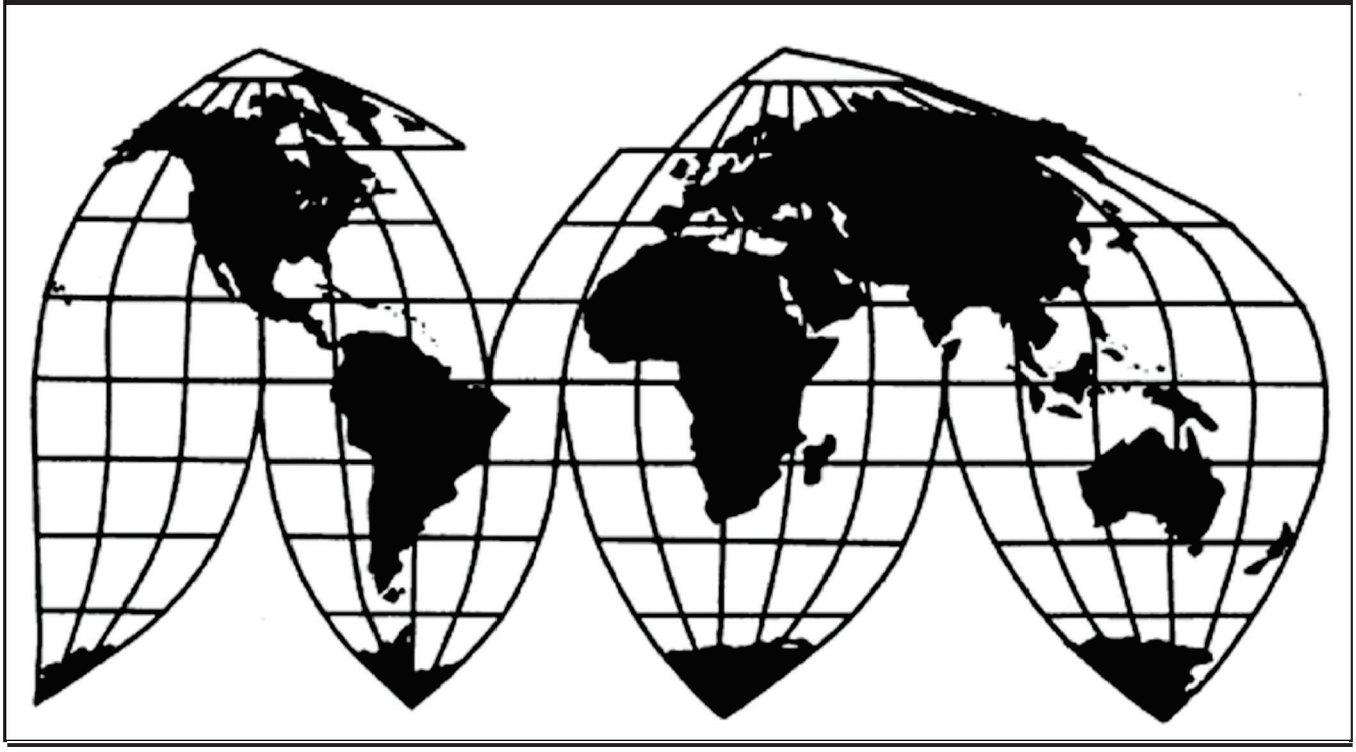
In the Matter of

CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR

337-TA-935

Publication 4906 **June 2019**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Washington, DC 20436

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR**	**Investigation No. 337-TA-935**

ISSUANCE OF A GENERAL EXCLUSION ORDER, A LIMITED EXCLUSION ORDER, AND A CEASE AND DESIST ORDER; TERMINATION OF INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue: (1) a general exclusion order ("GEO") barring the unlicensed entry of certain personal transporters that infringe one patent asserted in this investigation; (2) a limited exclusion order ("LEO") prohibiting the unlicensed entry of infringing personal transporters, components thereof, and manuals therefor manufactured abroad by or on behalf of certain respondents that are covered by one or more asserted U.S. patents and copyright; and (2) a cease and desist order ("CDO") directed against one domestic defaulting respondent. The Commission has terminated this investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), on November 10, 2014, based on a complaint filed by Segway, Inc. of Bedford, New Hampshire ("Segway") and DEKA Products Limited Partnership of Manchester, New Hampshire ("DEKA") (collectively, "Complainants"). 79 *Fed. Reg.* 66739-40 (Nov. 10, 2014). The amended

complaint, as supplemented, alleges violations of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,789,640 ("the '640 patent"); 7,275,607 ("the '607 patent"); and 8,830,048 ("the '048 patent"); the claim of U.S. Design Patent No. D551,722 ("the '722 design patent"); the claim of U.S. Design Patent No. D551,592 ("the '592 design patent"); and U.S. Copyright Registration No. TX-7-800-563 ("the Asserted Copyright") by numerous respondents. *Id.* In particular, the notice of investigation named the following thirteen entities as respondents: Ninebot Inc., Ninebot (Tianjin) Technology Co., Ltd.; and PowerUnion (Beijing) Tech Co. Ltd. (the "Ninebot Respondents"); Robstep Robot Co., Ltd. ("Robstep"); Shenzhen INMOTION Technologies Co., Ltd. ("INMOTION"); Tech in the City; and Freego USA, LLC ("FreeGo USA") (collectively, "Terminated Respondents"); UPTECH Robotics Technology Co., Ltd. ("UPTECH"), Beijing Universal Pioneering Technology Co., Ltd. ("U.P. Technology"), Beijing Universal Pioneering Robotics Co., Ltd. ("U.P. Robotics"), FreeGo High-Tech Corporation Limited ("FreeGo China"), and EcoBoomer Co. Ltd. ("EcoBoomer") (collectively, "Defaulting Respondents"); and Roboscooters.com ("Roboscooters"). The Commission's Office of Unfair Import Investigations was also named as a party.

In the course of the investigation, the ALJ issued the following IDs with respect to the Terminated Respondents: ALJ Order Nos. 13 (Feb. 19, 2015) (*not reviewed* Mar. 18, 2015) (terminating respondent FreeGo USA by consent order); 19 (May 4, 2015) (*not reviewed* May 20, 2015) (terminating respondent Robstep by settlement); 23 (Jun. 19, 2015) (*not reviewed* Jul. 15, 2015) (terminating respondent INMOTION by settlement); 24 (Jul. 8, 2015) (*not reviewed* Jul. 28, 2015) (terminating respondent Tech in the City by consent order); and 27 (Aug. 20, 2015) (*not reviewed* Sept. 18, 2015) (terminating the Ninebot Respondents by settlement). The ALJ also issued an ID finding all of the Defaulting Respondents in default. *See* ALJ Order No. 20 (May 7, 2015) (*not reviewed* May 27, 2015). The sole remaining respondent Roboscooters participated in a preliminary teleconference on December 15, 2014, filed an answer to the complaint and notice of investigation (Dec. 31, 2014), partially responded to one set of Requests for Document Production, and produced a corporate witness for deposition on May 6, 2015, but did not otherwise participate in the investigation.

On July 8, 2015, Complainants filed a motion for summary determination of violation of Section 337 by Defaulting Respondents (*i.e.*, U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, and EcoBoomer), and respondent Roboscooters. The IA filed a response in support of the motion on July 23, 2015. No respondent filed a response to the motion.

On August 21, 2015, the ALJ issued an ID (order No. 28) granting Complainants' motion. No party petitioned for review of the ID.

On October 7, 2015, the Commission issued a Notice ("Commission Notice"). The Commission determined to affirm the ALJ's finding of a violation of section 337. The Commission also determined to review the August 21 ID in part. On review, the Commission determined, *inter alia*, to clarify that the authority for the ALJ to draw adverse inferences against respondent Roboscooters for its failures to act during the investigation and find Roboscooters in violation is found in Commission Rule 210.17, 19 C.F.R. § 210.17, and corrected certain

apparent typographical errors in the ID. *See* 80 *Fed. Reg.* 61842-43 (Oct. 14, 2015). The Commission requested written submissions on remedy, public interest, and bonding. *See id.* at 61843. Complainants and the IA timely filed their submissions pursuant to the Commission Notice. No other parties filed any submissions in response to the Commission Notice.

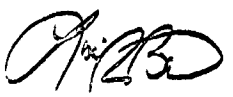
Having reviewed the submissions filed in response to the Commission's Notice and the evidentiary record, the Commission has determined that the appropriate form of relief in this investigation is: (a) a GEO prohibiting the unlicensed importation of certain personal transporters covered by claims 1, 2 and 4-7 of the '048 patent; (b) an LEO prohibiting the unlicensed entry of infringing (i) personal transporters, components thereof, and manuals therefor that are covered by one or more of claims 1 and 4 of the '640 patent manufactured abroad by or on behalf of, or imported by or on behalf of, the respondents UPTECH, U.P. Technology, U.P. Robotics, FreeGo China, EcoBoomer, and Roboscooters or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (ii) personal transporters, components thereof, and manuals therefor that are covered by one or more of claims 1, 3, and 7 of the '607 patent manufactured abroad by or on behalf of, or imported by or on behalf of, the respondents UPTECH, U.P. Technology, U.P. Robotics, FreeGo China, EcoBoomer, and Roboscooters or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (iii) personal transporters, components thereof, and manuals therefor that are covered by the claim of the '722 design patent manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, or UPTECH, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (iv) personal transporters, components thereof, and manuals therefor that are covered by the claim of the '592 design patent manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, or Roboscooters, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (v) personal transporters, components thereof, and manuals therefor that are covered by the Asserted Copyright manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, or UPTECH, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; and (c) a CDO directed against respondent Ecoboomer.

The Commission has further determined that the public interest factors enumerated in subsections (d)(l), (d)(2), and (f)(1) (19 U.S.C. §§ 1337(d)(l), (d)(2), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. § 1337(j)). The Commission has also issued an opinion explaining the basis for the Commission's action. The investigation is terminated.

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

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

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: March 10, 2016

CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR **Inv. No. 337-TA-935**

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, John K. Shin, Esq., and the following parties as indicated, on **March 11, 2016**.

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

On Behalf of Complainants Segway Inc. and DEKA Products Limited Partnership:

David F. Nickel, Esq.
FOSTER, MURPHY, ALTMAN & NICKEL, PC
1899 L. St. NW, Suite 1150
Washington, DC 20036

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

Respondents:

Beijing Universal Pioneering Robotics Co., Ltd.
Room 302, 3/F TianLi Building No. 56
ZhiChun Road, Haidan District
Beijing, PRC 100098

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

UPTECH Robotics Technology Co., Ltd.
Room 302, 3/F TianLi Building No. 56
ZhiChun Road, Haidan District
Beijing, PRC 100098

☐ Via Hand Delivery
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FreeGo High-Tech Corporation Limited
6/F, Block I, Electronic Info Industrial Park
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EcoBoomer Co., Ltd.
18139 Coastline Drive, Suite 3
Malibu, CA 90265

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Roboscooters.com
21541 Crawford Lake Rd.
Laurel Hill, NC 28541

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR**	**Investigation No. 337-TA-935**

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation and sale of certain personal transporters covered by claims 1, 2 and 4-7 of U.S. Patent No. 8,830,048 ("the '048 patent") asserted in this investigation.

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

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude the issuance of the general exclusion order, and that the

bond during the Presidential review period shall be in the amount of 100 percent of the entered value for all covered products in question.

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

1. Personal transporters covered by one or more of claims 1, 2 and 4-7 of the '048 patent are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patent, except under license of the patent owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid personal transporters are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption under bond in the amount of one hundred (100) percent of the entered value of the products, pursuant to subsection (j) of Section 337 (19 U.S.C. § 1337(j)) and the Presidential memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty days after the date of receipt of this Order.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures that it establishes, persons seeking to import personal transporters 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.

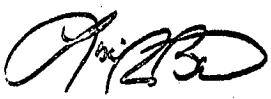
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to personal transporters imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

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

6. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.

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

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: March 10, 2016

CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR **Inv. No. 337-TA-935**

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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of **CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR**	**Investigation No. 337-TA-935**

CEASE AND DESIST ORDER

IT IS HEREBY ORDERED THAT EcoBoomer Co. Ltd. of Malibu, California, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting U.S. agents or distributors for personal transporters, components thereof, and manuals therefor that are covered by one or more of claims 1, 2 and 4-7 of U.S. Patent No. 8,830,048 ("the '048 patent"); claims 1 and 4 of U.S. Patent No. 6,789,640 ("the '640 patent"); and claims 1, 3 and 7 of U.S. Patent No. 7,275,607 ("the '607 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) "Complainants" shall mean Segway, Inc. of Bedford, New Hampshire, and DEKA Products Limited Partnership of Manchester, New Hampshire.

(C) "Respondent" shall mean EcoBoomer Co. Ltd. of Malibu, 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 personal transporters, components thereof, and manuals therefor covered by one or more of claims 1, 2 and 4-7 of the '048 patent; claims 1 and 4 of the '640 patent; and claims 1, 3 and 7 of the '607 patent.

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 the relevant one or more of the '048 patent, the '640 patent, and the '607 patent, Respondent shall not:

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

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

(C) advertise imported covered products

(D) solicit U.S. agents or distributors for imported covered products; or

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

IV.
Conduct Permitted

Notwithstanding any other provision of this order, specific conduct otherwise prohibited by the terms of this order shall be permitted if, in a written instrument, the owner of the relevant '048 patent, '640 patent, and/or '607 patent 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 requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. The first report required under this section shall cover the period from the date of issuance of this order through June 30, 2016. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that it has (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.

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-935") in a prominent place on the cover pages and/or the first page. (*See* Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainants' 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, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and

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

ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

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

VII.
Service of Cease and Desist order

Respondent is ordered and directed to:

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

(B) Serve, within fifteen 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 latest expiration date of the '048 patent, the '640 patent, and the '607 patent.

VIII.
Confidentiality

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

IX.
Enforcement

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

X.
Modification

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

XI.
Bonding

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

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

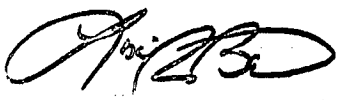
The bond is to be forfeited in the event that the United States Trade Representative approves this order (or does not disapprove it within the review period), unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent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

[2] *See* note 1 above.

the products subject to this bond and provides certification to that effect that is 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
Secretary to the Commission

Issued: March 10, 2016

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U.S. International Trade Commission
500 E Street, SW, Room 112
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On Behalf of Complainants Segway Inc. and DEKA Products Limited Partnership:

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PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of **CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR**	**Investigation No. 337-TA-935**

COMMISSION OPINION

I. BACKGROUND

The Commission instituted this investigation on November 10, 2014, based on a complaint filed by Segway, Inc. ("Segway") and DEKA Products Limited Partnership ("DEKA") (collectively, "Complainants"), alleging a violation of section 337, 19 U.S.C. § 1337, as amended, in the importation, sale for importation, and sale within the United States after importation of certain personal transporters, components thereof, and manuals therefor by reason of infringement of one or more of claims 1 and 4 of U.S. Patent No. 6,789,640 ("the '640 patent"); claims 1, 3, and 7 of U.S. Patent No. 7,275,607 ("the '607 patent"); claims 1, 2, 4, 5, 6, and 7 of U.S. Patent 8,830,048 ("the '048 patent"); the claim of U.S. Design Patent No. D551,722 ("the '722 design patent"); the claim of U.S. Design Patent No. D551,592 ("the '592 design patent"); and U.S. Copyright Registration No. TX-7-800-563 ("Asserted Copyright"). *See* 79 *Fed. Reg.* 66739-40 (Nov. 10, 2014). The notice of investigation named the following thirteen entities as respondents: Ninebot Inc., Ninebot (Tianjin) Technology Co., Ltd.;[1] and

[1] Ninebot (Tianjin) Technology Co., Ltd. ("Ninebot (Tianjin)") is the correct corporate name for Ninebot Inc. (China) which was originally named as a respondent in the Amended Complaint. *See* ID at 2 n.1; IARemedyOpen at 3 n. 6; 79 *Fed. Reg.* 66740 (2014).

PowerUnion (Beijing) Tech Co. Ltd. (collectively, the "Ninebot Respondents"); Robstep Robot Co., Ltd. ("Robstep"); Shenzhen INMOTION Technologies Co., Ltd. ("INMOTION"); Tech in the City; Freego USA, LLC ("FreeGo USA"); UPTECH Robotics Technology Co., Ltd. ("UPTECH"); Beijing Universal Pioneering Technology Co., Ltd. ("U.P. Technology"); Beijing Universal Pioneering Robotics Co., Ltd. ("U.P. Robotics"); FreeGo High-Tech Corporation Limited ("FreeGo China"); EcoBoomer Co. Ltd. ("EcoBoomer"); and Roboscooters.com ("Roboscooters"). *Id.* The Ninebot Respondents and respondents Robstep, INMOTION, Tech in the City, and FreeGo USA were terminated from the investigation based on settlement or consent orders (collectively, "Terminated Respondents"). Respondents UPTECH, U.P. Technology, U.P. Robotics, FreeGo China, and EcoBoomer were found in default (collectively, "Defaulting Respondents"). A Commission investigative attorney ("IA," or "Staff") is participating in this investigation. *Id.*

The ALJ issued the following IDs with respect to the Terminated Respondents: ALJ Order Nos. 13 (Feb. 19, 2015) (*not reviewed* Mar. 18, 2015) (terminating respondent FreeGo USA by consent order); 19 (May 4, 2015) (*not reviewed* May 20, 2015) (terminating respondent Robstep by settlement); 23 (Jun. 19, 2015) (*not reviewed* Jul. 15, 2015) (terminating respondent INMOTION by settlement); 24 (Jul. 8, 2015) (*not reviewed* Jul. 28, 2015) (terminating respondent Tech in the City by consent order); and 27 (Aug. 20, 2015) (*not reviewed* Sept. 18, 2015) (terminating the Ninebot Respondents by settlement).

The ALJ issued an ID finding all of the Defaulting Respondents in default on May 7, 2015. *See* ALJ Order No. 20 (*not reviewed* May 27, 2015).

The sole remaining respondent Roboscooters participated in a preliminary teleconference

on December 15, 2014, filed an answer to the complaint and notice of investigation (Dec. 31, 2014), partially responded to one set of Requests for Document Production, and produced a corporate witness for deposition on May 6, 2015, but did not otherwise participate in the investigation. ID at 5. Roboscooters did not appear at the Markman hearing which was held on April 16, 2015, and it did not file a response to Complainants' motion for summary determination of violation discussed below. *Id.*

On July 8, 2015, Complainants filed a motion for summary determination of violation of section 337 by Defaulting Respondents (*i.e.*, U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, and EcoBoomer), and respondent Roboscooters ("Mot.,") a supporting Memorandum ("Mem.," or "Compl. Memo"), and a statement of material facts ("SMF"). With their motion, Complainants sought the following relief:

> 1. An initial determination that (a) those Respondents who have been found in default in this Investigation ("Defaulting Respondents") and (b) Respondent Roboscooters.com ("Roboscooters" or "Non-Participating Respondent") have violated Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, through their importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of personal transporters, components thereof, and manuals therefor, that infringe claims 1 and 4 of United States Patent No. 6,789,640 (the "'640 Patent"); claims 1, 3, and 7 of United States Patent No. 7,275,607 (the "'607 Patent"); claims 1, 2, 4, 5, 6, and 7 of United States Patent No. 8,830,048 (the "'048 Patent") (collectively, the "Asserted Utility Patents"); United States Design Patent No. D551,722 (the "'722 Patent"); United States Design Patent No. D551,592 (the "'592 Patent") (collectively, the "Asserted Design Patents"); and/or United States Copyright Registration No. TX-7-800563 (the "Asserted Copyright");
>
> 2. An initial determination that Complainants satisfy the domestic industry requirement; and

> 3. A recommended determination that the Commission (a) issue a general exclusion order pursuant to 19 U.S.C. § 1337(d)(2) covering personal transporters and components thereof that infringe claims 1, 2, 4, 5, 6 and/or 7 of the '048 Patent, (b) issue limited exclusion orders pursuant to 19 U.S.C. § 1337(d)(l) directed to the Defaulting Respondents and Roboscooters covering personal transporters, components thereof and manuals therefor that infringe claims 1 and 4 of the '640 Patent, claims 1, 3 and 7 of the '607 Patent, the Asserted Design Patents, and the Asserted Copyright, (c) cease and desist orders pursuant to 19 U.S.C. § 1337(f)(1) directed to Respondents EcoBoomer and Roboscooters; and (d) set the bond for the Presidential review period at 100% of the entered value of the infringing personal transporters, components thereof, and manuals therefor.

See Mot. at 1-3; Mem. at 1-2; ID at 3-4.

The IA filed a response in support of the motion on July 23, 2015 ("SResp.," or "IA Resp."). No respondent filed any response to the motion.

On August 21, 2015, the ALJ issued an ID (order No. 28) granting Complainants' motion and finding violations of section 337 by the Defaulting Respondents and Roboscooters. On October 7, 2015, the Commission issued a Notice ("Commission Notice") determining to review the ID in part and, on review, to modify certain portions of the ID. *See* 80 *Fed. Reg.* 61842-43 (Oct. 14, 2015). The Commission did not review the ID's findings of violation. The Commission also requested written submissions on remedy, public interest, and bonding. *Id.* Complainants and the IA timely filed their submissions pursuant to the Commission Notice. No other submissions were filed in response to the Commission Notice.

II. REMEDY

In a section 337 proceeding, the Commission has "broad discretion in selecting the form, scope, and extent of the remedy." *Viscofan, S.A. v. United States Int'l Trade Comm'n*, 787 F.2d

544, 548 (Fed. Cir. 1986). Based on the record in this investigation, and for the reasons detailed below, the Commission has determined to issue (a) a general exclusion order ("GEO") prohibiting the unlicensed importation of certain personal transporters covered by claims 1, 2 and 4-7 of the '048 patent; (b) a limited exclusion order ("LEO") prohibiting the unlicensed entry of infringing personal transporters, components thereof, and manuals therefor manufactured abroad by or on behalf of the Defaulting Respondents and respondent Roboscooters, or any of their affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns that are covered by one or more of claims 1 and 4 of the '640 patent; claims 1, 3, and 7 of the '607 patent; the '722 design patent; the '592 design patent; and the Asserted Copyright; and (c) a cease and desist order ("CDO") directed against respondent Ecoboomer. We also find that these remedial orders are not contrary to the public interest.

A. GEO

For the reasons that follow, we have determined to issue a GEO pursuant to 19 U.S.C. § 1337(d)(2), forbidding entry into the United States of all personal transporters covered by one or more of claims 1, 2, and 4-7 of the '048 patent.

Under section 337, the Commission is authorized to issue a GEO excluding all infringing goods regardless of the source when the conditions of section 337(d)(2) or (g)(2) are met. *See* 19 U.S.C. §§ 1337 (d)(2), (g)(2). In the present investigation, respondent Roboscooters participated in a preliminary teleconference on December 15, 2014, filed an answer to the complaint and notice of investigation (Dec. 31, 2014), partially responded to one set of Requests for Document Production, and produced a corporate witness for deposition on May 6, 2015, but did not otherwise participate in the investigation. ID at 5. Several other respondents answered the

complaint and settled with Complainants. *Id.* at 4. Under these circumstances, section 337(d)(2) is the appropriate statutory provision governing issuance of a GEO. *See Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, and Products Containing Same*, Inv. No. 337-TA-489, Comm'n Op. at 4 (July 23, 2004) (finding that the issuance of a GEO under section 337(d)(2), rather than 337(g)(2), was appropriate when not all respondents failed to appear to contest the investigation); *see also Certain Energy Drink Products*, Inv. No. 337-TA-678, USITC Pub. No. 4286, Comm'n Op. at 4-7 (Nov. 2011); *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, USITC Pub. No. 4376, Comm'n Op. at 24 (Feb. 2013).

Accordingly, under section 337(d)(2):

> The authority of the Commission to issue an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that --
>
> (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or
> (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2). In determining whether either criterion is satisfied the Commission may look not only to the activities of active respondents, but also to those of non-respondents as well as respondents who have defaulted or been terminated from an investigation. *See Certain Electronic Paper Towel Dispensing Devices and Components Thereof*, Inv. No. 337-TA-718, Comm'n Op. at 16 (Dec. 1, 2011), *id.* at 13-14; *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm'n Op. at 59 (April 14, 2010).

As detailed below, the record in the present investigation warrants the issuance of a GEO under both subparagraph (A) and subparagraph (B) of subsection 337(d)(2). *See* 19 U.S.C. § 1337(d)(2).

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

The record shows a high likelihood that Defaulting Respondents and respondent Roboscooters would likely circumvent an LEO by employing various practices, including importing the infringing products through several different distributors and selling such products under various different names. RD at 79. For example, with respect to the WindRunner personal transporters, the record shows that "it is unknown which company actually manufactures and imports the infringing WindRunner brand products." Mem. at 403, DI Tech. Ex. 10. *See also* RD at 79. The record shows that there are many companies on the Internet that are selling the WindRunner brand of personal transporters to customers in the U.S. *See* SResp. at 60, Exh. C. In addition to the companies already associated with the WindRunner, such as UPTECH, U.P. Technology, and U.P. Robotics, the record shows that there are numerous new distributors for Windrunner brand personal transporters, namely: (1) Shanghai Lannmarker Vehicles and Accessories Co., Ltd.; (2) Huizhou Tonsim Electronic Co., Ltd.; (3) Shenzhen Ocam Electronic Technology Co.. Ltd.; (4) Shenzhen Bai Yu Technology Co., Ltd.; (5) Merlot Commerce Co., Ltd. (Yongkang); (6) Wuyi Ofly Motion Apparatus Company; and (7) Shenzhen Greia Technology Co., Limited. *See* RD at 79 n. 4. Therefore, an LEO directed only to WindRunners associated with respondents UPTECH, U.P. Technology, and U.P. Robotics, is likely to be circumvented.

Similarly ineffective would be an LEO directed to the products of respondent FreeGo

China which, as the record shows, could continue to import infringing products either under a different corporate name, or a different product name. The record shows that FreeGo China has some unknown corporate relationship with at least Shenzhen Uvi Hi-Tech Co., Ltd. (R/B Exs. 9 and 17) and that although FreeGo China has been found in default, it still manufactures its products in China and offers them for sale in the United States, including now under its UVI Hi-Tech name, and through multiple other distributors. R/B Exs. 9 and 17; Staff Exh. D (identifying additional distributors for FreeGo scooter). The record shows that just weeks after it was found in default, FreeGo China offered to import and sell its infringing products to a Segway distributor for between $750 to $850 USD, which is significantly less than Segway's personal transporters, which sell for at least $5,000 depending on the model. R/B Ex. 17; R/B Ex. 28. The record also shows that FreeGo China allows its distributors to market and sell its infringing products under different "private label" names. IMP Ex. 1 at 83.

Likewise, based on the record, an LEO directed only to the products of respondents EcoBoomer and Roboscooters would be ineffective because these respondents are e-commerce websites that use a variety of third-party distributors to import their products. Specifically, as Mr. Jacobs (Roboscooters' founder and sole employee, ID at 5) explained at his deposition, Roboscooters is a middle-man that enables online purchases of personal transporters from its website, and it employs a "drop shipment" business model. IMP Ex. 1 at 7. Thus, when a customer orders a personal transporter from Roboscooters' website, Mr. Jacobs places an order with the company that manufactures the transporter (FreeGo, Estway, Robstep, etc.), and submits payment to that company and typically directs that company to ship the infringing product directly to the customer. IMP Ex. 1 at 8. Under this business model, Roboscooters is not

identified as the importer of record of the infringing product and the issuance of an LEO against it would not stop Roboscooters' sale-for-importation business. *See e.g. id.* at 23. The ALJ found that Defaulting Respondent EcoBoomer appears to have a similar business structure. RD at 81 (citing Am. Complaint at ¶ 21). The record thus shows that absent a GEO, respondents Roboscooters and EcoBoomer, as well as other on-line distributors, could easily circumvent an LEO by drop-shipping products directly to their customers from different manufacturers using different brand names.

In sum, the record shows that the Defaulting Respondents and Roboscooters could easily circumvent an LEO by selling their infringing personal transporters online, using different corporate names, using third-party distributors, changing the brand name for the personal transporters, or simply removing any identification of the brand name from the website and the actual product. *See also* RD at 79-81; IARemedyOpen at 7-9; ComplRemedyOpen at 21-24. Therefore, the requirement of subsection 19 U.S.C. § 1337(d)(2)(A) is satisfied here.

(2) Subparagraph (B) – A Pattern Of Violation Of Section 337 Where It Is Difficult To Identify The Source Of Infringing Products

Undisputed record evidence also shows that there is a widespread pattern of importation and sale of infringing personal transporters throughout the United States. Complainants named thirteen respondents in this investigation, including the following eight manufacturing respondents: PowerUnion, UPTECH, U.P. Robotics, U.P. Technology, Ninebot (Tianjin), INMOTION, Robstep, and FreeGo China. Moreover, the record shows that there are numerous potentially infringing personal transporters manufactured and/or sold by named respondents and third-parties not named as respondents. R/B Exs. 29, 30; IMP Ex. 1 at 17.

Complainants also identified additional companies that are manufacturing and selling Segway-like products. Mem. at 398-99. Such companies include (1) Shenzen Xinli Intelligent Robot Co., Ltd., (2) Airwheel (Changzhou) Technology Co., Ltd., (3) China Flame Group, Ltd., (4) Shenzen Xinli Escooter Technology Co. Ltd.; (4) Freeyoyo Co. Ltd., (5) Shenzen Flyers Technology Co., Ltd., (6) Shenzen Topwheel Technology Co., Ltd. (www.topwheelchina.com); (7) Koowheel.com; (8) Xinli Escooter Technology Co., Ltd.; (9) Shenzen Sinotec Tehnology Co., Ltd.; (10) Wuhu Okay Robot; (11) Shenzen Ecoflyway Co., Ltd.; (12) Hangzhou Chic Intelligent Technology Co., Ltd.; and (13) Shenzen 3C Lead-Way Group. R/B Exs. 2, 3, 7-8, 10-13, 14-16, 19 and 20. The record indicates that each of these companies claims it is capable of exporting its products to the United States. *Id. See* RD at 82.

Specifically, respondent Roboscooters recently admitted that it has started to sell [[ ]] transporters in the United States. IMP Ex. 1 at 15-21. The record also shows that there are many other companies on the Internet that sell the WindRunner and FreeGo personal transporters to customers in the United States. SResp. at 60, Exh. C, D. The record contains a list of over 1,000 counterfeit or "knock-off" personal transporters being sold online by over 100 individual sellers. R/B Exs. 29, 30; RD at 83. Numerous online sales of infringing imported goods can constitute a pattern of violation of section 337. *See* RD at 83 (citing *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm'n Op. at 14 (June 26, 2015)).

The record also shows that the sources of the imported products are difficult to identify. A recent article published by WIRED magazine describes the market for self-balancing type personal transporters, the growing prevalence of Chinese manufacturers of such products, and the inability to identify the manufacturers of the products. R/B Ex. 1; RD at 83. According to the

article, "[t]he Chinese manufacturing industry moves so quickly with so little documentation that it's basically impossible to fact-check" where the transporters originate. R/B Ex. 1 at 3. *See id.* at 4 ("This manufacturing vitality, where as soon as something is created it is immediately everywhere, isn't unique to two-wheeled self-balancing scooters . . . As it is, the reward for being first is still just being copied first.") [2]

The record shows that the manufacturers, distributors, and other third-party sellers of personal transporters sell their products online, including under fictitious corporate names, thus avoiding detection. Mem. at 395-404; R/B Exs. 29, 30; RD at 84. The Commission has recognized that the anonymity over the Internet increases the difficulty in identifying the sources of infringing products. *See* RD at 84 (citing *Certain Cases for Portable Electronic Devices*, Inv. No. 337-TA-867/861 (Consolidated), Comm'n Op. at 9-10 (July 10, 2014); *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Comm'n Op. at 6 (Nov. 19, 2012)).

In sum, the record shows that a pattern of violation exists and that it is difficult to identify the source of infringing products, thus satisfying the requirements of 19 U.S.C. § 1337(d)(2)(B).

B. LEO

Complainants seek only an LEO against the Defaulting Respondents and respondent Roboscooters for personal transporters and components thereof that infringe claims 1 and 4 of the '640 patent and claims 1, 3 and/or 7 of the '607 patent. ComplRemedyOpen at 29-35. The

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[2]The article explains that, "[b]ecause the Chinese manufacturing industry is so centralized, anything new spreads like crazy through the supply chain. One manufacturer creates a product; another reverse-engineers it and makes it too. And that company can make it cheaper and faster, because it had no R&D costs. In most cases, this endless game of product-telephone makes the product worse." R/B Ex. 1 at 4.

IA also supports this remedy. IARemedyOpen at 13-14. Section 337(d)(l) provides that "[i]f the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States . . ." 19 U.S.C. § 1337 (d)(l). The ALJ found that there is a violation in the importation, sale for importation, and sale after importation of the products that infringe claims 1 and 4 of the '640 patent and claims 1, 3 and/or claim 7 of the '607 patent, ID at 90-92, and we determined not to review this finding. *See* ID at 90-92; 80 *Fed. Reg.* 61842. Accordingly, we have determined to issue an LEO directed against products of the Defaulting Respondents and Roboscooters that infringe these claims under 19 U.S.C. § 1337 (d)(l).

The ALJ also found that WindRunner G1U infringes the '722 design patent, WindRunner GlX infringes the '592 design patent, and the FreeGo F3 infringes the '592 design patent, ID at 90, and we did not review those findings. 80 *Fed. Reg.* 61842. Accordingly, we also direct the LEO against: (1) the WindRunner GlU personal transporters which infringe the '722 Design Patent, made by or for, or sold by or for, respondents UPTECH, U.P. Robotics, and U.P. Technology; (2) the WindRunner GlX personal transporters which infringe the '592 Design Patent, made by or for, or sold by or for, respondents UPTECH, U.P. Robotics, and U.P. Technology; and (3) the FreeGo F3 personal transporters which infringe the '592 Design Patent, made by or for, or sold by or for, respondents FreeGo China and Roboscooters.

Finally, the ALJ found that the WindRunner manuals infringe the Asserted Copyright, ID at 90, and we did not review that finding. 80 *Fed. Reg.* 61842. Accordingly, we also direct the LEO against the infringing Windrunner manuals of UPTECH, U.P. Robotics, and U.P.

Technology.

C. CDO

Complainants seek CDOs against respondents Ecoboomer and Roboscooters. ComplRemedyOpen at 36-40. The ALJ recommended the issuance of a CDO only against domestic defaulting respondent EcoBoomer, but not against Roboscooters, provided the Commission issues the GEO requested by Complainants. RD at 86-88. The IA supports the ALJ's recommendation. IARemedyOpen at 14.

(1) EcoBoomer

We find that the record in this investigation supports the issuance of a CDO only against domestic defaulting respondent EcoBoomer. The Commission generally issues a CDO to domestic respondents when they are shown to maintain commercially significant U.S. inventories of infringing products. *See e.g. Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, Comm'n Op. at 37-42, USITC Pub. No. 2391 (June 1991). In cases of default the Commission presumes that domestic respondents maintain commercially significant U.S. inventories of the infringing imported product, and will issue CDOs accordingly. *See e.g. Certain Video Game Systems, Accessories, and Components Thereof*, Inv. No. 337-TA-473, Comm'n Op. at 2 (Dec. 24, 2002) ("*Video Game Systems*"); *Certain Agricultural Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380, Comm'n Op. at 44 n.124, USITC Pub. No. 3026 (Mar. 1997). *See also* RD at 85-86, IARemedyOpen at 14; ComplRemedyOpen at 36.

Defaulting respondent EcoBoomer is a domestic respondent and therefore is presumed to have commercially significant U.S. inventories of Accused Products, *see Certain Video Game Systems* at 2. Accordingly, we have determined to issue a CDO against EcoBoomer. *See also*

RD at 86; IARemedyOpen at 15; ComplRemedyOpen at 36. The CDO against EcoBoomer applies to only the three Asserted Utility Patents which it was found to infringe. *See* RD at 85; IARemedyOpen at 15 n. 14. [3]

(2) Roboscooters

In seeking a CDO against Roboscooters, Complainants argue that "[i]n this Investigation, a [LEO] alone cannot provide efficient relief for Segway," ComplRemedyOpen at 39, due primarily to a Roboscooters' drop shipment business model. The ALJ recommended that the Commission issue a GEO directed against the articles found to infringe the '048 patent.[4] She noted that such a GEO would cover the same Robstep Robin M1 devices that Complainants sought to cover under a CDO. Accordingly, the ALJ found that a GEO will provide an adequate remedy with no need for a CDO against Roboscooters. *See* RD at at 87-88. Consistent with the ALJ's recommendation, we have determined to issue a GEO with respect to the articles found to infringe '048 patent. *See supra.*

Complainants argue that a CDO "covering Roboscooters' sale for importation, importation and/or sale after importation of personal transporters, components thereof and manuals therefor that infringe the Asserted Claims of the Asserted Utility Patents and the '592 Design Patent is appropriate even if the Commission issues a GEO covering the '048 Patent," ComplRemedyOpen at 38, but they fail to provide a factual or legal basis for their argument or to

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[3] We note that Complainants do not seek a statutory relief in the form of a CDO against EcoBoomer under § 1337(g)(1)(E). Rather, they seek a CDO against EcoBoomer under § 1337(f)(1). *See* ID at 3-4; Mem. at 1-2.

[4] The same products that infringe the '048 patent also infringe the '640 and '607 patents. *See* RD at 85.

show any flaw in the ALJ's analysis and recommendation. *See id.* at 38-40; *see also* Mot. at 415-418. We note that while the ALJ found, based on the record, that a CDO against Roboscooters "would be unnecessary if a ***GEO*** were enforced," RD at 86 (emphasis added), Complainants contend only that "[i]n this Investigation, a ***limited exclusion order*** alone cannot provide efficient relief for Segway," ComplRemedyOpen at 39 (emphasis added), and this contention does not demonstrate that the ALJ's finding noted above is incorrect.

Complainants further contend that "Roboscooters currently has in its possession at least [[ ]] infringing personal transporters." *Id.* The ALJ determined, however, that "there is insufficient evidence to find that the [[ ]] products infringe any of the Asserted Utility Patents."[5] ID at 56. *See also id.* at 60. Therefore, the record shows that Roboscooters currently has in its possession [[ ]] personal transporter that was found to infringe the Asserted Utility Patents. Nevertheless, even assuming [[ ]] transporters are infringing, Complainants do not contend that this constitutes a commercially significant inventory. Based on the foregoing, we find that the record does not support the issuance of a CDO against Roboscooters in the present investigation.[6]

III. PUBLIC INTEREST

Before issuing a remedy for a violation of section 337, the Commission must consider the effect of the remedy on certain public interest considerations: (1) the public health and welfare,

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[5] The Complainants were able to obtain discovery regarding Roboscooters's inventory, and there is no dispute that the number of products is small. *See* ID at 87.

[6] We note that Roboscooters did not default under 19 U.S.C. § 1337(g)(1), and, therefore, Complainants could not, and do not, seek statutory relief against Roboscooters under § 1337(g)(1)(E). *See* ID at 3-4; Mem. at 1-2.

(2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. 19 U.S.C. §§ 1337(d), (f), (g); *Certain Ink Jet Print Cartridges and Components Thereof,* Inv. No. 337-TA-446, Commission Opinion at 14 (October 2002). Both the IA and Complainants submit that the public interest factors do not weigh against the ALJ's recommended remedy in this investigation.

We find that the evidentiary record in this investigation does not indicate that any of the above-referenced factors raises public interest concerns that would preclude issuance of the remedial orders in this investigation. The record does not support a finding of any specific harm to the public health, safety, or welfare sufficient to preclude issuance of the proposed remedial orders. As the IA points out, the subject products are alternative personal transportation devices for individual riders, largely to be used in place of multiple other transportation means such as cars, motor scooters, motorcycles, bicycles, and walking. *Id.* (citing Complainants' Statement Regarding the Public Interest, at 1-2 (Sept. 25, 2015)). Furthermore, the competitive conditions are robust in the United States economy for self-balancing personal transporters. Based on the record, Segway, any of its licensees, and other third parties in the U.S. appear to be able to replace the products at issue with their own like or directly competitive articles within a commercially reasonable time after the exclusion orders go into effect. *Id.* (citing Complainants' Statement Regarding the Public Interest, at 2-3 (Sept. 25, 2015)). Therefore, U.S. consumers would have access to competitive products from at least Segway and its licensees, and any exclusion order would have minimal impact on competitive conditions in the United States economy and the production of like or directly competitive articles in the United States. *See also*

ComplRemedyOpen at 43-44.

Based on the foregoing, we find that entry of the remedial orders sought by Complainants would not be contrary to the public interest in this investigation.

IV. BONDING

Upon the entry of the remedial orders, a respondent may continue to import and sell its products during the sixty (60) day period of Presidential review subject to posting a bond. 19 U.S.C. § 1337(j)(3). The amount of the bond is determined by the Commission and must be sufficient to protect a complainant from any injury. 19 C.F.R. § 210.50(a)(3). Both the IA and Complainants agree that, given the state of the evidentiary record, the bond amount should be set at 100 percent of the entered value of the accused products as no reliable price differential can be determined. *See* ComplRemedyOpen at 44-46, IARemedyOpen at 17-18.

The ALJ noted Complainants' evidence that infringing products are sold at several different price points, RD at 89 (citing Mem. at 419-20), and found no evidence of a reasonable royalty rate for the Asserted Utility Patents, the Asserted Design Patents, or the Asserted Copyright. Accordingly, she recommended that the Defaulting Respondents and Roboscooters pay a bond of 100 percent of entered value during the 60-day Presidential review period. RD at 89-90.

The Commission has set bond rates at 100 percent of the entered value of the accused product where the available pricing or royalty information is inadequate. *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same*, Inv. No. 337-TA-372, Comm'n Op. on Remedy, the Public Interest, and Bonding at 15, USITC Pub. 2964 (May 1996)). We agree that the record in the present investigation lacks sufficient evidence of a

reasonable royalty rate, and that the pricing of the accused products varies significantly, *see* RD at 89. Accordingly, we have determined to set the bond at 100 percent of the entered value of the accused products during the Presidential review period.

V. CONCLUSION

Having considered the ALJ's Recommended Determination, the parties' submissions filed in response to the Commission's Notice, and the evidentiary record, the Commission has determined to issue:

(a) a GEO prohibiting the unlicensed importation of certain personal transporters covered by claims 1, 2 and 4-7 of the '048 patent;

(b) an LEO prohibiting the unlicensed entry of infringing

(i) personal transporters, components thereof, and manuals therefor that are covered by one or more of claims 1 and 4 of the '640 patent manufactured abroad by or on behalf of, or imported by or on behalf of, the respondents UPTECH, U.P. Technology, U.P. Robotics, FreeGo China, EcoBoomer, and Roboscooters or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns;

(ii) personal transporters, components thereof, and manuals therefor that are covered by one or more of claims 1, 3, and 7 of the '607 patent manufactured abroad by or on behalf of, or imported by or on behalf of, the respondents UPTECH, U.P. Technology, U.P. Robotics, FreeGo China, EcoBoomer, and Roboscooters or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns;

(iii) personal transporters, components thereof, and manuals therefor that are covered by the claim of the '722 design patent manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, or UPTECH, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns;

(iv) personal transporters, components thereof, and manuals therefor that are covered by the claim of the '592 design patent manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, or Roboscooters, or any of their affiliated companies,

parents, subsidiaries, or other related business entities, or their successors or assigns;

(v) personal transporters, components thereof, and manuals therefor that are covered by the Asserted Copyright manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, or UPTECH, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; and

(c) a CDO directed against respondent Ecoboomer.

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

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: April 20, 2016

CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR **Inv. No. 337-TA-935**

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served by hand upon the Commission Investigative Attorney, John K. Shin, Esq., and the following parties as indicated, on **April 20, 2016**.

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

On Behalf of Complainants Segway Inc. and DEKA Products Limited Partnership:

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Respondents:

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Laurel Hill, NC 28541

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☒ Via First Class Mail
☐ Other:_____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	
CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR	Investigation No. 337-TA-935

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

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination ("ID") (Order No. 28) of the presiding administrative law judge ("ALJ") granting complainants' motion for summary determination of violation of section 337 and, on review, to make certain modifications in the ID.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337"), on November 10, 2014, based on a complaint filed by Segway, Inc. of Bedford, New Hampshire ("Segway") and DEKA Products Limited Partnership of Manchester, New Hampshire ("DEKA") (collectively, "Complainants"). 79 *Fed. Reg.* 66739-40 (Nov. 10, 2014). The amended complaint, as supplemented, alleges violations of Section 337 by reason of infringement of

certain claims of U.S. Patent Nos. 6,789,640 ("the '640 patent"); 7,275,607 ("the '607 patent"); and 8,830,048 ("the '048 patent"); the claim of U.S. Design Patent No. D551,722 ("the '722 design patent"); the claim of U.S. Design Patent No. D551,592 ("the '592 design patent"); and U.S. Copyright Registration No. TX-7-800-563 by numerous respondents. *Id.* In particular, the notice of investigation named the following thirteen entities as respondents: Ninebot Inc., Ninebot (Tianjin) Technology Co., Ltd., and PowerUnion (Beijing) Tech Co. Ltd. (the "Ninebot Respondents"); Robstep Robot Co., Ltd. ("Robstep"); Shenzhen INMOTION Technologies Co., Ltd. ("INMOTION"); Tech in the City; and Freego USA, LLC ("FreeGo USA") (collectively, "Terminated Respondents"); UPTECH Robotics Technology Co., Ltd. ("UPTECH"); Beijing Universal Pioneering Technology Co., Ltd. ("U.P. Technology"); Beijing Universal Pioneering Robotics Co., Ltd. ("U.P. Robotics"); FreeGo High-Tech Corporation Limited ("FreeGo China"); and EcoBoomer Co. Ltd. ("EcoBoomer") (collectively, "Defaulting Respondents"); and Roboscooters.com ("Roboscooters"). The Commission's Office of Unfair Import Investigations was also named as a party.

In the course of the investigation, the ALJ issued the following IDs with respect to the Terminated Respondents: ALJ Order Nos. 13 (Feb. 19, 2015) (*not reviewed* Mar. 18, 2015) (terminating respondent FreeGo USA by consent order); 19 (May 4, 2015) (*not reviewed* May 20, 2015) (terminating respondent Robstep by settlement); 23 (Jun. 19, 2015) (*not reviewed* Jul. 15, 2015) (terminating respondent INMOTION by settlement); 24 (Jul. 8, 2015) (*not reviewed* Jul. 28, 2015) (terminating respondent Tech in the City by consent order); and 27 (Aug. 20, 2015) (*not reviewed* Sept. 18, 2015) (terminating the Ninebot Respondents by settlement). The ALJ also issued an ID finding all of the Defaulting Respondents in default. *See* ALJ Order No. 20 (May 7, 2015) (*not reviewed* May 27, 2015). The sole remaining respondent Roboscooters participated in a preliminary teleconference on December 15, 2014, filed an answer to the complaint and notice of investigation (Dec. 31, 2014), partially responded to one set of Requests for Document Production, and produced a corporate witness for deposition on May 6, 2015, but did not otherwise participate in the investigation.

On July 8, 2015, Complainants filed a motion for summary determination of violation of Section 337 by defaulting respondents and respondent Roboscooters. The Commission investigative attorney filed a response in support of the motion. No other responses were filed.

On August 21, 2015, the ALJ issued an ID (Order No. 28) granting Complainants' motion and making recommendations regarding remedy and bonding. The ID finds, *inter alia*, a violation of Section 337 under subsection 337(g)(2) by reason of infringement of the '048 patent based on substantial, reliable, and probative evidence. 19 U.S.C. § 1337(g)(2). The ID also finds a violation by the defaulting respondents and respondent Roboscooters by reason of infringement of the '640 patent, the '607 patent, the '722 design patent, the '592 design patent, and U.S. Copyright Registration No. TX-7-800-563. No party petitioned for review of the ID.

The Commission has determined to review the ID in part and, on review, to clarify that the authority for the ALJ to draw adverse inferences against respondent Roboscooters for its failures to act during the investigation and find Roboscooters in violation is found in

Commission Rule 210.17, 19 C.F.R. § 210.17. On review, the Commission also corrects certain apparent typographical errors. Specifically, in the last paragraph on page 45, "Ex. 19" should be substituted for "Ex. 9," the "FreeGo F3" should be substituted for the "WindRunner G1U." Likewise, we substitute "Focxess" for "Estway" in the last paragraph on page 60. *See* ID at 45; 60. Furthermore, we substitute the clause "In support of their allegations in the Complaint that the Gen 2 PT vehicles practice claims of the Asserted Utility Patents," for the first clause of the last sentence on page 65 of the ID. *See* ID at 65-66.

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 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 are 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 (Dec. 1994) (Commission Opinion).

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

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

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the expiration dates of each of the asserted patents and copyright, and state the HTSUS subheadings under which the accused articles are imported. Complainants are also requested to supply the names of known importers of the infringing articles. The written submissions and proposed remedial orders must be filed no later than the close of business on October 21, 2015. Reply submissions must be filed no later than the close of business on October 28, 2015. Such submissions should address the ALJ's recommended determinations on remedy and bonding

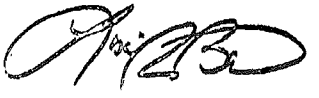
which were made in Order No. 28. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

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-935") 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 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 Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: October 7, 2015

CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR **Inv. No. 337-TA-935**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, John K. Shin, Esq., and the following parties as indicated, on **October 7, 2015**.

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

On Behalf of Complainants Segway Inc. and DEKA Products Limited Partnership:

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Respondents:

Roboscooters.com
21541 Crawford Lake Rd.
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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR**	**Investigation No. 337-TA-935**

NOTICE OF THE COMMISSION'S DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION FINDING CERTAIN RESPONDENTS IN DEFAULT

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 20) finding certain respondents in default.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. 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 November 10, 2014, based on a complaint filed on behalf of Segway Inc. of Bedford, New Hampshire and DEKA Products Limited Partnership of Manchester, New Hampshire (collectively "Complainants"). 79 *Fed. Reg.* 66739-40 (Nov. 10, 2014). The complaint was filed on September 9, 2014, a supplement to the complaint was filed on September 19, 2014, and an amended complaint was filed on October 6, 2014. The amended complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, or sale within the United States after importation of certain personal

transporters, components thereof, and manuals therefor by reason of infringement of certain claims of U.S. Patent No. 6,789,640; U.S. Patent No. 7,275,607; U.S. Patent No. 8,830,048; U.S. Design Patent No. D551,722; U.S. Design Patent No. D551,592; and Copyright Registration No. TX 7-800-563. The Commission's notice of investigation named the following respondents, among others: UPTECH Robotics Technology Co., Ltd. of Beijing, China; Beijing Universal Pioneering Robotics Co., Ltd. of Beijing, China; Beijing Universal Pioneering Technology Co., Ltd. of Beijing, China; FreeGo High-Tech Corporation Limited of Shenzhen, China; and EcoBoomer Co. Ltd. of Malibu, California (collectively "non-responding Respondents"). A Commission investigative attorney (IA) is participating in the investigation.

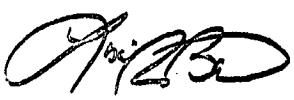
On March 27, 2015, Complainants filed a motion for an order to show cause and for entry of default judgment against the non-responding Respondents. On April 8, 2015, the IA filed a response supporting the motion.

On April 17, 2015, the ALJ issued a show cause order. The non-responding Respondents did not file any responses to the ALJ's order. On May 7, 2015, the ALJ issued an ID finding the non-responding Respondents in default. No petitions for review were filed.

The Commission has determined not to review the subject ID.

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

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 27, 2015

CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR **Inv. No. 337-TA-935**

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, John K. Shin, Esq., and the following parties as indicated, on **May 27, 2015**.

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

On Behalf of Complainants Segway Inc. and DEKA Products Limited Partnership:

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On Behalf of Respondents Ninebot Inc. (USA), Ninebot Inc. (China), and PowerUnion (Beijing) Tech Co. Ltd.:

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Respondents:

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PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of **CERTAIN PERSONAL TRANSPORTERS, COMPONENTS THEREOF, AND MANUALS THEREFOR**	**Inv. No. 337-TA-935**

ORDER NO. 28: INITIAL DETERMINATION GRANTING SUMMARY DETERMINATION ON VIOLATION OF SECTION 337 AND RECOMMENDED DETERMINATION ON REMEDY AND BONDING

(August 21, 2015)

On July 8, 2015, Complainants Segway, Inc. ("Segway") and DEKA Products Limited Partnership ("DEKA") (collectively, "Complainants") filed a motion for summary determination of violation by Respondents Beijing Universal Pioneering Robotics Co., Ltd. ("U.P. Robotics"), Beijing Universal Pioneering Technology Co., Ltd. ("U.P. Technology"), UPTECH Robotics Technology Co., Ltd. ("UPTECH"), FreeGo High-Tech Corporation Limited ("FreeGo China"), EcoBoomer Co. Ltd. ("EcoBoomer"), and Roboscooters.com ("Roboscooters") (Motion Docket No. 935-020). The motion requests an initial determination on violation and domestic industry, and a recommended determination on remedy and bonding. On July 23, 2015, the Commission Investigative Staff ("Staff") filed a response in support of the motion. No other responses were received.

For the reasons discussed below, I find that that there is a violation 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, or the sale within the United States after importation of certain personal

transporters, components thereof, and manuals therefor by U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, EcoBoomer, and Roboscooters. I also find that a domestic industry exists, as required by 19 U.S.C. § 1337(a)(2). I further recommend that a general exclusion order, a limited exclusion order, and a cease and desist order issue to remedy the violation of section 337. Because this determination addresses violation and remedy for all of the remaining respondents, it terminates the Investigation in its entirety. Accordingly, the hearing scheduled for September 8-11, 2015, is hereby canceled.

TABLE OF CONTENTS

The following abbreviations may be used in this Initial Determination:

Mot.	Complainants' motion for summary determination
Mem.	Complainants' memorandum in support of their motion for summary determination
SMF	Complainants' statement of material facts as to which there is no genuine issue
Ex.	Exhibit
G Ex.	General Exhibit (attached to Complainants' summary determination motion)
IMP Ex.	Importation Exhibit (attached to Complainants' summary determination motion)
INF Ex.	Infringement Exhibit (attached to Complainants' summary determination motion)
DI Tech Ex.	Domestic Industry Technical Prong Exhibit (attached to Complainants' summary determination motion)
DI Econ. Ex.	Domestic Industry Economic Prong Exhibit (attached to Complainants' summary determination motion)
R/B Ex.	Remedy and Bonding Exhibit (attached to Complainants' summary determination motion)
SResp.	Staff's response to Complainants' summary determination motion

I. BACKGROUND

A. Procedural History

On October 6, 2015, Complainants filed their Amended Complaint alleging violations of section 337 of the Tariff Act of 1930, as amended, by reason of infringement of certain claims of U.S. Patent Nos. 6,789,640 (the "'640 patent"), 7,257,607 (the "'607 patent"), 8,830,048 (the "'048 patent"), U.S. Design Patent Nos. D551,722 (the "'722 design patent") and D551,592 (the "'592 design patent"), and U.S. Copyright Registration No. TX-7-800-563. . On November 5, 2014, the Commission issued a Notice of Institution in this matter, ordering that an investigation be instituted to determine:

> (a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain personal transporters, components thereof, and manuals therefor by reason of infringement of one or more of claims 1 and 4 of the '640 patent; claims 1, 3, and 7 of the '607 patent; claims 1, 2, 4, 5, 6, and 7 of the '048 patent; the claim of the '722 design patent' and the claim of the '592 design patent;
>
> (b) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain personal transporters, components thereof, and manuals therefor by reason of infringement of U.S. Copyright Registration No. TX-7-800-563; and
>
> (c) whether an industry in the United States exists as required by subsection (a)(2) of Section 337;

Notice of Investigation (Nov. 5, 2014). The Investigation was instituted upon publication of the Notice of Investigation in the *Federal Register* on November 10, 2014. *See* 79 Fed. Reg. 66739-50 (2014); 19 C.F.R. § 210.10(b).

The Amended Complaint named Respondents Ninebot, Inc. (China),[1] Ninebot, Inc. (USA) and PowerUnion (Beijing) Tech. Co. Ltd. (collectively, the "Ninebot Respondents"), Shenzhen INMOTION Technologies Co., Ltd. ("INMOTION"), Robstep Robot Co., Ltd. ("Robstep"), FreeGo USA, LLC ("FreeGo USA"), who have been terminated from this Investigation; and Respondents U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, EcoBoomer, and Roboscooters, who are the subject of the present initial determination.

On February 19, 2015, an initial determination (Order No. 13) terminated Respondent FreeGo USA from this Investigation based on a consent order stipulation; and on March 18, 2015, the Commission determined not to review the initial determination and issued a consent order. On May 4, 2015, an initial determination (Order No. 19) terminated Respondent Robstep by settlement, which was not reviewed by the Commission pursuant to a notice issued on May 20, 2015. On May 7, 2015, an initial determination (Order No. 20) found Respondents U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, and EcoBoomer, (the "Defaulting Respondents") in default; the initial determination was not reviewed by the Commission pursuant to a notice issued on May 27, 2015. On June 19, 2015, an initial determination (Order No. 23) terminated Respondent INMOTION by settlement, which was not reviewed by the Commission pursuant to a notice issued on July 15, 2015. On July 8, 2015, an initial determination (Order No. 24) terminated Respondent Tech in the City by consent order; which was not reviewed by the Commission pursuant to a notice issued on July 28, 2015. On August 20, 2015, an initial determination (Order No. 27) terminated the Ninebot Respondents by settlement.

[1] The correct corporate name for Ninebot Inc. (China) is Ninebot (Tianjin) Technology Co., Ltd. *See* Ninebot Response to Amended Complaint at ¶ 1 (Dec. 19, 2014).

A *Markman* hearing was held in this Investigation on April 16, 2015. The Procedural Schedule in this Investigation is currently stayed pursuant to Order No. 26 (July 22, 2015). The evidentiary hearing currently scheduled for September 8-11, 2015, is hereby canceled in view of this initial determination.

B. Motion for Summary Determination

On July 8, 2015, Complainants filed a motion for summary determination of violation by Respondents U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, EcoBoomer, and Roboscooters (Motion Docket No. 935-020) ("Mot."). Pursuant to Ground Rules 3.1 and 3.3, Complainants attached a memorandum ("Mem.") in support of the motion and a statement of material facts ("SMF"). Staff filed a response in support of the motion on July 23, 2015 ("SResp."). No respondent filed any response to the motion.

Complainants' motion seeks the following relief:

> 1. An initial determination that (a) those Respondents who have been found in default in this Investigation ("Defaulting Respondents") and (b) Respondent Roboscooters.com ("Roboscooters" or "Non-Participating Respondent") have violated Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, through their importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of personal transporters, components thereof, and manuals therefor, that infringe claims 1 and 4 of United States Patent No. 6,789,640 (the "'640 Patent"); claims 1, 3, and 7 of United States Patent No. 7,275,607 (the "'607 Patent"); claims 1, 2, 4, 5, 6, and 7 of United States Patent No. 8,830,048 (the "'048 Patent") (collectively, the "Asserted Utility Patents"); United States Design Patent No. D551,722 (the "'722 Patent"); United States Design Patent No. D551,592 (the "'592 Patent") (collectively, the "Asserted Design Patents"); and/or United States Copyright Registration No. TX-7-800563 (the "Asserted Copyright");
>
> 2. An initial determination that Complainants satisfy the domestic industry requirement; and
>
> 3. A recommended determination that the Commission (a) issue a general exclusion order pursuant to 19 U.S.C. § 1337(d)(2) covering personal transporters and components thereof that infringe claims 1, 2, 4, 5, 6 and/or 7 of the '048 Patent, (b) issue limited exclusion orders pursuant to 19 U.S.C. § 1337(d)(1)

> directed to the Defaulting Respondents and Roboscooters covering personal transporters, components thereof and manuals therefor that infringe claims 1 and 4 of the '640 Patent, claims 1, 3 and 7 of the '607 Patent, the Asserted Design Patents, and the Asserted Copyright, (c) cease and desist orders pursuant to 19 U.S.C. § 1337(f)(1) directed to Respondents EcoBoomer and Roboscooters; and (d) set the bond for the Presidential review period at 100% of the entered value of the infringing personal transporters, components thereof, and manuals therefor.

Mot. at 1-3; Mem. at 1-2.

C. The Private Parties

1. Complainants Segway and DEKA

Complainant Segway is a corporation incorporated in the state of Delaware, with its principal place of business in Bedford, New Hampshire. Amended Complaint at ¶ 7. Segway has been selling its patented Segway® Personal Transporters since 2002. *Id.* DEKA is a New Hampshire limited partnership with its principal place of business at 340 Commercial Street, Manchester, New Hampshire. Amended Complaint at ¶ 8. DEKA's sole general partner is DEKA Research & Development Corp., which was founded by inventor Dean Kamen in 1982 and focuses on the research and development of innovative technologies, including certain technologies on which the patented Segway® Personal Transporter is based. *Id.*

2. Terminated Respondents

Respondents FreeGo USA and Tech in the City were terminated by consent order. *See* Order No. 13 (Feb. 19, 2015); Order No. 24 (July 8, 2015). Respondents INMOTION, Robstep, and the Ninebot Respondents were terminated by settlement. *See* Order No. 19 (May 4, 2015); Order No. 23 (June 19, 2015); Order No. 27 (Aug. 20, 2015). The settlement agreement with the Ninebot Respondents includes a license to the Asserted Patents and the Asserted Copyright. Order No. 27 at Ex. A, Ex. B.

3. Defaulting Respondents

Respondents U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, and EcoBoomer (the "Defaulting Respondents") have not participated in this Investigation and were found in default pursuant to Order No. 20 (May 7, 2015). U.P. Robotics, U.P. Technology, UPTECH, and FreeGo China are Chinese corporations that manufacture personal transporters. Amended Complaint at ¶¶ 12-14 and 19. EcoBoomer is an ecommerce company with an office located in Malibu, California, that sells and distributes personal transporters. Amended Complaint at ¶ 21.

4. Respondent Roboscooters

Roboscooters is an ecommerce website that focuses on the sale for importation, importation and distribution in the United States of personal transporters supplied by the named Respondents in this Investigation as well as other Chinese manufacturers. *See* IMP. Ex. 1, Deposition of Mr. Jacobs, at 15-17; Amended Complaint at ¶ 18. Roboscooters has a business address in Laurel Hill, North Carolina, and its founder and sole employee is Mr. Millard Jacobs. Roboscooters participated in a preliminary teleconference on December 15, 2015, filed an answer to the Complaint and Notice of Investigation (Dec. 31, 2014), partially responded to one set of Requests for Document Production, and produced a corporate witness for deposition on May 6, 2015, *see* IMP. Ex. 1, but has otherwise not participated in the Investigation. Roboscooters did not appear at the *Markman* hearing on April 16, 2015, and it did not file a response to the present motion for summary determination.

D. The Asserted Intellectual Property and Standing

1. Utility Patents

Complainants have asserted three utility patents, the '640 patent (G Ex. 2), the '607 patent (G Ex. 3), and the '048 patent (G Ex. 4) (collectively, the "Asserted Utility Patents").

The '640 patent, entitled "Yaw Control for a Personal Transporter," issued on September 14, 2004, and relates to methods and apparatus for yaw (or turning) control of a balancing transporter while maintaining the safe balance of the transporter. G Ex. 2. The '640 patent names Richard W. Arling, W. Patrick Kellery, Philip LeMay, John B. Morrell, Jonathan B. Pompa and David W. Robinson as inventors. G Ex. 2. The inventors assigned their interest to Complainant DEKA on April 10, 2003. G Ex. 8. Segway is the exclusive licensee under the '640 Patent in the relevant field pursuant to a license agreement with DEKA. G Ex. 15. Complainants hold all right, title and interest in and to the '640 Patent for uses in the relevant field. G Exs. 2, 8 and 15.

The '607 patent, entitled "Control of a Personal Transporter Based on User Position," issued on October 2, 2007, and relates to improved controllers for a transporter. G Ex. 3. The '607 patent names Dean Kamen, Robert R. Ambrogi, James J. Dattolo, Robert J. Duggan, J. Douglas Field, Richard Kurt Heinzmann, Matthew M. McCambridge, John B. Morrell, Michael D. Piedmonte and Richard J. Rosasco as inventors. G. Ex. 3. The inventors assigned their interest to DEKA on or before December 21, 2004. G Ex. 9. Segway is the exclusive licensee under the '607 patent in the relevant field pursuant to a license agreement with DEKA. G Ex. 15. Complainants hold all right, title and interest in and to the '607 Patent for uses in the relevant field. G Ex. 3, 9, and 15.

The '048 patent, entitled "Control of a Personal Transporter Based on User Position," is a continuation of the '607 patent that issued on September 9, 2014, and relates to transporters with improved control technology. G Ex. 4. The '048 patent names Dean Kamen, Robert R. Ambrogi, James J. Dattolo, Robert J. Duggan, J. Douglas Field, Richard Kurt Heinzmann, Matthew M. McCambridge, John B. Morrell, Michael D. Piedmonte and Richard J. Rosasco as

inventors. G Ex. 4. The inventors assigned their interest to DEKA on or before December 2004. G Ex. 10. Segway is the exclusive licensee under the '048 patent in the relevant field pursuant to a license agreement with DEKA. G Ex. 15. Complainants hold all right, title and interest in and to the '048 patent for uses in the relevant field. G Ex. 4, 10, and 15.

2. Design Patents

Complainants have asserted two design patents, the '722 design patent (G Ex. 5) and the '592 design patent (G Ex. 6) (collectively, the "Asserted Design Patents") (the Asserted Utility Patents and Asserted Design Patents are collectively, the "Asserted Patents").

The '722 design patent, entitled "Human Transporter," issued on September 25, 2007, and names Shih-Tao Chang and Scott Waters as inventors. G Ex. 5. The inventors assigned their interest to Segway LLC on June 29, 2006. G Ex. 11. Segway LLC assigned its interest to Complainant Segway, Inc. on October 9, 2006. G Ex. 12. Segway holds all right, title and interest in and to the '722 Design Patent. G Exs. 5, 11, and 12.

The '592 design patent, entitled "Human Transporter," issued on September 25, 2007, and names Shih-Tao Chang and Scott Waters as inventors. G Ex. 6. The inventors assigned their interest to Segway LLC on June 30, 2006. G Ex. 13. Segway LLC assigned its interest to Complainant Segway, Inc. on October 9, 2006. G Ex. 14. Segway holds all right, title and interest in and to the '592 design patent. G Exs. 6, 13 and 14.

3. Copyright

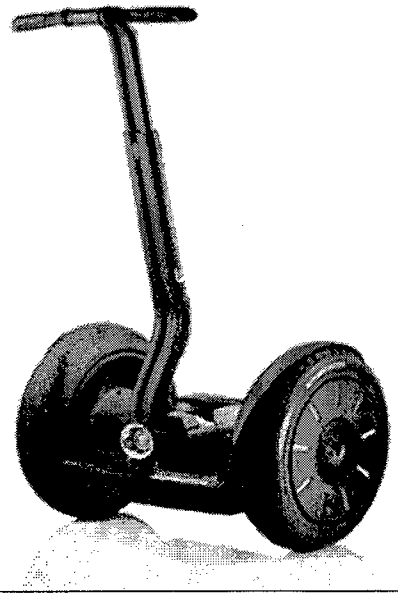
Complainants have asserted Copyright Registration No. Reg. No. TX-7-800-563 (G Ex. 7), which protects Segway's creative expression embodied in its works entitled (i) Getting Started Manual Segway Personal Transporter (PT) i2, x2 (G Ex. 16); and (ii) Reference Manual

Segway Personal Transporter (PT) i2, x2 (G Ex. 17). Segway is the author and owner of Copyright Registration No. Reg. No. TX-7-800-563 (G Ex. 7).

E. Products At Issue

1. Segway Products

Complainants have identified several models of the second generation Segway® Human Transporter (now known as the Segway Personal Transporter (PT)), which include Segway's LeanSteer™ technology. Mem. at 16-17. Specifically, Segway identifies the i2 and i2 SE, with thin non-marking tires for most urban and suburban paved surfaces; and the x2 and x2SE, with deeply-treaded, all-terrain tires for off-road uses:

i2 MODEL	x2 MODEL
	

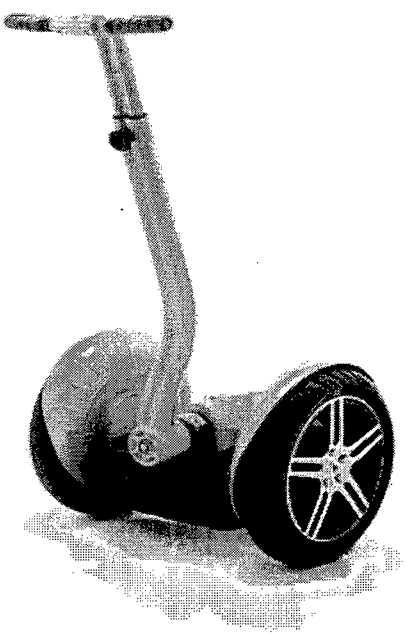
Id. Complainants allege that the Asserted Utility Patents are practiced by the i2, x2, i2,SE and x2 SE models, the Asserted '722 Design Patent is practiced by the i2, the Asserted '592 Design Patent is practiced by the x2, and the reference manuals sold with the i2 and x2 models exploit the asserted copyright. *Id.*

2. Accused Products

Complainants allege that personal transporters imported and/or sold by the Defaulting Respondents and Roboscooters infringe the Asserted Patents and Copyright. Mem. at 18-24; SResp. at 24-25. Segway specifically identifies the following products:

a. WindRunner Products

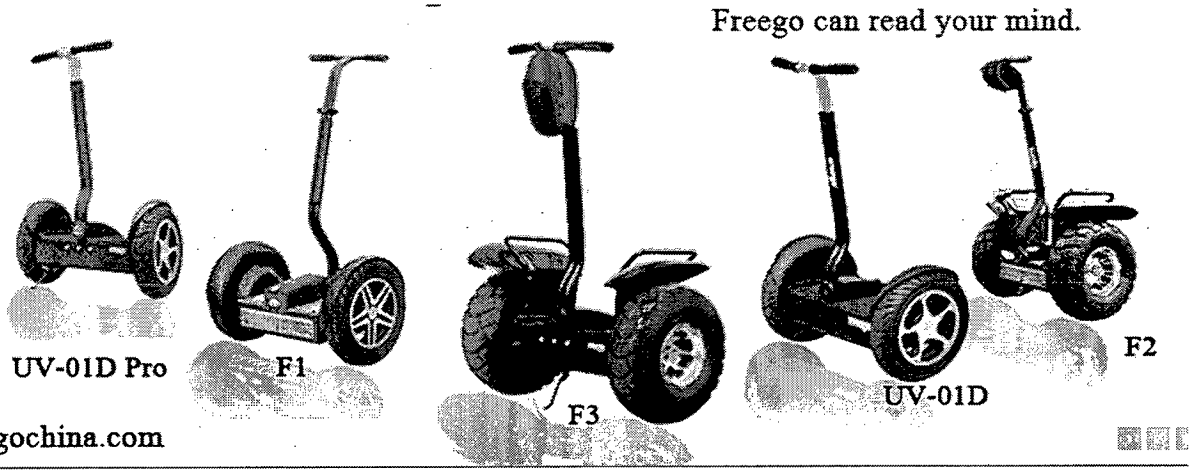
Complainants have identified two models of personal transporters sold under the trade name WindRunner: G1U (Urban standard) and G1X (Off-road standard). Mem. at 19-20. The WindRunner personal transporters are manufactured by defaulting Respondents UPTECH, U.P. Technology, and U.P. Robotics, and are sold by terminated Respondent PowerUnion (Beijing) Tech. Co. Ltd. Complaint at ¶ 61; IMP Ex. 2 at ¶¶ 1-10; DI Tech Ex. 10 at ¶ 22.

G1U MODEL	G1X MODEL
	

Id.

b. FreeGo Products

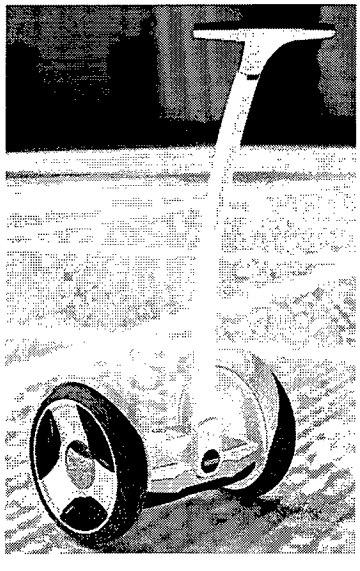
Complainants have identified several models of personal transporters manufactured by FreeGo China and sold by FreeGo USA. Mem. at 18-19; Complaint at ¶ 65. The model numbers identified include UV-01D Pro, UV-01D, F1, F2 and F3 pictured below:



Id.

c. Ninebot Products

The terminated Ninebot Respondents manufacture and sell personal transporters, including the Ninebot mini flight. Mem. at 20-21; Complaint at ¶ 62; DI Tech Ex. 10 at ¶ 14-20; INF Ex. 3 at ¶ 3, 22-23, Exs. A-F.



Id. The terminated Ninebot Respondents and affiliated entities are licensed under the Asserted Utility Patents, the Asserted Design Patents, and the Asserted Copyright pursuant to the parties' settlement agreement. *See* Order No. 27 (Aug. 20, 2015), Ex. A at ¶ 1.3, Ex. B at ¶¶ 1.1, 1.2 ; *see also* Complaint, Ex. 7.

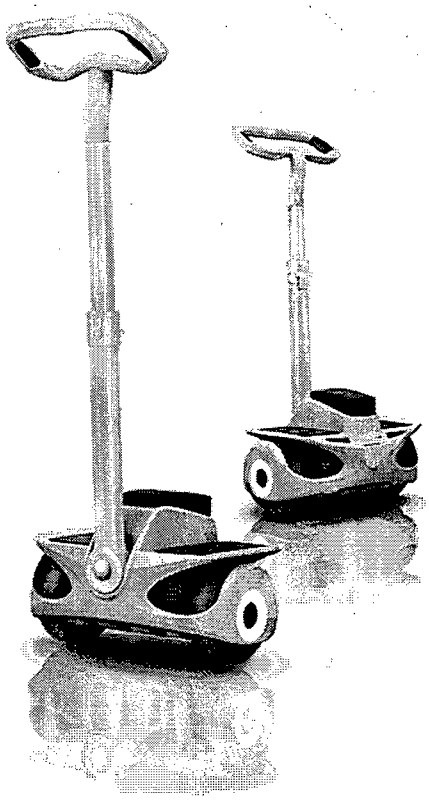
d. INMOTION Products

Terminated Respondent INMOTION manufactures and sells personal transporters, including the INMOTION SCV R1 and R2. Mem. at 21-22; Complaint at ¶ 63; DI Tech Ex. 10 at ¶ 33-34; Order No. 23 (June 19, 2015), Ex. A (INMOTION Settlement Agreement) at § 2.3.

Id.

e. Robstep Products

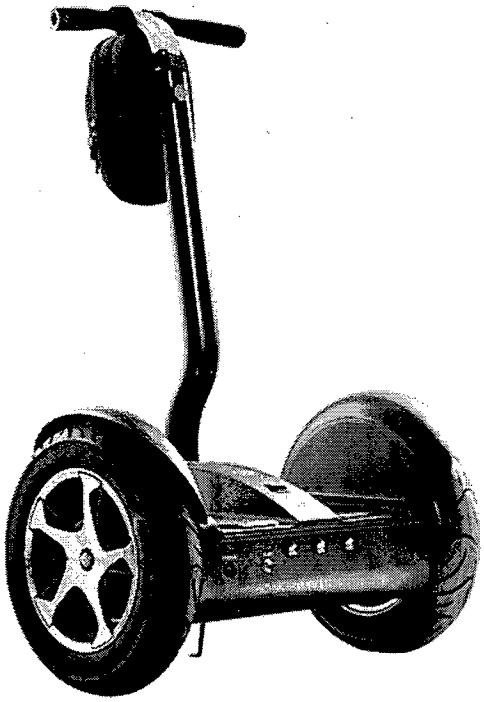
Terminated Respondent Robstep manufactures and sells personal transporters, including the Robstep M1 and M2. Mem. at 22-23; Complaint at ¶ 64; DI Tech Ex. 10 at ¶ 29-32; Order No. 19 (May 4, 2015), Ex. A (Robstep Settlement Agreement) at § 2.3.



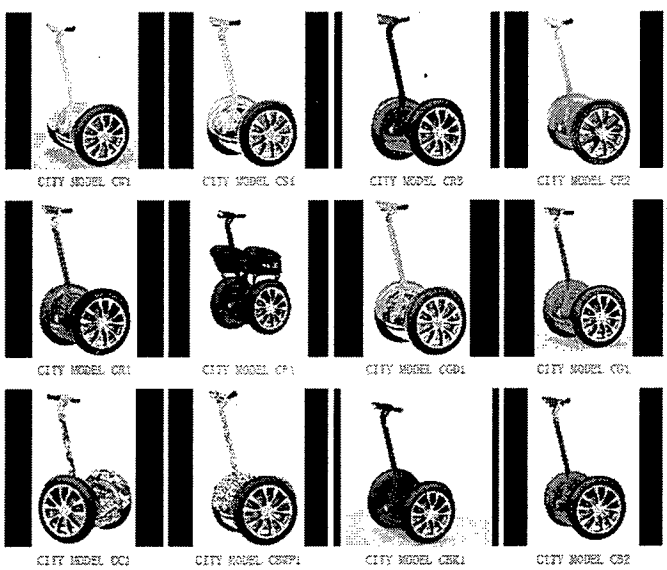
Id.

f. Additional Products

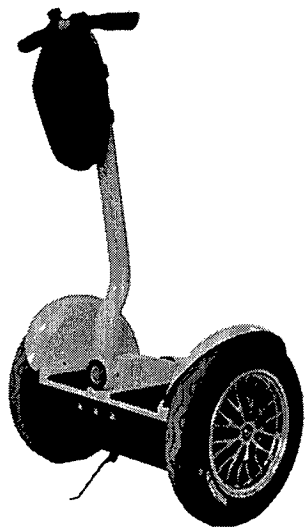
Complainants have identified several additional personal transporter products [redacted], which are manufactured and/or sold by non-parties Estway Technology Co., Ltd. ("Estway"), OkayRobot Co., Ltd. ("OkayRobot"), and Focxess High Tech Ltd. ("Focxess"). Mem. at 23-24; IMP Ex. 1 (Jacobs Dep. Tr.) at 15-18. Estway sells the ES-City, ES-Adventure, ES-Golf, and ES-Logistics (collectively, the "Estway Personal Transporters"). Mem. at 149-186; INF Ex. 2 at 451-52.



Id. (citing http://www.estway.com/products/cross-city). OkayRobot sells the Cross Model, Golf Model, and City Model personal transporters (collectively, "OkayRobot Transporters"). Mem. at 302-318; IMP Ex. 1 at 17-23, 121.



Id. (citing http://www.okayrobot.net/). Focxess sells personal transporters including models CL1, CL2, G1, G2, G3, F1, and F2 (collectively "Focxess's Transporters"). Mem. at 318-68; INF Ex. 2 at 489-529.



Id. (citing http://www.focxess.com/products/twowheel/Lithium_battery_scooter/2015/0311/49.html).

II. LEGAL STANDARDS

A. Summary Determination

Commission Rule 210.18 governing summary determination states, in part:

> The determination sought by the moving party 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).

The evidence "must be viewed in the light most favorable to the party opposing the motion ...with doubts resolved in favor of the nonmovant." *Crown Operations Int'l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (citations omitted); *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.'" *Crown Operations Int'l*, 289 F.3d 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) (citations omitted). "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 Lab., Inc. v. KLM Labs., Inc.*, 984 F.2d 1182, 1185 (Fed. Cir. 1993).

B. Default

Commission Rule 210.16(b)(4) states: "A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation." 19 C.F.R. § 210.16(b)(4). Commission Rule 210.16(c) further provides that "[t]he facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent." 19 C.F.R. § 210.16(c). *See Certain Opaque Polymers*, Inv. No. 337-TA-883, Comm'n Op. at 18-19 (Apr. 30, 2015) (presuming allegations in a complaint to be true after default).

III. 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. 19 U.S.C. § 1337; *Certain Steel Rod Treating Apparatus and Components Thereof*, Inv. No. 337-TA-97, Commission Memorandum Opinion, 215 U.S.P.Q. 229, 231 (1981).

A. Subject Matter Jurisdiction

Section 337 confers subject matter jurisdiction on the International Trade Commission to investigate, and if appropriate, to provide a remedy for, unfair acts and unfair methods of competition in the importation, the sale for importation, or the sale after importation of articles into the United States. *See* 19 U.S.C. §§ 1337(a)(1)(B) and (a)(2). The complaint alleges that the Defaulting Respondents and Roboscooters have violated subsection 337(a)(1)(B) by the importation and sale of products that infringe the asserted patents. As indicated below, I find that the importation requirement has been satisfied with respect to the accused products. No party has contested the Commission's jurisdiction over the accused products. Thus, I find that the Commission has subject matter jurisdiction over this Investigation under Section 337 of the Tariff Act of 1930. *See Amgen, Inc. v. U.S. Int'l Trade Comm'n*, 902 F.2d 1532, 1536 (Fed. Cir. 1990).

B. Personal Jurisdiction

Respondents Roboscooters and EcoBoomer are both located in the United States, Amended Complaint at ¶¶ 18, 21, and are thus subject to the personal jurisdiction of the Commission. In addition, Roboscooters responded to the Complaint and Notice of Investigation, participated in the preliminary teleconference, and participated in limited discovery, and I thus find that Roboscooters has submitted to the personal jurisdiction of the Commission. *See*

Certain Miniature Hacksaws, Inv. No. 337-TA-237, Initial Determination, 1986 WL 379287 (October 15, 1986) (unreviewed by Commission in relevant part).

C. In Rem Jurisdiction

The Commission has *in rem* jurisdiction over the products at issue by virtue of the below finding that the accused products have been imported into the United States. *See Sealed Air Corp. v. U.S. Int'l Trade Comm'n*, 645 F.2d 976, 985 (C.C.P.A. 1981).

IV. IMPORTATION

Section 337 prohibits "[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that (i) infringe a valid and enforceable United States patent . . . ." 19 U.S.C. § 1337(a)(1)(B). A complainant "need only prove importation of a single accused product to satisfy the importation element." *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17 at 5 (Sep. 23, 2004). In this Investigation, admissions by several respondents prove importation of accused products by each of the Defaulting Respondents and by Roboscooters.

A. Importation of Accused Products

The accused Windrunner products are manufactured by three of the Defaulting Respondents (UPTECH, U.P. Technology, and U.P. Robotics) in China and then imported into the United States. Mem at 35-37; Complaint at ¶¶ 2-4, 9, 12-14, 61, 69, 74. The terminated Ninebot Respondents stated in their response to the complaint [redacted]. *See* Ninebot Respondents' Response to the Complaint and Notice of Investigation (Dec. 19, 2014) at ¶¶ 9-10. At the time of the filing of the Amended Complaint, the infringing Windrunner G1U and G1X products were available for sale online from

Respondent PowerUnion. IMP Ex. 2 (Kisler Dec.) at ¶¶ 1-10, Ex. A. In April-May 2013, prior to filing the complaint, Segway purchased a Windrunner G1U and a Windrunner G1X, which were imported into the United States. *Id.* There is thus no genuine dispute that the accused Windrunner products are imported into the United States.

Defaulting Respondent FreeGo China manufactures, imports, and/or sells the accused FreeGo branded personal transporters, which are manufactured in China or abroad and then imported into the United States. Mem. at 35-37; Complaint at ¶ 65. Terminated Respondent FreeGo USA admitted that it had imported and/or sold (or offered to sell) the FreeGo personal transporters. Staff Ex. B at FreeGoUSA000004 (FreeGo USA discovery responses). There is thus no genuine dispute that the accused FreeGo products are imported into the United States.

Terminated Respondent INMOTION has admitted to importing into the U.S. [redacted] personal transporters in the first three quarters of 2014. IMP Ex. 6 (INMOTION's Response to Complainants' Interrogatories) at 23-24. The Ninebot Respondents have also admitted to importing into the U.S. the accused Ninebot mini-flight personal transporters. IMP Ex. 4 at ¶ A. Mr. Millard Jacobs, the owner of Roboscooters, testified at his deposition that he had sold [redacted] personal transporters, and that he had [redacted] in his possession. IMP Ex. 1 at 33-34, 39. There is thus no genuine dispute that the INMOTION, Ninebot, and Robstep products are imported into the United States.

B. Importation by Domestic Respondents

Defaulting Respondent EcoBoomer is an online distributor/retailer that has imported and/or sold (or offered to sell) the Ninebot personal transporters (and user manuals) and INMOTION personal transporters. Mem. at 35-37; Complaint at ¶¶ 110-116, 119, 124. As discussed above, there is no dispute that Ninebot and INMOTION personal transporters have

been imported into the United States. The President of Segway, Rod Keller, submitted a declaration with the Complaint identifying Ninebot and INMOTION products for sale on EcoBoomer's website and citing a statement from EcoBoomer that these products "are available now for purchase and we can air ship them to any state in the US within 7-10 business days." DI Tech Ex. 10 at ¶ 37. Thus, there is no genuine dispute that EcoBoomer has imported Ninebot and INMOTION personal transporters and/or sold these transporters for importation.

Respondent Roboscooters has admitted to selling Ninebot, INMOTION, Robstep, and FreeGo personal transporters, in addition to [redacted] personal transporters. [redacted]. Mr. Millard Jacobs, the owner of Roboscooters, admitted that [redacted]. *Id.* at 16-18. Mr. Jacobs also admitted that [redacted] in his possession. *Id.* at 22, 39. There is thus no genuine dispute that Roboscooters has imported and/or sold for importation accused Ninebot, INMOTION, Robstep, and FreeGo personal transporters, in addition to other personal transporters.

V. INFRINGEMENT

A. Applicable Law

Section 337(a)(1)(B)(i) prohibits "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 – (i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17." 19 U.S.C. §1337(a)(1)(B)(i).

1. Utility Patent Infringement

The Commission has held that the word "infringe" in Section 337(a)(1)(B)(i) "derives its legal meaning from 35 U.S.C. § 271, the section of the Patent Act that defines patent infringement." *Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software ("Electronic Devices")*, Inv. No. 337-TA-724, Comm'n Op. at 13-14 (December 21, 2011)). Under 35 U.S.C. § 271(a), direct infringement of a patent consists of making, using, offering to sell, or selling the patented invention without consent of the patent owner.

"An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing." *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996) (citation omitted). Infringement must be proven by a preponderance of the evidence. *SmithKline Diagnostics, Inc. v. Helena Labs. Corp.*, 859 F.2d 878, 889 (Fed. Cir. 1988). A preponderance of the evidence standard "requires proving that infringement was more likely than not to have occurred." *Warner-Lambert Co. v. Teva Pharm. USA, Inc.*, 418 F.3d 1326, 1341 n.15 (Fed. Cir. 2005).

A complainant must prove either literal infringement or infringement under the doctrine of equivalents. Literal infringement requires the patentee to prove that the accused device contains each and every limitation of the asserted claim(s). *Frank's Casing Crew & Rental Tools, Inc. v. Weatherford Int'l, Inc.*, 389 F.3d 1370, 1378 (Fed. Cir. 2004). "If even one limitation is missing or not met as claimed, there is no literal infringement." *Elkay Mfg. Co. v. EBCO Mfg. Co.*, 192 F.3d 973, 980 (Fed. Cir. 1999). Literal infringement is a question of fact.

Finisar Corp. v. DirecTV Group, Inc., 523 F.3d 1323, 1332 (Fed. Cir. 2008). A patent may also be infringed under the doctrine of equivalents by manufacture, use, or sale of subject matter equivalent to that literally claimed. Infringement under the doctrine of equivalents "requires proof of insubstantial differences between the claimed and accused products or processes." *Fonar Corp. v. Gen. Elec. Co.*, 107 F.3d 1543, 1555 (Fed. Cir. 1997) citing *Hilton Davis Chem. Co. v. Warner-Jenkinson Co.*, 62 F.3d 1512, 1521-22 (Fed. Cir. 1995).

2. Design Patent Infringement

Infringement of a design patent is established where an ordinary observer, familiar with the prior art designs, would be deceived into believing that the accused product is the same as the patented design. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 683 (Fed. Cir. 2008). The ordinary observer test applies to the design claimed in its entirety, and thus, the "deception that arises is a result of the similarities in the overall design, not of similarities in ornamental features in isolation." *Crocs, Inc. v. Int'l Trade Comm'n*, 598 F.3d 1294, 1303 (Fed. Cir. 2010) (quoting *Amini Innovation Corp. v. Anthony Cal., Inc.*, 439 F.3d 1365 (Fed. Cir. 2006)). As such, small differences in isolation distract from the overall appearance of the claimed design. *Id.* at 1303-1304. Accordingly, "minor difference between a patented design and an accused article's design cannot, and shall not, prevent a finding of infringement." *Payless Shoesource, Inc. v. Reebok Int'l Ltd.*, 998 F.2d 985, 9991 (Fed. Cir. 1993). The proper inquiry is whether the accused design appropriates the claimed design *as a whole.*

3. Copyright Infringement

In order to establish a case of copyright infringement, a complainant "must demonstrate ownership of the copyrights and copying by respondents." *Certain Coin-Operated Audio-Visual*

Games, Inv. No. 337-TA-87, Comm'n Op. (June 25, 1981); *Soft Sculpture Dolls*, Inv. No 337-TA-231, USITC Pub. No. 1923 at 76 (1986). Copyright ownership is

> established by proof of (1) originality in the author, (2) copyrightability of the subject matter, (3) citizenship status of the author such as to permit a claim of copyright, (4) compliance with the applicable statutory formalities, and (5) if complainant is not the author, a transfer of rights or other relationship between the author and complainant so as to constitute complainant the valid copyright claimant." *Id.*

Most of these elements can be established through the registration certificate issued by the Copyright Office. *Id.*

Once ownership has been established, copying by the respondent is "a substantive element necessary to sustain a copyright infringement action." *Id.* Copying can be shown through direct evidence of copying or by inference with evidence of 1) access and 2) substantial similarity. *Certain TV Programs, Literary Works for TV Production and Episode Guides*, Inv. No. 337-TA-886, Order No. 18 at 15 (Feb. 6, 2015). "[A] determination of substantial similarity requires a detailed examination of the works themselves." *Funky Films, Inc. v. Time Warner Entertainment Co. L.P.*, 462 F.3d 1072, 1075 (9th Cir. 2006), quoting *Williams v. Crichton*, 84 F.3d 581, 488 (2nd Cir.1996). "Substantial similarity is a fact-specific inquiry, but it may often be decided as a matter of law." *Benay v. Warner Bros. Entertainment, Inc.*, 607 F.3d 620, 624 (9th Cir. 2010), quoting *Sid & Marty Krofft Television Productions, Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1164 (9th Cir. 1977) ("*Krofft*").

B. Asserted Intellectual Property

Complainants assert three utility patents, two design patents, and one copyright. Complaint at ¶¶ 1-4.

1. Utility Patents

The Asserted Utility Patents are the '048 patent, the '607 patent, and the '640 patent.

a. '048 Patent

The '048 patent is directed to an apparatus controller for prompting a rider to be positioned on a vehicle in such a manner as to reduce lateral instability due to lateral acceleration of the vehicle. G Ex. 4 at Abstract. The apparatus has an input for receiving specification from the rider of a desired direction of travel, and indicating means for reflecting to the rider a propitious instantaneous body orientation to enhance stability in the face of lateral acceleration. *Id.* The indicating means may include a handlebar that is pivotable with respect to the vehicle and that is driven in response to vehicle turning. *Id.*

The '048 patent has one independent claim and nineteen dependent claims. *Id.* at cols. 18-19. Complainants assert claims 1, 2, and 4-7 of the '048 Patent. Claim 1 recites:

> 1. A transporter comprising:
>
> a user support assembly for supporting a user;
>
> at least two laterally disposed primary ground contacting wheels coupled to the user support assembly;
>
> a motorized drive assembly for applying torque to the at least two laterally disposed ground contacting wheels;
>
> At least one sensor for sensing the pitch of the user support assembly;
>
> A yaw input mechanism comprising a user support element moveably coupled to the user support assembly and adapted to receive specification by the user of a desired yaw, the desired yaw being based at least in part on the orientation of the user support element; and
>
> a control loop coupled to the motorized drive assembly for determining a torque to be applied to the at least two primary ground contacting wheels, the torque depending at least in part on the pitch of the user support assembly and the desired yaw indicated by the yaw indication mechanism.

Id. at 18:25-43. Claims 2 and 4-7 are dependent claims:

> 2. The transporter according to claim 1, wherein the user support element is a handlebar.

Id. at 18:44-45.

> 4. The transporter according to claim 1, wherein the user support element is adapted to received specification by the user of a desired yaw and a desired yaw rate.
>
> 5. The transporter according to claim 4, the torque depending at least in part on the pitch of the user support assembly, the desired yaw, and the desired yaw rate.
>
> 6. The transporter according to claim 1, wherein the user support element is pivotably coupled to the user support assembly.
>
> 7. The transporter according to claim 6, wherein the user support element is disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels.

Id. at 48-59.

b. '607 Patent

The '607 patent is directed to a personal transporter with a controller for providing user input of a desired direction of motion or orientation. G Ex. 3 at Abstract. The controller has an input for receiving steering specifications by a user based on a detected body orientation of the user. *Id.* User-specified steering instructions may be conveyed by the user using any of a large variety of inputs, including: ultrasonic body position sensing; foot force sensing; handlebar lean; active handlebar; mechanical sensing of body position; and linear slide directional input. *Id.* An apparatus that may include an active handlebar is provided for prompting a rider to be positioned on a vehicle in such a manner as to reduce lateral instability due to lateral acceleration of the vehicle. *Id.*

The '607 patent has one independent claim and six dependent claims. *Id.* at col. 18. Complainants assert claims 1, 3, and 7, which recite:

> 1. A controller for a transporter having at least one primary ground-contacting element, the transporter characterized by a roll angle, the controller comprising:
>
> a. an input adapted to receive specification by a user of a desired yaw, yaw rate, and direction of motion of the transporter, at least the desired yaw and yaw rate being based on a detected body orientation of the user;

b. a pitch state estimator for sensing a pitch of the transporter and outputting a pitch state signal; and

c. a processor of a kind that generates a command signal governing motion of the at least one ground-contacting element based at least on the user-specified yaw and yaw rate received by the input, in conjunction with the pitch state signal based on the pitch of the transporter, in such a manner as to maintain balance of the transporter in the course of achieving the specified yaw and direction of motion of the transporter.

Id. at 18:9-25.

3. A controller in accordance with claim 1, further comprising:

a summer for differencing an instantaneous yaw value from the desired yaw to generate a yaw error value such that the yaw command signal generated by the processor is based at least in part on the yaw error value.

Id. at 18:30-35.

7. A controller in accordance with claim 1, wherein the input adapted to receive user specification includes a shaft disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels, the desired yaw specified on the basis of orientation of the shaft.

Id. at 18:47-51.

c. '640 Patent

The '640 patent is directed to a device and method for providing yaw control for a balancing transporter that has two laterally disposed ground-contacting wheels. G Ex. 2 at Abstract. The method has the steps of receiving a user input of a desired yaw value; comparing an instantaneous yaw value with the desired yaw value to generate a yaw error value; processing the yaw error value to obtain a yaw command signal; and applying the yaw command signal in conjunction with a pitch command signal based on a similarly-generated pitch error (from instantaneous and desired pitch) in such a manner as to maintain balance of the transporter in the course of executing yaw control. *Id.* at Abstract, col. 7:59-63–8:1.

The '640 patent has two independent claims and five dependent claims. Complainants assert independent claims 1 and 4:

1. A method for providing yaw control for a balancing transporter having two laterally disposed ground-contacting wheels, the method comprising:

a. receiving a user input of a desired yaw value;

b. comparing an instantaneous yaw value with the desired yaw value to generate a yaw error value;

c. processing the yaw error value to obtain a yaw command signal; and

d. applying the yaw command signal in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control.

Id. at 8:65-9:10.

4. A yaw controller for a balancing transporter having two laterally disposed ground-contacting wheels, the yaw controller comprising:

a. an input for receiving a user-specified yaw value;

b. a summer for differencing an instantaneous yaw value from the user-specified yaw value to generate a yaw error value; and

c. a processor for generating a yaw command signal based at least on the yaw error value in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control.

Id. at 9:15-10:8.

2. Design Patents

The Asserted Design Patents are the '722 design patent and the '592 design patent.

a. '722 Design Patent

The '722 design patent, entitled "Human Transporter," claims an ornamental design for a personal transporter as shown and described in the following exemplary figures:

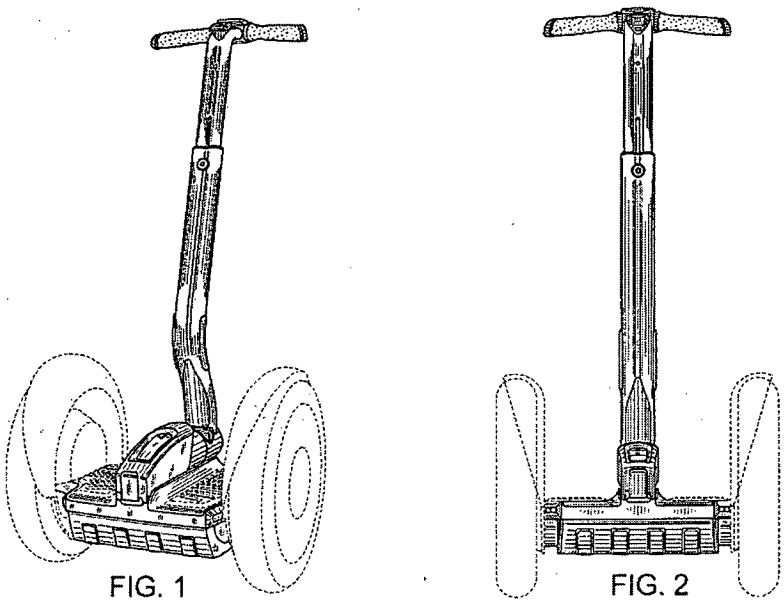


FIG. 1

FIG. 2

G Ex. 5.

b. '592 Design Patent

The '592 design patent, entitled "Human Transporter," claims an ornamental design for a personal transporter as shown and described in the following exemplary figures:

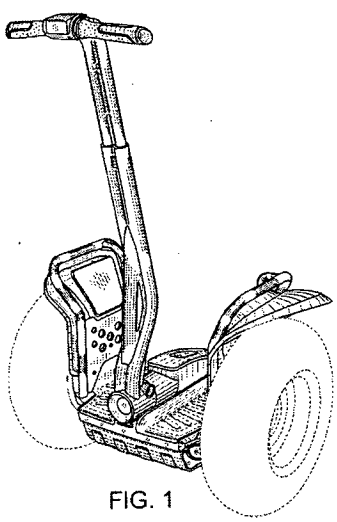


FIG. 1

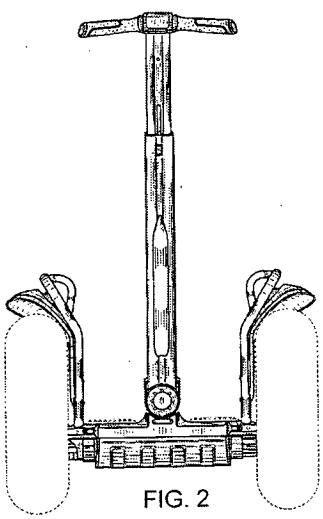


FIG. 2

G Ex. 6.

3. Copyright

The Asserted Copyright protects Segway, Inc.'s creative expression embodied in its works entitled "Getting Started Manual Segway Personal Transporter (PT) i2, x2" (G Ex. 16); and "Reference Manual Segway Personal Transporter (PT) i2, x2" (G Ex. 17), collectively referred to herein as the "Manuals", including the illustrations within the Manuals. Mem at 16.

C. Claim Construction and Level of Ordinary Skill in the Art

A *Markman* hearing was held on April 16, 2015, in which the Complainants, terminated Respondent INMOTION, and the Staff participated. On April 30, 2015, these parties filed an Updated Joint Claim Construction Chart, in which the parties agreed to constructions for the following claim terms:

Term or Phrase	Asserted Patent / Claim(s)	The Parties' and Staff's Agreed-To Construction
"balancing", "balance"	'640 Patent: claims 1, 4 '607 Patent: claim 1	capable of operation on one or more wheels but would be unable to stand on the wheels but for operation of a control loop governing operation of the wheels
"transporter"	'640 Patent: claims 1, 4 '607 Patent: claim 1 '048 Patent: claim 1	vehicle
"yaw"	'640 Patent: claims 1, 3, 4 '607 Patent: claims 1, 3 and 7 '048 Patent: claims 1, 4, 5	rotation or orientation about a vertical axis
"an instantaneous yaw value"	'640 Patent: claims 1, 4 '607 Patent: claim 3	current yaw value
"yaw error value"	'640 Patent: claims 1, 4 '607 Patent: claim 3	difference between the current yaw value and the desired yaw value
"summer"	'640 Patent: claim 4	an element used to compare inputs
"yaw rate"	'607 Patent: Claim 1	user directed angular velocity
"pitch"	'607 Patent: Claim 1 '048 Patent: Claims 1, 5	forward or backward lean of the vehicle with respect to a vertical axis as defined by the direction of gravity
"pitch state estimator"	'607 Patent: Claim 1	A control element that derives the pitch of the vehicle based on one or more sensors

Term or Phrase	Asserted Patent / Claim(s)	The Parties' and Staff's Agreed-To Construction
"direction of motion of the transporter"	'607 Patent: claim 1	forward or backward movement of the transporter.
"desired yaw rate"	'048 Patent: Claims 4, 5	user directed angular velocity
"roll compensated"	'048 Patent, claims 13, 14	modified to compensate for the roll angle of the user support assembly

SResp. at 18-20. Although the Staff disagreed with certain of Complainants' proposed claim constructions at the time of the *Markman* hearing, the parties have now agreed to the construction for all of the previously disputed terms:

Term or Phrase	Asserted Patent/ Claim(s)	Complainants and Staff's Updated Construction/ Potential Compromise Position
"desired yaw value"; "user-specified yaw value"	'640 patent, claims 1, 4	numerical representation of a user directed turn command
"desired yaw"; "specified yaw"; "user specified yaw";	'607 patent, claims 1,7; '048 patent, claims 1, 4, 5	user directed turn command
"in conjunction with"	'640 patent, claims 1,4; '607 patent, claim 1	together with
"disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels"	'607 patent, claim 7; '048 patent, claim 7	initially disposed in a plane that is at a right angle to the axis of rotation of the two ground-contacting wheels
"based on a detected body orientation of the user"	'607 patent, claim 1	based on a mechanism designed to correspond to the body position of the user
"control loop"	'048 patent, claim 7	controller

SResp. at 20-21. In addition, Complainants have submitted opinions from Mr. Jack Ganssle, a retained expert witness, in support of these claim constructions. *See* INF Ex. 2. Complainants and the Staff agree that Mr. Ganssle qualifies as a person of ordinary skill in the art for the Asserted Utility Patents. *Id.* The parties have agreed that one of ordinary skill in the art of the asserted utility patents would have had at least an undergraduate Bachelor's degree in mechanical, aerospace, or electrical engineering, robotics, and/or computer science, or their equivalent, along with at least three years of relevant experience or training in any of the noted disciplines, or a master's or other graduate level degree in any of the noted disciplines, or someone with the equivalent amount (e.g. 7 years) of training or work experience in such disciplines. *Id.* at 20 n.10; INF Ex. 2 at 14.

Based on Mr. Ganssle's opinions set forth in his expert report, and because there is no dispute from any party,[2] I adopt the claim constructions and the level of ordinary skill in the art agreed upon by Complainants and the Staff.

D. Infringement by the WindRunner Products and Manual

The WindRunner personal transporters are manufactured by defaulting Respondents UPTECH, U.P. Technology, and U.P. Robotics, and pursuant to Commission Rule 210.16(c), the facts alleged in the complaint regarding these products are presumed to be true with respect to these respondents. 19 C.F.R. § 210.16(c); Complaint at ¶ 61; INF Exs. 5-7, 9-11. Complainants assert that the WindRunner G1U and G1X infringe the Asserted Utility Patents. Mem. at 44-79. Complainants further assert that the WindRunner G1U and G1X infringe the '722 design patent and that the WindRunner G1X infringes the '592 design patent. Mem. at 80-91. Finally, Complainants assert that the WindRunner User Manual infringes the Asserted Copyright. Mem.

[2] Respondent Roboscooters did not participate in the *Markman* hearing and has not contested the proposed claim constructions.

at 91-98. The Staff does not dispute Complainants' evidence of infringement by the WindRunner products. SResp. At 27-29. Neither UPTECH, U.P. Technology, nor U.P. Robotics responded to Complainants' motion for summary determination. Based on the evidence discussed below, I find that the WindRunner G1U and G1X infringe the Asserted Utility Patents and the Asserted Design Patents, and the WindRunner User Manual infringes the Asserted Copyright.

1. Utility Patents

Complainants assert that the WindRunner G1U and G1X infringe the '048 patent, the '607 patent, and the '640 patent. Mem. at 44-79. In support of its infringement allegations in the Complaint, Complainants attached declarations from Dean Kamen, the President of DEKA and a named inventor on the patents, INF Ex. 3 at 5-8, INF Ex. 4 at 2-3, and claim charts identifying elements of the WindRunner products that meet each limitation of the asserted claims. INF Exs. 5-7. Complainants also submit the opinions of a technical expert, Mr. Jack Ganssle, who, after examining the evidence and physically disassembling a Windrunner personal transporter, opines that the Windrunner satisfies each limitation of the asserted claims and thus infringes the three utility patents. INF Ex. 2 at 262-332.

a. '048 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the WindRunner G1U and G1X infringe each and every limitation of claims 1, 2, 4, 5, 6, and 7 of the '048 patent, as discussed below.

Claim 1: The Windrunner G1U/G1X is a "transporter." INF Ex. 8, Windrunner User Manual at 12, 45; INF Ex. 2, Ganssle Infringement Report at 262-63; INF Ex. 4, Kamen Supplemental Declaration at 27. The Windrunner G1U/G1X has "a user support assembly for

supporting a user." INF Ex. 8, at 12, 15; INF Ex. 2 at 263-64; INF Ex. 4, at 27. The Windrunner G1U/G1X has "at least two laterally disposed primary ground contacting wheels coupled to the user support assembly." INF Ex. 8, at 12, 15; INF Ex. 2, at 264-266. The Windrunner G1U/G1X has "a motorized drive assembly for applying torque to the at least two laterally disposed ground contacting wheels." INF Ex. 8, at 12, 91; INF Ex. 2, at 266-67; INF Ex. 4, at 27. The Windrunner G1U/G1X has "at least one sensor for sensing the pitch of the user support assembly." INF Ex. 8, at 12; INF Ex. 2, at 270-72; INF Ex. 3, at 11, 15; INF Ex. 4, at 27. The Windrunner G1U/G1X has "a yaw input mechanism comprising a user support element moveably coupled to the user support assembly and adapted to receive specification by the user of a desired yaw, the desired yaw being based at least in part on the orientation of the user support element." INF Ex. 8, at 12, 21, 48-49; INF Ex. 2, at 272-277; INF Ex. 3, at 12-13; INF Ex. 4, at 27. The Windrunner G1U/G1X has "a control loop coupled to the motorized drive assembly for determining a torque to be applied to the at least two primary ground contacting wheels, the torque depending at least in part on the pitch of the user support assembly and the desired yaw indicated by the yaw indication mechanism." INF Ex. 8, at 12, 49; INF Ex. 2, at 277-278; INF Ex. 4, at 27.

Claim 2: The Windrunner G1U/G1X meets the additional limitation of dependent claim 2 "wherein the user support element is a handlebar." INF Ex. 8, at 15, 24, 42, 44, 48; INF Ex. 2, at 278-281; INF Ex. 3, at 12.

Claim 4: The Windrunner G1U/G1X meets the additional limitation of dependent claim 4 "wherein the user support element is adapted to received specification by the user of a desired yaw and a desired yaw rate." INF Ex. 8, at 15, 21, 48-49; INF Ex. 2, at 281-286; INF Ex. 3, 12-13; INF Ex. 4, at 27.

Claim 5: The Windrunner G1U/G1X meets the additional limitation of dependent claim 5, wherein "the torque depending at least in part on the pitch of the user support assembly, the desired yaw, and the desired yaw rate." INF Ex. 8, at 12, 91; INF Ex. 2, at 286-290; INF Ex. 4, at 27.

Claim 6: The Windrunner G1U/G1X meets the additional limitation of dependent claim 6, "wherein the user support element is pivotably coupled to the user support assembly." INF Ex. 8, at 15, 21, 48-49; INF Ex. 2, at 290-293; INF Ex. 4, at 27.

Claim 7: The Windrunner G1U/G1X meets the additional limitation of dependent claim 7, "wherein the user support element is disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels." INF Ex. 8, at 15, 21, 48-49; INF Ex. 2, at 293-295; INF Ex. 3, at 15.

b. '607 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the Windrunner G1U/G1X infringe claims 1, 3, and 7 of the '607 Patent, as discussed below.

Claim 1: The Windrunner G1U/G1X is a "controller for a transporter having at least one primary ground-contacting element, the transporter characterized by a roll angle." INF Ex. 8, at 12, 15; INF Ex. 2, at 312-315; INF Ex. 3, at 10. The Windrunner G1U/G1X has "an input adapted to receive specification by a user of a desired yaw, yaw rate, and direction of motion of the transporter, at least the desired yaw and yaw rate being based on a detected body orientation of the user." INF Ex. 8, at 15, 21, 48-49; INF Ex. 2, at 315-320; INF Ex. 3, at 12-13; INF Ex. 4, at 27. The Windrunner G1U/G1X has a "pitch state estimator for sensing a pitch of the transporter and outputting a pitch state signal." INF Ex. 8, at 12; INF Ex. 2, at 320-323; INF Ex.

3, at 11, 15; INF Ex. 4, at 27. The Windrunner G1U/G1X has a "processor of a kind that generates a command signal governing motion of the at least one ground-contacting element based at least on the user-specified yaw and yaw rate received by the input, in conjunction with the pitch state signal based on the pitch of the transporter, in such a manner as to maintain balance of the transporter in the course of achieving the specified yaw and direction of motion of the transporter." INF Ex. 8, at 21, 48, 49; INF Ex. 2, at 323-326; INF Ex. 3, at 11-13, 15; INF Ex. 4, at 27.

Claim 3: The Windrunner G1U/G1X meets the additional limitation of dependent claim 3, the controller of claim 1 further comprising "a summer for differencing an instantaneous yaw value from the desired yaw to generate a yaw error value such that the yaw command signal generated by the processor is based at least in part on the yaw error value." INF Ex. 8, at 12, 48-49; INF Ex. 2, at 326-327; INF Ex. 3, at 12-13, 15; INF Ex. 4, at 27.

Claim 7: The Windrunner G1U/G1X meets the additional limitation of dependent claim 7, the controller of claim 1 wherein "the input adapted to receive user specification includes a shaft disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels, the desired yaw specified on the basis of orientation of the shaft." INF Ex. 8, at 21, 45, 48-49; INF Ex. 2, at 328-332; INF Ex. 3, at 12-13, 15; INF Ex. 4, at 27.

c. '640 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the Windrunner G1U/G1X infringes claim 4 of the '640 Patent, as discussed below.

The Windrunner G1U/G1X has a "yaw controller for a balancing transporter having two laterally disposed ground-contacting wheels." INF Ex. 8, at 12, 15; INF Ex. 2, at 296-300; INF

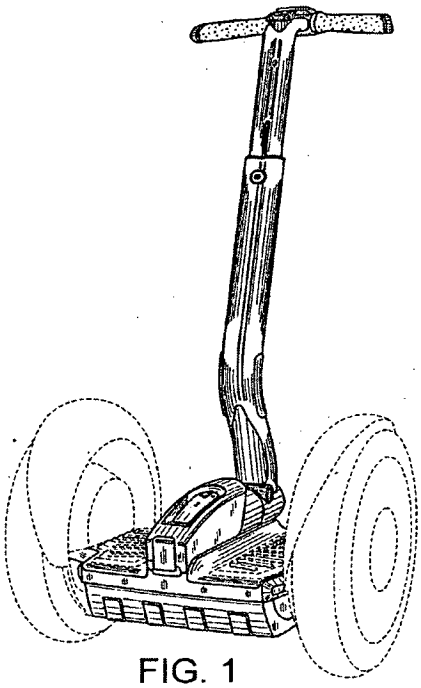
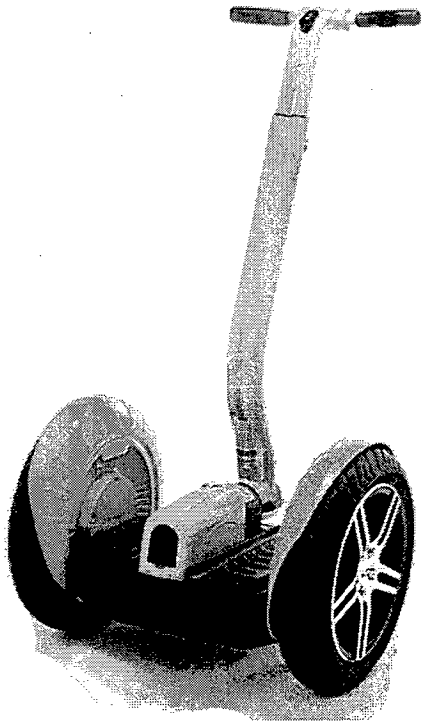
Ex. 3, at 10. The Windrunner G1U/G1X has "an input for receiving a user-specified yaw value." INF Ex. 8, at 21, 48-49; INF Ex.2, at 300-305; INF Ex. 3, at 12-13. The Windrunner G1U/G1X has a "summer for differencing an instantaneous yaw value from the user-specified yaw value to generate a yaw error value." INF Ex. 8, at 12, 21, 48-49; INF Ex. 2, at 305-307; INF Ex. 3, at 12-13, 15. The Windrunner G1U/G1X has "a processor for generating a yaw command signal based at least on the yaw error value in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control." INF Ex. 8, at 12, 48-49; INF Ex. 2, at 307-311; INF Ex. 3, at 11-13, 15; INF Ex. 4, at 27.

2. Design Patents

Complainants assert that the WindRunner G1U and G1X transporters infringe the '722 design patent, and the WindRunner G1X transporter infringes the '592 design patent. Mem. at 80-91. In support of its infringement allegations in the Complaint, Complainants attached claim charts comparing the claimed designs to the WindRunner transporters. Complaint at ¶¶ 90, 95; INF Ex. 9-11.

a. '722 Design Patent

Based on the allegations in the complaint, Complainants' motion, and the chart attached in INF Ex. 9, I find that the WindRunner G1U infringes the '722 design patent based on the ordinary observer test. An exemplary comparison of the WindRunner G1U and the '722 design patent appears below:

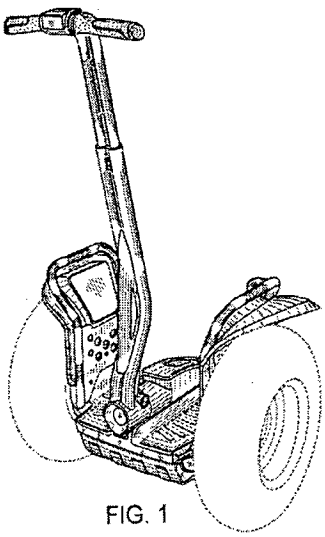
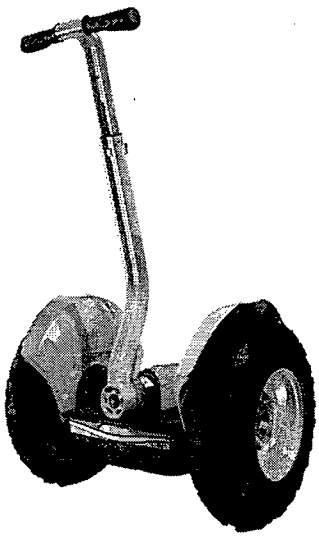
'722 Patent	WindRunner G1U
 FIG. 1	

INF Ex. 9.

In addition, I find that the WindRunner G1X does not infringe the '722 design patent. *See* SResp. at 28-29 (noting that Segway distinguishes between the '722 and '592 design patents for its own transporters in the context of domestic industry).

b. '592 Design Patent

Based on the allegations in the complaint, Complainants' motion, and the chart attached in INF Ex. 11, I find that the WindRunner G1X infringes the '592 design patent based on the ordinary observer test. An exemplary comparison of the WindRunner G1X and the '592 design patent appears below:

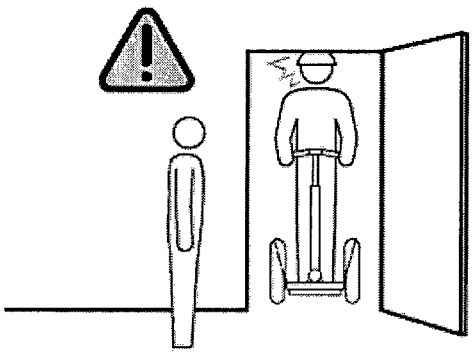
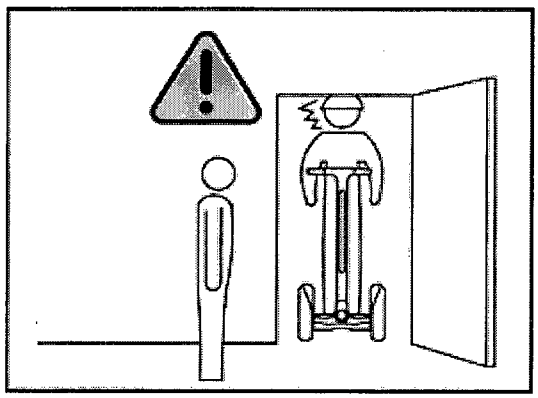
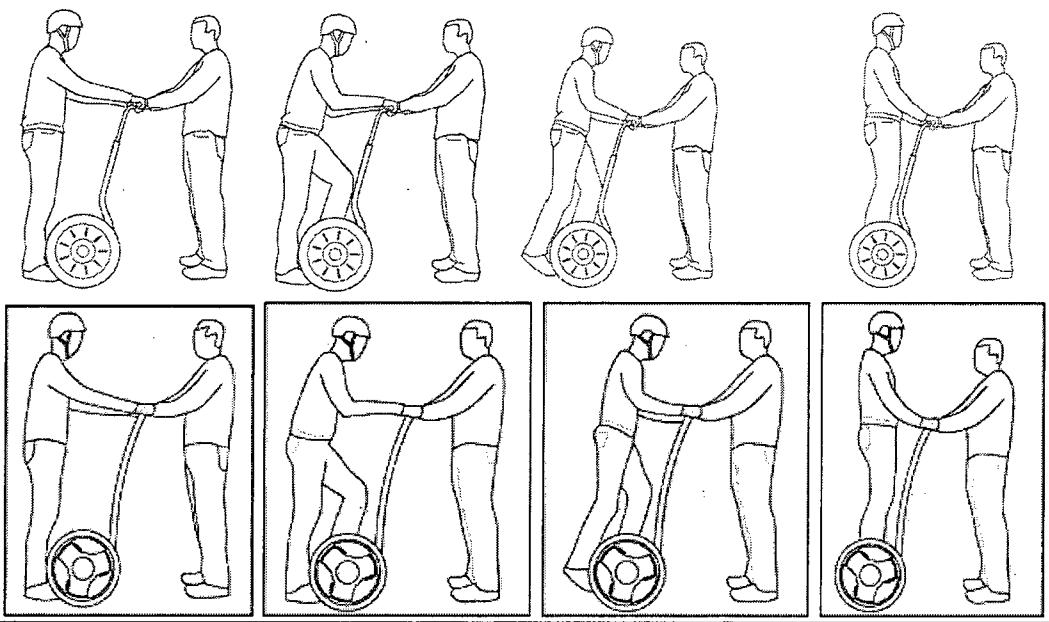
'592 Patent	WindRunner G1X
 FIG. 1	

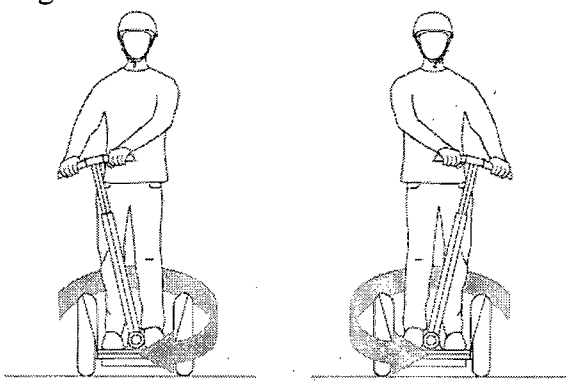
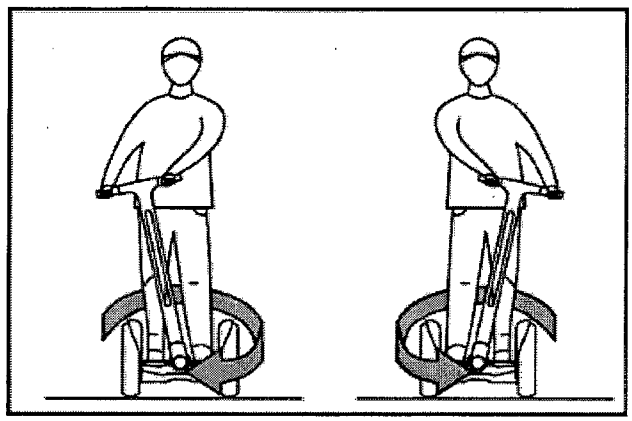
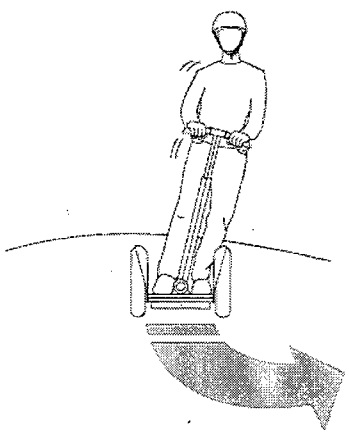
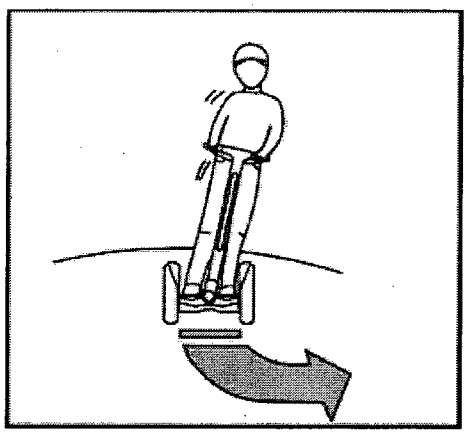
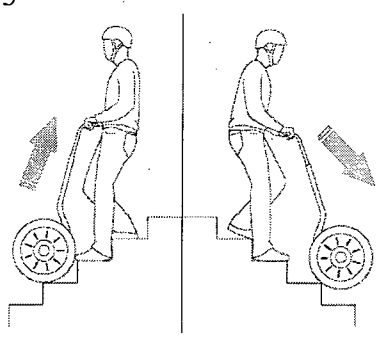
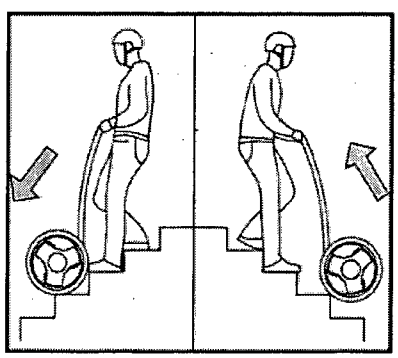
INF Ex. 11.

3. Copyright

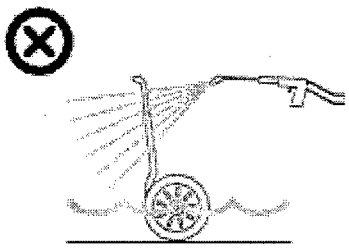
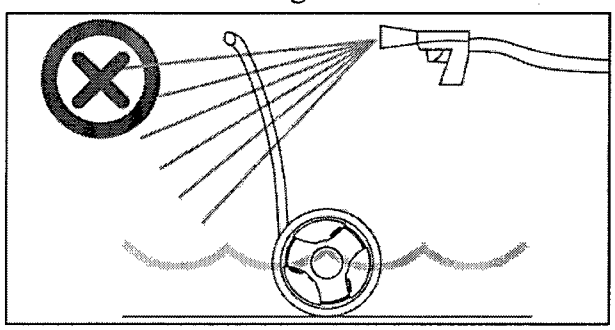
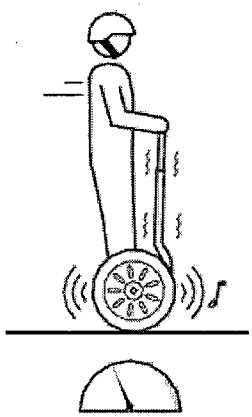
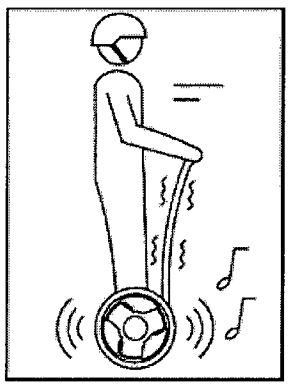
Complainants assert that the WindRunner User Manual infringes the Asserted Copyright, which protects the "Getting Started Manual Segway Personal Transporter (PT) i2, x2" (G Ex. 16) and the "Reference Manual Segway Personal Transporter (PT) i2, x2" (G Ex. 17). Mem. at 91-98. In support of its infringement allegations in the Complaint, Complainants alleged that the protected Segway manuals are distributed with Segway personal transporters and have been available on the internet (at www.segway.com) since August 2006. Complaint at ¶ 101. In addition, Complainants attached claim charts comparing the protected Segway manuals to the WindRunner User Manual. Complaint at ¶¶ 102-103, Ex. 39A, 39B.

Exemplary comparisons between the Segway manuals and the WindRunner User Manual appear below:

Segway Getting Started Manual (G Ex. 16)	WindRunner User Manual (INF Ex. 8)
Page 98 	Page 60 
Pages 71-73, 89 (Ex. 13) compared to Page 44 (Ex. 16) 	

Segway Getting Started Manual (G Ex. 16)	WindRunner User Manual (INF Ex. 8)
Page 85 	Page 49 
Page 86 	Page 49 
Page 103 	Page 52 

INF Ex. 12.

Segway Reference Manual (G Ex. 17)	Wind Runner User Manual (INF Ex. 8)
Page 87  **Figure 26. Avoid Submersion**	Page 74 
Pages 51, 57 	Pages 56, 64 

INF Ex. 13.

I find that the evidence from the complaint demonstrates accessibility and substantial similarity, which supports a finding that the WindRunner User Manual infringes the Asserted Copyright.

E. Infringement by the FreeGo Products

The FreeGo personal transporters are manufactured by defaulting Respondent FreeGo China, and pursuant to Commission Rule 210.16(c), the facts alleged in the complaint regarding these products are presumed to be true with respect to FreeGo China. 19 C.F.R. § 210.16(c); Complaint at ¶ 65; INF Exs. 14, 15, 16, 18, 19. Complainants assert that the FreeGo personal transporters infringe the Asserted Utility Patents. Mem. at 101-136. Complainants further assert that the FreeGo F3 transporter infringes the Asserted Design Patents. Mem. at 136-144. The

Staff does not dispute Complainants' evidence of infringement by the accused FreeGo products. SResp. At 29-30. FreeGo China did not respond to Complainants' motion for summary determination. Based on the evidence discussed below, I find that the FreeGo personal transporters infringe the Asserted Utility Patents and the Asserted Design Patents.

1. Utility Patents

Complainants assert that the FreeGo personal transporters infringe the '048 patent, the '607 patent, and the '640 patent. Mem. at 101-136. In support of its infringement allegations in the Complaint, Complainants attached declarations from Dean Kamen, the President of DEKA and a named inventor on the patents, INF Ex. 3 at 8-11, INF Ex. 4 at 3-4, and claim charts identifying elements of the FreeGo products that meet each limitation of the asserted claims. INF Exs. 14-16. Complainants also submit the opinions of a technical expert, Mr. Jack Ganssle, who opines that the FreeGo personal transporters satisfy each limitation of the asserted claims and thus infringe the three utility patents. INF Ex. 2 at 393-448.

a. '048 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the FreeGo personal transporters infringe each and every limitation of claims 1, 2, 4, 5, 6, and 7 of the '048 patent, as discussed below.

Claim 1: Each FreeGo transporter is a "transporter." INF Ex. 17, at 4; INF Ex. 2, at 393-394; INF Ex. 4, at 28. Each FreeGo transporter has "a user support assembly for supporting a user." INF Ex. 17, at 5; INF Ex. 2, at 394-396; INF Ex. 4, at 28. Each FreeGo transporter has "at least two laterally disposed primary ground contacting wheels coupled to the user support assembly." INF Ex. 17, at 4-5, 8; INF Ex. 2, at 396-398; INF Ex. 4, at 28. Each FreeGo transporter has "a motorized drive assembly for applying torque to the at least two laterally

disposed ground contacting wheels." INF Ex. 17, at 4, 15; INF Ex. 2, at 398-399; INF Ex. 4, at 28. Each FreeGo transporter has "at least one sensor for sensing the pitch of the user support assembly." INF Ex. 17, at 4, 8-9; INF Ex. 2, at 399-401; INF Ex. 3, at 17; INF Ex. 4, at 27. Each FreeGo transporter has "a yaw input mechanism comprising a user support element moveably coupled to the user support assembly and adapted to receive specification by the user of a desired yaw, the desired yaw being based at least in part on the orientation of the user support element." INF Ex. 17, at 5, 9-10; INF Ex. 2, at 401-404; INF Ex. 4, at 28. Each FreeGo transporter has "a control loop coupled to the motorized drive assembly for determining a torque to be applied to the at least two primary ground contacting wheels, the torque depending at least in part on the pitch of the user support assembly and the desired yaw indicated by the yaw indication mechanism." INF Ex. 17, at 8-10; INF Ex. 2, at 404-407; INF Ex. 4, at 28.

Claim 2: Each FreeGo transporter meets the additional limitation of dependent claim 2 "wherein the user support element is a handlebar." INF Ex. 17, at 5, 8; INF Ex. 2, at 407-409.

Claim 4: Each FreeGo transporter meets the additional limitation of dependent claim 4 "wherein the user support element is adapted to received specification by the user of a desired yaw and a desired yaw rate." INF Ex. 17 at 5, 9-10; INF Ex. 2, at 409-412; INF Ex. 3, Kamen Declaration at 17; INF Ex. 4, at 28.

Claim 5: Each FreeGo transporter meets the additional limitation of dependent claim 5, wherein "the torque depending at least in part on the pitch of the user support assembly, the desired yaw, and the desired yaw rate." INF Ex. 17, at 8-10, 13; INF Ex. 2, at 412-414; INF Ex. 4, at 28.

Claim 6: Each FreeGo transporter meets the additional limitation of dependent claim 6, "wherein the user support element is pivotably coupled to the user support assembly." INF Ex. 17, at 9-10; INF Ex. 2, at 414-416; INF Ex. 4, at 28.

Claim 7: Each FreeGo transporter meets the additional limitation of dependent claim 7, "wherein the user support element is disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels." INF Ex. 17, at 5, 9-10; INF Ex. 2, at 416-419; INF Ex. 3, at 17.

b. '607 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the FreeGo personal transporters infringe each and every limitation of claims 1, 3, and 7 of the '607 Patent, as discussed below.

Claim 1: Each FreeGo transporter has a "controller for a transporter having at least one primary ground-contacting element, the transporter characterized by a roll angle." INF Ex. 17, at 4-5, 8; INF Ex. 2, at 419-422; INF Ex. 3, at 17. Each FreeGo transporter has "an input adapted to receive specification by a user of a desired yaw, yaw rate, and direction of motion of the transporter, at least the desired yaw and yaw rate being based on a detected body orientation of the user." INF Ex. 17, at 5, 9-10; INF Ex. 2, at 422-426; INF Ex. 3, at 17. Each FreeGo transporter has a "pitch state estimator for sensing a pitch of the transporter and outputting a pitch state signal." INF Ex. 17, at 4, 8-9; INF Ex. 2, at 426-428; INF Ex. 3, at 17; INF Ex. 4, at 28. Each FreeGo transporter has a "processor of a kind that generates a command signal governing motion of the at least one ground-contacting element based at least on the user-specified yaw and yaw rate received by the input, in conjunction with the pitch state signal based on the pitch of the transporter, in such a manner as to maintain balance of the transporter in the

course of achieving the specified yaw and direction of motion of the transporter." INF Ex. 17, at 4, 8-10, 13; INF Ex. 2, at 428-432; INF Ex. 4, at 28.

Claim 3: Each FreeGo transporter meets the additional limitation of dependent claim 3, the controller of claim 1 further comprising "a summer for differencing an instantaneous yaw value from the desired yaw to generate a yaw error value such that the yaw command signal generated by the processor is based at least in part on the yaw error value." INF Ex. 17, at 4; INF Ex. 2, at 432-433; INF Ex. 3, at 17.

Claim 7: Each FreeGo transporter meets the additional limitation of dependent claim 7, the controller of claim 1 wherein "the input adapted to receive user specification includes a shaft disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels, the desired yaw specified on the basis of orientation of the shaft." INF Ex. 17, at 5, 9-10; INF Ex. 2, at 433-438; INF Ex. 3, at 17.

c. '640 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the FreeGo personal transporters infringe each and every limitation of claim 4 of the '640 Patent, as discussed below.

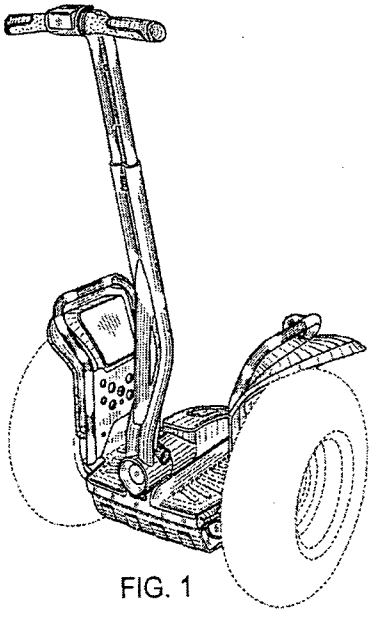
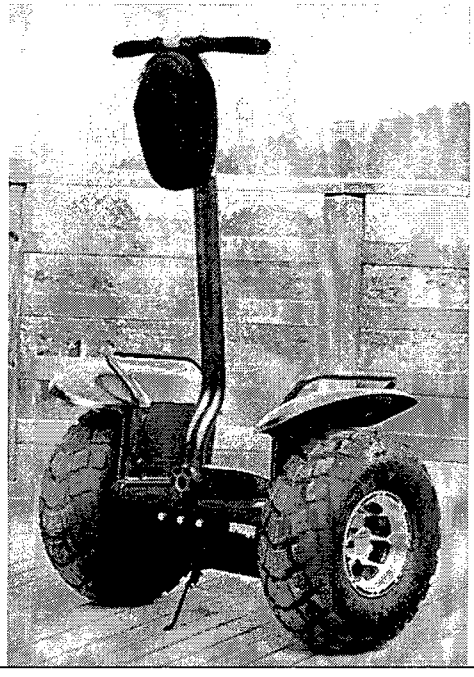
Each FreeGo transporter has a "yaw controller for a balancing transporter having two laterally disposed ground-contacting wheels." INF Ex. 17, at 4-5, 8; INF Ex. 2, at 438-440; INF Ex. 4, at 28. Each FreeGo transporter has "an input for receiving a user-specified yaw value." INF Ex. 17, at 5, 9-10; INF Ex. 2, at 440-443; INF Ex. 4, at 28. Each FreeGo transporter has a "summer for differencing an instantaneous yaw value from the user-specified yaw value to generate a yaw error value." INF Ex. 17 at 4; INF Ex. 2, at 443-444; INF Ex. 3, at 17. Each FreeGo transporter has "a processor for generating a yaw command signal based at least on the

yaw error value in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control." INF Ex. 17, at 4, 8-10, 13; INF Ex. 2, at 444-448; INF Ex. 3, at 17; INF Ex. 4, at 28.

2. Design Patents

Complainants assert that the FreeGo F3 personal transporter infringes the '722 and '592 design patents. Mem. at 136-144. In support of its infringement allegations in the Complaint, Complainants attached claim charts comparing the claimed designs to the FreeGo F3 transporter. Complaint at ¶¶ 92, 96; INF Ex. 18, 19.

Based on the allegations in the complaint, Complainants' motion, and the chart attached in INF Ex. 9, I find that the FreeGo F3 transporter infringes the '592 design patent based on the ordinary observer test. An exemplary comparison of the WindRunner G1U and the '592 design patent appears below:

'592 Patent	FreeGo F3
 FIG. 1	

INF Ex. 19.

In addition, I find that the FreeGo F3 transporter does not infringe the '722 design patent. *See* SResp. at 30 (noting that Segway distinguishes between the '722 and '592 design patents for its own transporters in the context of domestic industry).

F. Infringement by the INMOTION Products

The INMOTION personal transporters are manufactured by terminated Respondent INMOTION and imported and/or sold for importation by defaulting Respondent EcoBoomer and Respondent Roboscooters. Pursuant to Commission Rule 210.16(c), the facts alleged in the complaint regarding these products are presumed to be true with respect to EcoBoomer. 19 C.F.R. § 210.16(c); Complaint at ¶¶ 63, 110-116, 124; INF Exs. 20, 21, 22. Complainants assert that the INMOTION SCV Transporters infringe the Asserted Utility Patents. Mem. at 187-233. The Staff does not dispute Complainants' evidence of infringement by the INMOTION SCV products. SResp. at 31-32. Neither EcoBoomer nor Roboscooters responded to Complainants' motion for summary determination. Based on the evidence discussed below, I find that the INMOTION SCV products infringe under both the default standard that applies to EcoBoomer and the summary determination standard that applies to Roboscooters.

1. '048 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the INMOTION SCV infringes each and every limitation of claims 1, 2, 4, 5, 6, and 7 of the '048 Patent, as discussed below.

Claim 1: The INMOTION SCV is a "transporter." INF Ex. 23, at INM00001550; INF Ex. 2, at 18; INF Ex. 4, at 29. The INMOTION SCV has "a user support assembly for supporting a user." INF Ex. 23, at INM00001528-29, 1552; INF Ex. 2, at 18-20. The INMOTION SCV has "at least two laterally disposed primary ground contacting wheels coupled

to the user support assembly." INF Ex. 2, at 20-21; INF Ex. 4, at 29. The INMOTION SCV has "a motorized drive assembly for applying torque to the at least two laterally disposed ground contacting wheels." INF Ex. 23, at INM00001527-28; INF Ex. 2, at 21-24; INF Ex. 4, at 29. The INMOTION SCV has "at least one sensor for sensing the pitch of the user support assembly." INF Ex. 23, at INM00001527; INF Ex. 2, at 24-32; INF Ex. 4, at 29. The INMOTION SCV has "a yaw input mechanism comprising a user support element moveably coupled to the user support assembly and adapted to receive specification by the user of a desired yaw, the desired yaw being based at least in part on the orientation of the user support element." INF Ex. 23, at INM00001527-1528, 1555; INF Ex. 2, at 32-44. The INMOTION SCV has "a control loop coupled to the motorized drive assembly for determining a torque to be applied to the at least two primary ground contacting wheels, the torque depending at least in part on the pitch of the user support assembly and the desired yaw indicated by the yaw indication mechanism." INF Ex. 23, at INM00001527-1528, 1555; INF Ex. 2, at 34, 44-68.

Claim 2: The INMOTION SCV meets the additional limitation of dependent claim 2 "wherein the user support element is a handlebar." INF Ex. 23, at INM00001527-1528, 1555; INF Ex. 2, at 69-70.

Claim 4: The INMOTION SCV meets the additional limitation of dependent claim 4 "wherein the user support element is adapted to received specification by the user of a desired yaw and a desired yaw rate." INF Ex. 23, at INM00001527-1528, 1555; INF Ex. 2, at 70-77; INF Ex. 4, at 29.

Claim 5: The INMOTION SCV meets the additional limitation of dependent claim 5, wherein "the torque depending at least in part on the pitch of the user support assembly, the

desired yaw, and the desired yaw rate." INF Ex. 23, at INM00001527-1528, 1555; INF Ex. 2, at 77-114; INF Ex. 4, at 29.

Claim 6: The INMOTION SCV meets the additional limitation of dependent claim 6, "wherein the user support element is pivotably coupled to the user support assembly." INF Ex. 23, at INM00001527-1528, 1555; INF Ex. 2, at 115-117; INF Ex. 4, at 29.

Claim 7: The INMOTION SCV meets the additional limitation of dependent claim 7, "wherein the user support element is disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels." INF Ex. 23, at INM00001525, 1556; INF Ex. 2, at 117-119; INF Ex. 3, at 19.

2. '607 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the INMOTION SCV infringes each and every limitation of claims 1, 3, and 7 of the '607 Patent, as discussed below.

Claim 1: The INMOTION SCV has a "controller for a transporter having at least one primary ground-contacting element, the transporter characterized by a roll angle." INF Ex. 23, at INM00001527-INM00001528; INF Ex. 2, at 120-123. The INMOTION SCV has "an input adapted to receive specification by a user of a desired yaw, yaw rate, and direction of motion of the transporter, at least the desired yaw and yaw rate being based on a detected body orientation of the user." INF Ex. 23, at INM00001527-28, 53, 55; INF Ex. 2, at 124-135. The INMOTION SCV has a "pitch state estimator for sensing a pitch of the transporter and outputting a pitch state signal." INF Ex. 23, at INM00001527-28; INF Ex. 2, at 135-143. The INMOTION SCV has a "processor of a kind that generates a command signal governing motion of the at least one ground-contacting element based at least on the user-specified yaw and yaw rate received by the

input, in conjunction with the pitch state signal based on the pitch of the transporter, in such a manner as to maintain balance of the transporter in the course of achieving the specified yaw and direction of motion of the transporter." INF Ex. 23, at INM00001527-28; INF Ex. 2, at 143-166; INF Ex. 4, at 29.

Claim 3: The INMOTION SCV meets the additional limitation of dependent claim 3, the controller of claim 1 further comprising "a summer for differencing an instantaneous yaw value from the desired yaw to generate a yaw error value such that the yaw command signal generated by the processor is based at least in part on the yaw error value." INF Ex. 23, at INM00001527-28, 1555; INF Ex. 2, at 166-189.

Claim 7: The INMOTION SCV meets the additional limitation of dependent claim 7, the controller of claim 1 wherein "the input adapted to receive user specification includes a shaft disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels, the desired yaw specified on the basis of orientation of the shaft." INF Ex. 23, at INM00001525, 56; INF Ex. 2, at 190-192; INF Ex. 4, at 29.

3. '640 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the INMOTION SCV infringes each and every limitation of claims 1 and 4 of the '640 Patent, as discussed below.

Claim 1: The INMOTION SCV provides "yaw control for a balancing transporter having two laterally disposed ground-contacting wheels, the method comprising." INF Ex. 23, at INM00001525, 1555; INF Ex. 2, at 193-194. The INMOTION SCV provides for "receiving a user input of a desired yaw value." INF Ex. 23 at INM00001527-28; INF Ex. 2 at 194-205; INF Ex. 4, at 29. The INMOTION SCV provides for "comparing an instantaneous yaw value with

the desired yaw value to generate a yaw error value." INF Ex. 2, at 205-213; INF Ex. 3, at 19. The INMOTION SCV provides for "processing the yaw error value to obtain a yaw command signal." INF Ex. 2, at 213-216. The INMOTION SCV provides for "applying the yaw command signal in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control." INF Ex. 23, at INM00001555; INF Ex. 2, at 216-232.

Claim 4: The INMOTION SCV is a "yaw controller for a balancing transporter having two laterally disposed ground-contacting wheels." INF Ex. 23 at INM00001525; INF Ex. 2, at 233-234; INF Ex. 4, at 29. The INMOTION SCV has an "an input for receiving a user-specified yaw value." INF Ex. 23, at INM00001527-28, 1555; INF Ex. 2, at 234-245; INF Ex. 4, at 29. The INMOTION SCV has a "summer for differencing an instantaneous yaw value from the user-specified yaw value to generate a yaw error value." INF Ex. 23, at INM00001527-28; INF Ex. 2, at 245-256; INF Ex. 3, at 19. The INMOTION SCV has a "a processor for generating a yaw command signal based at least on the yaw error value in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control." INF Ex. 23, at INM00001555; INF Ex. 2, at 257-262; INF Ex. 4, at 29.

G. Infringement by the Robstep Products

The Robstep personal transporters are manufactured by terminated Respondent Robstep and imported and/or sold for importation by Respondent Roboscooters. Complainants assert that the Robstep Robin M1 Personal Transporter infringes the Asserted Utility Patents. Mem. at 233-251. The Staff does not dispute Complainants' evidence of infringement by the Robstep products. SResp. at 34. Roboscooters did not respond to Complainants' motion for summary

determination. Based on the evidence discussed below, I find that the there is no genuine dispute that the Robstep Robin M1 infringes the Asserted Utility Patents.

1. '048 Patent

Based on the allegations in Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the Robstep Robin infringes each and every limitation of claims 1, 2, 4, 5, 6, and 7 of the '048 Patent, as discussed below.

Claim 1: The Robstep Robin is a "transporter." INF Ex. 27A, at 2; INF Ex. 2, Report at 333; INF Ex. 4, at 30. The Robstep Robin has "a user support assembly for supporting a user." INF Ex. 27B at ROBITC0000248, ROBITC0000261; INF Ex. 2, at 333-335; INF Ex. 4, at 30. The Robstep Robin has "at least two laterally disposed primary ground contacting wheels coupled to the user support assembly." INF Ex. 27A, at 2-3; INF Ex. 27B at ROBITC0000248; INF Ex. 2, at 335-338. The Robstep Robin has "a motorized drive assembly for applying torque to the at least two laterally disposed ground contacting wheels." INF Ex. 27A, at 2; INF Ex. 27B, at ROBITC0000242; INF Ex. 2, at 338-339; INF Ex. 4, at 30. The Robstep Robin has "at least one sensor for sensing the pitch of the user support assembly." INF Ex. 27A, at 2; INF Ex. 27B, at ROBITC0000248; INF Ex. 2, at 340-342; INF Ex. 3, at 20-21; INF Ex. 4, at 30. The Robstep Robin has "a yaw input mechanism comprising a user support element moveably coupled to the user support assembly and adapted to receive specification by the user of a desired yaw, the desired yaw being based at least in part on the orientation of the user support element." INF Ex. 27A, at 3, 9; INF Ex. 2, at 342-345; INF Ex. 3, at 20-21; INF Ex. 4, at 30. The Robstep Robin has "a control loop coupled to the motorized drive assembly for determining a torque to be applied to the at least two primary ground contacting wheels, the torque depending at least in part on the pitch of the user support assembly and the desired yaw indicated by the yaw

indication mechanism." INF Ex. 27A, at 2-3; INF Ex. 27B at ROBITC0000242; INF Ex. 2, at 345-347; INF Ex. 4, at 30.

Claim 2: The Robstep Robin meets the additional limitation of dependent claim 2 "wherein the user support element is a handlebar." INF Ex. 27A, at 2-3; INF Ex. 27B, at ROBITC0000242, ROBITC0000248, ROBITC0000261; Ex. 2, at 347-350; INF Ex. 3, at 20-21.

Claim 4: The Robstep Robin meets the additional limitation of dependent claim 4 "wherein the user support element is adapted to received specification by the user of a desired yaw and a desired yaw rate." INF Ex. 27A, at 9; INF Ex. 27B, at ROBITC0000242, ROBITC0000261; INF Ex. 2, at 350-353; INF Ex. 3, at 20-21; INF Ex. 4, at 30.

Claim 5: The Robstep Robin meets the additional limitation of dependent claim 5, wherein "the torque depending at least in part on the pitch of the user support assembly, the desired yaw, and the desired yaw rate." INF Ex. 27A, at 2-3, 9; INF Ex. 27B, at ROBITC0000242; INF Ex. 2, at 353-355; INF Ex. 4, at 30.

Claim 6: The Robstep Robin meets the additional limitation of dependent claim 6, "wherein the user support element is pivotably coupled to the user support assembly." INF Ex. 27A, at 9; INF Ex. 27B, at ROBITC0000242, ROBITC0000261; INF Ex. 2, at 355-358; INF Ex. 4, at 30.

Claim 7: The Robstep Robin meets the additional limitation of dependent claim 7, "wherein the user support element is disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels." INF Ex. 27A, at 9; INF Ex. 27B, at ROBITC0000242, ROBITC0000261; INF Ex. 2, at 358-360; INF Ex. 3, at 20-21.

2. '607 Patent

Based on the allegations in Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the Robstep Robin infringes each and every limitation of claims 1, 3, and 7 of the '607 Patent, as discussed below.

Claim 1: The Robstep Robin has a "controller for a transporter having at least one primary ground-contacting element, the transporter characterized by a roll angle." INF Ex. 27A, at 2-3; INF Ex. 27B, at ROBITC0000242, ROBITC0000267; INF Ex. 2, at 361-364; INF Ex. 3, at 20-21. The Robstep Robin has "an input adapted to receive specification by a user of a desired yaw, yaw rate, and direction of motion of the transporter, at least the desired yaw and yaw rate being based on a detected body orientation of the user." INF Ex. 27A, at 3, 9; INF Ex. 27B, at ROBITC0000242, ROBITC0000261; INF Ex. 2, at 364-367; INF Ex. 3, at 20-21; INF Ex. 4, at 30. The Robstep Robin has a "pitch state estimator for sensing a pitch of the transporter and outputting a pitch state signal." INF Ex. 27A, at 2-3; INF Ex. 27B, at ROBITC0000242; INF Ex. 2, at 367-370; INF Ex. 3, at 20-21; INF Ex. 4, at 30. The Robstep Robin has a "processor of a kind that generates a command signal governing motion of the at least one ground-contacting element based at least on the user-specified yaw and yaw rate received by the input, in conjunction with the pitch state signal based on the pitch of the transporter, in such a manner as to maintain balance of the transporter in the course of achieving the specified yaw and direction of motion of the transporter." INF Ex. 27A, at 2-3, 9; INF Ex. 27B, at ROBITC0000242, ROBITC0000261; INF Ex. 2, at 370-374; INF Ex. 3, at 20-21; INF Ex. 4, at 30.

Claim 3: The Robstep Robin meets the additional limitation of dependent claim 3, the controller of claim 1 further comprising "a summer for differencing an instantaneous yaw value

from the desired yaw to generate a yaw error value such that the yaw command signal generated by the processor is based at least in part on the yaw error value." INF Ex. 27A, at 2-3; INF Ex. 27B, at ROBITC0000242; INF Ex. 2, at 374-377; INF Ex. 3, at 20-21; INF Ex. 4, at 30.

Claim 7: The Robstep Robin meets the additional limitation of dependent claim 7, the controller of claim 1 wherein "the input adapted to receive user specification includes a shaft disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels, the desired yaw specified on the basis of orientation of the shaft." INF Ex. 27A, at 3, 9; INF Ex. 27B, at ROBITC0000242, ROBITC0000261; INF Ex. 2, at 377-381; INF Ex. 3, at 20-21; INF Ex. 4, at 30.

3. '640 Patent

Based on the allegations in Complainants' motion, and the uncontested analysis by Mr. Kamen and Mr. Ganssle, I find that the Robstep Robin infringes each and every limitation of claim 4 of the '640 Patent, as discussed below.

The Robstep Robin has a "yaw controller for a balancing transporter having two laterally disposed ground-contacting wheels." INF Ex. 27A, at 2-3; INF Ex. 27B, at ROBITC0000242, ROBITC0000267; INF Ex. 1, INF Ex. 2, at 381-385; INF Ex. 3, at 20-21. The Robstep Robin has "an input for receiving a user-specified yaw value." INF Ex. 27A, at 9; INF Ex. 27B at ROBITC0000242, ROBITC0000261; INF Ex. 2, at 385-388; INF Ex. 3, at 20-21. The Robstep Robin has a "summer for differencing an instantaneous yaw value from the user-specified yaw value to generate a yaw error value." INF Ex. 27A, at 2-3; INF Ex. 27B, at ROBITC0000242; INF Ex. 2, at 388-390; INF Ex. 3, at 20-21. The Robstep Robin has "a processor for generating a yaw command signal based at least on the yaw error value in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the

course of executing yaw control." INF Ex. 27A, at 2-3; INF Ex. 27B, at ROBITC0000242, ROBITC0000261; INF Ex. 2, at 390-393; INF Ex. 3, at 20-21; INF Ex. 4, at 30.

H. Infringement by the Ninebot Products

The Ninebot personal transporters are manufactured by the terminated Ninebot Respondents and imported and/or sold for importation by defaulting Respondent EcoBoomer and Respondent Roboscooters. Pursuant to Commission Rule 210.16(c), the facts alleged in the complaint regarding these products are presumed to be true with respect to EcoBoomer. 19 C.F.R. § 210.16(c); Complaint at ¶¶ 63, 110-116, 124; INF Exs. 20, 21, 22. Complainants assert that the Ninebot mini-flight transporter infringes the Asserted Utility Patents. Mem. at 251-286. Complainants further assert that the Ninebot mini-flight infringes the '722 design patent. Mem. at 286-289. Finally, Complainants assert that the Ninebot User Manual infringes the Asserted Copyright. Mem. at 290-302. The Staff does not dispute Complainants' evidence of infringement by the Ninebot mini-flight or the Ninebot User Manual. SResp. at 31-33.

Pursuant to the settlement and license agreements between Complainants and the Ninebot Respondents, however, the accused Ninebot mini-flight personal transporter is licensed to practice the Asserted Utility Patents and the Asserted Design Patents. *See* Order No. 27, Ex. A, Ex. B (Aug. 20, 2015). In addition, the Ninebot User Manual is licensed under the Asserted Copyright. *See id.*, Ex. B. Accordingly, I find that there is no infringement by the Ninebot Respondents or by sellers of Ninebot products such as EcoBoomer and Roboscooters. *See Keurig, Inc. v. Sturm Foods, Inc.*, 732 F.3d 1370, 1374-75 (Fed. Cir. 2013) (finding patent exhaustion of apparatus and method claims after the sale of licensed products).

I. Infringement by Additional Products

The Estway, OkayRobot, and Focxess personal transporters are manufactured by non-

Respondents [redacted].

Complainants assert that the Estway, OkayRobot, and Focxess personal transporters infringe the Asserted Utility Patents. Mem. at 149-186 (Estway), 302-318 (OkayRobot), 318-367 (Focxess). The Staff does not dispute Complainants' evidence of infringement by these additional products. SResp. at 34. [redacted] did not respond to Complainants' motion for summary determination. Based on the evidence discussed below, I find that the there is no genuine dispute that the Estway and Focxess products infringe the Asserted Utility Patents, but there is insufficient evidence to find that the OkayRobot products infringe any of the Asserted Utility Patents.

1. Estway

Complainants assert that the Estway personal transporters infringe the '048 patent, the '607 patent, and the '640 patent. Mem. at 149-186. In support of its infringement allegations, Complainants submit the opinions of a technical expert, Mr. Jack Ganssle, who opines that the Estway personal transporters satisfy each limitation of the asserted claims and thus infringe the three utility patents. INF Ex. 2 at 448-488.

a. '048 Patent

Based on Complainants' motion and the uncontested analysis by Mr. Ganssle, I find that the Estway personal transporters infringe each and every limitation of claims 1, 2, 4, 5, 6, and 7 of the '048 patent, as discussed below.

Claim 1: Each Estway personal transporter is a "transporter." INF Ex. 2, at 448-449. Each Estway personal transporter has "a user support assembly for supporting a user." INF Ex. 2, at 449-451. Each Estway personal transporter has "at least two laterally disposed primary ground contacting wheels coupled to the user support assembly." INF Ex. 2, at 451-453. Each

Estway personal transporter has "a motorized drive assembly for applying torque to the at least two laterally disposed ground contacting wheels." INF Ex. 2, at 453-454. Each Estway personal transporter has "at least one sensor for sensing the pitch of the user support assembly." INF Ex. 2, at 454-455. Each Estway personal transporter has "a yaw input mechanism comprising a user support element moveably coupled to the user support assembly and adapted to receive specification by the user of a desired yaw, the desired yaw being based at least in part on the orientation of the user support element." INF Ex. 2, at 455-457. Each Estway personal transporter has "a control loop coupled to the motorized drive assembly for determining a torque to be applied to the at least two primary ground contacting wheels, the torque depending at least in part on the pitch of the user support assembly and the desired yaw indicated by the yaw indication mechanism." INF Ex. 2, at 457-459.

Claim 2: Each Estway personal transporter meets the additional limitation of dependent claim 2 "wherein the user support element is a handlebar." INF Ex. 2, at 460-461.

Claim 4: Each Estway personal transporter meets the additional limitation of dependent claim 4 "wherein the user support element is adapted to received specification by the user of a desired yaw and a desired yaw rate." INF Ex. 2, at 461-463.

Claim 5: Each Estway personal transporter meets the additional limitation of dependent claim 5, wherein "the torque depending at least in part on the pitch of the user support assembly, the desired yaw, and the desired yaw rate." INF Ex. 2, at 463-465.

Claim 6: Each Estway personal transporter meets the additional limitation of dependent claim 6, "wherein the user support element is pivotably coupled to the user support assembly." INF Ex. 2, at 465-467.

Claim 7: Each Estway personal transporter meets the additional limitation of dependent claim 7, "wherein the user support element is disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels." INF Ex. 2, at 467-469.

b. '607 Patent

Based on Complainants' motion and the uncontested analysis by Mr. Ganssle, I find that the Estway personal transporters infringe each and every limitation of claims 1, 3, and 7 of the '607 patent, as discussed below.

Claim 1: Each Estway personal transporter has a "controller for a transporter having at least one primary ground-contacting element, the transporter characterized by a roll angle." INF Ex. 2, at 470-471. Each Estway personal transporter has "an input adapted to receive specification by a user of a desired yaw, yaw rate, and direction of motion of the transporter, at least the desired yaw and yaw rate being based on a detected body orientation of the user." INF Ex. 2, at 471-473. Each Estway personal transporter has a "pitch state estimator for sensing a pitch of the transporter and outputting a pitch state signal." INF Ex. 2, at 473-474. Each Estway personal transporter has a "processor of a kind that generates a command signal governing motion of the at least one ground-contacting element based at least on the user-specified yaw and yaw rate received by the input, in conjunction with the pitch state signal based on the pitch of the transporter, in such a manner as to maintain balance of the transporter in the course of achieving the specified yaw and direction of motion of the transporter." INF Ex. 2, at 474-477.

Claim 3: Each Estway personal transporter meets the additional limitation of dependent claim 3, the controller of claim 1 further comprising "a summer for differencing an instantaneous yaw value from the desired yaw to generate a yaw error value such that the yaw command signal

generated by the processor is based at least in part on the yaw error value." INF Ex. 2, at 477-478.

Claim 7: Each Estway personal transporter meets the additional limitation of dependent claim 7, the controller of claim 1 wherein "the input adapted to receive user specification includes a shaft disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels, the desired yaw specified on the basis of orientation of the shaft." INF Ex. 2, at 478-481.

c. '640 Patent

Based on Complainants' motion and the uncontested analysis by Mr. Ganssle, I find that the Estway personal transporters infringe each and every limitation of claim 4 of the '640 Patent, as discussed below.

Each Estway transporter has a "yaw controller for a balancing transporter having two laterally disposed ground-contacting wheels." INF Ex. 2, at 481-483. Each Estway transporter has "an input for receiving a user-specified yaw value." INF Ex. 2, at 483-485. Each Estway transporter has a "summer for differencing an instantaneous yaw value from the user-specified yaw value to generate a yaw error value." INF Ex. 2, at 485. Each Estway transporter has "a processor for generating a yaw command signal based at least on the yaw error value in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control." INF Ex. 2, at 486-488.

2. OkayRobot

Complainants assert that the OkayRobot personal transporters infringe the claims 1, 2, 4, 5, 6, and 7 of the '048 patent. Mem. at 302-318. In support of its infringement allegations, Complainants cite to the OkayRobot website (http://www.okayrobot.net) and to an OkayRobot

user manual (INF Ex. 35). [redacted] did not file a response to this motion and has not contested this evidence. However, several of the websites cited in Complainants' memorandum were not available when accessed by the Administrative Law Judge. *See, e.g.* http://www.okayrobot.com/en/ENabout.asp; http://www.okayrobot.com/en/ENnews.asp; http://www.okayrobot.com/en/ENvideo.asp. In addition, Complainants fail to explain the provenance of the OkayRobot user manual attached as INF Exhibit 35. The evidence relied upon by Complainants is thus unreliable, and there is no clear evidence linking the website and manual to the OkayRobot products [redacted]. Complainants did not submit any expert analysis of an Okay Robot product, instead relying on Mr. Ganssle's analysis of videos showing a different product. Mem. at 312-313 (citing INF Ex. 2 at 501). OkayRobot products were not identified in the Complaint in this Investigation, [redacted], and I find that Complainants have failed to prove infringement of the '048 patent by any OkayRobot product.

3. Focxess

Complainants assert that the Focxess personal transporters infringe the '048 patent, the '607 patent, and the '640 patent. Mem. at 318-367. In support of its infringement allegations, Complainants submit the opinions of a technical expert, Mr. Jack Ganssle, who opines that the Foxcess* personal transporters satisfy each limitation of the asserted claims and thus infringe the three utility patents. INF Ex. 2 at 488-538.

* In the confidential version of this Initial Determination, a typographical error incorrectly referenced Estway in this sentence.

a. '048 Patent

Based on Complainants' motion and the uncontested analysis by Mr. Ganssle, I find that the Focxess personal transporters infringe each and every limitation of claims 1, 2, 4, 5, 6, and 7 of the '048 patent, as discussed below.

Claim 1: Each Focxess personal transporter is a "transporter." INF Ex. 2, at 488-489. Each Focxess transporter has "a user support assembly for supporting a user." INF Ex. 2, at 489-492. Each Focxess transporter has "at least two laterally disposed primary ground contacting wheels coupled to the user support assembly." INF Ex. 2, at 492-494. Each Focxess transporter has "a motorized drive assembly for applying torque to the at least two laterally disposed ground contacting wheels." INF Ex. 2, at 494-495. Each Focxess transporter has "at least one sensor for sensing the pitch of the user support assembly." INF Ex. 2, at 496. Each Focxess transporter has "a yaw input mechanism comprising a user support element moveably coupled to the user support assembly and adapted to receive specification by the user of a desired yaw, the desired yaw being based at least in part on the orientation of the user support element." INF Ex. 2, at 496-500. Each Focxess transporter has "a control loop coupled to the motorized drive assembly for determining a torque to be applied to the at least two primary ground contacting wheels, the torque depending at least in part on the pitch of the user support assembly and the desired yaw indicated by the yaw indication mechanism." INF Ex. 2, at 500-502.

Claim 2: Each Focxess transporter meets the additional limitation of dependent claim 2 "wherein the user support element is a handlebar." INF Ex. 2, at 502-504.

Claim 4: Each Focxess transporter meets the additional limitation of dependent claim 4 "wherein the user support element is adapted to received specification by the user of a desired yaw and a desired yaw rate." INF Ex. 2, at 504-507.

Claim 5: Each Focxess transporter meets the additional limitation of dependent claim 5, wherein "the torque depending at least in part on the pitch of the user support assembly, the desired yaw, and the desired yaw rate." INF Ex. 2, at 507-509.

Claim 6: Each Focxess transporter meets the additional limitation of dependent claim 6, "wherein the user support element is pivotably coupled to the user support assembly." INF Ex. 2, at 509-512.

Claim 7: Each Focxess transporter meets the additional limitation of dependent claim 7, "wherein the user support element is disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels." INF Ex. 2, at 512-515.

b. '607 Patent

Based on Complainants' motion and the uncontested analysis by Mr. Ganssle, I find that the Focxess personal transporters infringe each and every limitation of claims 1, 3, and 7 of the '607 patent, as discussed below.

Claim 1: Each Focxess transporter has a "controller for a transporter having at least one primary ground-contacting element, the transporter characterized by a roll angle." INF Ex. 2, at 515-517. Each Focxess transporter has "an input adapted to receive specification by a user of a desired yaw, yaw rate, and direction of motion of the transporter, at least the desired yaw and yaw rate being based on a detected body orientation of the user." INF Ex. 2, at 517-521. Each Focxess transporter has a "pitch state estimator for sensing a pitch of the transporter and outputting a pitch state signal." INF Ex. 2, at 521-522. Each Focxess transporter has a "processor of a kind that generates a command signal governing motion of the at least one ground-contacting element based at least on the user-specified yaw and yaw rate received by the input, in conjunction with the pitch state signal based on the pitch of the transporter, in such a

manner as to maintain balance of the transporter in the course of achieving the specified yaw and direction of motion of the transporter." INF Ex. 2, at 522-525.

Claim 3: Each Focxess transporter meets the additional limitation of dependent claim 3, the controller of claim 1 further comprising "a summer for differencing an instantaneous yaw value from the desired yaw to generate a yaw error value such that the yaw command signal generated by the processor is based at least in part on the yaw error value." INF Ex. 2, at 525-526.

Claim 7: Each Focxess transporter meets the additional limitation of dependent claim 7, the controller of claim 1 wherein "the input adapted to receive user specification includes a shaft disposed in a plane transverse to an axis characterizing rotation of the two laterally disposed wheels, the desired yaw specified on the basis of orientation of the shaft." INF Ex. 2, at 526-530.

c. '640 Patent

Based on Complainants' motion and the uncontested analysis by Mr. Ganssle, I find that the Focxess personal transporters infringe each and every limitation of claim 4 of the '640 Patent, as discussed below.

Each Focxess transporter has a "yaw controller for a balancing transporter having two laterally disposed ground-contacting wheels." INF Ex. 2, at 530-532. Each Focxess transporter has "an input for receiving a user-specified yaw value." INF Ex. 2, at 532-535. Each Focxess transporter has a "summer for differencing an instantaneous yaw value from the user-specified yaw value to generate a yaw error value." INF Ex. 2, at 535. Each Focxess transporter has "a processor for generating a yaw command signal based at least on the yaw error value in

conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control." INF Ex. 2, at 536-538.

VI. INVALIDITY

The Asserted Patents are presumed valid as a matter of law. 35 U.S.C. § 282. This presumption of validity may be overcome only by "clear and convincing evidence." *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1359 (Fed. Cir. 2007). *See also Microsoft Corp. v. i4i Ltd. P'ship*, 131 S. Ct. 2238, 2242-2253 (2011) (upholding the "clear and convincing" standard for invalidity). The burden of proof never shifts to the patentee to prove validity. *Scanner Techs. Corp. v. ICOS Vision Sys. Corp. N.V.*, 528 F.3d 1365, 1380 (Fed. Cir. 2008).

None of the Respondents have made a *prima facie* case for invalidity of any of the Asserted Patents. The Staff also does not challenge the validity of the Asserted Patents. SResp. At 35. The Commission is prohibited from making a determination on validity when no defense of invalidity has been raised. *Lannom Mfg. Co., Inc. v. International Trade Comm'n*, 799 F.2d 1572, 1580 (Fed. Cir. 1986). Accordingly, there is no genuine dispute as to invalidity.

VII. DOMESTIC INDUSTRY

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 domestic industry requirement of Section 337 consists of an "economic prong" and a "technical prong." *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm'n Op. at 12-14, 2009 WL 5134139, at *10 (April 24, 2008) ("*Stringed Musical Instruments*").

A. Technical Prong

1. Legal Standards

To meet the technical prong, the complainant must establish that it practices at least one claim of each asserted patent. *Certain Point of Sale Terminals and Components Thereof*, Inv. No. 337-TA-524, Order No. 40 (April 11, 2005). "The test for satisfying the 'technical prong' of the industry requirement is essentially [the] same as that for infringement, *i.e.*, a comparison of domestic products to the asserted claims." *Alloc v. U.S. Int'l Trade Comm'n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). The technical prong of the domestic industry can be satisfied either literally or under the doctrine of equivalents. *Certain Excimer Laser Systems for Vision Correction Surgery and Components Thereof and Methods for Performing Such Surgery*, Inv. No. 337-TA-419, Order No. 43 (July 30, 1999). A showing that the complainant practices an invalid claim of the asserted patent is not sufficient to meet this requirement, however. *Certain Audiovisual Components and Products Containing the Same*, Inv. No. 337-TA-837, Comm'n Op. at 33 (March 10, 2014).

2. Domestic Industry Products

Complainants assert that the Segway Gen II Personal Transporter ("Gen 2 PT") vehicles, including the i2, x2, i2 SE, and x2 SE, practice the Asserted Utility Patents, the Asserted Design Patents, and the Asserted Copyright. Mem. at 368-379.

3. Utility Patents

Complainants assert that the Gen 2 PT vehicles practice claims of the '048 patent, the '607 patent, and the '640 patent. Mem. at 368-378. In support of its infringement allegations in the Complaint, Complainants attached declarations from Matthew J. Harding, a Segway employee, and claim charts identifying elements of the Gen 2 PT vehicles that meet each

limitation of the asserted claims. DI Tech Exs. 2, 5, 6, 7. Complainants also submit the opinions of a technical expert, Mr. Jack Ganssle, who examined Gen 2 PT vehicles, analyzed source code, and reviewed manuals for these products. DI Tech. Ex. 1. The Staff agrees with Complainants that the Gen 2 PT vehicles practice the Asserted Utility Patents. SResp. at 36-39. Based on the evidence discussed below, I find that there is no genuine dispute that the Gen 2 PT vehicles practice the Asserted Utility Patents.

a. '048 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Harding and Mr. Ganssle, I find that the Gen 2 PT vehicles practice at least claim 1 of the '048 patent, as discussed below.

Each Gen 2 PT vehicle is a "transporter." DI Tech. Ex. 7, at 1; DI Tech. Ex. 2, at ¶ 17; INF Ex. 1, Ganssle Declaration citing DI Tech. Ex. 1, Ganssle DI Report, at 4-5. Each Gen 2 PT vehicle has "a user support assembly for supporting a user." DI Tech. Ex. 7, at 1; DI Tech. Ex. 2, at ¶ 18; DI Tech. Ex. 1, at 5-8; Ex. DI Tech. Ex. 3, Segway Manual, Complaint Ex. 13. Each Gen 2 PT vehicle has "at least two laterally disposed primary ground contacting wheels coupled to the user support assembly." DI Tech. Ex. 7, at 1; DI Tech. Ex. 2, at ¶ 19; DI Tech. Ex. 1, at 8-11; DI Tech. Ex. 3. Each Gen 2 PT vehicle has "a motorized drive assembly for applying torque to the at least two laterally disposed ground contacting wheels." DI Tech. Ex. 7, at 1-2; DI Tech. Ex. 2, at ¶ 20; DI Tech. Ex. 1, at 11-14; DI Tech. Ex. 4. Each Gen 2 PT vehicle has "at least one sensor for sensing the pitch of the user support assembly." DI Tech. Ex. 7, at 2; DI Tech. Ex. 2, at ¶ 21; DI Tech. Ex. 1, at 15-32; DI Tech. Ex. 4. Each Gen 2 PT vehicle has "a yaw input mechanism comprising a user support element moveably coupled to the user support assembly and adapted to receive specification by the user of a desired yaw, the desired yaw being based at

least in part on the orientation of the user support element." DI Tech. Ex. 7, at 2-3; DI Tech. Ex. 2, at ¶ 22; DI Tech. Ex. 1, at 33-57; DI Tech. Ex. 3. Each Gen 2 PT vehicle has "a control loop coupled to the motorized drive assembly for determining a torque to be applied to the at least two primary ground contacting wheels, the torque depending at least in part on the pitch of the user support assembly and the desired yaw indicated by the yaw indication mechanism." DI Tech. Ex. 7, at 4; DI Tech. Ex. 2, at ¶ 23; DI Tech. Ex. 1at 57-80; DI Tech. Ex. 4.

b. '607 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Harding and Mr. Ganssle, I find that the Gen 2 PT vehicles practice at least claim 1 of the '607 patent, as discussed below.

Each Gen 2 PT vehicle has a "controller for a transporter having at least one primary ground-contacting element, the transporter characterized by a roll angle." DI Tech. Ex. 5, at 4; DI Tech. Ex. 6at ¶¶ 3, 9, and 10; DI Tech. Ex. 1, at 81-83; DI Tech. Ex. 4. Each Gen 2 PT vehicle has "an input adapted to receive specification by a user of a desired yaw, yaw rate, and direction of motion of the transporter, at least the desired yaw and yaw rate being based on a detected body orientation of the user." DI Tech. Ex. 5, at 5; DI Tech. Ex. 6, at ¶¶ 5, 8, 10, and 11; DI Tech. Ex. 1, at 83-107; DI Tech. Ex. 4. Each Gen 2 PT vehicle has a "pitch state estimator for sensing a pitch of the transporter and outputting a pitch state signal." DI Tech. Ex. 5at 6; DI Tech. Ex. 6, at ¶ 6 DI Tech. Ex. 1, at 107-125; DI Tech. Ex. 4. Each Gen 2 PT vehicle has a "processor of a kind that generates a command signal governing motion of the at least one ground-contacting element based at least on the user-specified yaw and yaw rate received by the input, in conjunction with the pitch state signal based on the pitch of the transporter, in such a manner as to maintain balance of the transporter in the course of achieving the specified yaw and

direction of motion of the transporter." DI Tech. Ex. 5, at 7; DI Tech. Ex. 6, at ¶ 7 DI Tech. Ex. 1, at 125-147; DI Tech. Ex. 4.

c. '640 Patent

Based on the allegations in the complaint, Complainants' motion, and the uncontested analysis by Mr. Harding and Mr. Ganssle, I find that the Gen 2 PT vehicles practice at least claim 4 of the '640 patent, as discussed below.

Each Gen 2 PT vehicle has a "yaw controller for a balancing transporter having two laterally disposed ground-contacting wheels." DI Tech. Ex. 5, at 1; DI Tech. Ex. 6, at ¶¶ 3, 9, and 10; DI Tech. Ex. 1, at 148-149; DI Tech. Ex. 4. Each Gen 2 PT vehicle has an "an input for receiving a user-specified yaw value." DI Tech. Ex. 5at 2; DI Tech. Ex. 6, at ¶¶ 5, 8, and 10 DI Tech. Ex. 1, at 149-172; DI Tech. Ex. 4. Each Gen 2 PT vehicle has a "summer for differencing an instantaneous yaw value from the user-specified yaw value to generate a yaw error value." DI Tech. Ex. 5, at 2; DI Tech. Ex. 6, at ¶¶ 5, 8, and 10; DI Tech. Ex. 1, at 172-174. Each Gen 2 PT vehicle has "a processor for generating a yaw command signal based at least on the yaw error value in conjunction with a pitch command signal based on a pitch error in such a manner as to maintain balance of the transporter in the course of executing yaw control." DI Tech. Ex. 5at 3; DI Tech. Ex. 6, at ¶ 13; DI Tech. Ex. 1, at 174-210.

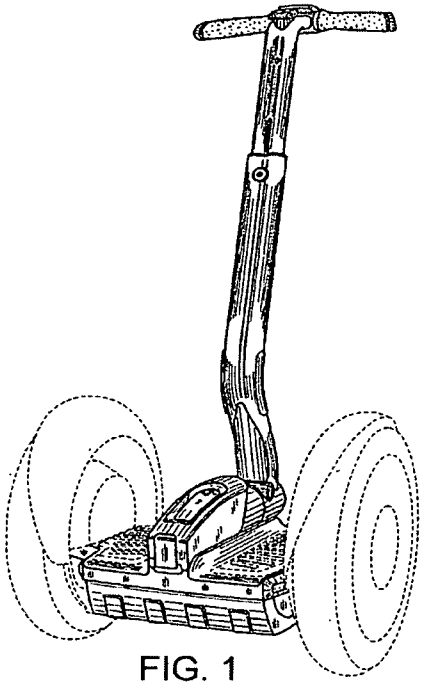
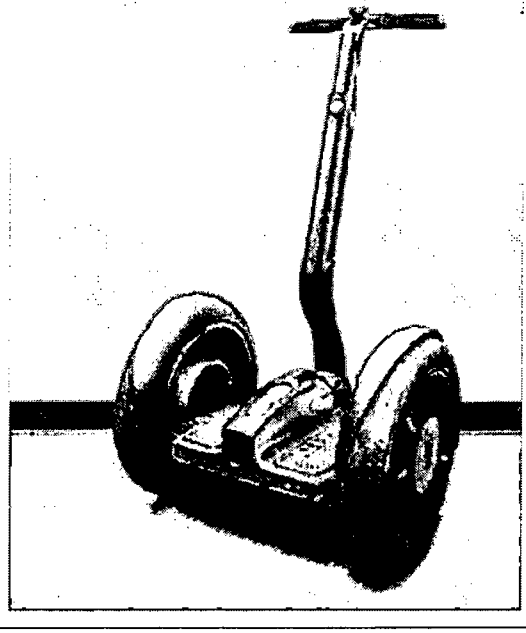
4. Design Patents

Complainants assert that the Segway i2 vehicle infringes the '722 design patent, and the Segway x2 vehicle infringes the '592 design patent. Mem. at 378. In support of its infringement allegations in the Complaint, Complainants attached claim charts comparing the claimed designs to the Segway vehicles. Complaint at ¶¶ 144-145; DI Tech Exs. 8-9. The Staff agrees with Complainants that these vehicles practice the Asserted Design Patents. SResp. at 40-41. Based

on the evidence discussed below, I find that there is no genuine dispute that the i2 and x2 vehicles practice the Asserted Design Patents.

a. '722 Design Patent

Based on the allegations in the complaint, Complainants' motion, and the chart attached in DI Tech Ex. 8, I find that the Segway i2 vehicle practices the '722 design patent based on the ordinary observer test. An exemplary comparison of the Segway i2 vehicle and the '722 design patent appears below:

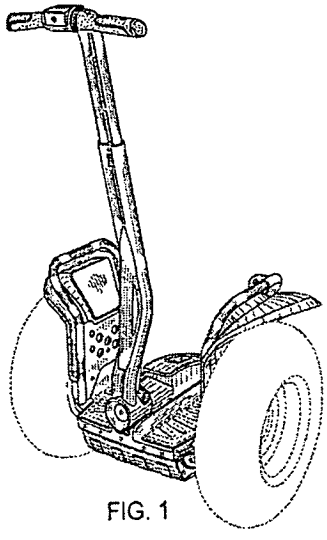
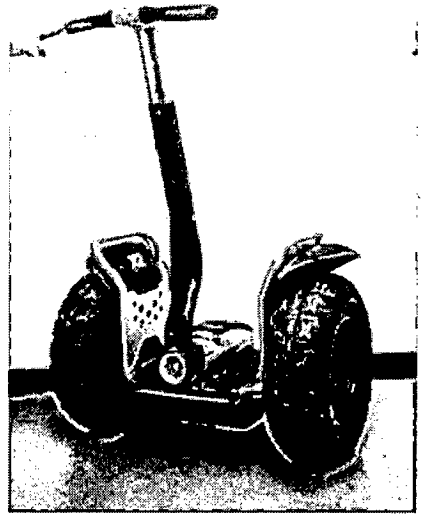
'722 Patent	Segway i2
 FIG. 1	

See DI Tech Ex. 8.

b. '592 Design Patent

Based on the allegations in the complaint, Complainants' motion, and the chart attached in DI Tech Ex. 9, I find that the Segway x2 vehicle practices the '592 design patent based on the

ordinary observer test. An exemplary comparison of the Segway x2 vehicle and the '592 design patent appears below:

'592 Patent	Segway x2
 FIG. 1	

See DI Tech Ex. 9.

5. Copyright

Complainants assert that the Asserted Copyright explicitly protects the "Getting Started Manual Segway Personal Transporter (PT) i2, x2" (G Ex. 16) and the "Reference Manual Segway Personal Transporter (PT) i2, x2" (G Ex. 17). Mem. at 378-379. This is apparent from the face of the Asserted Copyright. G Ex. 7. In support of its copyright claims in the Complaint, Complainants alleged that the protected Segway manuals are distributed with Segway personal transporters and have been available on the internet (at www.segway.com) since August 2006. Complaint at ¶ 101. This was further supported by a declaration from Rod Keller, the President of Segway. DI Tech Ex. 10 at ¶ 13. The Staff agrees with Complainants that Segway's manuals practice the Asserted Copyright. SResp. at 41-42. Based on this undisputed evidence, I find that

there is no genuine issue that at least the "Getting Started Manual" (G Ex. 16) and the "Reference Manual" (G Ex. 17) practice the Asserted Copyright.

B. Economic Prong

Complainants assert that the economic prong of the domestic industry requirement is satisfied through (A) significant investment in plant and equipment and (B) significant employment of labor and capital. Mem. at 379-391. In support of its contentions in the Complaint, Complainants attached declarations from Rod Keller, the President of Segway. DI Tech Ex. 10. Complainants also submit several tables providing sales and employment data, and other relevant information. DI Econ. Exs. 1-7. The Staff agrees with Complainants that Complainants satisfy the economic prong of the domestic industry requirement. SResp. at 42-51. Based on the evidence discussed below, I find that there is no genuine dispute that Complainants satisfy the economic prong under section 337(a)(3)(A) with respect to the Asserted Utility Patents and the Asserted Design Patents, and under section 337(a)(3)(B) with respect to the Asserted Utility Patents, the Asserted Design Patents, and the Asserted Copyright.

1. Legal Standards

To satisfy the economic prong, a complainant must show that a domestic industry exists by demonstrating the existence of:

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

See 19 U.S.C. 1337(a)(3); *Wind Turbines*, 1996 WL 1056330, at *13-14. *see Certain CD-ROM Controllers and Products Containing the Same – II*, Inv. No. 337-TA-409, Comm'n Op. at 37 (October 1999); ("The 'economic prong' of the domestic industry requirement is satisfied when

it is determined that the economic activities or investments set forth in subsections (A), (B), or (C) of section 337(a)(3) have taken place or are taking place.").

"There is no minimum monetary expenditure that a complainant must demonstrate to qualify as a domestic industry." *Certain Stringed Musical Instruments and Components Thereof,* Inv. No. 337-TA-586, Comm'n Op. at 25 (May 16, 2008) ("*Stringed Instruments*"). Further, "there is no need to define or quantify the industry itself in absolute mathematical terms." *Id.* at 26. Similarly, "a precise accounting is not necessary, as most people do not document their daily affairs in contemplation of possible litigation." *Id.* Reasonable and appropriate allocation methodologies, such as sales based allocations, have been employed and accepted by the Commission for purposes of satisfying the domestic industry economic prong. *See, e.g., Certain Toner Cartridges and Components Thereof,* Inv. No. 337-TA-918, Order No. 22 at 3-5 (Jan. 16, 2015); *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 at 105-108 (June 29, 2012). The economic prong requires a quantitative analysis, and "qualitative factors alone are insufficient to show significant investment in plant and equipment and significant employment of labor or capital." *Lelo Inc. v. Int'l Trade Comm'n*, 786 F.3d 879, 885 (Fed. Cir. 2015).

2. Investments in Plant and Equipment

In 2001 Segway, Inc. completed construction of its manufacturing plant and headquarters in Bedford, New Hampshire, which is dedicated to the design, development, manufacture, distribution, and servicing of its patented personal transporters. DI Tech. Ex. 10 at ¶ 7. At its headquarters in, Segway has corporate offices, engineering and product development, and manufacturing facilities, where all of the domestic industry transporters are manufactured and

tested. The Bedford facility comprises approximately [redacted] square feet, and it was appraised in February 2013 at over [redacted] as an occupied rental property. DI Tech Ex. 10 at ¶ 8; DI Econ Ex. 7. Segway also uses its headquarters in New Hampshire to perform customer support, quality assurance, warranty fulfillment and other after-market services for its customers, distributors and dealers. Segway's RMPs and accessories for its domestic industry transporters are also designed and manufactured in this facility. DI Tech Ex. 10 at ¶ 7.

In addition, as of December 2013, Segway had invested at least [redacted] in fixed assets for manufacturing, manufacturing support, design and engineering of the Segway domestic industry transporters at its Bedford, New Hampshire manufacturing site. Mem. at 386; DI Tech. Ex. 10 at ¶ 11.

Complainant asserts that approximately [redacted] of Segway's sales by value are domestic industry transporters, with [redacted] of Segway's sales by value attributable to the i2, and [redacted] to the x2. Mem. at 381, 385. I find that it is appropriate to allocate Segway's investments by these percentages. *See Certain Devices for Improving Uniformity Used in a Backlight Module and Components Thereof and Products Containing Same*, Inv. No. 337-TA-805, Initial Determination at 60 (October 22, 2012) (applying a sales allocation for domestic industry expenditures). Accordingly, [redacted] of the value of the Bedford facility and [redacted] in manufacturing costs can be counted as investment in plant and equipment relevant to the Asserted Utility Patents. *See* SResp. at 44-47. Similarly, [redacted] of the value of the Bedford facility and [redacted] of the manufacturing costs are allocable to each of the Asserted Design Patents. *Id.* I find these investments to be significant under section 337(a)(3)(A).

3. Employment of Labor or Capital

In 2014, Segway employed approximately [redacted] in the United States, with the majority in its primary facilities in Bedford, New Hampshire. Mem. at 389 (identifying [redacted] employees in December 2014, with [redacted] in Bedford). *See also* DI Tech. Ex. 10 at ¶¶ 9-10 (identifying [redacted] employees as of January 2014, with [redacted] in Bedford). Approximately [redacted] of the domestic employees are dedicated to the engineering and manufacture of Segway's personal transporters and related accessories. *Id.* (identifying [redacted] such employees in December 2014). *See also* DI Tech. Ex. 10 at ¶ 10 (identifying [redacted] employees in January 2014). The wages and benefits for these employees was approximately [redacted]. *Id.* (identifying total wages and benefits of [redacted] in December 2014). *See also* DI Tech. Ex. 10 at ¶ 10 (identifying total wages and benefits of [redacted] in January 2014).

Applying a sales-based allocation as above, approximately [redacted] of Segway's labor costs and [redacted] employees can be allocated to domestic industry products, with approximately [redacted] and [redacted] employees each attributable to the i2 and x2. *See* SResp. at 48-51. I find these amounts to be significant under section 337(a)(3)(B) for the Asserted Utility Patents and the Asserted Design Patents.

In addition, Complainants assert that a team of approximately [redacted] Segway employees was involved in creating the user manuals protected by the Asserted Copyright. Mem. at 390-391; DI Tech Ex. 10 at ¶ 13. Based on the salaries of these employees and the amount of time spent on the project, Segway President Rod Keller estimated that Segway invested approximately [redacted] in the creation and preparation of these manuals. DI Tech Ex. 10 at ¶ 13. Complainants also assert that Segway spent approximately [redacted] on warranty and repair costs for the i2 and x2 vehicles. Mem. at 390-391; DI Tech. Ex. 10 at ¶ 12 (citing [redacted] in

costs for 2013). Complainants argue that these warranty and repair activities effectively assist in the exploitation of the copyrighted manuals. *Id.*

Based on this evidence, and with no dispute from the Staff, SResp. at 49-50, I find that Segway's labor costs for the creation of the manuals and its warranty and repair costs support a finding that Segway has satisfied the economic prong of the domestic industry requirement through significant employment of labor or capital under section 337(a)(3)(B) for the Asserted Copyright.

VIII. REMEDY & BONDING

For the reasons discussed below, it is my recommended determination that a limited exclusion order, general exclusion order, and a cease and desist order issue to remedy the violation of section 337.

A. General Exclusion Order

Segway seeks a general exclusion order with respect to products that infringe the asserted claims of the '048 Patent. Mem. at 393. Segway states that products that infringe the '048 Patent will be readily identifiable by "straightforward physical inspection of the product, review of the product manual and/or review of videos showing the product in use." *Id.* at 39. *See* INF Ex. 2, Ganssle Infringement Report at 262-96, 332-360, 393-419, 448-469, 488-515. Segway says simple physical inspection will disclose whether a device includes "a transporter," "a user support assembly," "at least two laterally disposed primary ground contacting wheels," "a motorized drive assembly," "at least one sensor for sensing the pitch," "a yaw input mechanism . . . the desired yaw being based at least in part on the orientation of the user support element," and "a control loop . . . for determining a torque to be applied . . . depending at least in part on the pitch of the user support assembly and the desired yaw." *Id.*

Segway also contends that products that infringe the '640 and/or '607 Patents also infringe the '048 Patent, such that a general exclusion order covering the '048 Patent would cover all three Asserted Utility Patents, as a practical matter. As discussed above, WindRunner transporters manufactured by defaulting Respondents U.P. Robotics, U.P. Technology, and UPTECH, FreeGo transporters manufactured by defaulting Respondent FreeGo China, and additional personal transporters imported by defaulting Respondent EcoBoomer and Respondent Roboscooters infringe claims 1, 2 and 4-7 of the '048 Patent. *See supra.*

1. Legal Standards

Under subsection 337(d), the Commission may issue either a limited or a general exclusion order. A limited exclusion order instructs the Bureau of Customs and Border Protection ("Customs") to exclude from entry all articles that are covered by the intellectual property right at issue and that originate from an entity that was a party to the Commission investigation. *Certain Condensers, Parts Thereof and Products Containing Same, including Air Conditioners for Automobiles*, Inv. No. 337-TA-334 (Remand), Comm'n Op. at 24, U.S.I.T.C. Pub 3063 (September 1997) ("*Condensers*"). A general exclusion order ("GEO"), on the other hand, instructs Customs to exclude from entry all articles that are covered by the intellectual property right at issue, without regard to source. 19 U.S.C. §1337(d)(2)(B).

A GEO is warranted when "a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons" or "there is a pattern of violation of this section and it is difficult to identify the source of infringing products." *Id.*; *see Certain Devices for Connecting Computers Via Telephone Lines*, Inv. No. 337-TA-360, Comm'n Op. at 2-3 (December 1994) (*citing Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90, Comm'n Op. at 18 (Nov. 1981) ("*Spray Pumps*")).

The statute authorizes the Commission to issue a general exclusion order when either of the statutory provisions is satisfied. *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same*, Inv. No. 337-TA-372, Comm'n Op. on Remedy, the Public Interest, and Bonding at 7, n.15, USITC Pub. 2964 (May 1996).

A GEO commensurate with the scope of the patent is appropriate when necessary to afford a complainant adequate relief. *See Certain Strip Lights*, Inv. No. 337-TA-287, Comm'n Op. at 2 (October 3, 1989) (unpublished opinion). When the intellectual property right at issue is "of a sort which might readily be infringed by foreign manufacturers who are not parties to the Commission's investigation," a general exclusion order should be issued. *Magnets*, at 21 (quoting, *Spray Pumps*, at 17). In deciding whether to issue a general exclusion order, the Commission "now focus[es] principally on the statutory language itself." *Certain Ground Fault Circuit Interrupters and Products Containing Same,* Inv. No. 337-TA-615, Comm'n Op. at 25 (Mar. 27, 2009).

2. Background

According to Segway, foreign manufacturers of personal transporter devices first came to the attention of Segway President Rod Keller in late 2013 or early 2014, when he attended a trade show in which "at least Respondents UPTECH, PowerUnion, Ninebot, INMOTION, and Robstep had booths." Mem. at 396. Since then, Segway has undertaken various actions to stop companies from selling "Segway" or "Segway-like" productions "on the internet or elsewhere." *Id.* These actions include professional monitoring and "world-wide enforcement" of Segway's intellectual property rights. *Id.* at 397. Through these efforts, Segway identified the Respondents in this Investigation. *Id.* In addition, Roboscooters has recently "admitted that it imported and sold in the United States products manufactured/supplied by" [redacted]

[redacted]" Id. at 397-98; IMP Ex. 1 (Jacobs Tr.) at 15-17; INF Ex. 2 (Ganssle Infringement Report) at 448-69, 488-515.

Through [redacted], Segway has learned "of almost a dozen additional companies, located almost entirely in China, claiming to manufacture knock-off 'Segway-like' personal transporters, and dozens of distributors offering knock-off products for sale worldwide." *Id.* at 398; R/B Ex. 29 (Keller GEO Decl.). Segway says that it has no way to confirm whether these entities actually are selling personal transporters in the U.S. but asserts that they are capable of doing so and aggressively attempting to recruit U.S. dealers. *Id.* For example, an Internet search identified transporters for sale from 10 different Chinese suppliers, including several non-respondents. Id. at 398-99. Each of these companies "claims to be a manufacturer of personal transporters" capable of exporting their products to the U.S. *See* R/B Exs. 2, 3, 12, 13.[3] Segway identifies 10 additional Chinese companies that "claim to manufacture 'Segway type' cheap alternatives." *Id.* at 399. Segway maintains that such knock-offs would infringe the '048 Patent. *Id.* at 398.

Respondent Roboscooters has also disclosed that it sells its transporters in the U.S. *Id.* *See* IMP Ex. 1, Jacobs Dep. at 15-21. The infringing transporters are marketed on the ability of infringers to produce cheaper alternatives to Segway, in part because of cheaper labor costs overseas. *Id.* at 400; R/B Exs. 5, 6. For example, a "News Release" [redacted] claims to provide information for "Finding Alternatives to the Segway PT," and states that "other companies will reverse engineer the item and set up overseas manufacturing centers and sell the item for considerably less." R/B Ex. 6.

[3] Segway identified but was unable, due to time constraints, to name as respondents all the companies that it discovered were importing infringing transporters. Mem. at 402, n.10.

3. Discussion

By definition, a limited exclusion order ("LEO") depends on Customs' ability to identify "persons determined by the Commission to be violating" section 337 and their products. 19 U.S.C. § 1337 (d)(2). As discussed below, a GEO is necessary to prevent circumvention of an LEO, and because it is difficult to identify the source of infringing products.

a. Preventing Circumvention of an LEO

Segway has shown that an LEO would likely be circumvented by the Defaulting Respondents and Roboscooters. Foreign manufacturers import their products through several different distributors, and the distributors sell these products under many different names.

With respect to the WindRunner personal transporters, Segway points out that although UPTECH, U.P. Technology, and U.P. Robotics are associated with these products, "it is unknown which company actually manufactures and imports the infringing WindRunner brand products." Mem. at 403, DI Tech. Ex. 10. The Staff cites evidence that there are many other companies on the internet that are selling the WindRunner brand of personal transporters to customers all over the world, including to the U.S. SResp. at 60, Exh. C.[4] This evidence shows that an LEO directed only upon the named Respondents would be easily circumvented by importers of the accused WindRunner products. The Commission has found that numerous online sales of infringing goods is evidence that infringers will likely attempt to circumvent an LEO. *See Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm'n Op. at 12 (June 26, 2015).

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[4] Several new distributors for Windrunner brand personal transporters are identified: (1) Shanghai Lannmarker Vehicles and Accessories Co., Ltd.; (2) Huizhou Tonsim Electronic Co., Ltd.; (3) Shenzhen Ocam Electronic Technology Co.. Ltd.; (4) Shenzhen Bai Yu Technology Co., Ltd.; (5) Merlot Commerce Co., Ltd. (Yongkang); (6) Wuyi Ofly Motion Apparatus Company; and (7) Shenzhen Greia Technology Co., Limited.

Respondent FreeGo China is also likely to circumvent a limited exclusion order by continuing to import infringing products, whether under a different corporate name or product name. Complainants have identified that FreeGo China has some unknown corporate relationship with at least Shenzhen Uvi Hi-Tech Co., Ltd. (R/B Exs. 9 and 17). Although FreeGo China has been found in default, it still manufactures its products in China and offers them for sale in the United States, including now under its UVI Hi-Tech name, and through multiple other distributors. R/B Exs. 9 and 17; Staff Exh. D (identifying additional distributors for FreeGo scooter). In fact, just weeks after it was found in default, FreeGo China offered to import and sell its infringing products [redacted], which is significantly less than Segway's personal transporters, which sell for at least $5,000 depending on the model. *See* R/B Ex. 17; R/B Ex. 28. In addition, FreeGo China [redacted] The evidence thus shows that FreeGo China is likely to circumvent an LEO because it is already offering its products for sale under a different corporate name and it allows its products to be sold under different product names.

An LEO directed to Respondents EcoBoomer and Roboscooters would similarly be ineffective because these respondents are e-commerce websites [redacted]. As Mr. Jacobs explained at his deposition, Roboscooters is [redacted]

[redacted] *Id.* at 8. Because of this business model, Roboscooters is not named as the importer of the infringing product and the issuance of an LEO against it would not stop Roboscooters' sale-for-importation business. *Id.* at 23 [redacted]. Defaulting Respondent EcoBoomer appears to have a similar business structure. Am. Complaint at ¶ 21. Absent a GEO, Respondents Roboscooters and EcoBoomer, as well as other on-line distributors, can easily circumvent an LEO [redacted].

For the reasons discussed above, I find that the Defaulting Respondents and Roboscooters could easily circumvent an LEO by selling their infringing personal transporters online, using different corporate names, using third-party distributors, changing the brand name for the personal transporters, or simply removing any identification of the brand name from the website and the actual product. Accordingly, I find that a GEO covering products that infringe the '048 Patent is necessary to prevent circumvention of an LEO.

b. Pattern of Violation and Difficulty in Identifying the Source of Infringing Products

In addition, the evidence shows that there is a widespread pattern of infringement, and it is difficult to identify the source of infringing products. As discussed above, there are infringing products manufactured by several named and unnamed Respondents. The facts discussed above

regarding the likely circumvention of an LEO are also evidence that it is difficult to identify the source of infringing products.

The number of named Respondents and unnamed manufacturers and importers of personal transporters shows a widespread pattern of violation. In this investigation, Segway named thirteen Respondents, many of whom have defaulted. As set forth above and in the declaration of Segway President, Rod Keller, there are also numerous other potentially infringing personal transporters manufactured and/or sold by named Respondents and third-parties not named as Respondents. R/B Exs. 29, 30. The Complaint identified eight manufacturing Respondents: PowerUnion, UPTECH, U.P. Robotics, U.P. Technology, Ninebot China, INMOTION, Robstep, and FreeGo China. During discovery, Roboscooters admitted that it imported and sold in the United States additional products [redacted]. IMP Ex. 1 at 17.

In addition, through its own market intelligence, Segway recently identified a list of ten additional companies that are manufacturing and selling Segway-like products. Mem. at 398-99. Such companies include (1) Shenzen Xinli Intelligent Robot Co., Ltd., (2) Airwheel (Changzhou) Technology Co., Ltd., (3) China Flame Group, Ltd., (4) Shenzen Xinli Escooter Technology Co. Ltd.; (4) Freeyoyo Co. Ltd., (5) Shenzen Flyers Technology Co., Ltd., (6) Shenzen Topwheel Technology Co., Ltd. (www.topwheelchina.com); (7) Koowheel.com; (8) Xinli Escooter Technology Co., Ltd.; (9) Shenzen Sinotec Tehnology Co., Ltd.; (10) Wuhu Okay Robot; (11) Shenzen Ecoflyway Co., Ltd.; (12) Hangzhou Chic Intelligent Technology Co., Ltd.; and (13) Shenzen 3C Lead-Way Group. R/B Exs. 2, 3, 7-8, 10-13, 14-16, 19 and 20. Each of these companies claims to be capable of exporting their products to the United States. *Id.* Indeed, with respect to [redacted], Respondent Roboscooters recently admitted that it

has started to sell their transporters in the United States. IMP Ex. 1 at 15-21. The Staff cites evidence that there are many other companies on the internet that are selling the WindRunner and FreeGo personal transporters to customers all over the world, including to the United States. SResp. at 60, Exh. C, D. In addition, [redacted] has compiled a listing of over 1,000 counterfeit or "knock-off" personal transporters being sold online by over 100 individual sellers. R/B Exs. 29, 30. This is a large number of online retailers, and "[t]he Commission has found in other investigations that numerous online sales of infringing imported goods can constitute a pattern of violation of Section 337." *Certain Loom Kits For Creating Linked Articles*, Inv. No. 337-TA-923, Comm'n Op. at 14 (June 26, 2015); *citing Certain Cases for Portable Electronic Devices*, Inv. No. 337-TA-867/861, Comm'n Op. at 10 (July 10, 2014).

The sources of the imported products are also difficult to identify. A recent article published by WIRED magazine details the market for self-balancing type personal transporters, the growing prevalence of Chinese manufacturers of such products, and the inability to identify the manufacturers of the products. R/B Ex. 1. The article states, "The Chinese manufacturing industry moves so quickly with so little documentation that it's basically impossible to fact-check" where the transporters originate. R/B Ex. 1 at 3. The article further states that "[t]his manufacturing vitality, where as soon as something is created it is immediately everywhere, isn't unique to two-wheeled self-balancing scooters... As it is, the reward for being first is still just being copied first." R/B Ex. 1 at 4. The article further noted that, "[b]ecause the Chinese manufacturing industry is so centralized, anything new spreads like crazy through the supply chain. One manufacturer creates a product; another reverse-engineers it and makes it too. And that company can make it cheaper and faster, because it had no R&D costs. In most cases, this endless game of product-telephone makes the product worse." R/B Ex. 1 at 4.

The manufacturers, distributors, and other third-party sellers of personal transporters sell their products online, potentially under fictitious corporate names, thus avoiding detection. Mem. at 395-404; R/B Exs. 29, 30. The Commission has recognized that the anonymity over the Internet increases the difficulty in identifying the sources of infringing products. *Certain Cases for Portable Electronic Devices*, Inv. No. 337-TA-867/861, Comm'n Op. at 9-10 (July 10, 2014); *see also Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Comm'n Op. at 6 (Nov. 19, 2012). Complainants recently identified over ten additional companies in Hong Kong and China that allegedly produce products that appear very similar to Segway's personal transporters. *Id.* at 398-399. When similar factors were present in *Portable Electronic Devices*, the Commission entered a GEO. Inv. No. 337-TA-867/86, Comm'n Op. at 9-10.

Accordingly, the evidence reveals both a widespread pattern of unauthorized use of Segway's patented personal transporter technology and the existence of certain business conditions that warrant the issuance of a GEO covering personal transporters that infringe claims 1, 2 and 4-7 of the '048 patent. Specifically, Complainants have demonstrated that: (1) there is an established and growing demand for personal transporters that infringe the '048 patent both in the United States and world markets; (2) an extensive online marketing and distribution network exists that is readily available to foreign manufacturers and distributors of infringing personal transporters; (3) it is easy for Respondents to circumvent a limited exclusion order by altering its name, product name and/or using an internet-based sales structure; and (4) it is difficult to identify the source of the infringing products. *See* Mem. at 404-407.

B. Limited Exclusion Order

As discussed above, the same products that infringe the '048 Patent also infringe the '640 and '607 Patents. Complainants seek an LEO against the Defaulting Respondents and Roboscooters for personal transporters and components thereof that infringe claims 1 and 4 of the '640 Patent and claims 1, 3 and/or 7 of the '607 Patent. Mem. at 408-410. Section 337(d)(1) states that "[i]f the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States ..." 19 U.S.C. § 1337 (d)(1). Because I find that there is a violation in the importation, sale for importation, and sale after importation of these products, I recommend that an LEO issue against the Defaulting Respondents and Roboscooters.

In addition, in the event that the Commission declines to issue a GEO, I recommend that an LEO issue for the infringement of claims 1, 2, and 4-7 of the '048 Patent.

I further recommend that an LEO issue against UPTECH, U.P. Robotics, and U.P. Technology for the WindRunner G1U, which infringes the '722 Design Patent. In addition, I recommend that an LEO issue against UPTECH, U.P. Robotics, and U.P. Technology for the WindRunner G1X, which infringes the '592 Design Patent, and against FreeGo China and Roboscooters for the FreeGo F3, which infringes the '592 Design Patent.

Finally, I recommend that an LEO should issue against UPTECH, U.P. Robotics, and U.P. Technology for the WindRunner manuals that infringe the Asserted Copyright.

C. Cease and Desist Order

Complainants seek cease and desist orders against domestic Respondents EcoBoomer and Roboscooters. Mem. at 415-418. A cease and desist order serves to prevent a respondent with

sufficient infringing inventory from undercutting the remedy provided by an exclusion order. *See Certain Voltage Regulators, Components Thereof and Products Containing Same*, Inv. No. 337-TA-564, Recommended Determination on Remedy and Bonding, at 6-7 (May 30, 2007). Typically, in order to obtain a cease and desist order, a complainant must show that a respondent has a "commercially significant" inventory of infringing imports in the U.S. *See Mobile Devices, Associated Software, and Components Thereof,* Inv. No. 337-TA-744, Comm'n Op. at 24-25 (June 5, 2012).

1. EcoBoomer

Defaulting domestic Respondent EcoBoomer is presumed to have commercially significant U.S. inventories of Accused Products. *See Certain Video Game Systems, Accessories, and Components Thereof*, Inv. No. 337-TA-473, Comm'n Op. at 2 (Dec. 24, 2002) ("In default situations, the Commission presumes that domestic respondents maintain commercially significant U.S. inventories of the infringing imported product."). Accordingly, I recommend that a cease and desist order issue against EcoBoomer.

2. Roboscooters

Complainants have only identified limited inventory in the possession of Roboscooters, and Staff thus opposes the entry of a cease and desist order against Roboscooters. SResp. at 72. There is [redacted] infringing product in Roboscooters's inventory, [redacted], and [redacted] potentially infringing product, an [redacted]. Mem. at 417. Nevertheless, Complainants seek a cease and desist order to provide "complete relief" to remedy the violation by Roboscooters. As discussed below, I recommend that a cease and desist order issue against Roboscooters if the Commission declines to issue a GEO, but such an order would be unnecessary if a GEO were enforced.

Complainants cite certain Commission Opinions where cease and desist orders were issued in the absence of significant inventory, but the inventory that the Commission found in those cases was more significant than Roboscooters's [redacted] infringing product. In *Certain Plastic Food Storage Containers*, the finding on inventory was similar to a default, because "respondents did not participate meaningfully in the investigation." Inv. No. 337-TA-152, Comm'n Op. at 5 n.4. (July 1984). Although Roboscooters is no longer active in this Investigation, the Complainants here were able to obtain discovery regarding Roboscooters's inventory, and there is no dispute that the number of products is small. In *Certain Hardware Logic Emulation Systems and Components Thereof*, the Commission found that even one infringing unit constituted "commercially significant inventory," but this determination was based on the estimated value of the product at issue, which was a "high cost" item, which is not the case with Roboscooters. Inv. No. 337-TA-383, Comm'n Op. on Temporary Relief at 6 (finding "commercially significant inventory"), 9 (citing "the high cost of emulators") (Oct. 15, 1996). In *Certain Lens-Fitted Film Packages*, the Commission explicitly declined to issue cease and desist orders against parties without significant inventory. Inv. No. 337-TA-406, Comm'n Op. at 15 (June 24, 2003) ("We believe it would be unwise, disruptive, and impractical for the Commission to try to supplant or duplicate the functions of Customs in section 337 enforcement by issuing numerous C&Ds to parties that do not maintain inventory in the United States."). I thus decline to find that Roboscooters has "commercially significant inventory."

I agree with Complainants, however, that an LEO would be ineffective relief against Roboscooters to remedy the violation here. In *Certain Plastic Food Storage Containers*, the Commission held that "[h]aving established that it is entitled to relief, [a complainant] is entitled to effective relief." Inv. No. 337-TA-152, Comm'n Op. at 8. Accordingly, the Commission

issued a cease and desist order against the distribution of false advertising materials within the United States. *Id.* at 10-11. *See also Certain Hardware Logic Emulation Systems*, Comm'n Op. at 27 ("Our remedial authority extends to the prohibition of all acts reasonably related to the importation of infringing products and is not limited to articles that directly infringe a United States patent."); *Certain Lens-Fitted Packages*, Comm'n Op. at 13-14 (When "Congress authorized the Commission to issue cease and desist orders in 1974, it indicated that this new authority was intended to give the Commission flexibility in taking action against any respondent violating section 337."). As discussed above in the context of issuing a GEO, Roboscooters sells infringing products [redacted] IMP Ex. 1 (Jacobs Dep.) at 7-8, 15-17, 71, 83. An LEO would not be effective in excluding these products.[5] The products sold in this manner have no markings from Roboscooters and, [redacted], there will be no way for Customs to determine that Roboscooters is responsible for the sale or that the importation is subject to a limited exclusion order. Accordingly, I recommend that a cease and desist order issue against Roboscooters if the Commission declines to issue a GEO.

D. Bonding

If the Commission enters an exclusion order in this Investigation, the infringing personal transporters, components thereof and manuals therefore will be entitled to entry and sale under bond during the 60-day Presidential review period. The purpose of the bonding requirement is to protect complainants from injury during this limited period. 19 U.S.C. § 1337(j)(3); *see also* 19 C.F.R. § 210.50(a)(3).

[5] As discussed above, a GEO would exclude these products, and a cease and desist order would thus be unnecessary if a GEO issued.

The Commission typically sets the Presidential review period bond based on the price differential between the imported or infringing product, or based on a reasonable royalty. *See, e.g., Certain Microsphere Adhesives, Process For Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24, (December 15, 1995) (setting bond based on price differentials); *Certain Plastic Encapsulated Integrated Circuits*, Inv. No. 337-TA-315, Comm'n Op. at 45, USITC Pub. 2574 (Nov. 1992) (setting the bond based on a reasonable royalty). In the event that a price comparison cannot be made, a bond of 100% of the value of the products at issue is appropriate to protect complainants if respondents are permitted to continue to import their products during the Presidential review period. *See* 19 U.S.C. § 1337(j), s*ee, also, Certain Microsphere Adhesives*, Inv. No. 337-TA-366, 1996 WL 1056095, at *12 (Jan. 16, 1996).

Complainants contend that at a bond value of at least 100% should be entered. Mem. at 418-21. The Staff supports a bond of 100% of entered value. SResp. at 72-73. Complainants submit evidence that infringing products are sold at several different price points, Mem. at 419-20, but there is no evidence of a reasonable royalty rate for the Asserted Utility Patents, the Asserted Design Patents, or the Asserted Copyright. The Commission has set bond rates at 100% of the entered value of the accused product where the available pricing or royalty information is inadequate. *See, e.g., Certain Neodymuim-Iron-Boron Magnets, Magnet Alloys, and Products Containing Same*, Inv. No. 337-TA-372, Comm'n Op. on Remedy, the Public Interest and Bonding at 15, USITC Pub. 2964 (May 1996); *see also Cases for Personal Electronic Devices*, Comm'n Op. at 20-22 (setting 100% bond value). Because there is insufficient evidence of a reasonable royalty rate here, I recommend that the Defaulting

Respondents and Roboscooters pay a bond of 100% of entered value during the 60-day Presidential review period.

IX. CONCLUSIONS OF LAW

1. The Commission has subject matter jurisdiction over this Investigation.

2. The Commission has *in personam* jurisdiction over domestic Respondents Roboscooters and EcoBoomer.

3. The Commission has *in rem* jurisdiction over the accused personal transporters, components thereof, and manuals therefor.

4. There has been an importation into the United States, sale for importation, or sale within the United States after importation of certain personal transporters, components thereof, and manuals therefor by Respondents UPTECH, U.P. Robotics, U.P. Technology, FreeGo China, EcoBoomer, and Roboscooters.

5. A domestic industry exists in the United States pursuant to Section 337(a)(2) with respect to the Asserted Utility Patents, the Asserted Design Patents, and the Asserted Copyright.

6. The WindRunner G1U and G1X personal transporters infringe claims 1, 2, 4-7 of the '048 Patent, claims 1, 3 and 7 of the '607 patent, and claims 1 and 4 of the '640 Patent.

7. The WindRunner G1U personal transporter infringes the '722 Design Patent.

8. The WindRunner G1X personal transporter infringes the '592 Design Patent.

9. The WindRunner Manual infringes the Asserted Copyright.

10. The FreeGo personal transporters infringe claims 1, 2, 4-7 of the '048 Patent, claims 1, 3 and 7 of the '607 patent, and claim 4 of the '640 Patent.

11. The FreeGo F3 personal transporter infringes the '592 Design Patent.

12. The INMOTION SCV personal transporters infringe claims 1, 2, 4-7 of the '048

Patent, claims 1, 3 and 7 of the '607 patent, and claims 1 and 4 of the '640 Patent.

13. The Robstep M1 personal transporter infringes claims 1, 2, 4-7 of the '048 Patent, claims 1, 3 and 7 of the '607 patent, and claim 4 of the '640 Patent.

14. The Estway personal transporters infringe claims 1, 2, 4-7 of the '048 Patent, claims 1, 3 and 7 of the '607 patent, and claim 4 of the '640 Patent.

15. The Focxess personal transporters infringe claims 1, 2, 4-7 of the '048 Patent, claims 1, 3 and 7 of the '607 patent, and claim 4 of the '640 Patent.

16. The Ninebot personal transporters are licensed to the Asserted Patents and the Asserted Copyright.

17. The Asserted Patents have not been shown to be invalid.

18. There is a violation of section 337 by Respondents UPTECH, U.P. Robotics, and U.P. Technology in the importation, sale for importation, and/or sale after importation of certain WindRunner personal transporters, components thereof, and manuals thereof with respect to the Asserted Utility Patents, the Asserted Design Patents, and the Asserted Copyright.

19. There is a violation of section 337 by Respondent FreeGo China in the importation, sale for importation, and/or sale after importation of certain FreeGo personal transporters and components thereof with respect to the Asserted Utility Patents and the Asserted Design Patents.

20. There is a violation of section 337 by Respondent EcoBoomer in the importation, sale for importation, and/or sale after importation of certain INMOTION personal transporters and components thereof with respect to the Asserted Utility Patents.

21. There is a violation of section 337 by Respondent Roboscooters in the importation, sale for importation, and/or sale after importation of certain FreeGo, INMOTION, Robstep, [redacted] personal transporters and components thereof with respect to the Asserted

Utility Patents and the Asserted Design Patents.

X. INITIAL DETERMINATION AND RECOMMENDED DETERMINATION

Based on the foregoing, and the record as a whole, it is my Final Initial Determination that there is a violation 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, or the sale within the United States after importation of certain personal transporters, components thereof, and manuals therefor with respect to the Asserted Utility Patents, the Asserted Design Patents, and the Asserted Copyright. It is my Recommended Determination that a general exclusion order issue to remedy the violation with respect to the '048 Patent. I further recommend that a limited exclusion order issue to remedy the violation with respect to the '607 Patent, the '640 Patent, the Asserted Design Patents, and the Asserted Copyright. In addition, I recommend that a cease and desist order issue against Respondent EcoBoomer. I recommend a bond of 100% of entered value during the Presidential review period.

I hereby certify the record in this Investigation to the Commission with my Final Initial and Recommended Determinations. Pursuant to Commission Rule 210.38, the record further comprises the pleadings of the parties filed with the Secretary, the transcript of the pre-hearing conference and the *Markman* hearing, and the exhibits attached to Complainants' summary determination motion and the Staff's response thereto. 19 C.F.R. 210.38(a).

The initial determination portion of this Initial and Recommended Determination, issued pursuant to Commission Rule 210.42(c), shall become the determination of the Commission 45 days after the service thereof, unless the Commission, within that period, shall have ordered its review of certain issues therein, or by order, has changed the effective date of the initial determination portion. 19 C.F.R. 210.43(c). If the Commission determines that there is a

violation of 19 U.S.C. § 1337(a)(1), the recommended determination portion, issued pursuant to Commission Rule 210.42(a)(1)(ii), will be considered by the Commission in reaching a determination on remedy and bonding pursuant to Commission Rule 210.50(a).

Within ten (10) days of the date of this Initial Determination, each party shall submit to 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. A party seeking to have a portion of the order deleted from the public version thereof must attach to its submission a copy of the order with red brackets indicating the portion(s) asserted to contain confidential business information.[6] The parties' submissions under this subsection need not be filed with the Commission Secretary but shall be submitted by paper copy to the Administrative Law Judge and by e-mail to the Administrative Law Judge's attorney advisor.

SO ORDERED.

Dee Lord
Administrative Law Judge

[6] Redactions should be limited to avoid depriving the public of the basis for understanding the result and reasoning underlying the decision. Parties who submit excessive redactions may be required to provide an additional written statement, supported by declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in Commission Rule 201.6(a). 19 C.F.R. § 201.6(a).

CERTIFICATE OF SERVICE

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

SEP 16 2015

Lisa R. Barton, Secretary
U.S. International Trade Commission
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On Behalf of Complainants Segway Inc. and DEKA Products Limited Partnership:

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