

In the Matter of

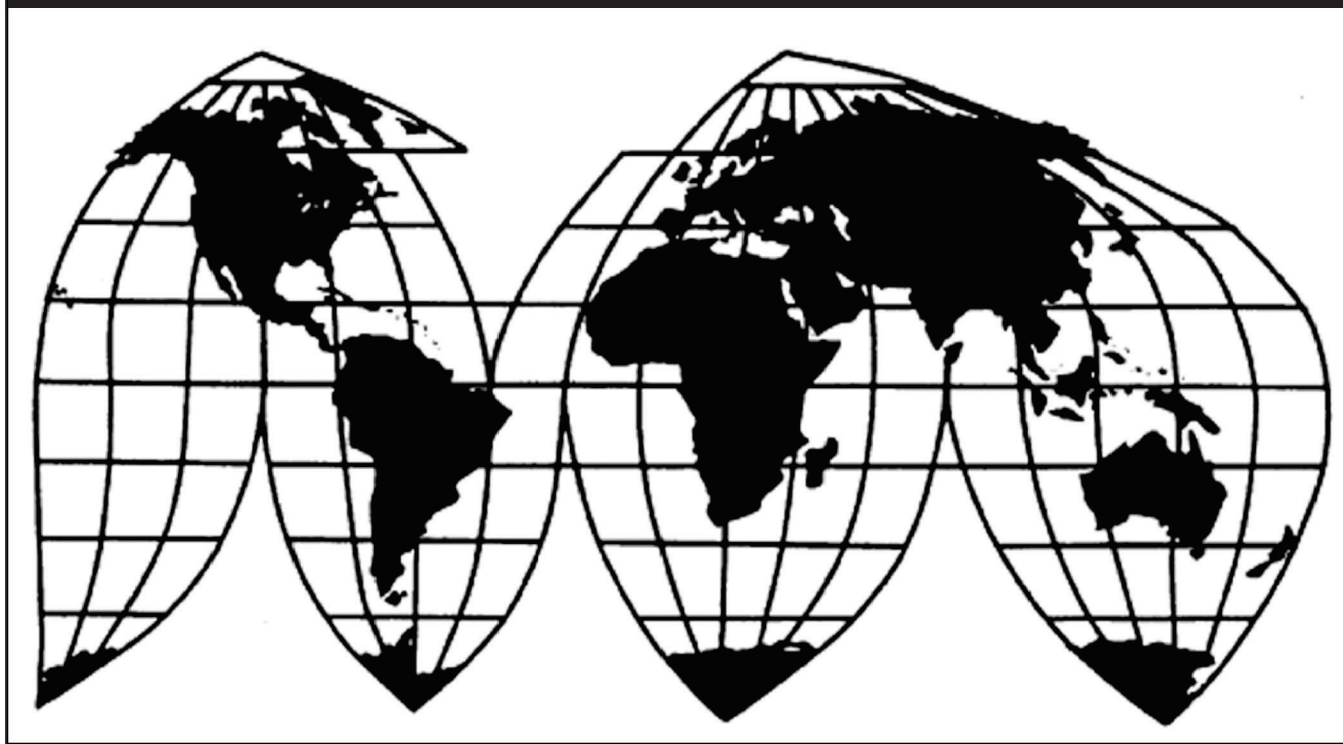
**CERTAIN LED LIGHTING DEVICES AND
COMPONENTS THEREOF**

337-TA-1107

Publication 5024

February 2020

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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U.S. International Trade Commission

Washington, DC 20436
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In the Matter of

CERTAIN LED LIGHTING DEVICES AND COMPONENTS THEREOF

337-TA-1107



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LED LIGHTING DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1107

**ISSUANCE OF A GENERAL EXCLUSION ORDER; TERMINATION OF THE
INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order (“GEO”) denying entry of certain LED lighting devices and components thereof. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 10, 2018, based on a complaint filed on behalf of Fraen Corporation (“Fraen”) of Reading, Massachusetts. 83 FR 15399-15400 (Apr. 10, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED lighting devices and components thereof by reason of infringement of one or more claims of U.S. Patent No. 9,411,083 (“the ’083 patent”) and U.S. Patent No. 9,772,499 (“the ’499 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Chauvet & Sons, LLC of Sunrise, Florida; ADJ Products, LLC of Los Angeles, California; Elation Lighting, Inc. of Los Angeles, California; Golden Sea Professional Equipment Co., Ltd. of Guangdong, China; Artfox USA, Inc. of City of Industry, California; Artfox Electronics Co., Ltd. of Guangdong, China;

Guangzhou Chaiyi Light Co., Ltd. d/b/a Fine Art Lighting Co., Ltd. of Guangdong, China; Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine of Guangdong, China; Guangzhou Flystar Lighting Technology Co., Ltd. of Guangdong, China; and Wuxi Changsheng Special Lighting Apparatus Factory d/b/a Roccer of Jiangsu, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is also participating in the investigation. *Id.*

On June 13, 2018, the ALJ issued an initial determination terminating Chauvet & Sons, LLC from the investigation on the basis of a license agreement. Order No. 14 at 1 (June 13, 2018), *unreviewed*, Notice (July 9, 2018).

On July 12, 2018, the ALJ issued an initial determination terminating ADJ Products, LLC and Elation Lighting, Inc. from the investigation on the basis of a license agreement. Order No. 17 at 1 (July 12, 2018), *unreviewed*, Notice (Aug. 8, 2018). In the same initial determination, the ALJ terminated Golden Sea Professional Equipment Co., Ltd. from the investigation based on the provisions of 19 C.F.R. 210.21(a). *Id.*

On July 20, 2018, the ALJ issued an initial determination terminating Artfox USA, Inc. from the investigation on the basis of a license agreement. Order No. 18 at (July 20, 2018), *unreviewed*, Notice (Aug. 14, 2018). In the same initial determination, the ALJ terminated Artfox Electronics Co., Ltd. from the investigation based on the provision of 19 C.F.R. 210.21(a). *Id.*

On August 28, 2018, the ALJ issued an initial determination (“ID”) finding the remaining respondents—Fine Art, E-Shine, Flystar, and Roccer (collectively, “defaulting respondents”)—in default for failure to respond to the complaint, notice of investigation, and her order to show cause why they should not be found in default. Order No. 20 (Aug. 28, 2018), *unreviewed*, Notice (Sep. 17, 2018).

On September 14, 2018, Fraen moved for summary determination of violation of section 337 by the defaulting respondents. In addition, Fraen requested a recommended determination for the Commission to issue a general exclusion order and set a bond at 100 percent. On September 26, 2018, OUII filed a response in support of Fraen’s motion and requested remedy.

On May 16, 2019, the ALJ issued the subject ID granting Fraen’s motion for summary determination of violation of section 337 by the defaulting respondents. Specifically, the ALJ found, *inter alia*, that Fraen established infringement of claim 1 of the ’083 patent and claim 1 of the ’499 patent; that Fraen established that the importation requirement of 337(a)(1)(B)(i) is satisfied as to each defaulting respondent and each accused product; and that Fraen satisfied both the technical and economic prongs of the domestic industry requirement. The ALJ also included her recommendation that the Commission issue a general exclusion order and impose a 100 percent bond during the presidential review period. No petitions for review were filed.

On June 28, 2019, the Commission issued a Notice stating that the Commission determined to review the ID in part and, on review, to take no position on whether Fraen satisfied the domestic industry requirement under subparagraphs (A) and (C) of section 337(a)(3). 84 FR 32218. The Commission's determination resulted in finding a violation of section 337. *Id.* at 32219. The Notice also requested written submissions on remedy, the public interest, and bonding. *See id.* at 32219-20.

On July 15, 2019, Fraen submitted a brief on remedy, the public interest, and bonding, requesting that the Commission issue a GEO and set a bond of 100 percent during the Presidential review period. Fraen did not request a cease and desist order. On the same day, OUII also submitted a brief on remedy, the public interest, and bonding, supporting the ALJ's recommendation to issue a GEO and impose a bond of 100 percent. On July 22, 2019, both Fraen and OUII submitted replies to the other's opening brief. No other submissions were filed in response to the Notice.

The Commission finds that the statutory requirements for relief under section 337(d)(2) are met with respect to the defaulting respondents. *See* 19 U.S.C. 1337(d)(2). In addition, the Commission finds that the public interest factors enumerated in section 337(d)(1) do not preclude issuance of statutory relief. *See id.* 1337(d)(1).

The Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed entry of certain LED lighting devices and components thereof that infringe claim 1 of the '083 patent or claim 1 of the '499 patent. The Commission has also determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the GEO. The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

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

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: August 21, 2019

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Whitney Winston, Esq.**, and the following parties as indicated, on **8/21/2019**



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

On Behalf of Complainant Fraen Corporation:

William D. Belanger
PEPPER HAMILTON LLP
19th Floor, High Street Tower
125 High Street
Boston, MA 02110

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

Respondents:

Guangzhou Chaiyi Light Co., Ltd. d/b/a Fine Art Lighting Co.,
Ltd.,
No. 8 Kexing Road, Guangzhou Civilian Scien-tech Park
No. 1633 Beitai Road, Baiyun District, Guangdong 510000
China

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

Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine
Building A., Longhu First Industrial Zone
Shijing Road, Baiyun District, Guangzhou
Guangdong 510430, China

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

Guangzhou Flystar Lighting Technology Co., Ltd.
3rd Floor, B. Building Huihuang Industrial Estate
Nanfang Village, Renhe Town, Baiyun District,
Guangzhou, Guangdong 510000, China

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

**CERTAIN LED LIGHTING DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1107

Certificate of Service – Page 2

Wuxi Changsheng Special Lighting Apparatus Factory d/b/a
Roccer
2nd Industrial Zone, Dangxiao Road, Luqu Wuxi
Jiangsu 214000, China

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

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

In the Matter of

**CERTAIN LED LIGHTING DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1107

GENERAL EXCLUSION ORDER

The United States International Trade Commission (“Commission”) has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the unlawful importation, sale for importation, or sale within the United States after importation of certain LED lighting devices and components thereof that infringe one or more of claim 1 of U.S. Patent No. 9,411,083 (“the ’083 patent”) and claim 1 of U.S. Patent No. 9,772,499 (“the ’499 patent”).

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

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

during the period of Presidential review shall be in the amount of one hundred (100) percent of the entered value of the articles in question.

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

1. LED lighting devices and components thereof that infringe one or more of claim 1 of the '083 patent and claim 1 of the '499 patent ("covered articles") are excluded from entry for consumption into the United States, entry for consumption from a foreign trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, except under license of the patent owner or as provided by law.
2. Notwithstanding paragraph 1 of this Order, covered articles are entitled to entry into the United States for consumption, entry for consumption from a foreign- trade zone, or withdrawal from a warehouse for consumption under bond in the amount of one hundred (100) percent of the entered value of the products, pursuant to subsection (j) of section 337 (19 U.S.C. § 1337(j)) and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection ("CBP"), in advance of the date of the entry, pursuant to procedures CBP establishes.
3. At the discretion of CBP and pursuant to the procedures it establishes, persons

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

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to covered articles that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.
5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).
6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.
7. Notice of this Order shall be published in the Federal Register.

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: August 21, 2019

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, **Whitney Winston, Esq.**, and the following parties as indicated, on **8/21/2019**



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

On Behalf of Complainant Fraen Corporation:

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PEPPER HAMILTON LLP
19th Floor, High Street Tower
125 High Street
Boston, MA 02110

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No. 1633 Beitai Road, Baiyun District, Guangdong 510000
China

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- Other: _____

Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine
Building A., Longhu First Industrial Zone
Shijing Road, Baiyun District, Guangzhou
Guangdong 510430, China

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

Guangzhou Flystar Lighting Technology Co., Ltd.
3rd Floor, B. Building Huihuang Industrial Estate
Nanfang Village, Renhe Town, Baiyun District,
Guangzhou, Guangdong 510000, China

- Via Hand Delivery
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**CERTAIN LED LIGHTING DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1107

Certificate of Service – Page 2

Wuxi Changsheng Special Lighting Apparatus Factory d/b/a
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Jiangsu 214000, China

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- Other: _____

PUBLIC VERSION

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

In the Matter of

**CERTAIN LED LIGHTING DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1107

COMMISSION OPINION

I. INTRODUCTION

On July 5, 2019, the Commission found that four respondents to this investigation—each of which was found in default—violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”). Notice, 84 Fed. Reg. 32218 (July 5, 2019). All other respondents named in this investigation were previously terminated on unopposed motions. *See id.* at 32219. As explained in this opinion, the Commission has determined that a general exclusion order (“GEO”) is the appropriate remedy and a bond of 100 percent of the entered value of articles subject to that order is required during the Presidential review period specified in section 337. *See* 19 U.S.C. § 1337(j)(3).

II. BACKGROUND

The Commission instituted this investigation on April 10, 2018, based on a complaint filed on behalf of Fraen Corporation of Reading, Massachusetts (“Fraen”). 83 Fed. Reg. 15399–15400 (Apr. 10, 2018). The complaint alleges violations 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 LED lighting devices and components thereof by reason of infringement of one or more

PUBLIC VERSION

claims of U.S. Patent No. 9,411,083 (“the ’083 patent”) and U.S. Patent No. 9,772,499 (“the ’499 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Chauvet & Sons, LLC of Sunrise, Florida; ADJ Products, LLC of Los Angeles, California; Elation Lighting, Inc. of Los Angeles, California; Golden Sea Professional Equipment Co., Ltd. of Guangdong, China; Artfox USA, Inc. of City of Industry, California; Artfox Electronics Co., Ltd. of Guangdong, China; Guangzhou Chaiyi Light Co., Ltd. d/b/a Fine Art Lighting Co., Ltd. of Guangdong, China; Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine of Guangdong, China; Guangzhou Flystar Lighting Technology Co., Ltd. of Guangdong, China; and Wuxi Changsheng Special Lighting Apparatus Factory d/b/a Roccer of Jiangsu, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is also participating in the investigation. *Id.*

Six of the ten respondents were terminated from the investigation on the basis of license agreements or the provisions of 19 C.F.R. § 210.21(a). On August 28, 2018, the ALJ issued an initial determination finding the four remaining respondents—Fine Art, E-Shine, Flystar, and Roccer (collectively, “defaulting respondents”)—in default for failure to respond to the complaint, notice of investigation, and her order to show cause. Order No. 20 (Aug. 28, 2018), *unreviewed*, Notice (Sep. 17, 2018).

On May 16, 2019, the ALJ issued an initial determination granting Fraen’s unopposed motion for summary determination of violation of section 337 (“Fraen MSD”) by the defaulting respondents. Order No. 21 (May 16, 2019). The ALJ found (1) that “Fraen has proven infringement of each of the Asserted Patents in this Investigation by a preponderance of evidence;” (2) that “Fraen has proven under Section 337(a)(1)(B)(i) that each of the Defaulting Respondents has imported, sold for importation, or sold within the United States after importation, at least one

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item each of an infringing product or article;” and (3) that Fraen has satisfied both the technical and economic prongs of the domestic industry requirement. *Id.* at 5–6. The ALJ recommended that the Commission issue a GEO and impose a 100 percent bond during the Presidential review period. *Id.* at 6. Fraen did not request, and the ALJ did not recommend, that the Commission issue cease and desist orders.

The Commission determined to review the initial determination of violation with respect to whether Fraen satisfied section 337’s domestic industry requirement relating to Fraen’s protected articles based on its investments in plant and equipment or its investments in the exploitation of the ’083 and ’499 patents. *See* Notice, 84 Fed. Reg. 32218, 32219 (July 5, 2019); *see also* 19 U.S.C. §§ 1337(a)(3)(A), 1337(a)(3)(C). On review, the Commission took no position on those issues. 84 Fed. Reg. at 32219. The Commission did not review any other portion of the initial determination on violation—including the finding that Fraen satisfied section 337’s domestic industry requirement based on its investments in labor and capital relating to Fraen’s protected articles. *See id.*; *see also* 19 U.S.C. § 1337(a)(3)(B). Consistent with its determinations on review, the Commission affirmed the initial determination’s finding that the defaulting respondents violated section 337. 84 Fed. Reg. at 32219.

When the Commission gave notice of its determination on violation, it also requested written submissions on remedy, the public interest, and bonding. *See id.* at 32219–20. Parties to this investigation, as well as government agencies and other interested parties, were invited to file submissions on these issues. *See id.* at 32219. In response to the Commission’s request, on July 15, 2019, Fraen submitted a brief (“Fraen Br.”) on remedy, the public interest, and bonding. OUII submitted its own brief (“OUII Br.”) on the same day. Both Fraen and OUII argued that the Commission should issue a GEO and set a bond of 100 percent during the Presidential review

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period. Fraen and OUII's positions are consistent with the ALJ's recommended determination on remedy and bonding. Fraen did not request the Commission to issue cease and desist orders, nor did the RD recommend this remedy. On July 22, 2019, both Fraen and OUII submitted replies to the other's opening brief. Fraen and OUII's replies acknowledge that there is broad agreement between the parties and the ALJ as to the appropriate remedy and bond.¹ No other submissions were filed in response to the Commission's Notice.

III. DISCUSSION

Where a violation of section 337 has been found, the Commission must consider the issues of remedy, the public interest, and bonding. The Commission has "broad discretion in selecting the form, scope, and extent of the remedy." *Viscofan, S.A. v. US. Int'l Trade Comm'n*, 787 F.2d 544,548 (Fed. Cir. 1986). The Commission may issue an exclusion order excluding the goods of the person(s) found in violation (a limited exclusion order) or, if certain criteria are met, against all infringing goods regardless of the source (a general exclusion order). *See Fuji Photo Film Co. v. Int'l Trade Comm'n*, 474 F.3d 1281, 1286 (Fed. Cir. 2007); *see also* 19 U.S.C. §§ 1337(d)(2), (g)(2). For the reasons described herein, the Commission has determined to issue a GEO pursuant to section 337(d)(2) and set a bond of 100 percent of the entered value of products covered by that order.

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

General exclusion orders reach entities beyond those that appeared before the Commission. Therefore, the Commission exercises caution when issuing this broad remedy. As the Commission has explained:

¹ OUII's reply, however, disputes Fraen's identification of the Harmonized Tariff Schedule of the United States numbers under which covered articles are imported.

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

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

Section 337 includes two subsections that address when the Commission may issue a GEO: § 1337(d)(2) and § 1337(g)(2). The principal difference between these two subsections is that subsection (d)(2) applies where one or more persons has appeared to contest the investigation, while subsection (g)(2) is reserved for investigations where no person appears to contest the investigation. Compare § 1337(d)(2) with § 1337(g)(2). While only the text of section 337(g)(2) explicitly states that the underlying violation of section 337 must be “established by substantial, reliable, and probative evidence,” § 1337(g)(2)(B), a general exclusion order under section 337(d)(2) must also rest upon a violation established by the same standard of proof. See *Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, Such as Sildenafil Citrate, and Products Containing Same*, Inv. No. 337-TA-489, Comm’n Op. at 4 (July 23, 2004) (public version) (explaining that “a violation of section 337 may not be found unless supported by ‘reliable, probative, and substantial evidence,’” regardless of whether subsection (d)(2) or (g)(2) applies). Section 337(g)(2) also explicitly incorporates the requirements of subsection (d)(2) among its own requirements. 19 U.S.C. § 1337(g)(2).

Here, where four respondents defaulted without appearing, but six other respondents appeared and were terminated based on settlement or other reasons, section 337(d)(2) provides the

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correct legal framework to analyze whether a GEO is an appropriate remedy. *See Certain Self-Anchoring Beverage Containers*, Inv. No. 337-TA-1092, Comm'n Op. at 15 (July 24, 2019) (public version) (“[W]here a respondent appears and was terminated based on a settlement agreement, section 337(g)(2) does not apply”). Section 337(d)(2) provides:

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

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

19 U.S.C. § 1337(d)(2). Satisfaction of either of the requirements in subsection (d)(2) will suffice to support issuance of a GEO. *See Fuji Photo Film Co.*, 474 F.3d at 1286. As discussed below, the Commission has determined that both conditions are satisfied, *i.e.*, a GEO is necessary to prevent circumvention of a limited exclusion order (“LEO”), and there is both a pattern of violation of section 337 with respect to Fraen’s patents and it is difficult to identify the source of the products infringing those patents.

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

The Commission has determined that a GEO is necessary to prevent circumvention of an LEO based on record evidence showing that numerous foreign entities offer what appear to be LED lighting devices that are identical to those sold and imported by the defaulting respondents. *See Fraen MSD*, Ex. D at ¶¶ 14–15. In other words, the defaulting respondents are not the only source of the LED lighting devices on which the underlying violation of section 337 is based. Given that fact, there is a high likelihood that an LEO directed only to the defaulting respondents

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would be ineffective from its inception, as it would immediately be circumvented through the sales and importation of LED lighting devices by other existing foreign entities.

Further, record evidence shows that, in addition to the numerous sellers offering LED lighting devices identical to those of the defaulting respondents, there is an equally large number of foreign sellers offering LED Lighting devices that, while not identical to defaulting respondents' products, nonetheless appear to infringe Fraen's patents. *See* Fraen MSD, Ex. D at ¶¶ 13, 16–17 (describing prevalence of product listings on online commerce sites for LED lighting devices that appear to infringe). As with the entities selling products identical to those offered by the defaulting respondents, an LEO directed only to the defaulting respondents would be subject to immediate circumvention by these foreign sellers offering similar LED lighting devices that also appear to infringe Fraen's patents.

Finally, the conclusion that an LEO would likely be circumvented is reinforced by the fact that nearly all of the foreign sellers identified in the record offer their products for sale through online commerce sites such as Amazon.com, eBay.com, and Alibaba.com. *See* Fraen MSD, Ex. D at ¶¶ 12–14, 16–17, 19–20. The Commission has previously recognized that such online sales indicate a likelihood that an LEO would be circumvented by virtue of the ease with which sellers can mask or change their identities. *See Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-918, Comm'n Op. at 7 (Oct. 1, 2015) (public version) (“[T]he evidence shows that many of the Retailer Respondents . . . in this investigation conduct their operations via one or more Internet websites, thereby facilitating circumvention of an exclusion order limited to products of named respondents.”); *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923 (“*Loom Kits*”), Comm'n Op. at 12 (June 26, 2015) (public version) (“If the Commission entered an exclusion order limited to the products of the defaulting respondents, the defaulting respondents

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could circumvent the order via anonymous sales on the Internet.”); *Certain Cases for Portable Elec. Devices*, 337-TA-867/861, Comm. Op. at 9–10, 15–18 (July 10, 2014) (public version) (“[T]he respondents can easily circumvent an LEO by selling infringing goods online.”).

Accordingly, based on the record before it, the Commission has determined that a general exclusion order barring entry of articles is necessary to prevent circumvention of an exclusion order limited to the infringing LED lighting products of the defaulting respondents. Thus, section 337(d)(2)(A) is satisfied.

2. There is a Pattern of Violation of Section 337 with Respect to Fraen’s Patents and the Source of the Infringing Products is Difficult to Identify.

The Commission has determined that there is a pattern of violation of section 337 and that the source of the infringing products is difficult to identify based on record evidence showing that LED lighting devices that appear to infringe are offered for sale by numerous foreign entities over the internet, with suspect product listings numbering into the thousands. *See* Fraen MSD, Ex. D at ¶¶ 12-20, Exs. 9–12, 13, 15–17, 19–22. For example, the evidence of record shows that on January 10, 2018, a search on the online commerce site Alibaba.com for “b eye light,” which is similar to the name “B-Eye” given to Fraen’s domestic industry products, returned 1,635 listings. *See id.* at ¶ 12(c), Ex. 9. A similar search of eBay.com for “bee eye light” also returned numerous products listings. *See id.* at Ex. 10. Unrebutted evidence further establishes that the products offered in these listings are not just similar in name; they also share design elements with Fraen’s domestic industry products, and appear to infringe Fraen’s patents. *See id.* at ¶ 12(c) (“The overwhelming majority of these entries from well over one hundred companies appear to copy significant elements of [Fraen’s Licensee’s] design.”). While Fraen acknowledged that some of these search results include duplicate listings, *see id.*, the overall extent to which products that appear to infringe are available for sale online still supports the conclusion that there is a pattern

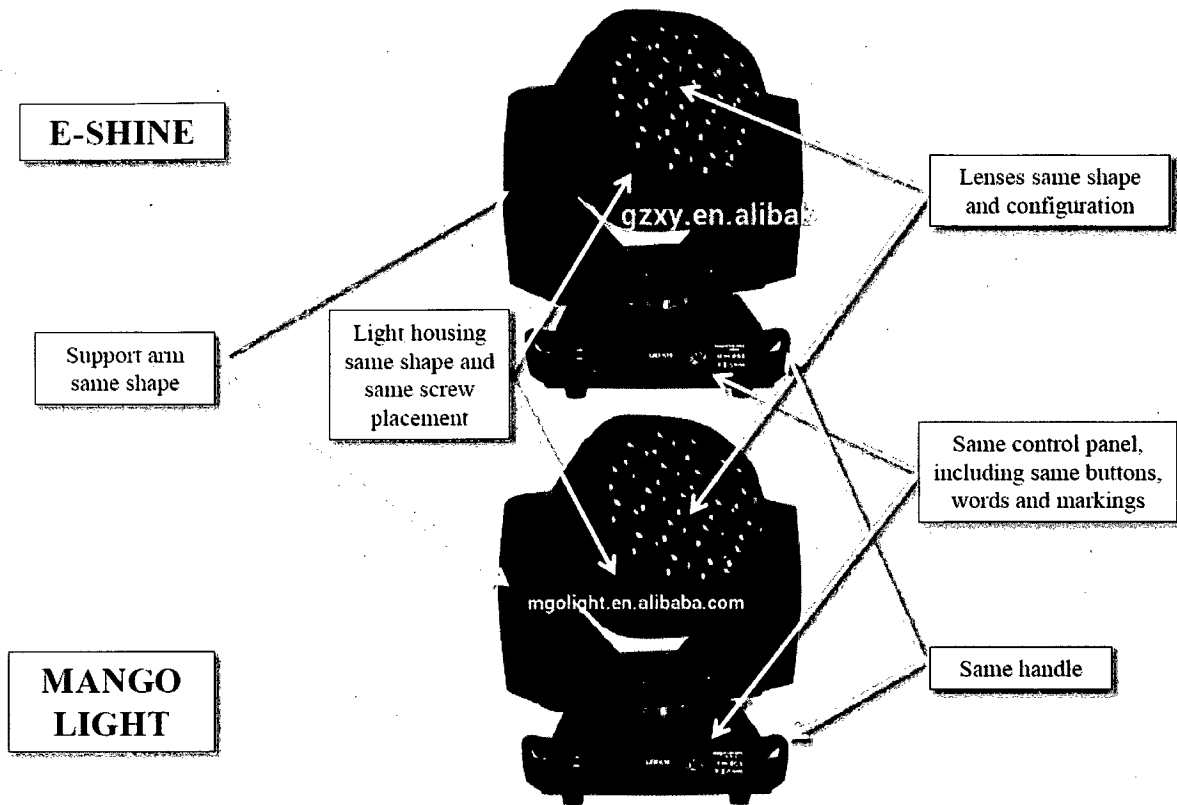
PUBLIC VERSION

of violation with respect to Fraen's patents. This is particularly true in this investigation where, as discussed above in the context of circumvention, the record evidence shows that a significant portion of the product listings from the Alibaba.com search actually offer lighting devices that are identical to those determined to be infringing in this investigation. *See id.* at ¶ 14 ("Among the aforementioned Alibaba.com product listings, it appears that a large number of companies are selling *identical* fixtures to the three we sampled, most claiming that they are the manufacturer of such fixtures.").

The Commission has determined that the sources of the infringing products are also difficult to identify. That conclusion follows most readily from the fact that LED lighting devices identical to the accused products of the defaulting respondents are offered by other sellers under nominally different brand names. *See id.* Among the supporting record evidence are two exhibits providing side-by-side comparisons of an accused product offered by one of the defaulting respondents, E-Shine, and a product offered by a non-party, Mango Light, which nonetheless appears to be identical. *See id.* at Exs. 15, 16; *see also id.* at ¶ 14 (describing exhibits 15 and 16). A portion of one of those exhibits, reproduced here, is demonstrative of the similarities:

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Visual Comparison of E-Shine and Mango Light Product Photos



See id. at Ex. 15. As can be seen from the exhibit, E-Shine and Mango Light offer the same LED lighting device. Given that E-Shine and Mango Light offer the same infringing LED lighting device under different brand names, it is unclear which is the source of the product. It is also unclear if neither is the source, and instead E-Shine and Mango Light are merely resellers acquiring the lighting devices from some other unidentified source. That none of the purported manufacturers may actually be the source of the various infringing lighting devices is further supported by the fact that, in some instances, the LED lighting devices ship with an instruction manual bearing neither a product name nor company name; they are entirely generic. *See id.* at ¶ 14(a)(iii) (“[T]he LED Moving Head Light model Fraen purchased from Flystar comes with an instruction booklet containing no product name and no company name.”); *see also id.* at Ex. 14

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(reproducing the Flystar product instruction booklet).

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

B. Entry of a General Exclusion Order Is Not Contrary to the Public Interest.

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

The record in this investigation contains no evidence that a GEO would adversely affect the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. *See* 19 U.S.C. § 1337(d)(1). The Commission requested submissions from the public with respect to the public interest, but no third party filed a submission in response to the Commission’s notice. *See* 84 Fed. Reg. 32219–20. In addition, the record shows that Fraen, its licensees, and its noninfringing competitors have sufficient capacity to readily replace the products at issue if they are excluded. *See* Order No. 21 at 45; Fraen Br. at 12–13; OUII Br. at 11; *see also* Fraen MSD, Ex. C at ¶ 23 (“Fraen has the ability to increase its capacity to produce more optical systems to

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meet increased customer demand. Fraen often does increase production capacity when a product becomes very popular.”).

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

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

During the 60-day period of Presidential review, imported articles otherwise subject to remedial orders are entitled to conditional entry under bond. 19 U.S.C. § 1337(j)(3). The amount of the bond is specified by the Commission and must be an amount sufficient to protect the complainant from any injury. *Id.*; 19 C.F.R. § 210.50(a)(3). The Commission frequently sets the bond by attempting to eliminate the difference in sales prices between the patented domestic product and the infringing product or alternatively based upon a reasonable royalty. *Certain Microsphere Adhesives, Process For Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. No. 2949, Comm’n Op. at 24 (Jan. 1996). In cases where the Commission finds that the evidence is either unavailable or the complainant demonstrates that the available evidence is inadequate to base a determination of the appropriate amount of the bond, the Commission has set a 100 percent bond. *See Certain Sortation Systems, Parts Thereof, and Products Containing Same*, Inv. No. 337-TA-460, Comm’n Op. at 21 (Mar. 2003). The complainant bears the burden of establishing the need for a bond and the bond amount. *Certain Rubber Antidegradants, Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-533, Comm’n Op. at 39-40 (July 21, 2006).

Here, the ALJ, Fraen, and OUII all recommend a bond of 100 percent. Order No. 21 at 46; Fraen Br. at 11; OUII Br. at 10. The Commission agrees that a 100 percent bond is appropriate. In this investigation, the defaulting respondents provided no discovery. Thus, there

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is a lack of reliable pricing information. Because of the large number of identical infringing products and similar products that appear to infringe offered for sale at substantially varying prices online, it would not be feasible to calculate a price differential or reasonable royalty from that information without additional information. *See Fraen MSD, Ex. D at ¶¶ 12–20* (detailing the results of Fraen’s search online for products that appear to infringe its patents). For example, the record as it stands lacks information sufficient to determine whether any particular online product listing is an unreliable outlier such that it should be excluded from an average price differential calculation. Moreover, the Commission has set a bond of 100 percent in similar circumstances to those of this investigation. *See Loom Kits, Comm’n Op. at 19* (setting the bond at 100 percent where “the record [] shows that a large number of infringing loom kits are sold on the Internet at different prices,” “the defaulting respondents in th[e] investigation provided no discovery, including discovery about pricing,” and “[t]he record [] lacks a reliable comparison of the price of the domestic industry products to the price of the infringing products.”).

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

IV. CONCLUSION

The Commission has considered the issues of remedy, the public interest, and bonding and has determined to issue a GEO. The GEO excludes from entry for consumption into the United States LED lighting devices and components thereof that infringe one or more of claim 1 of the ’083 patent and claim 1 of the ’499 patent. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the infringing LED lighting devices and components thereof imported during the period of Presidential review.

PUBLIC VERSION

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: September 11, 2019

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, **Whitney Winston, Esq.**, and the following parties as indicated, on **9/12/2019**



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

On Behalf of Complainant Fraen Corporation:

William D. Belanger
PEPPER HAMILTON LLP
19th Floor, High Street Tower
125 High Street
Boston, MA 02110

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

Respondents:

Guangzhou Chaiyi Light Co., Ltd. d/b/a Fine Art Lighting Co.,
Ltd.,
No. 8 Kexing Road, Guangzhou Civilian Scien-tech Park
No. 1633 Beitai Road, Baiyun District, Guangdong 510000
China

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

Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine
Building A., Longhu First Industrial Zone
Shijing Road, Baiyun District, Guangzhou
Guangdong 510430, China

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

Guangzhou Flystar Lighting Technology Co., Ltd.
3rd Floor, B. Building Huihuang Industrial Estate
Nanfang Village, Renhe Town, Baiyun District,
Guangzhou, Guangdong 510000, China

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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LED LIGHTING DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1107

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

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part an initial determination ("ID") (Order No. 21) of the presiding administrative law judge ("ALJ") granting summary determination on violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") by certain defaulting respondents. On review, the Commission has determined to find a violation of section 337. The Commission is requesting written submission on remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-5453. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 10, 2018, based on a complaint filed on behalf of Fraen Corporation ("Fraen") of Reading, Massachusetts. 83 FR 15399-15400 (Apr. 10, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED lighting devices and components thereof by reason of infringement of one or more

claims of U.S. Patent No. 9,411,083 (“the ’083 patent”) and U.S. Patent No. 9,772,499 (“the ’499 patent”). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Chauvet & Sons, LLC of Sunrise, Florida; ADJ Products, LLC of Los Angeles, California; Elation Lighting, Inc. of Los Angeles, California; Golden Sea Professional Equipment Co., Ltd. of Guangdong, China; Artfox USA, Inc. of City of Industry, California; Artfox Electronics Co., Ltd. of Guangdong, China; Guangzhou Chaiyi Light Co., Ltd. d/b/a Fine Art Lighting Co., Ltd. of Guangdong, China; Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine of Guangdong, China; Guangzhou Flystar Lighting Technology Co., Ltd. of Guangdong, China; and Wuxi Changsheng Special Lighting Apparatus Factory d/b/a Roccer of Jiangsu, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is also participating in the investigation. *Id.*

On June 13, 2018, the ALJ issued an initial determination terminating Chauvet & Sons, LLC from the investigation on the basis of a license agreement. Order No. 14 at 1 (June 13, 2018), *unreviewed*, Notice (July 9, 2018).

On July 12, 2018, the ALJ issued an initial determination terminating ADJ Products, LLC and Elation Lighting, Inc. from the investigation on the basis of a license agreement. Order No. 17 at 1 (July 12, 2018), *unreviewed*, Notice (Aug. 8, 2018). In the same initial determination, the ALJ terminated Golden Sea Professional Equipment Co., Ltd. from the investigation based on the provisions of 19 C.F.R. § 210.21(a). *Id.*

On July 20, 2018, the ALJ issued an initial determination terminating Artfox USA, Inc. from the investigation on the basis of a license agreement. Order No. 18 at (July 20, 2018), *unreviewed*, Notice (Aug. 14, 2018). In the same initial determination, the ALJ terminated Artfox Electronics Co., Ltd. from the investigation based on the provision of 19 C.F.R. § 210.21(a). *Id.*

On August 28, 2018, the ALJ issued an initial determination finding the remaining respondents in default for failure to respond to the complaint, notice of investigation, and her order to show cause. Order No. 20 (Aug. 28, 2018), *unreviewed*, Notice (Sep. 17, 2018).

On September 14, 2018, Fraen moved for summary determination of violation of section 337 by the defaulting respondents. In addition, Fraen requested a recommended determination for the Commission to issue a general exclusion order and set a bond in the amount of 100 percent of entered value. On September 28, 2018, OUII filed a response in support of Fraen’s motion and requested remedy.

On May 16, 2019, the ALJ issued the subject ID granting Fraen’s motion for summary determination of violation of section 337 by the defaulting respondents. Specifically, the ALJ found, *inter alia*, that Fraen established infringement of claim 1 of the ’083 patent and claim 1 of the ’499 patent; that Fraen established that the importation requirement is satisfied as to each defaulting respondent and each accused product; and that Fraen satisfied both the technical and economic prongs of the domestic industry requirement. The ALJ’s ID also included her

recommendation that the Commission issue a general exclusion order and impose a 100 percent bond during the period of presidential review.

No petitions for review were filed.

Having examined the record of this investigation, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review the ID's findings that Fraen satisfies the economic prong of the domestic industry requirement under section 337(a)(3)(A) and (C). On review, the Commission has determined to take no position on those issues.

The Commission has further determined not to review the remainder of the ID, including the ID's findings that Fraen has established infringement of claim 1 of the '083 patent and claim 1 of the '499 patent; that Fraen established that the importation requirement is satisfied as to each defaulting respondent and each accused product; that Fraen satisfied the technical prong of the domestic industry requirement; and that Fraen satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(B). Accordingly, the Commission has determined to affirm with modifications the ID's finding of violation of section 337.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

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

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

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

Complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patents expire, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on July 15, 2019. Reply submissions must be filed no later than the close of business on July 22, 2019. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1107") in a prominent place on the cover page and/or the first page. (See Handbook on Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel¹, solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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

¹ All contract personnel will sign appropriate nondisclosure agreements.

Practice and Procedure, 19 CFR part 210.

By order of the Commission.

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

Lisa R. Barton
Secretary to the Commission

Issued: June 28, 2019

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Whitney Winston, Esq.**, and the following parties as indicated, on **6/28/2019**



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

On Behalf of Complainant Fraen Corporation:

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19th Floor, High Street Tower
125 High Street
Boston, MA 02110

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

Respondents:

Guangzhou Chaiyi Light Co., Ltd. d/b/a Fine Art Lighting Co.,
Ltd.,
No. 8 Kexing Road, Guangzhou Civilian Scien-tech Park
No. 1633 Beitai Road, Baiyun District, Guangdong 510000
China

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

Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine
Building A., Longhu First Industrial Zone
Shijing Road, Baiyun District, Guangzhou
Guangdong 510430, China

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

Guangzhou Flystar Lighting Technology Co., Ltd.
3rd Floor, B. Building Huihuang Industrial Estate
Nanfang Village, Renhe Town, Baiyun District,
Guangzhou, Guangdong 510000, China

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

**CERTAIN LED LIGHTING DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1107

Certificate of Service – Page 2

Wuxi Changsheng Special Lighting Apparatus Factory d/b/a
Roccer
2nd Industrial Zone, Dangxiao Road, Luqu Wuxi
Jiangsu 214000, China

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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN LED LIGHTING DEVICES
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1107

ORDER NO. 21:

**INITIAL DETERMINATION ON VIOLATION AND
RECOMMENDATION ON REMEDY AND BOND:
GRANTING COMPLAINANT FRAEN
CORPORATION'S MOTION FOR SUMMARY
DETERMINATION ON VIOLATION BY
DEFAULTING RESPONDENTS, AND
RECOMMENDED DETERMINATION ON REMEDY
AND BOND [MOTION DOCKET NO. 1107-018]**

(May 16, 2019)

I. INTRODUCTION

On September 14, 2018, pursuant to Commission Rule 210.18, Complainant Fraen Corporation ("Fraen") filed a motion for summary determination together with a memorandum of law in support thereof ("MSD") that the Defaulting Defendants¹ have violated Section 337 of the Tariff Act of 1930, as amended, through the importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of LED lighting devices and components thereof that infringe certain claims of the asserted patents, that is U.S. Patent No. 9, 411,083 ("the '083 patent") and U.S. Patent No. 9,772,499 ("the '499

¹ The Defaulting Respondents are: (1) Guangzhou Chaiyi Light Co., Ltd., d/b/a Fine Art Lighting Co. ("Fine Art"); (2) Guangzhou Xuanyi Lighting Co., Ltd., d/b/a XY E-Shine ("E-Shine"); (3) Guangzhou Flystar Lighting Technology Co., Ltd. ("Flystar"); and (4) Wuxi Changsheng Special Lighting Apparatus Factory d/b/a Roccer ("Roccer").

Public Version

patent” and with the ’083 patent, “the Asserted Patents.”). (See 19 U.S.C. § 1337; Motion Docket No. 1107-018 (Sept. 14, 2018); MSD at 1-2.).² Pursuant to Ground Rule 2.4, Fraen also submitted as part of its MSD “Complainant Fraen Corporation’s Separate Statement of The Material Facts In Support of Motion for Summary Determination” (“SMF”), at last pages of MSD, paginated as pp. 1-3.).

As part of its MSD, Fraen seeks a summary determination that Fraen satisfies the technical and economic prongs of the domestic industry requirement. Additionally, Fraen seeks a recommended determination that the Commission issue a general exclusion order (“GEO”) pursuant to 19 U.S.C. § 1337(d)(2) and (g)(2). Fraen requests that a bond be set at 100% of entered value during the Presidential review period. (MSD at 1, 2.).³

² Fraen certified under Ground Rule 2.2 that it consulted with Commission Investigative Staff (“Staff”) at least two (2) days before it filed its MSD, and that Staff reported that it would take a position after Fraen filed its MSD. (MSD at 1.).

³ Fraen attached to its MSD an “Appendix of Declarations and Exhibits to Complainant Fraen Corporation’s Memorandum of Points and Authorities in Support of its Motion for Summary Determination” (“Appendix”). (See Doc. ID No. 1333678.). The Appendix is comprised of documents that include, *inter alia*, product listings for various products that demonstrably appeared to copy Fraen’s domestic industry products, and misuse Fraen’s patents. Fraen found these products and product listings through web searches of, *inter alia*, Alibaba.com, eBay.com and Amazon websites. As described in more detail below, Fraen produced through exhibits product catalogue pages for various Accused Products; waybills and invoices for various Accused Products that Fraen purchased and then examined; and helpful articles on the damage being caused to American businesses by counterfeit products. Fraen did a remarkably thorough job of affirmatively documenting its support for its MSD on all issues for which it is required to prove that it is entitled to summary determination. Particularly noteworthy documentation includes:

(1) the September 14, 2018 “Declaration of Anthony Bolzan In Support of Fraen Corporation’s Motion for Summary Determination” (“Bolzan Decl.”), Fraen’s General Counsel. (Exh. A to MSD, Doc. ID No. 1333679.). Mr. Bolzan purchased a variety of products from the Defaulting Respondents in addition to describing the price lists and products of Fraen’s customers who support Fraen’s domestic industry. Mr. Bolzan describes the products he purchased, and recorded the dates of purchase, took pictures of waybills from Defaulting Respondents, and took pictures of the packages that came with the Accused Products to demonstrate that the products he purchased were made or sold by the Defaulting Respondents in the United States. (Exh. A to MSD, Doc. ID No. 1333679 with 15 Exhs. attached thereto.).

Public Version

(2) the September 14, 2018 “Expert Declaration of Dr. Jianzhong Jiao in Support of Complainant Fraen Corporation’s Motion of Summary Determination” (“Jiao Decl.”), with some 14 exhibits attached thereto. (Doc. ID No. 1333695 (Sept. 11, 2018)). Dr. Jiao provided extensive, thorough, persuasive expert testimony on the Defaulting Respondents’ infringement of Fraen’s Asserted Patents through claim charts attached to the Jiao Declaration based upon his own examination and testing of the products that Mr. Bolzan purchased and comparison of those against the claims of the ’083 and ’499 patents. (See Exhs. to the Jiao Decl., Doc. ID Nos. 1333701-1333713.). Dr. Jiao also provided expert testimony on the Fraen products that practice the technical prong of the domestic industry requirement. (Exh. A to MSD, Jiao Decl.). Dr. Jiao produced a claim by claim analysis of the Clay Paky technical industry product against the claims of the Asserted Patents to prove that Fraen practices the patents

(3) the September 14, 2018 “Confidential Declaration of Nicodemo Scarfo in Support of Complainant Fraen Corporation’s Motion for Summary Determination.” (Exh. C to MSD, Doc. ID No. 1333714, with some 16 exhibits attached thereto, Doc. ID Nos. 1333715-1333729.). Mr. Scarfo is Fraen’s Chief Executive Officer. (Scarfo Decl. at ¶ 2.). Mr. Scarfo describes in detail Fraen’s history; Fraen’s acquisition or establishment of subsidiaries; Fraen’s customer Clay Paky, upon whom Fraen relies in part to satisfy the economic prong of the domestic industry requirement; and the operations and structure of Fraen’s lighting products. Mr. Scarfo’s exhibits include several tables and explanations that thoroughly and clearly describe and support Fraen’s investments and expenditures using a sales allocation method. (Exh. B to MSD, Scarfo Decl.).

(4) the September 14, 2018 “Declaration of Scott Gredenza in Support of Complainant Fraen Corporation’s Motion for Summary Determination” (“Gredenza Decl.,” Exh. D to MSD, Doc. ID No. 1333730 with some 22 exhibits attached thereto at Doc. ID Nos. 1333730-1333752.). Mr. Gredenza is Fraen’s Director of Sales and Business Development. (Gredenza Decl. at ¶ 2.). Mr. Gredenza describes how in November 2017, he attended an important trade show in Nevada called the “Live Design International show (“LDI”) at which he saw extensive displays by nearly all of the Respondents, including the Defaulting Respondents, that appeared to be copying Fraen’s optics products and which were using confusingly similar product names to Fraen’s. In some 22 of his exhibits, Mr. Gredenza describes his search for the Defaulting Respondents’ products online at internet websites including Alibaba.com, eBay.com and Amazon.com. He describes how he found more than 100 websites with more than 1600 entries that contained products that were exactly the same as those Fraen sells, offered in some cases by Defaulting Respondents, and in some cases by other, mostly Chinese companies that were clearly importing into and selling copied products into the United States. (Gredenza Decl.). The Gredenza Declaration exhibits are worth perusing for the numbers of pictures that are replicated from websites of lighting devices that look exactly like Fraen’s and contain similar names. The Gredenza Decl. is a clear example of widespread proliferation of the misuse of patented articles that are sold freely into the United States.

(5) the September 12, 2018 “Declaration of Stephen Holzen in Support of Complainant Fraen Corporation’s Motion for Summary Determination” (“Holzen Decl.” Exh. E to MSD, Doc. ID No. 1333754, with some 28 exhibits attached thereto, Doc. ID Nos. 1333755-1333780.). Mr. Holzen is a Director at Stout Risius Ross, LLC (“Stout”) a financial advisory firm that, *inter alia*, consults on financial matters including valuations of patents and appropriate remedies in patent infringement litigation. (Holzen Decl. at ¶ 3.). Mr. Holzen holds a master’s degree in Business Administration (“MBA”) in addition to Certified Licensing Professional (“CLP”) and Certified Valuation Analyst (“CVA”) credentials. (Holzen Decl. at ¶ 4.). Fraen hired Mr. Holzen to offer opinions on the “current state of intellectual property enforcement within the United State against counterfeiters based in China in conjunction with Fraen’s request for a General Exclusion Order in this Investigation.” (Holzen Decl. at ¶ 9.). Mr. Holzen describes at length “counterfeiting” consistent with the Organization for Economic Co-

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On September 26, 2018, Staff filed its response to Fraen's MSD in which it supports both Fraen's MSD, as well as Fraen's request for remedy and bond. (*See* Response of the Commission Investigative Staff to Complainant Fraen Corporation's Motion for Summary Determination of Violations by the Defaulting Respondents and For Recommended Determination on Remedy and Bonding ("Staff Response"); Doc. ID No. 657202; Staff Resp. at 1, 33-34.).

II. SUMMARY FINDINGS AND RECOMMENDATION

Consistent with 19 C.F.R. 210.42, this decision is issued as an Initial Determination on Violation and as a Recommendation on Remedy and Bond.

For the reasons described in this decision, Fraen's MSD is *granted* because there are no material disputes of fact and Fraen is entitled to a judgment as a matter of law. The

operation and Development's ("OECD") definition of the same, and how the bulk of counterfeit goods shipments have been seized in East Asia, with some 60% of the counterfeiting originating from the People's Republic of China according to a 2015 OECD report. (Holzen Decl. at ¶ 11.). Mr. Holzen reports that research by "'Marketplace Pulse' reveals that Chinese sellers now make up 25% of the merchants selling on Amazon's United States website, and potentially a quarter of Amazon's global marketplace." (Holzen Decl. at ¶ 12 (internal citations omitted).). Mr. Holzen describes at length how counterfeiters use the internet to find photographs and descriptions of original products and then list their infringing products on the same pages as the original, or link them, with the result that it is "impossible for the end consumers to tell the difference" between original and counterfeit products. (Holzen Decl. at ¶ 14 (internal citations omitted).). Mr. Holzen also describes how as soon as certain e-commerce sites or accounts are shut down, counterfeiters quickly set up new accounts, often on the same e-commerce sites. (*Id.* at ¶ 15 (internal citations omitted).). Mr. Holzen also relies on the Grzenda Decl. for the evidence that there appear to be more than 100 Chinese companies on Alibaba.com alone who are offering for sale products that appear to counterfeit Fraen's products. Mr. Holzen describes (as does Mr. Grzenda), for example, how Mr. Grzenda's search of the term "b eye light" returned some 26 pages and some 1,662 product listings (including duplicates), on a business to business Alibaba purchasing website that sell into the United States products that "appear to be identical to or copy significant functional elements of the Accused Products." (Holzen Decl. at ¶ 14 (citing Grzenda Decl. at ¶¶ 13-19).). Mr. Holzen offers his opinion that a GEO should issue in this case because "... the facts and circumstances discussed above demonstrate a need 'to prevent circumvention,' that there is 'a pattern of violation,' and that it is difficult to identify the source of infringing product' that come into the United States." (Holzen Decl. at ¶ 23.). I accept Mr. Holzen as an expert. I relied upon his opinion as well as the substantial evidence that he and Mr. Grzenda produced that describe the scope of the counterfeit or copied products they found on a variety of websites which they then examined or from which they duplicated pictures, product descriptions, product lists and pricing. The evidence that Fraen produced unequivocally supports Fraen's assertion of widespread copying and of Fraen's entitlement to a GEO.

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recommended findings of this decision have been adapted from or adopted from Fraen's SMF, in addition to other findings of fact or rulings of law as follows:

1. Fraen is a Massachusetts corporation with corporate offices located at Newcrossing Road, Reading, Massachusetts 01867. (SMF No. 1 (citing Compl. at ¶ 9); *see also* Scarfo Decl. at ¶ 4.).
2. Fraen is the owner with complete right in and title to the Asserted Patents. (SMF No. 2 (citing Exhs. 3 and 4 to Compl.).).
3. The Asserted Patents are valid and enforceable. (SMF No. 3 (citing 35 U.S.C § 282.)).
4. Fraen has satisfied the requirements for subject matter jurisdiction because Fraen has asserted and proven by a preponderance of evidence that the Defaulting Respondents have violated 19 U.S.C. §1337(a)(1)(B). *See Amgen v. U. S. Int'l Trade*, 902 F.2d 1532, 1536 (Fed. Cir. 1990).
5. Fraen has satisfied the requirements for *in rem* jurisdiction pursuant to Section 337(a)(1)(B) which applies to the "[t]he importation into the United States, the sale for importation, or the sale within the United States after importation" of articles that infringe a valid and enforceable United States patent," because Fraen has proven that each of the Defaulting Respondents imports at least one Accused Product into the United States and sells for importation and/or after importation at least one Accused Product.
6. Fraen has proven infringement of claim 1 of each of the Asserted Patents in this Investigation by a preponderance of evidence. These asserted claims relate to an optical system that, among other things, enable the core functionality of certain entertainment and other light fixtures by channeling light from a light source, such as an LED, through a light pipe to a secondary lens that projects the light to illuminate a subject. (SMF No. 4 (citing Compl. at ¶¶ 40-42, 48).).
7. Fraen has proven under Section 337(a)(1)(B)(i) that each of the Defaulting Respondents has imported, sold for importation, or sold within the United States after importation, at least one item each of an infringing product or article. (SMF No. 5 (citing Exh. A to MSD, Bolzan Decl. ¶¶ 4-9, 11-14, 16-20; 22-26 (evidence of sale and importation with respect to each of the defaulting Respondents); Bolzan Exh. 1 (same); Compl. ¶¶ 67-82; *see also* Section VI.B, *infra*)).
8. The Defaulting Respondents' Accused Products⁴ directly infringe at least claim 1 of the '083 patent and claim 1 of the '499 patent. (SMF Nos. 6, 7 (citing Bolzan Decl. ¶¶ 4-27 (collecting evidence of infringement including evidence of sale and

⁴ The Accused Products are Fine Art's Fine 1519 Pixie, E-Shine's Beehive K10, Flystar's LED Moving Head Light, and Roccer's Bee Eye Beam. (*See, e.g.*, MSD at 12 n.2.).

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importation and expert testimony with respect to each of the defaulting Respondents); Bolzan Exh. 1 (collecting evidence of sale and importation with respect to each of the defaulting Respondents); Jiao Decl. ¶¶ 8-11 (citing claim charts attached as Jiao Exhs. 3A-3C); Compl. at ¶¶ 67-82; *see also* Section VIII.B, *infra.*).

9. Fraen has proven that its color-mixing zoom optical systems are incorporated into LED lighting devices that practice at least one claim of each of the Asserted Patents. (*See* SMF No. 8 (citing Jiao Decl. ¶¶ 12-14 (citing claim charts attached as Jiao Exhs. 5, 6); Compl. at ¶¶ 91-92; Compl. Exhs. 39, 40; *see also* Section VIII.A(1), *infra.*).
10. Fraen has proven that it satisfies the technical prong of the Domestic Industry requirement. (*See* Section VIII.A(1), *infra.*)
11. Fraen has proven that it satisfies the economic prong of the Domestic Industry requirement under 19 U.S.C. § 1337 (a)(3)(A), (B) and (C). (*See* SMF No. 11; *see also* Section VIII.B(1), *infra.*).
12. There is a widespread pattern of unauthorized use of the Asserted Patents such that a General Exclusion Order (“GEO”) is necessary to prevent circumvention of the relief granted in this case. This includes the activities of the four Defaulting Respondents, none of whom has appeared in this Investigation, as well as numerous other foreign companies whose activities plainly infringe the Asserted Patents and whose identities are difficult, if not impossible, to determine. (*See* SMF No. 8 (citing Compl. at ¶¶ 97-99; Grzenda Decl. ¶¶ 6-20; Grzenda Exhs. 7-10, 12-13, 17, 20-22; *see also* Section IX.B, *infra.*).
13. Fraen requests a bond in the amount of 100% of the entered value because this is necessary to protect Fraen given the incontrovertible evidence of counterfeiting and copying of its products that Fraen produced. This also is the recommendation of this decision because no other measure will satisfactorily protect Fraen from the harm by the Defaulting Respondents and the voluminous number of Chinese based companies that are misusing Fraen’s patents, copying them, and importing and/or selling them in the United States.

III. BACKGROUND

A. Procedural History

Fraen filed its complaint on March 6, 2018 (“Complaint”), alleging a violation of Section 337 based on the importation, sale for importation, and/or sale within the United States after importation of certain LED lighting devices and components thereof that infringe one or more of (i) claims 1, 3, 5-10, 12-16, and 19 of the ’083 patent, and (ii) claims 1 and 3-10 of the ’499

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patent. (*See* 83 Fed. Reg. 15399-400 (Apr. 10, 2018) (“Notice of Institution of Investigation”); Compl. at ¶ 3.)).

On April 10, 2018, by publication of a notice in the *Federal Register*, the Commission instituted an investigation, to determine:

whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED lighting devices and components thereof by reason of infringement of one or more of claims 1, 3, 5-10, 12-16 and 19 of the '083 patent and claims 1 and 3-10 of the '499 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337[.]

See 83 Fed. Reg. 15399 (Apr. 10, 2018); 19 C.F.R. § 210.10(b).

The Notice of Institution of Investigation (“NOI”) identified ten (10) Respondents: (1) Chauvet & Sons, Inc. (“Chauvet”); (2) ADJ Products, LLC (“ADJ”); (3) Elation Lighting, Inc. (“Elation”); (4) Golden Sea Professional Equipment Co., Ltd. (“Golden Sea”); (5) Artfox USA, Inc.; (6) Artfox Electronics Co., Ltd. (collectively, “Artfox”); (7) Guangzhou Chaiyi Light Co., Ltd., d/b/a Fine Art Lighting Co., Ltd. (“Fine Art”); (8) Guangzhou Xuanyi Lighting Co., Ltd., d/b/a XY E-Shine (“E-Shine”); (9) Guangzhou Flystar Lighting Technology Co., Ltd. (“Flystar”); and (10) Wuxi Changsheng Special Lighting Apparatus Factory d/b/a Roccer (“Roccer”). (*See* 83 Fed. Reg. 15399-400 (Apr. 10, 2018)).

Pursuant to Commission Rule 210.11(a), the Commission attempted to serve the Complaint and NOI on each of the named Respondents.

On April 26, 2018, the Commission issued returned mail processing records indicating that the address information for E-Shine and Fine Art was incorrect. (*See* Doc. ID No. 643370 (Apr. 26, 2018) (returned mail record with respect to E-Shine); Doc. ID No. 643371 (Apr. 26, 2018) (returned mail record with respect to Fine Art)).

On May 2, 2018, Fraen filed a motion in which it requested leave to serve its Complaint

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and NOI on E-Shine and Fine Art. (See Motion Docket No. 1107-004 (May 2, 2018).). Fraen's motion was granted the same day. (Order No. 7 (May 2, 2018).).

On May 11, 2018 and May 29, 2018, Fraen submitted correspondence indicating that it had successfully served E-Shine and Fine Art with the Complaint and NOI. (See Doc. ID No. 644906 (May 11, 2018) (service on Fine Art); Doc. ID No. 646137 (May 29, 2018) (service on E-Shine).).

On May 9, 2018 and May 10, 2018, Chauvet, Elation, ADJ, and Golden Sea filed responses to the Complaint and NOI. (See Doc. ID Nos. 644752, 644757, 644756, and 644758, respectively.).

On May 31, 2018, Fraen moved to terminate the Investigation with respect to Chauvet based upon a settlement agreement. (See Motion Docket No. 1107-009 (May 31, 2018).). This motion was granted on June 13, 2018. Order No. 14 (Jun. 13, 2018). On July 9, 2018, the Commission terminated the Investigation with respect to Chauvet. (See Notice of a Commission Determination Not to Review an Initial Determination Granting a Motion to Terminate the Investigation as to Respondent Chauvet & Sons, LLC (Jul. 9, 2018).).

On June 5, 2018, Fraen moved to terminate the Investigation with respect to ADJ, Elation, and Golden Sea based upon settlement agreements. (See Motion Docket No. 1107-011 (Jun. 5, 2018). This motion was granted on July 12, 2018. Order No. 17 (Jul. 12, 2018).). On August 8, 2018, the Commission terminated the investigation with respect to ADJ, Elation and Golden Sea. See Notice of a Commission Determination Not to Review an Initial Determination Granting a Motion to Terminate the Investigation as to Respondents ADJ Products, LLC; Elation Lighting, Inc.; and Golden Sea Professional Equipment Co., Ltd. (Aug. 8, 2018).).

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On June 21, 2018, Fraen moved to terminate this Investigation with respect to Artfox. (See Motion Docket No. 1107-014 (Jun. 21, 2018)). Fraen's motion to terminate this Investigation with respect to Artfox was granted on July 20, 2018. (See Order No. 18 (Jul. 20, 2018)).

On August 14, 2018, the Commission terminated the Investigation with respect to Artfox. (See Notice of a Commission Determination Not to Review an Initial Determination Granting a Motion to Terminate the Investigation as to Respondents Artfox USA, Inc.; and Artfox Electronics Co., Ltd. (Aug. 14, 2018)).

None of the remaining Respondents, that is the Defaulting Respondents, entered appearances or filed responses to the Complaint and NOI. Accordingly, on June 29, 2018, Fraen filed a motion seeking an order to Show Cause why a default order should not be entered against the non-responsive Respondents. (Motion Docket No. 1107-015 (Jun. 29, 2018)).

On July 9, 2018, an Order to Show Cause issued to the remaining Respondents (i.e. the Defaulting Respondents) requesting that they explain why they should not be found to be in default. (See Order No. 16 (Jul. 9, 2018)).

None of the non-responsive Respondents filed responses to the Order to Show Cause. Accordingly, an initial determination issued on August 28, 2018 that found the non-responsive Respondents, that is the Defaulting Respondents, to be in default. (See Order No. 20 (Aug. 28, 2018)). On September 17, 2018, the Commission determined that Fine Art, E-Shine, Flystar, and Roccer ("Defaulting Respondents") are in default. (See Notice of Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default (Sept. 17, 2018)).

There are no remaining participating Respondents in this Investigation.

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Fraen seeks a general exclusion order (“GEO”) pursuant only with respect to claim 1 of the ’083 patent and claim 1 of the ’499 patent. It appears (and is accepted) that Fraen has withdrawn claims 3, 5-10, 12-16 of the ’083 patent, and claims 3-10 of the ’499 patent.

B. The Parties

1. Complainant

Complainant Fraen Corporation (“Fraen”) is a Massachusetts corporation that was founded in 1942 and that has a principal place of business in Reading, Massachusetts. (*See* Compl. at ¶ 9.). Fraen manufactures a variety of products, including clock hands, instrument pointers, metal and plastic components, and mechanical assemblies. (*See* Compl. at ¶ 11.). Additionally, Fraen designs, develops, and manufactures LED lighting optical solutions, including a color-mixing zoom optical system that led to the Asserted Patents. (*See* Compl. at ¶¶ 12-14.). Fraen is the owner by assignment of all right, title, and interest in the Asserted Patents. (*See* Compl. at ¶ 10; Exhs. 3, 4.).

The Declaration of Nicodemo Scarfo, Fraen’s Chief Executive Officer, provides a complete description of Fraen’s history, beginning in 1942 in Massachusetts, together with the history of Fraen’s investment in and growth of its lighting optics businesses, including that of its subsidiaries. (*See* Exh. C to MSD, Scarfo Decl., and exhibits thereto.). Mr. Scarfo’s Declaration is noteworthy for describing the color-mixing zoom optical system for which it is known and which is the subject of its patents. (*Id.*). Mr. Scarfo describes how it provides its optical system in custom forms to its customers, including Clay Paky, upon whom Fraen relies for its domestic industry. (*Id.* at ¶¶ 4-13.). Mr. Scarfo’s Declaration also contains extensive financial information in the form of several tables and explanations that describe Fraen’s Optics Group’s total domestic expenditures and revenues, and how Fraen uses a sales allocation method which

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Fraen applies, based upon Clay Paky's proportion of expenditures in relation to Fraen's Optics Group's sales, to support the economic prong of the domestic industry requirement. (*Id.* at ¶¶ 11-22.). The tables from the Scarfo Declaration which describe Fraen's investments are replicated in Fraen's MSD at pp. 20-24.

2. The Defaulting Respondents

Respondent Guangzhou Chaiyi Light Co., Ltd., d/b/a Fine Art ("Fine Art") is a corporation organized under the laws of China with a principal place of business in Guangzhou City, Guangdong Province, China. (*See* Compl. at ¶ 24.). Fine Art manufactures and sells LED lighting devices and related components. (*See Id.*). Fine Art imports the accused Fine 1519 Pixie LED products that it manufactures in China. Fine Art then sells those products for importation into the United States, and/or Fine Art sells those products in the United States after importation. (*See* Compl. at ¶¶ 67-70.).

Respondent Guangzhou Xuanyi Lighting Co., Ltd., d/b/a XY E-Shine ("E-Shine") is a corporation organized under the laws of China with a principal place of business in Guangzhou City, Guangdong Province, China. (*See* Compl. at ¶ 25.). E-Shine manufactures and sells LED lighting devices and related components. *Id.* E-Shine imports the accused Beehive K10 XY-1915ZN LED products that it manufactures in China. E-Shine then sells those products for importation into the United States, and/or E-Shine sells those products in the United States after importation. (*See* Compl. at ¶¶ 71-74.).

Respondent Guangzhou Flystar Lighting Technology Co., Ltd., ("Flystar") is a corporation organized under the laws of China having a principal place of business in Guangzhou City, Guangdong Province, China. (*See* Compl. at ¶ 26.). Flystar manufactures and sells LED lighting devices and related components. *Id.* Flystar imports the accused LED Moving

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Head Light products that it manufactures in China. Flystar then sells those products for importation into the United States, and/or Flystar sells those products in the United States after importation. (*See* Compl. at ¶¶ 75-78.).

Respondent Wuxi Changsheng Special Lighting Apparatus Factory d/b/a Roccer (“Roccer”) is a corporation organized under the laws of China with a principal place of business in Wuxi City, Jiangsu Province, China. (*See* Compl. at ¶ 27.). Roccer manufactures and sells LED lighting devices and related components. *Id.* Roccer imports the accused Bee Eye Beam LED products that it manufactures in China. Roccer then sells those products for importation into the United States, and/or Roccer sells those products in the United States after importation. (*See* Compl. at ¶¶ 79-82.).

IV. OVERVIEW OF THE TECHNOLOGY AND THE PATENTS AT ISSUE

A. The Asserted '083 and '499 Patents

The Asserted Patents pertain to light-mixing systems that can be used in entertainment light fixtures to channel light from various light sources through lenses. (*See* Compl. at ¶ 40.).

The '083 Patent, entitled “Light Mixing Lenses and Systems,” relates to lighting systems containing one or more lighting modules that receive light from one or more light sources. The '083 patent issued on August 9, 2016. It lists the following individuals as inventors: Marco Angelini; Claudia Bigliatti; and Ernesto Grossi. (*See id.*). The patent has 19 claims, of which only claim 1 remains at issue for purposes of Fraen’s motion. (*See* MSD at 14.) The asserted claim, claim 1, reads as follows:

Claim 1. An optical system, comprising a plurality of light modules disposed adjacent to one another, each of said light modules comprising: a light pipe for receiving light from a light source at a proximal end thereof and guiding the received light at least partially via reflections at its one or more peripheral surfaces to a distal end thereof providing an output surface through which light exits the light pipe, said light pipe having a non-rotationally symmetric cross-

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section, said output surface of the light pipe comprising surface texturing formed thereon, and

a lens for receiving at least a portion of the light exiting the light pipe to form an output beam,

wherein each of the light modules is rotated on its longitudinal axis relative to one or more of the other light modules, and

wherein the light modules are positioned and oriented relative to one another such that an output beam of each light module at least partially overlaps with an output beam of at least another light module over a target surface so as to provide an illumination pattern on that surface characterized by a light distribution exhibiting a reduced appearance of the cross-sectional shape of each of the light pipes and having a cross-sectional geometry different than a cross-sectional geometry of each of said light pipes.

(See '083 patent at cl. 1; *see also* Jiao Decl. ¶ 8.).

The '499 patent is titled "Light Mixing Lenses and Systems." (See '499 patent.). The '499 patent issued on September 26, 2017. It lists the following individuals as inventors: Marco Angelini; Claudia Bigliatti; and Ernesto Grossi. (See *id.*). The '499 patent has 10 claims, of which only claim 1 remains at issue for purposes of Fraen's MSD. (See MSD. at 15-16.) The asserted claim, claim 1, reads as follows:

Claim 1. An optical system, comprising

a plurality of light modules disposed adjacent to one another, each of said light modules comprising: a light pipe for receiving light from a light source at a proximal end thereof and guiding the received light at least partially via reflections at its one or more peripheral surfaces to a distal end thereof providing an output surface through which light exits the light pipe, said light pipe having a non-rotationally symmetric cross-section, and

a lens for receiving at least a portion of the light exiting the light pipe to form an output beam,

wherein each of the light modules is rotated on its longitudinal axis relative to one or more of the other light modules, and

wherein the light modules are positioned and oriented relative to one another such that an output beam of each light module at least partially overlaps with an output beam of at least another light module over a target surface so as to provide an illumination pattern on that

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surface characterized by a light distribution exhibiting a reduced appearance of the cross-sectional shape of each of the light pipes and having a cross-sectional geometry different than a cross-sectional geometry of each of said light pipes.

(See '499 patent at cl. 1.)

The '499 patent is a continuation of the '083 patent. These patents share much, if not all, of the same specification and are generally directed to lighting modules and systems to project light received from light emitting diodes ("LED") or other light sources onto a target surface in a uniform, patterned, or other controlled manner. (See generally '083 patent; see also '499 patent.). By using non-rotationally symmetric light tubes that are progressively rotated with respect to each other, a uniform output light distribution is achieved. (See '083 patent at 14:25-55; '499 patent at 14:41-15:2.). Depicted below as Figure 1 is an exemplary lighting module as taken from Figure 2 of the '083 patent:

Figure 1: Figure 2 Light Module from the '083 Module

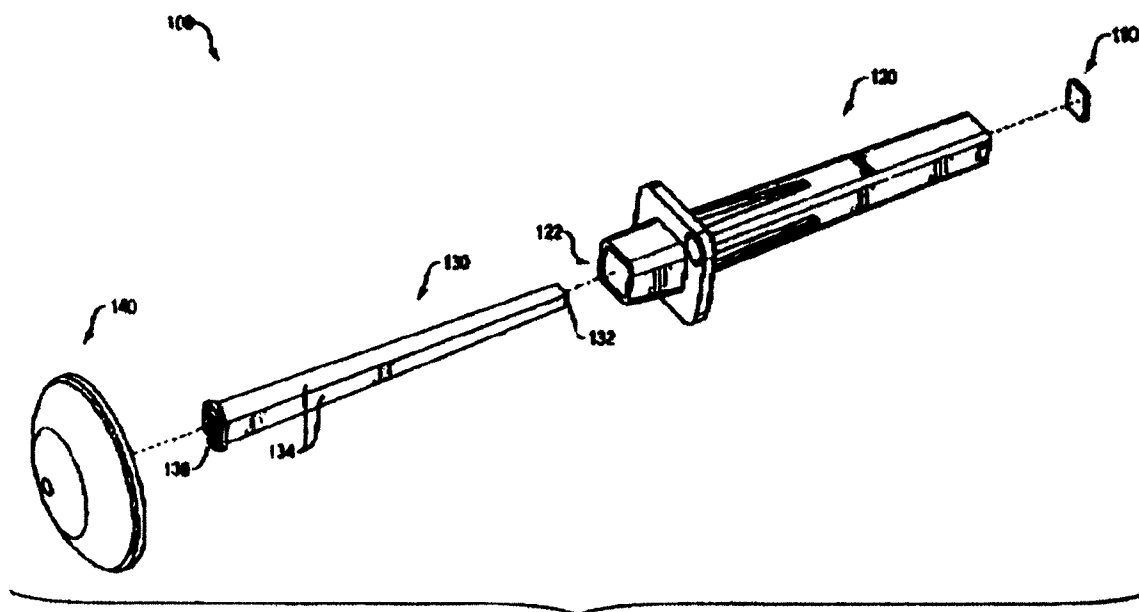


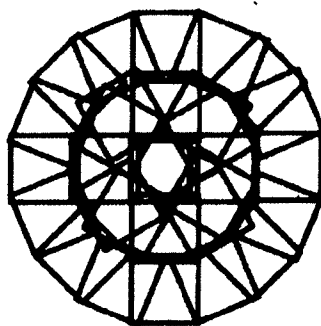
FIG. 2

(See '083 patent at Fig. 2.).

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By using non-rotationally symmetric light pipes, lighting modules can be rotated progressively with respect to one another, thereby reducing overlap between lighting modules to create uniform luminosity. (See '083 patent at 14:37-55.). Depicted below in Figure 2 is Figure 12a from the '083 patent, which shows how the lighting modules can be rotated to overlap and create uniform luminosity.

Figure 2: Overlap Pattern from Figure 12a of '083 Patent



(See '083 patent at Fig. 12A.).

B. Claim Construction

1. Legal Standard and Application

The first step in determining whether an accused product infringes is to construe the claims. *See, e.g., Hearing Components, Inc. v. Shure Inc.*, 600 F.3d 1357, 1370 (Fed. Cir. 2010). Only claim terms in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vanderlande Indus. Nederland BV v. Int'l Trade Comm.*, 366 F.3d 1311, 1323 (Fed. Cir. 2004); *Vivid Tech., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999). Claim construction begins with the language of the claims themselves. Claims should be given their ordinary and customary meaning as understood by a person of ordinary skill in the art, viewing the claim terms in the context of the entire patent. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (“*Phillips*”). In some cases, the plain and ordinary meaning of claim language is readily apparent and claim construction will involve little

more than “the application of the widely-accepted meaning of commonly understood words.” *Id.* at 1314. In other cases, claim terms have a specialized meaning and it is necessary to determine what a person of ordinary skill in the art would have understood disputed claim language to mean by analyzing “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, as well as the meaning of technical terms, and the state of the art.” *Id.* (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)).

The claims themselves provide substantial guidance about the meaning of disputed claim language. *Phillips*, 415 F.3d at 1314. “[T]he context in which a term is used in the asserted claim can be highly instructive.” *Id.* Similarly, other claims of the patent at issue, regardless of whether they have been asserted against respondents, may show the scope and meaning of disputed claim language. *Id.*

In cases in which the meaning of a disputed claim term in the context of the patent’s claims was uncertain, the specification was used as the “single best guide to the meaning of a disputed term.” *Id.* at 1321. Moreover, “[t]he construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Id.* at 1316. As a rule, however, the examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Id.* at 1323.

2. This Decision Adopts Fraen’s Proposed Construction for “Non-rotationally Symmetric,” Fraen’s Only Proposed Claim Term Proposed for Construction

The only claim term that Fraen has asked to be construed is the phrase “non-rotationally symmetric,” which is found in claim 1 of each of the Asserted Patents. (*See* MSD at 11.). Fraen contends that the remaining terms of the asserted claim are not particularly complex and should

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thus be given their plain and ordinary meaning. (*See* MSD at 11; *accord* Staff Resp. at 20.).

Both Staff and I agree with Fraen.

Fraen has proposed that “the term ‘non-rotationally symmetric’ in claim 1 of each of the Asserted Patents should be construed to encompass all non-circular cross-sections.” (MSD at 12.). To support its claim construction, Fraen looks to claim 19 of the ’083 patent, and to claim 10 of the ’499 patent. (*See id.* at 11-12). These two (2) claim limitations add specific language that the “non-rotationally symmetric cross-section is selected from the group consisting of a square, a rectangular, a hexagonal and an octagonal cross-section.” (Compl. Exh. 1 (’083 patent); Compl. Exh. 2 (’499 patent)). Moreover, as Fraen notes, column 7, lines 29-32 of the ’083 patent and column 7 and lines 39-41 of the ’499 patent disclose that “the cross-section of the light pipe 130 can be square, . . . elliptical, hexagonal, star-shaped, etc.” (Compl. Exhs. 1, 2.).

Therefore, as Fraen notes, the language of claim one of each of the Asserted Patents is “consistent with its usage in claim 19 of the ’083 Patent and claim 10 of the ’499 Patent and the disclosure in column 7, lines 29-32 of the ’083 Patent and in column 7 and lines 39-41 of the ’499 Patent.” (MSD at 11.). With that explanation, Staff also agrees as do I. (*See* Staff Resp. at 19.). Fraen’s claim construction is adopted. (*Accord*, Staff Resp. at 21, 22.).

Fraen contends that the remaining claim term limitations should be given their plain and ordinary meaning. (*See* MSD at 11.). Staff agrees that the plain and ordinary meaning of the remaining claim limitations appears to be consistent with the intrinsic record. (*Id.*(citing *Thorner v. Sony Computer Entertainment America, LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012); *see also Phillips* at 415 F.3d 1312-13 (Fed. Cir. 2005) (en banc) (“*Phillips*”); *Alloc, Inc., v. U.S.*

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International Trade Commission, 342 F.3d 1361, 1368 (Fed. Cir. 2003) (“*Alloc*”). That is the finding here.

V. LEGAL STANDARDS: SUMMARY DETERMINATION ON VIOLATION AND IMPORTATION

A. Summary Determination

1. Fraen Has Proven That It Is Entitled to Summary Determination Because There Are No Material Disputed Facts and Fraen Has Offered Affirmative Evidence of its Entitlement to Summary Determination

Summary determination under Commission Rule 210.18 is analogous to summary judgement under Federal Rule of Civil Procedure 56, and may be granted only where the evidence shows “that there is no genuine issue as to any material fact and that the moving party is entitled to summary determination as a matter of law.” *See* 19 C.F.R. § 210.18(b). “Any party may move with any necessary supporting affidavits for a summary determination in [its] favor upon all or any part of the issues to be determined in the investigation.” 19 C.F.R. § 210.18(a). The party moving for summary determination bears the initial burden of establishing that there is an absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary determination should therefore be granted when a hearing on the matter at issue would serve no useful purpose and the movant is entitled to judgement as a matter of law. *See Certain Recombinant Erythropoietin*, Inv. No. 337-TA-281, U.S.I.T.C. Pub. No. 2186, I.D. at 70 (Jan. 10, 1989).

When the Commission finds respondents to be in default just as the Commission have found Fine Art, E-Shine, Flystar and Roccer to be in default in this Investigation, the facts alleged in the complaint will be presumed true with respect to that respondent. *See* 19 C.F.R. § 210.16(c); *see also Certain Opaque Polymers*, Inv. No. 337-TA-883, Comm’n Op. at 18-19 (Apr. 30, 2015) (“*Opaque Polymers*”). A finding of default can lead to a substantive finding of a

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Section 337 violation, and issuance of a general exclusion order. *See Certain Collapsible Sockets For Mobile Electronic Devices and Components Thereof*, Inv. No. 337-TA-1056, Comm'n Op. at 1-2 (July 9, 2018) (issuing general exclusion order against thirteen defaulting respondents) ("*Collapsible Sockets*"); *Certain Arrowheads With Arcuate Blades and Components Thereof*, Inv. No. 337-TA-1033, Comm'n Op. at 2-3 (May 1, 2018) (issuing general exclusion order against five defaulting respondents) ("*Arrowheads*"); *Certain Mobile Device Holders and Components Thereof*, Inv. No. 337-TA-1028, Comm'n Op. at 3-6, 30 (Mar. 22, 2018) (issuing general exclusion order against twenty defaulting respondents) ("*Mobile Device Holders*").

In this case, it is undisputed that Defaulting Respondents Fine Art, E-Shine, Flystar and Roccer have each defaulted by failing to respond to the Complaint, and then by failing to respond to the Notice to Show Cause. (Order No. 16 (July 9, 2018)). The Commission found Respondents Fine Art, E-Shine, Flystar and Roccer to be in default. (Notice of Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default, Doc. ID No. 655883 (Sept. 17, 2018).). Accordingly, the facts alleged in the Complaint with respect to each of the Defaulting Respondents are presumed to be true. Moreover, Fraen has more than adequately supported with affirmative evidence: (1) its importation and patent infringement claims by each of the Defaulting Respondents; and (2) that it has satisfied the technical and economic prongs of the domestic industry requirement. Consequently, Fraen is entitled to Summary Determination on all aspects of its Complaint as a matter of law.

B. Legal Standard: Violation of Section 337 (a)(1)(B) and (a)(2)

1. Fraen Has Proven by A Preponderance of Evidence that It Has Satisfied the Requirements of Section 337 (a)(1)(B) and (a)(2)

To establish a violation of Section 337(a)(1)(B) and (a)(2), a complainant must prove: (1)

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the importation of goods into the United States, the sale for importation, or the sale within the United States after importation; (2) infringement of a valid and enforceable United States patent; and (3) a domestic industry in the United States. 19 U.S.C. §§ 1337(a)(1)(B), 1337(a)(2); *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1365 (Fed. Cir. 2003). As is reflected in each of the Sections below, Fraen has proven that it has met each of the requirements of 19 U.S.C.

§§ 1337(a)(1)(B) and 1337(a)(2).

VI. IMPORTATION

A. Legal Standard

A complainant “need only prove importation of a single accused product to satisfy the importation element.” *Certain Arrowheads With Arcuate Blades and Components Thereof*, Inv. No. 337-TA-1033, Order No. 9, I.D. at 11 (Nov. 8, 2017) (citing *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17 at 5 (Sept. 23, 2004) (unreviewed)); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, U.S.I.T.C. Pub. No. 1605, Comm’n Action & Order at 7-8 (Aug. 29, 1984) (finding importation requirement satisfied by the importation of single trolley wheel assembly of no commercial value). The importation requirement can be established through a motion for summary determination. *Certain Mobile Commc’ns & Computer Devices & Components Thereof*, Inv. No. 337-TA-704, Order No. 48, I.D. at 3 (Oct. 5, 2010) (granting summary determination).

B. Fraen Has Proven That Each of the Defaulting Respondents Has Imported into the United States and Sold Within the United States at Least One Accused Product

Fraen has provided persuasive and conclusive evidence that each of the Defaulting Respondents has imported or offered for sale after importation into the United States at least one LED lighting product that infringes the Asserted Patents. Fraen’s evidence is contained in the Appendix of Exhibits to the Declaration of Anthony Bolzan (“Bolzan Declaration”),” and in the

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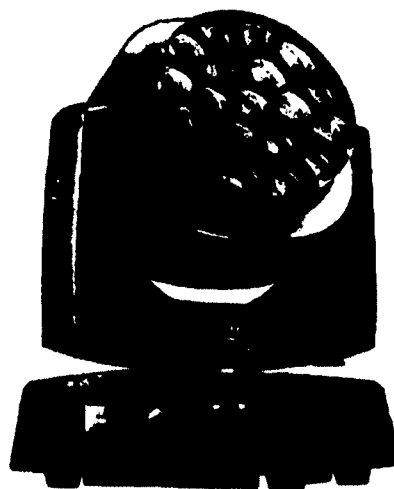
Bolzan Declaration submitted as Exhibit A to Fraen's MSD and dated September 14, 2018. Mr. Bolzan, Fraen's corporate counsel, describes in the Bolzan Declaration (Exh. A to the MSD, with attached exhibits thereto) how he purchased either directly from the Defaulting Respondents or their distributors on different websites, sample products that appeared to copy or mirror Fraen's LED products. (Exh. A to MSD.).

Fraen's proof of importation for each Defaulting Respondent is described below.

1. Fine Art Imports into and Sells in the United States at Least One Accused Product

Fraen has proven that at least one Fine Art product, that is the Fine 1519 Pixie, is imported into the United States and sold by Fine Art in the United States. Fraen accused the Fine 1519 Pixie of infringing claim 1 of the '083 and '499 patents. (See MSD at 9; Compl. at ¶¶ 67-70; Exh. B to MSD, Jiao Decl., at Exhs. 3A and 4A.). Fraen obtained a physical sample of the Fine 1519 Pixie directly from Fine Art. Exhibit 2 to the Bolzan Declaration is an invoice from Fine Art that reflects the sale of one Fine 1519 Pixie to Fraen's general counsel, Anthony Bolzan, for delivery to Fraen's Reading, Massachusetts facility. Exhibit 3 to the Bolzan Declaration is a photograph of a shipping label that reflects the importation of the Fine 1519 Pixie into the United States, which was shipped from a Fine Art facility in Guangzhou, China. Exhibit 3 also reflects that a Fine 1519 Pixie was delivered to Fraen's Reading, Massachusetts facility. Depicted below in Figure 3 is an image of Fine Art's Fine 1519 Pixie.

Figure 3: Image of Fine Art's Fine 1519 Pixie

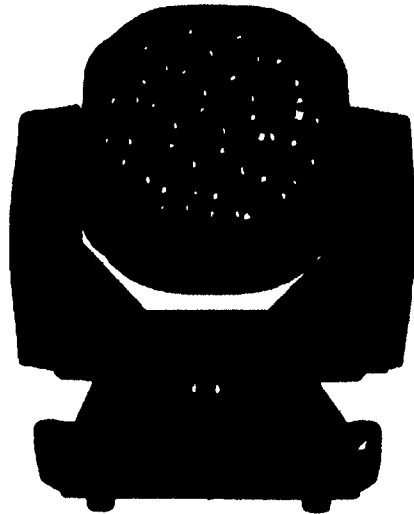


(See Exh. B to MSD, Jiao Decl., at Exhs. 3A, 4A.).

2. E-Shine Imports into and Sells in the United States at Least One Accused Product

Fraen has proven that at least one E-Shine product, that is E-Shine's Beehive K10 XY-1915ZN ("Beehive K10"), is imported into the United States and is sold by E-Shine in the United States. Fraen accused the Beehive K10 of infringing claim 1 of the '083 and '499 patents. (See MSD at 9; Compl. at ¶¶ 71-74; MSD Exh. B, Jiao Decl., at Exhs. 3B, 4B.). Fraen obtained one physical sample of the Beehive K10 directly from E-Shine. Exhibit 4 to the Bolzan Declaration is an invoice from E-Shine that reflects the sale of one Beehive K10 to Fraen's general counsel, Anthony Bolzan, for delivery to Fraen's Reading, Massachusetts facility. Exhibit 5 to the Bolzan Declaration is a picture taken of a shipping label that shows the importation of the Beehive K10 into the United States, which was shipped from a facility in Huizhou, China and delivered to Fraen's Reading, Massachusetts facility. Depicted below in Figure 4 is an image of E-Shine's Beehive K10.

Figure 4: Image of E-Shine's Beehive K10



(See Exh. B. to MSD, Jiao Decl., at Exhs. 3B, 4B.).

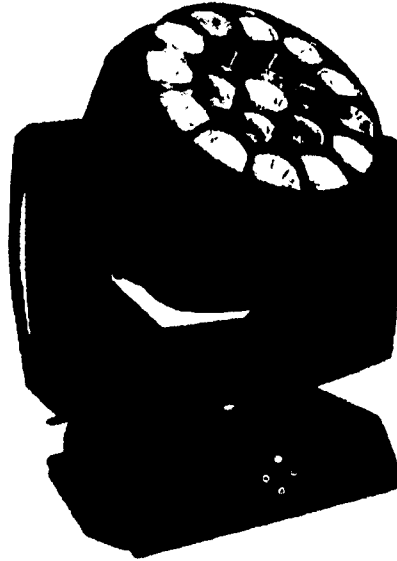
3. Flystar Imports into and Sells in the United States at Least One Accused Product

Fraen has proven that at least one Flystar product, that is Flystar's "LED Moving Head Light," is imported into the United States and is sold in the United States by Flystar. Fraen accused Flystar's LED Moving Head Light of infringing claim 1 of the '083 and '499 patents. (See MSD at 9-10; Compl. at ¶¶ 75-78; MSD Exh. B, Jiao Decl., at Exhs. 3C, 4C.). Fraen obtained one physical sample of the LED Moving Head Light directly from Flystar. Exhibit 6 to the Bolzan Declaration is an invoice from Flystar that reflects the sale of one LED Moving Head Light to Fraen, for delivery to Fraen's Reading, Massachusetts facility. Similarly, Exhibit 7 to the Bolzan Declaration is a PayPal receipt for Fraen general counsel, Anthony Bolzan's payment for the LED Moving Head Light and for shipment of the same to Fraen's Reading, Massachusetts facility. Exhibit 8 to the Bolzan Declaration is a photograph of a waybill that reflects the importation of the LED Moving Head Light into the United States. That same Exhibit 8 reflects that Flystar's LED Moving Headlight was shipped from a facility in Hong

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Kong to Fraen's Reading Massachusetts facility. Depicted below in Figure 5 is an image of Flystar's LED Moving Head Light.

Figure 5: Image of Flystar's LED Moving Head Light



(See MSD Exh. B, Jiao Decl., at Exhs. 3C, 4C.).

4. Roccer Imports into and Sells in the United States at Least One Accused Product

Fraen has proven that at least one Roccer product, that is Roccer's "19 Led 15w 4in1 RGBW Bee Eye Beam Zoom Head Moving Light Disco Stage Showlight" ("Bee Eye Beam"), is imported into the United States and is sold by Roccer in the United States. Fraen accused at least Roccer's Bee Eye Beam of infringing claim 1 of the '499 patent. (See MSD at 10; Compl. at ¶¶ 79-82; MSD Exh. B, Jiao Decl., at 4D.). Fraen obtained one physical sample of the Bee Eye Beam directly from Roccer. Exhibit 9 to the Bolzan Declaration is an invoice from Amazon.com that reflects the sale of the Bee Eye Beam within the United States for delivery to Fraen's Reading, Massachusetts facility. Exhibit 10 to the Bolzan Declaration is a photograph of a shipping label that reflects the importation of the Bee Eye Beam into the United States. The

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sample Bee Eye Beam was shipped from Wuxi, China and delivered to Fraen's Reading, Massachusetts facility. Exhibit 11 to the Bolzan Declaration is a photograph of a label affixed to the bottom the Bee Eye Beam, which shows that it was "Made in China." Depicted below in Exhibit 6 is an image of Roccer's Bee Eye Beam.

Figure 6: Image of Roccer's Bee Eye Beam



(See Exh. B to MSD, Jiao Decl., at 4D.).

VII. INFRINGEMENT

A. Valid Patents: Literal Infringement Legal Standard

The '083 and '499 patents are valid and enforceable. *See* 35 U.S.C. § 282; *Certain Pumping Bras*, Inv. No. 337-TA-988, Order No. 11, I.D. at 6-7 (Oct. 31, 2016) (recognizing presumption of validity and, where no respondent participated in the investigation to raise a challenge to patent validity, finding the asserted patent valid and enforceable) ("*Pumping Bras*"); *Certain Devices for Connecting Computers Via Tel. Lines*, Inv. No. 337-TA-360, U.S.I.T.C. Pub. 2843, I.D. at 2 (May 24, 1994) (explaining that a U.S. patent is presumed to be valid); *see also Certain Compact Multipurpose Tools*, Inv. No. 337-TA-416, U.S.I.T.C. Pub. No. 3239, Final

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I.D./R.D. at 7-8 (May 27, 1999) (finding that in the absence of a challenge to the validity of a patent, the presumption of validity is deemed conclusive).

Determination of infringement is a two-step process which consists of determining the scope of the asserted claim (claim construction) and then comparing the accused product...to the claim as construed.” *Certain Sucralose Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof*, Inv. No. 337-TA-604, Comm’n Op. at 36 (U.S.I.T.C., April 28, 2009)(citing *Litton Sys., Inc. v. Honeywell, Inc.*, 140 F.3d 1449, 1454 (Fed Cir. 1998)).

An accused device literally infringes a patent claim if it contains each limitation recited in the claim exactly. *Litton*, 140 F.3d at 1454. Each patent claim element or limitation is considered material and essential. *London v. Carson Pirie Scott & Co.*, 946 F.2d 1534, 1538 (Fed. Cir. 1991). In a Section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims by a preponderance of the evidence. *Enercon GmbH v. Int’l Trade Comm’n*, 151 F.3d 1376, 1384 (Fed. Cir. 1998). If any claim limitation is absent, there is no literal infringement of that claim as a matter of law. *Bayer AG v. Elan Pharm. Research Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000).

B. Each Accused Product Literally Infringes the ’083 and/or the ’499 Patents

Fraen has proven by a preponderance of evidence that each of the Accused Products infringes claim 1 of either or both the ’083 and ’499 patents. (See MSD at 13-15.).

To support its allegations of infringement, Fraen submitted the Declaration of Dr. Jianzhong Jiao in which Dr. Jiao detailed his infringement opinions in claim charts based upon his analyses of each of the Accused Products. (See Exh. B to MSD, Jiao Decl. and exhibits attached thereto.). Dr. Jiao completed his Ph.D. in Electrical Engineering at Northwestern University in 1989. (See Exh. B to MSD, Jiao Decl., Jiao Exh. 1.). I find him to be an expert in

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the field of lighting, LEDs and light sources, and optical and illumination engineering. (See MSD. Exh. B, Jiao Decl., Jiao Exh. 1; see accord Staff Resp. at 23.).

Dr. Jiao examined each Accused Product sample that Mr. Bolzan purchased either directly from the Defaulting Respondents and/or through their purported websites. Dr. Jiao also prepared detailed claim charts that demonstrate how each Accused Product meets each limitation of claim 1 of the '083 and/or the '499 patents. (See MSD Exh. B., Jiao Decl., at ¶ 9; Jiao Exhs. 3A-3C.). Fraen and Staff have provided helpful tables, replicated below, that summarize the results of Dr. Jiao's analyses and the exhibits in which his analyses may be found.

Table 1: Summary of Dr. Jiao's Analysis of Infringement of the '083 Patent

Claim Chart	Accused Product	Respondent	Dr. Jiao's Opinion
Jiao Exh. 3A	Fine 1519 Pixie	Fine Art	Infringes claim 1 of the '083 patent
Jiao Exh. 3B	Beehive K10 XY1915ZN LED	E-Shine	Infringes claim 1 of the '083 patent
Jiao Exh. 3C	LED Moving Head Light	Flystar	Infringes claim 1 of the '83 patent

(See MSD Exh. B, Jiao Decl., at ¶ 9; MSD at 11; Staff Resp. at 23.).

Fraen has provided the same type of evidence through Dr. Jiao's claim charts and analyses to prove that the Accused Products infringe claim 1 of the '499 patent. Table 2, again borrowed from Staff's presentation, reflects the summary of Dr. Jiao's opinion with respect to the Defaulting Respondents' infringement of the '499 patent.

Table 2: Summary of Dr. Jiao's Analysis of Infringement of the '499 Patent

Claim Chart	Accused Product	Respondent	Jiao Opinion
Jiao Exh. 4A	Fine 1519 Pixie	Fine Art	Infringes claim 1 of the '499 patent
Jiao Exh. 4B	Beehive K10 XY1915ZN LED	E-Shine	Infringes claim 1 of the '499 patent
Jiao Exh. 4C	LED Moving Head Light	Flystar	Infringes claim 1 of the '499 patent

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Jiao Exh. 4D	19 Led 15w 4in1 RGBW Bee Eye Beam Zoom Head Moving Light Disco Stage Showlight	Roccer	Infringes claim 1 of the '499 patent
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(See Exh. B to MSD, Jiao Decl. and exhibits identified as attached thereto; MSD at 11; *see also* Staff Resp. at 25.).

Based upon Dr. Jiao's careful and thorough Declaration, it is a finding of this decision that Fraen has met its burden of proof, and that Fraen is entitled to a summary determination that Fine Art, E-Shine and Flystar's Accused Products each infringe claim 1 of the '083 and the '499 patents, as reflected in Tables 1 and 2, and that Roccer's Accused Products infringe claim 1 of the '499 patent. (See Exh. B to Jiao Decl., and exhibits attached thereto.).

VIII. DOMESTIC INDUSTRY REQUIREMENTS

A. Technical Prong Legal Standard

A complainant in a patent-based Section 337 investigation must demonstrate that it is practicing or exploiting the patents at issue. *See* 19 U.S.C. § 1337(a)(2) and (3); *Certain Microsphere Adhesives, Process for Making Same, and Prods. Containing Same, Including SelfStick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 8, Pub. No. 2949 (U.S.I.T.C. Jan. 16, 1996) ("*Microsphere Adhesives*"); *Certain Silicon-on-Insulator Wafers*, Inv. No. 337TA-1025, Order No. 13 at 14-15 (Feb. 8, 2017). The domestic industry requirement has been divided into: (i) a technical prong, and (ii) an economic prong. *Certain Video Game Sys. & Controllers*, Inv. No. 337-TA-743, Comm'n Op. at 6 (Apr. 14, 2011).

"In order to satisfy the technical prong of the domestic industry requirement, it is sufficient to show that the domestic industry practices any claim of that patent, not necessarily

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an asserted claim of that patent.” *Certain Ammonium Octamolybdate Isomers* (“*Certain Isomers*”), Inv. No. 337-TA-477, Comm’n Op. at 55 (U.S.I.T.C. Jan. 5, 2004).

The test for claim coverage for the purposes of the technical prong of the domestic industry requirement is the same as that for infringement. *Certain Doxorubicin and Preparations Containing Same*, Inv. No. 337-TA-300, Initial Determination at 109, 1990 WL 710463 (U.S.I.T.C. May 21, 1990), *aff’d*, Views of the Commission at 22 (October 31, 1990) (“*Doxorubicin*”). “First, the claims of the patent are construed. Second, the complainant’s article or process is examined to determine whether it falls within the scope of the claims.” *Id.* The technical prong of the domestic industry can be satisfied either literally or under the doctrine of equivalents. *Certain Dynamic Sequential Gradient Devices and Component Parts Thereof*, Inv. No. 337-TA-335, Initial Determination at 44, Pub. No. 2575 (U.S.I.T.C. Nov. 1992).

1. Fraen Has Satisfied the Technical Prong of the Domestic Industry Requirement

Fraen has relied upon its customer, Clay Paky, to satisfy the technical prong of the domestic industry requirement. (See MSD at 18, 19.). Clay Paky’s K-Eye and B-Eye lines of LED lighting fixtures are the Domestic Industry Products upon which Fraen relies.⁵ Clay Paky incorporates Fraen’s color-mixing zoom optical system, which consist of custom-made light pipes, holders, and lenses, into its K-Eye and B-Eye lines of LED light fixtures. (*Id.*). Apparently, Clay Paky’s K-Eye fixtures are the newer versions of the B-Eye fixtures. (See *id.*; see also Exh. A to MSD, Bolzan ¶¶ 29-30.). According to Fraen, both lines of Clay Paky’s LED

⁵ For its domestic industry, Fraen chose not to rely upon two (2) of its other customers, Robe and DTS, for whom it makes custom optics for incorporation into light fixtures protected by the Asserted Patents. (Scarfo Decl. ¶ 10.). These light fixtures are also sold in the United States and could be considered domestic industry products. However, in order to streamline the domestic industry analysis for purposes of this Investigation, Fraen chose not to include their products in its analysis. (See MSD at 18 n.6.).

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light fixtures, which are sold in the United States, practice at least one claim from each of the Asserted Patents. (See Exh. C to MSD, Scarfo Decl. ¶ 10-11; Exh. to MSD, Bolzan Decl. ¶¶ 28, 31; Exh. B to the MSD, Jiao Decl. ¶¶ 12-14; see also n.3, *supra.*).

In support of its MSD, Fraen has provided affirmative evidence that Clay Paky's K-Eye and B-Eye lighting fixtures practice the Asserted Patents as is described in the Jiao Declaration. Dr. Jiao conducted a thorough examination of Clay Paky's K-Eye K20 on August 22, 2018 and concluded that the Domestic Industry Products practice claim 1 of the Asserted Patents. (See Jiao Decl. ¶¶ 12-14.). Dr. Jiao's detailed analyses of the Domestic Industry Products are set forth in the claim charts attached as Exhibits 5-6 to the Jiao Declaration. Additionally, Dr. Jiao examined product literature for the Clay Paky B-series domestic industry products. (See MSD Exh. B., Jiao Decl., at ¶ 12.).

Because there are no material disputed facts, and Fraen has supplied compelling support that it practices the Asserted Patents in the United States through its customer/licensee Clay Paky, it is a finding of this decision that Fraen has satisfied the technical prong of the domestic industry requirement. (*Accord*, Staff Resp. at 28.).

B. Economic Prong Legal Standard

The Commission may only find a violation of Section 337 "if an industry in the United States relating to the articles protected by the patent . . . exists or is in the process of being established." 19 U.S.C. § 1337(a)(2). Typically, a complainant must show that a domestic industry existed at the time a complaint was filed. See *Motiva LLC v. Int'l Trade Comm'n*, 716 F.3d 596, 601 n.6 (Fed. Cir. 2013).

The legislative history of 19 U.S.C. § 1337(a)(2) and Commission precedent provide that an industry is 'in the process of being established' if: (i) the patent owner "can demonstrate that

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he is taking the necessary *tangible steps* to establish such an industry in the United States”; and (ii) there is “a *significant likelihood* that the industry requirement will be satisfied in the future.” H. Rep. 100-40 at 157; S. Rep. 100-71 at 130 (emphasis added); *see, e.g., Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. (Apr. 24, 2008) at 13 (quoting same) (“*Stringed Musical Instruments*”). 19 U.S.C. § 1337(a)(3) sets forth the following economic criteria for determining the existence of a domestic industry in such investigations that a complainant must satisfy: (3) For purposes of paragraph (2), and industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned; significant investment in plant and equipment; significant employment of labor, or capital; or substantial investment in its exploitation, including engineering, research and development, or licensing.

With respect only to the subsections of 19 U.S.C. § 1337(a)(3), because the economic requirement sub-prong criteria are listed in the disjunctive, satisfaction of any one of them will be enough to meet the economic prong of the domestic industry requirement. *Certain Integrated Circuits, Chipsets and Prods. Containing Same* (“*Certain Integrated Circuits*”), Inv. No. 337-TA-428, Order No. 10, Initial Determination (unreviewed) (May 4, 2000).

However, under Section 337(a)(3), a complainant must substantiate the nature and the significance of its activities with respect to the articles protected by the patent at issue. *Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Comm’n Op. at 30 (Feb. 17, 2011). In explaining this, the Commission has also interpreted Sections 337(a)(3)(A) and (B) to relate to investments in plant and equipment and labor and capital “with respect to the products presented by the patent.” *Certain Ground Faults Interrupters and Prods.*

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Containing Same, Inv. No. 337-TA-739, 2012 WL 2394435 at *50, Comm'n Op. at 78 (June 8, 2012) (quoting U.S.C. §§ 1337(a)(3)(7)). It is not enough for the “substantial investment” under paragraph (C) to merely relate to articles protected by the asserted patents. Rather, “the complainant must establish that there is a nexus between the claimed investment and asserted patent regardless of whether the domestic- industry showing is based on licensing, engineering, research and development.” *Certain Integrated Circuit Chips & Prods. Containing* (“*Certain Integrated Circuit Chips*”), Inv. No. 337-TA-845, Final Initial Determination, 2013 WL 3463385 at *14 (June 7, 2013).

To determine whether investments are “significant” or “substantial,” the actual amounts of a complainant’s investments or a quantitative analysis must be performed. *Lelo Inc. v. Int’l Trade Comm’n*, 786 F.3d 879, 883-84 (Fed. Cir. 2015) (“*Lelo*”). Even after *Lelo, supra*, which requires some quantification of a complainant’s investments, there is still no bright line as to a threshold amount that might satisfy an economic industry requirement. It is the complainant’s burden to show by a preponderance of evidence that each prong of the domestic industry requirement is satisfied. *Certain Prods. Containing Interactive Program Guide and Parental Control Tech.*, Inv. No. 337-TA-845, Final Initial Determination, 2013 WL 3463385 at*14 (June 7, 2013.).

Moreover, the Commission makes its determination by “an examination of the facts in each investigation, the article of commerce, and the realities of the marketplace.” *Certain Male Prophylactic Devices*, Comm’n Op. at 39) (quoting *Certain Double Sided-Floppy Disk Drives and Components Thereof*, Inv. No. 337-TA-215, Comm’n Op. at 17, USITC Pub. 1859 (May 1986).).

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1. Fraen Has Satisfied the Economic Prong of the Domestic Industry Requirement by Using a Sales Allocation Method

Fraen has satisfied the economic prong under each sub-prong of the domestic industry requirement. There are no material disputes of fact that would prevent summary determination on this issue. (*Accord*, Staff Resp. at 28.). In support of its economic domestic industry contentions, Fraen has provided and relied upon a declaration from its Chief Executive Officer, Nicodemo Scarfo. (*See* Exh. C to MSD, Scarfo Decl. and exhibits attached thereto; *see also*, n.3, *supra.*).

In order to allocate Fraen's domestic investments related to the design, development, and manufacture of the color mixing zoom optics incorporated into the Domestic Industry Products, that is, Clay Paky's K-Eye and B-Eye LED lighting fixtures, Fraen determined the percentage of Fraen's own Optics Group's yearly revenue attributable to its sales of custom optical components to Clay Paky beginning in 2015 through Q1 of 2018. (*See* MSD at 19.).

As Fraen notes, the Commission routinely accepts a sales allocation method for expenditures that are allocated to each of the sub-prongs of the domestic industry requirement. (*Id.* (citing *Stringed Musical Instruments*, Inv. No. 337-TA-586, Comm'n Op. *Certain Stringed Musical Instruments & Components Thereof*, Inv. No. 337-TA-586, Comm'n Op. (May 16, 2008); *Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof*, Inv. No. 337-TA-965, I.D., Order No. 10 at 13 (Mar. 22, 2016) ("reasonable allocations . . . will be sufficient") (citations omitted).


Fraen's Optics Group, upon which it relies for some of its domestic industry expenditures, operates out of Fraen's Reading, Massachusetts, facility ("Reading facility"). That is the facility in which Fraen conducts its manufacturing, and research and development for its color-mixing zoom optics for use in Fraen's domestic industry products. (*See* Exh. C to MSD,

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Scarfo Decl., at ¶ 12.). Fraen conducts 100% of its manufacturing of its color-mixing optics and assemblies in the United States, and primarily out of its Reading facility. (MSD at 17; *see also* Exh. C to MSD, Scarfo Decl.). Fraen purchased its Reading facility in 1987. (Exh. C to MSD, Scarfo Decl., at ¶ 12.). The Reading facility has been in continuous use ever since. (*Id.*). Since 2013, 100% of Fraen's color-mixing optics and optics assemblies have been manufactured in the United States at Fraen's Reading facility. (*Id.* at ¶ 13.). Since 2015, all design and development related to Fraen's color-mixing zoom optical system has been conducted at Fraen's Reading facility. (*Id.*).

Fraen has allocated its expenditures as reflected, below, in Table 3.

Table 3. Fraen's Allocation of Its Domestic Industry as a Percentage of All Optics Revenue



(*See* Staff Resp. at 29 (citing Scarfo Decl. at ¶ 14).).

2. Fraen Has Made Significant Investments in Plant and Equipment under Section 337(a)(3)(A)

Fraen contends, and this decision agrees, that Fraen has satisfied the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A) based upon its significant investment in equipment. (*See* MSD at 24-26.).

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From 2015 through the first quarter of 2018, Fraen invested a total of ██████████ that consists of ██████████ in capitalized equipment and ██████████ in injection molding tooling that Fraen uses in the design and manufacture of its domestic industry products. (*See id.*; Exh. C to MSD, Scarfo Decl., at ¶ 15, Table 2.). Fraen contends that while this equipment should be attributed in its entirety to domestic industry products, Fraen concedes that some of these is also used for purposes other than the domestic industry products. (*See* MSD. at 24-25.). However, Fraen argues that the entire amount should be attributable to its domestic industry because Fraen would have had to invest this entire amount regardless of whether the equipment was used for other purposes. (*See* MSD at 25 (*citing Certain Magnetic Data Storage Tapes and Cartridges Containing the Same*, Inv. No. 337-TA1012, Comm'n Op. at 114-15 (Apr. 2, 2018) (“[T]he Final ID reasonably concluded that the equipment in question is used to assemble the [DI] products even though they are also used for [non-DI] products.”)). Because of some of the vagueness in Fraen’s explanation with respect to its total expenditures, Staff contends that it is unclear whether the entirety of Fraen’s ██████████ investment in equipment should be attribute to Fraen’s domestic industry. (Staff Resp. at 30.).

Alternatively, Fraen contends that its investments may be properly attributed to its domestic industry based upon its sales-based allocations reflected in Table 3. (*See* MSD at 22-26.).⁶ According to Fraen, its sales-based allocation reflects some ██████████ attributable to its color-mixing zoom optics and tooling costs from 2015 until the first quarter of 2018 and in tooling costs. (MSD at 24.).

Staff notes, and seems to accept, that if Fraen is credited with the totality of its expenditures, ██████████ in equipment expenditures from 2015 through Q12018, that figure

⁶ Fraen has replicated in its MSD virtually all of Fraen’s expenditure/investments-related tables that are contained in the Scarfo Declaration.

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represents an investment of more than [REDACTED] of Fraen's total optics-related revenue that is earned from its domestic industry products. (See MSD at 26.).

As with Staff, I find that Fraen's investment in equipment is significant in the context of Fraen's business. (See *id.*). Fraen argues that it would be unable to manufacture its color-mixing zoom optics systems if those investments had not been made. Staff notes, however, that if a sales-based allocation is used, Fraen's investment in equipment is only [REDACTED]. (Staff Resp. at 30.). However, as Staff argues, even the reduced amount is significant because it represents [REDACTED] of Fraen's domestic industry product sales revenue over the relevant period. (See *id.*). That is the finding here as well, i.e. that Fraen's domestic investment in equipment is significant.

3. Fraen Has Made Significant Investments in Labor and Capital under Section 337(a)(3)(B)

The evidence supports a finding that Fraen has made significant employment of labor and capital related to its domestic industry products. (See MSD at 26-29; *accord* Staff Resp. at 31.).

From 2015 through the first quarter of 2018, Fraen has averaged more than 100 employees at its Reading, Massachusetts, facility. (MSD at 26; Exh. C to MSD, Scarfo Decl., at ¶ 20.). These Fraen employees work in such jobs as injection molding, toolmaking, product assembly and other support staff. (*Id.*). From 2015 through the first quarter of 2018, Fraen invested approximately [REDACTED] in payroll expenses, [REDACTED] in capitalized equipment expenses, and [REDACTED] in raw material costs attributable to its domestic industry products. (MSD at 26-27; Exh. C to MSD, Scarfo Decl., at ¶¶ 16, 20.).

Fraen contends that its investments are significant because they have steadily increased during the past three (3) years. (MSD at 27.). Fraen's investments represent a reinvestment of approximately [REDACTED] of the revenues generated from sales of color-mixing zoom optics to Clay Paky, and [REDACTED] of the Optics Group's total revenue over that time period. (See MSD at 27.).

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There are no disputes with respect to the significance of Fraen's labor expenses, and therefore, it is entitled to summary determination. (*Accord*, Staff Resp. at 31.). It is a finding of this decision that Fraen's domestic investment in labor and capital related to the Domestic Industry Products is significant.

4. Fraen Has Made Substantial Investments in Research and Development Under Section 337(a)(3)(C)

With respect to the third prong of the economic domestic industry requirement, research and development ("R & D"), evidence reflects that Fraen has made a substantial investment in its engineering, research, and development directed to its domestic industry products. (*See* MSD at 29-30.). Fraen describes itself as an innovator in the development of optics for the LED lighting industry since it entered that industry in 2003. (*See* Exh. C to MSD, Scarfo Decl. ¶ 6-7.)

Fraen states that, from 2015 through the first quarter of 2018, its payroll expenses for its design and application engineers totaled about [REDACTED]. (*See* MSD at 30.). Using the allocations provided in Table 3, Fraen attributes [REDACTED] of its expenditures to activities related to the color-mixing zoom optics that are described by the asserted patents and used in the domestic industry products. (*See* MSD at 30; Exh. C to MSD, Scarfo Decl., at ¶ 19.). Fraen argues that these investments are substantial because they have increased year-over-year for the past three (3) years. *See id.* In the context of the Fraen's business, both Staff and I agree. (*See* Staff Resp. at 32.). Fraen's [REDACTED] investment represents approximately [REDACTED] of the total sales to Clay Paky for its domestic industry products. (*See* Exh. C to MSD, Scarfo Decl., at Table 1.). In this context, it is a finding of this decision that Fraen's investments are substantial. There is no dispute with respect to any material fact that Fraen satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(C) as well as under 19 U.S.C. § 1337(a)(3)(A) and 1337(a)(3)(B).

IX. REMEDY AND BONDING

A. Legal Standard

Pursuant to Commission Rule 210.42, an administrative law judge must issue a recommended determination on: (1) an appropriate remedy if the Commission finds a violation of Section 337; and (2) an amount, if any, of the bond to be posted. 19 C.F.R. § 210.42(a)(1)(ii). When a Section 337 violation has been found, as here, “the Commission has the authority to enter an exclusion order, a cease and desist order, or both.” *Certain Flash Memory Circuits and Prods. Containing the Same*, Inv. No. 337-TA-382, Comm’n Opinion on the Issues under Review and on Remedy, the Public Interest and Bonding, at 26 (June 9, 1997). The Commission has broad discretion in selecting the form, scope, and extent of the remedy in a section 337 proceeding. *Viscofan, S.A. v. United States Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

Fraen has requested that a general exclusion order (“GEO”), or alternatively, a LEO, be issued against the Defaulting Respondents with respect to claim 1 of the '083 patent and claim 1 of the '499 patent. (*See* MSD at 31.). Fraen also requests that bond be set at 100% of entered value for all infringing goods entered during the Presidential review period. (*Id.*). Fraen did not request a cease and desist order.

B. Fraen Is Entitled to a General Exclusion Order (“GEO”)

The Commission may issue a GEO to all infringing products, regardless of source, instead of LEO directed only to persons determined to be in violation of Section 337, when:

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

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19 U.S.C. § 1337(d)(2) (emphasis added); accord 19 C.F.R. § 210.50(c); *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340 (Fed. Cir. 2008); see also *Vastfame Camera, Ltd. v. Int'l Trade Comm'n*, 386 F.3d 1108, 1113 (Fed. Cir. 2004).

Additionally, Fraen argues that a GEO should issue under Section 337(g)(2). Section 337(g)(2) provides that a general exclusion order may be issued when:

- (A) no person appears to protest an investigation concerning a violation of the provisions of this section,
- (B) such a violation is established by substantial, reliable, and probative evidence, and,
- (C) the requirements of [Section 337(d)(2)] are met.

(See MSD at 30 (citing 19 U.S.C. § 1337(g)(2)(A)-(C)).

In this case, Fraen has made supportable and persuasive arguments that all requirements of Section 337(d)(2) and (g)(2) have been satisfied and that a GEO is proper under current Commission interpretations of the cited statutory provisions. Staff also agrees that in this case, the Commission may issue a GEO when either one of the statutory provisions, Section 337(d)(2)(A) or 337(d)(2)(B), is met. See *Certain Cigarettes & Packaging Thereof* ("Cigarette Wrappers"), Inv. No. 337-TA-643, Comm'n Op. (Oct. 1, 2009). See Staff Resp. at 33, 34.

Fraen argues that the Defaulting Respondents have not entered an appearance in this case, or otherwise responded to the Complaint and Notice of Investigation. (MSD at 30.). Fraen is equally correct that the Defaulting Respondents have been found to be in default. (*Id.* (citing Order No. 20.)). Moreover, the requirement that a violation be established by substantial, reliable, and probative evidence is supported by both the granting of Fraen's motion for summary determination on the issues of domestic industry and violation as well as through the evidence provided below. (*Id.* (citing *Certain Sildenafil or Pharmaceutically Acceptable Salt Thereof, Such as Sildenafil Citrate, and Prods. Containing Same*, Inv. No. 337-TA-489, Comm'n Op. at 4-5 (July 23, 2004.)). With each of these arguments I agree. (See MSD at 30,

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31; *accord*, Staff Resp. at 33.)). I find that Fraen has satisfied the requirements for, and is entitled to, a GEO.

1. Fraen Has Provided Evidence of Widespread Violation of Its Patents, Including from Unnamed Respondents

Fraen has presented uncontroverted and extensive evidence through its foray across the internet of a substantial number of *additional* instances of unlawful sales of infringing products on online marketplaces such as Alibaba, Amazon and eBay. (*See* Exh. D to MSD, Grzenda Decl., at ¶¶ 12-20; *see* Exh. E to MSD, Holzen Decl., at ¶¶ 8-23; *see also* n.3, *supra*.). Moreover, Fraen has examined the products that appear to be copying and misusing its patents at different points in time.

The scope of the counterfeiting or coping of what appear to be infringing products is set forth, *inter alia*, in Exhibit 22 to Mr. Grzenda's Declaration. That is only one of the many documents that suggest just how wide-spread counterfeiting appears to be, and how open and obvious. The exhibits to Mr. Grzenda's Declaration are sobering for the scope of the counterfeiting that appears to crop up through even minimal word or picture searches on internet sites. (*See* fn. 3(4), *supra*.).

By way of one example, in his Declaration, Mr. Grzenda describes a January 10, 2018 search of Alibaba.com in which he identified some 1,635 entries (including duplicates) of companies offering products like Fraen's domestic industry products by companies that have previously exported to customers in the United States. (*See* Staff Resp. at 35 (citing Exh. D to MSD, Grzenda Decl., at ¶ 12, Grzenda Exh. 9)). Fraen purchased three (3) products from websites featuring Defaulting Respondents' products and examined them. (*See* Staff Resp., *id.* (citing Exh. D to MSD, Grzenda Decl., at ¶ 13.)). Fraen has proven that those three (3) samples infringe. Fraen contends that the majority of the 1,635 entries that Mr. Grzenda was able to find

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just on a cursory review of websites, infringe the asserted patents. *Id.*

As Staff notes, in July 2018, Fraen once again searched Alibaba for potentially infringing products. (Staff Resp. at 35 (citing Exh. D to MSD, Grzenda Decl., at ¶ 19.). This search identified 17 companies selling products on Alibaba that are identical to or virtually identical to the Accused Products, where the merchant has been selling on Alibaba for less than one year. *Id.* In addition to the Accused Products, dozens of very similar light fixtures are offered on Alibaba to purchasers in the United States by over 100 foreign companies, mostly located in or near Guangzhou, China. (MSD at 35; Exh. D to MSD, Grzenda Decl., at ¶ 14; Grzenda Exhs. 15, 16.). This recommended decision cannot fully describe the scope of the exhibits to Mr. Grzenda's Declaration. They should be perused in the event there is even a minimal hesitation about granting a GEO.

Again, the exhibits to Mr. Grzenda's Declaration should be read, together with Mr. Holzen's detailed explanation of the concerns of the OECD with the scope of counterfeiting, and the damage it causes to patent holders and industries. (*See* Exh. E to MSD, Holzen Decl.).

Fraen has provided a compelling quantum of evidence of the proliferation of what appears to be the incontrovertible copying and counterfeiting of its products. In sum, Fraen has proven that there is substantial evidence of a widespread pattern of misuse of and violation of Fraen's patents. (*Accord*, Staff Resp. at 35.).

2. Fraen Has Provided Evidence of the Difficulty in Identifying All Sources of Infringement, in Part Because of Internet Proliferation of Counterfeiters

Fraen makes the virtually unassailable argument based upon its search of internet websites that "efforts to name all the companies Fraen suspects of infringing ... would likely be futile." (MSD at 34.). As Fraen notes, while 10 Respondents were named in this Investigation,

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four (4) of the named Respondents (the Defaulting Respondents) failed to appear and defend themselves, which is not especially surprising given the ease with which companies can appear and disappear on the internet. (*Id.* at 32; *see also* Exh. E to MSD, Holzen Decl.).

Not only Fraen's own internet search, but also Mr. Holzen's Declaration, which describes the problem of counterfeiting that is affecting companies worldwide, and the relative ineffectiveness of enforcement actions given the scope of the problem, are sobering and support Fraen's argument. (*Id.*; *see also* Exh. D to MSD, Grzenda Decl., at Exh. 12, 22.). Moreover, as Fraen notes, it would be financially impossible to pay for even a limited sample of like or nearly-identical products, then disassemble and inspect them and then create a claim chart for every one of those potentially infringing products. (MSD at 34.). The exact three (3) products that Fraen, with Dr. Jiao, examined and disassembled, appear to be offered for sale by more than 100 Chinese companies. (*Id.* (citing Exh. B to MSD, Jiao Decl., at ¶¶ 11-12 and Jiao Exhs. 4B-4D; Exh. D to MSD, Grzenda Decl., at ¶¶ 12(c), 12, 13, 14, 17, and Grzenda Exhs. 9-10, 12-13, 17; *see also* Exh. 22 to Grzenda Decl.; Exh. A to MSD, Bolzan Decl., at Exh. 6).).

As Fraen points out, the pattern of Respondents not appearing in judicial forums to answer for potentially unauthorized misuse of other's patents is not isolated. To that point Fraen notes that administrative law judges and the Commission have found GEOs to be an appropriate remedy in circumstances like those found in this Investigation. (*See* MSD at 32, 33 (citing *Mobile Device Holders*, Inv. No. 337-TA 1028, Comm'n Op. at 3-6, 21-23, 30 (Mar. 22, 2018); *Collapsible Sockets*, Inv. No. 337-TA-1056, Order No. 11, I.D. at 129-32 (Jan. 31, 2018); *Pumping Bras*, Inv. No. 337-TA-988, Order No. 11, I.D. at 39-43 (Oct. 31, 2016); *Certain Cases for Portable Elec. Devices*, Inv. Nos. 337-TA-867/861, Inv. Nos. 337-TA-867/861, Order No. 28, I.D. at 38-40 (Feb. 21, 2014).).

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3. Fraen Has Established that a GEO is Necessary to Prevent Circumvention

When Fraen describes the proliferation of identical or nearly identical “actual and suspected product listings by a large and growing panoply, of small, essentially unknown and often untraceable Chinese companies” as a “tsunami,” Fraen is not exaggerating. (MSD at 36 (citing Holzen Decl. at ¶¶ 11-19)). In more than 100 exhibits that are substantiated and reliably sourced and described, Fraen documented its searches of products and companies that were expanding over time as Fraen or its declarants conducted their searches, with new entrants onto websites such as Alibaba and Amazon continually offering similar or identical products. (*Id.* at 36, 37.). Fraen finally argues that given the “similarly fluid landscape of foreign infringing sellers” as the Commission has found warranted issuance of a GEO, the evidence is equally as compelling in this case that the evidence supports all the factors that militate for a GEO. (*Id.* at 36 (citing *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm’n Op. at 14 (June 26, 2015) (“The Commission has found in other investigations that numerous online sales of infringing imported goods can constitute a pattern of violation of Section 337.” (“*Loom Kits*”); *Certain Cases for Portable Elec. Devices*, Inv. Nos. 337-TA-867/861, Comm’n Op. at 10 (July 10, 2014) (“*Cases*”) (“[T]he respondents can easily circumvent a LEO by selling infringing goods online ... and [] foreign manufacturing operations can change their names and distribution patterns to avoid detection.”))).).

Fraen is correct that circumstances are similar here. There are many foreign companies of uncertain provenance selling what appear to be *identical* infringing light fixtures. (*Id.* at 37.). The evidence Fraen has presented unequivocally shows the widespread availability of apparently infringing light fixtures imported into and sold in the United States. Given the evidence of Fraen’s own documentation and searches which reflected this problem over time, the problem

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will continue unabated without the issuance of a GEO. (*Id.* (citing Holzen Decl. ¶¶ 20-23).).

4. A GEO Is in the Public Interest

While the Commission did not require that I make findings of fact with respect to the Public Interest, Fraen took the opportunity to make a compelling case how the public interest would be served by the issuance of a GEO with the same thoroughness with which it offered affirmative evidence that it is entitled to determinations in its favor of infringement, importation, satisfaction of the domestic industry prong and its request for a GEO. As Fraen observes, the public interest in protecting intellectual property rights is very strong. (*Id.* at 37 (citing *Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Comm'n Op. at 150 (June 19, 2007).). The Commission has a history of balancing any potentially adverse effect on the public interest against the public's interest in protecting and enforcing intellectual property rights and of rarely refusing to deny relief.⁷ (MSD at 37 (citing *Certain Inclined-Field Acceleration Tubes and Components Thereof*, Inv. No. 337-TA-67, U.S.I.T.C. Pub. No. 1119, Comm'n Op. at 21-22 (Dec. 1, 1980); *see also Spansion, Inc. v. Int'l Trade Comm'n*, 629 F.3d 1331, 1360 (Fed. Cir. 2010).).

Fraen has presented several compelling arguments that a GEO would not be contrary to the public interest because the subject articles, i.e. the color mixing LED lights at issue here, are used “nearly exclusively” for entertainment purposes and would not affect negatively the public health and welfare. (MSD at 38.). Moreover, as Fraen describes its market, it is a niche market and a GEO would not apply to LED lights generally or even LED entertainment lights generally.

⁷ See *Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof (II)*, Inv. No. 337-TA-1093, “Analysis and Findings with Respect to the Public Interest, And Recommendation on Remedy and Bond” at 12, 21 (Doc. ID No. 673214 (April 16, 2019)).

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(*Id.*).

Finally, Fraen makes the compelling argument, although elided here, that a GEO will not affect negatively any competition in the United States or consumers in the United States. Fraen states, and proves, that it can increase capacity to produce many more optical systems for its customers if demand increases, as Fraen often does when a product becomes very popular. (*Id.* at 40 (citing Scarfo Decl. ¶ 21)). In fact, as Fraen argues, the enforcement of Fraen's intellectual property rights would allow it to increase capacity and the number of U.S. employees should that need arise. Additionally, as Fraen argues, several of Fraen's Licensees, such as Chauvet & Sons, Inc., ADJ Products, LLC, and Elation Lighting, Inc. (each of whom were terminated from this Investigation based upon settlement) are well-established entertainment lighting companies headquartered in the U.S. Together, they with other companies Fraen mentioned, such as Martin Professional/Samsung and Philips Lighting, have the resources and ability to expand production and distribution of licensed entertainment lights should the market demand increase. In other words, consumers would not suffer an adverse impact if a GEO were to issue.

Fraen has met the statutory criteria, supported by ample evidence, for a GEO. At a minimum, a LEO is warranted.

C. BOND

1. Legal Standard

Even if the Commission decides to enter an exclusion order, Fraen argues that the affected articles will nonetheless be entitled to entry and sale under bond during the 60-day Presidential review period. The amount of a bond must "be sufficient to protect the complainant from any injury." 19 U.S.C. § 1337(j)(3); *see also* 19 C.F.R. § 210.50(a)(3).

The Commission typically sets the Presidential review period bond based upon the price differential between the imported or infringing product or based upon a reasonable royalty. *See,*

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e.g., *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-565, Comm'n Op. at 63 (November 2007) (setting bond based on price differentials); *Certain Plastic Encapsulated Integrated Circuits*, Inv. No. 337-TA315, Comm'n Op. on Issues Under Review and on Remedy, the Public Interest, and Bonding, at 45, USITC Pub. 2574 (November 1992) (setting the bond based on a reasonable royalty).

However, where the available pricing or royalty information is inadequate, the bond may be set at 100% of the entered value of the accused product. *See, e.g.*, *Certain Neodymium-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).

As Fraen argues, with Staff's agreement, since the Defaulting Respondents did not participate in this Investigation, Fraen was unable to obtain discovery on the costs of their products for either pricing or royalty purposes. (MSD at 41; Staff Resp. at 37.).

To the extent that Fraen was able to purchase certain of Defaulting Respondents' products, and review on a variety of websites price lists for a variety of counterfeit products that appear to sell in the United States, those lists might have served as a proxy for costs. However, as Fraen argues persuasively, the large number of lighting devices that appear to infringe Fraen's patents that are sold on the internet are sold at widely varying prices. (*See, e.g.*, Exh. D to MSD.).

Therefore, Fraen requests, and I recommend, that the bond be set at 100 percent for all infringing goods entered during the Presidential review period. (MSD at 41 (citing *Pumping Bras*, Inv. No. 337-TA-988, Comm'n Op. at 14-15 (Apr. 7, 2017) (setting Presidential review bond at "100 percent of the entered value of the infringing products" where "an average price differential between the Complainant's [product] and the infringing products would be difficult

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to calculate due to the high volume of internet sales at various prices” and respondents “defaulted and failed to participate in discovery”); *Loom Kits*, Inv. No. 337-TA-923, Comm’n Op. at 19 (June 26, 2015) (setting bond at 100 percent where “a large number of infringing [products] are sold on the Internet at different prices” and “the defaulting respondents in th[e] investigation provided no discovery, including discovery about pricing”).

Fraen contends, pursuant to 19 U.S.C. § 1337(j)(3) and 19 C.F.R. § 210.50(a)(3), that the proposed bond is necessary and enough to protect it from further injury. I accept that argument. Because it would be virtually impossible to calculate a correct, let alone an average price of counterfeit or potentially infringing products that are available for sale through online and other distribution sources, a 100% bond would be an appropriate amount to protect Fraen from harm during the Presidential review period. Fraen’s bond request is appropriate, is supported by Commission case precedent, and by evidence of the need for such a bond.

X. CONCLUSION

This decision operates as both a finding of violation based upon a Motion for Summary Determination under Commission Rule 210.18 and as an Initial Determination on Violation of Section 337 of the Tariff Act of 1930 together with a Recommendation on Remedy and Bond.

Accordingly, this recommended decision is certified to the Commission. All orders and documents, filed with the Secretary, including the record exhibits in this Investigation, as defined in 19 C.F.R. § 210.38(a), are not certified, since they are already in the Commission’s possession in accordance with Commission Rules. *See* 19 C.F.R. § 210.38(a). In accordance with 19 C.F.R. § 210.39(c), all material found to be confidential under 19 C.F.R. § 210.5 is to be given *in camera* treatment.

After Fraen has provided proposed redactions of confidential business information


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(“CBI”) that have been evaluated and accepted, the Secretary shall serve a public version of this ID upon Fraen and Staff together with a confidential version.

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

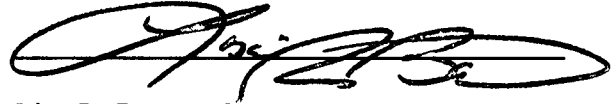
Within fourteen (14) days of the date of this document, Fraen and Staff shall submit to the Office of Administrative Law Judges a joint statement whether they seek to have any portion of this document deleted from the public version. The Parties’ submission shall be made by hard copy and must include a copy of this ID with yellow highlighting, with or without red brackets, indicating any portion asserted to contain CBI to be deleted from the public version. The submission shall also include a chart that: (i) contains the page number of each proposed redaction; and (ii) states (next to each page number) every sentence or phrase, listed separately, that the party proposes be redacted; and (iii) for each such sentence or phrase that the party proposes be redacted, a citation to case law with an explanation as to why each proposed redaction constitutes CBI consistent with case law. Any proposed redaction that is not explained may not be redacted after a review. The Parties’ submission concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.


MaryJoan McNamara
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INITIAL DETERMINATION** has been served by hand upon the Commission Investigative Attorney, **Whitney Winston, Esq.**, and the following parties as indicated, on **June 5, 2019**.



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

On Behalf of Complainant:

William D. Belanger, Esq.
PEPPER HAMILTON LLP
19th Floor, High Street Tower
125 High Street
Boston, MA 02110

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

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

In the Matter of

**CERTAIN LED LIGHTING DEVICES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-1107

**NOTICE OF A COMMISSION 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 an initial determination (“ID”) (Order No. 20) of the presiding administrative law judge (“ALJ”) finding respondents Guangzhou Chaiyi Light Co., Ltd. d/b/a/ Fine Art Lighting Co., Ltd.; Guangzhou Xuanyi Lighting Co., Ltd. d/b/a/ XY E-Shine; Guangzhou Flystar Lighting Technology Co., Ltd.; and Wuxi Changsheng Special Lighting Apparatus Factory d/b/a/ Roccer (collectively, the “Defaulting Respondents”), all of China, in default in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 10, 2018, based on a complaint filed on behalf of Fraen Corporation (“Fraen”) of Reading, Massachusetts. 83 FR 15399-15400 (Apr. 10, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED lighting devices and components thereof by reason of infringement of one or more claims of U.S. Patent No. 9,411,083 and U.S. Patent No. 9,772,499. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named as

respondents ADJ Products, LLC of Los Angeles, California; Elation Lighting, Inc. of Los Angeles, California; Golden Sea Professional Equipment Co., Ltd. of Guangdong, China; Artfox USA of City of Industry, California; Artfox China of Guangdong, China; Chauvet & Sons, LLC of Sunrise, Florida; and the Defaulting Respondents. *Id.* The Office of Unfair Import Investigations is also participating in the investigation. *Id.* Each of the Defaulting Respondents were served with the complaint and the notice of investigation.

On June 29, 2018, complainant Fraen filed a motion, pursuant to 19 C.F.R. § 210.16, for (1) an order directing the Defaulting Respondents to show cause why they should not be found in default for failure to respond to the complaint and notice of investigation as required by 19 C.F.R. § 210.13; and (2) the issuance of an ID finding the Defaulting Respondents in default upon their failure to show cause.


On July 9, 2018, the ALJ issued Order No. 16, which required the Defaulting Respondents to show cause within the time prescribed by Commission Rules for foreign entities as to why they should not be held in default and have judgment rendered against them pursuant to 19 C.F.R. § 210.16. No responses were received from the Defaulting Respondents.

The ALJ issued the subject ID on August 28, 2018, finding the Defaulting Respondents in default, pursuant to 19 C.F.R. §§ 210.16 and 210.17, because these respondents did not respond to the complaint, the notice of investigation, and Order No. 16 to show cause. 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 CFR Part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: September 17, 2018

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Whitney Winston, Esq.**, and the following parties as indicated, on **9/17/2018**



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

On Behalf of Complainant Fraen Corporation:

William D. Belanger
PEPPER HAMILTON LLP
19th Floor, High Street Tower
125 High Street
Boston, MA 02110

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

Respondents

Guangzhou Chaiyi Light Co., Ltd. d/b/a Fine Art Lighting Co.,
Ltd.,
No. 8 Kexing Road, Guangzhou Civilian Scien-tech Park
No. 1633 Beitai Road, Baiyun District, Guangdong 510000
China

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

Guangzhou Xuanyi Lighting Co., Ltd. d/b/a XY E-Shine
Building A., Longhu First Industrial Zone
Shijing Road, Baiyun District, Guangzhou
Guangdong 510430, China

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

Guangzhou Flystar Lighting Technology Co., Ltd.
3rd Floor, B. Building Huihuang Industrial Estate
Nanfang Village, Renhe Town, Baiyun District,
Guangzhou, Guangdong 510000, China

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

**CERTAIN LED LIGHTING DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1107

Certificate of Service – Page 2

Wuxi Changsheng Special Lighting Apparatus Factory d/b/a
Roccer
2nd Industrial Zone, Dangxiao Road, Luqu Wuxi
Jiangsu 214000, China

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- Via Express Delivery
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UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN LED LIGHTING DEVICES
AND COMPONENTS THEREOF**

Inv. No. 337-TA-1107

**ORDER NO. 20: INITIAL DETERMINATION FINDING NON-RESPONSIVE
RESPONDENTS IN DEFAULT**

(August 28, 2018)

Pursuant to Order No. 16 (July 9, 2018), Respondents Guangzhou Chaiyi Light Co., Ltd. d/b/a/ Fine Art Lighting Co., Ltd.; Guangzhou Xuanyi Lighting Co., Ltd. d/b/a/ XY E-Shine; Guangzhou Flystar Lighting Technology Co., Ltd.; and Wuxi Changsheng Special Lighting Apparatus Factory d/b/a/ Roccer (collectively, the “Defaulting Respondents”) were ordered to show cause (“Order to Show Cause”) within the time prescribed by Commission Rules for foreign entities, why they should not be held in default for failing to respond to the Complaint and Notice of Investigation (“NOI”). (Order No. 16, 2018 (July 9, 2018).). The Order to Show Cause was issued upon a motion filed by Complainant Fraen Corporation (“Fraen”). (Motion Docket No. 1107-015 (June 29, 2018).).

None of the Defaulting Respondents filed responses to Order No. 16.

Commission Rule 210.16(a)(1) states that “[a] party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in § 210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.” 19 C.F.R. § 210.16(a)(1). When a respondent fails to respond

or appear, “a party may file a motion for . . . an order directing respondent to show cause why it should not be found in default. If the respondent fails to make the necessary showing . . . the administrative law judge shall issue an initial determination finding the respondent in default.” 19 C.F.R. § 210.16(b)(1). A party found in default is deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation. *See* 19 C.F.R. § 210.16(b)(4).

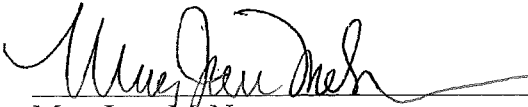
After being successfully served the Complaint and NOI by the Office of the Secretary, the Defaulting Respondents identified in Order No. 16, the Order to Show Cause, did not file answers/responses to the Complaint and NOI. The Defaulting Respondents have not entered appearances or participated in the Investigation. After being ordered to do so, none of the Defaulting Respondents responded to the Order to Show Cause to explain why they should not be found in default. In similar circumstances, respondents who did not respond to an order to show cause have been found in default pursuant to Commission Rule 210.16(a)(1). *See, e.g., Certain Carbon and Alloy Steel Prods.*, Inv. No. 337-TA-1002, Order No. 32 (Sept. 14, 2016), not reviewed by Comm’n Notice (Oct. 14, 2016).

Accordingly, it is my Initial Determination that the Defaulting Respondents who failed to respond to the Order to Show Cause are in default. Therefore, Respondents Guangzhou Chaiyi Light Co., Ltd. d/b/a/ Fine Art Lighting Co., Ltd.; Guangzhou Xuanyi Lighting Co., Ltd. d/b/a/ XY E-Shine; Guangzhou Flystar Lighting Technology Co., Ltd.; and Wuxi Changsheng Special Lighting Apparatus Factory d/b/a/ Roccer have waived their right to appear, be served with documents, and to contest the allegations at issue in this Investigation.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial

Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission orders on its own motion a review of the Initial Determination or certain issues in this initial determination pursuant to 19 C.F.R. § 210.44.

SO ORDERED.


MaryJoan McNamara
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INITIAL DETERMINATION** has been served by hand upon the Commission Investigative Attorney, **Whitney Winston, Esq.**, and the following parties as indicated, on **August 28, 2018**.



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

On Behalf of Complainant:

William D. Belanger, Esq.
PEPPER HAMILTON LLP
19th Floor, High Street Tower
125 High Street
Boston, MA 02110

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 Via Express Delivery
 Via First Class Mail
 Other: _____

Respondents

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Building A., Longhu First Industrial Zone
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Guangdong 510430, China

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**CERTAIN LED LIGHTING DEVICES AND COMPONENTS
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Inv. No. 337-TA-1107

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