

*In the Matter of*

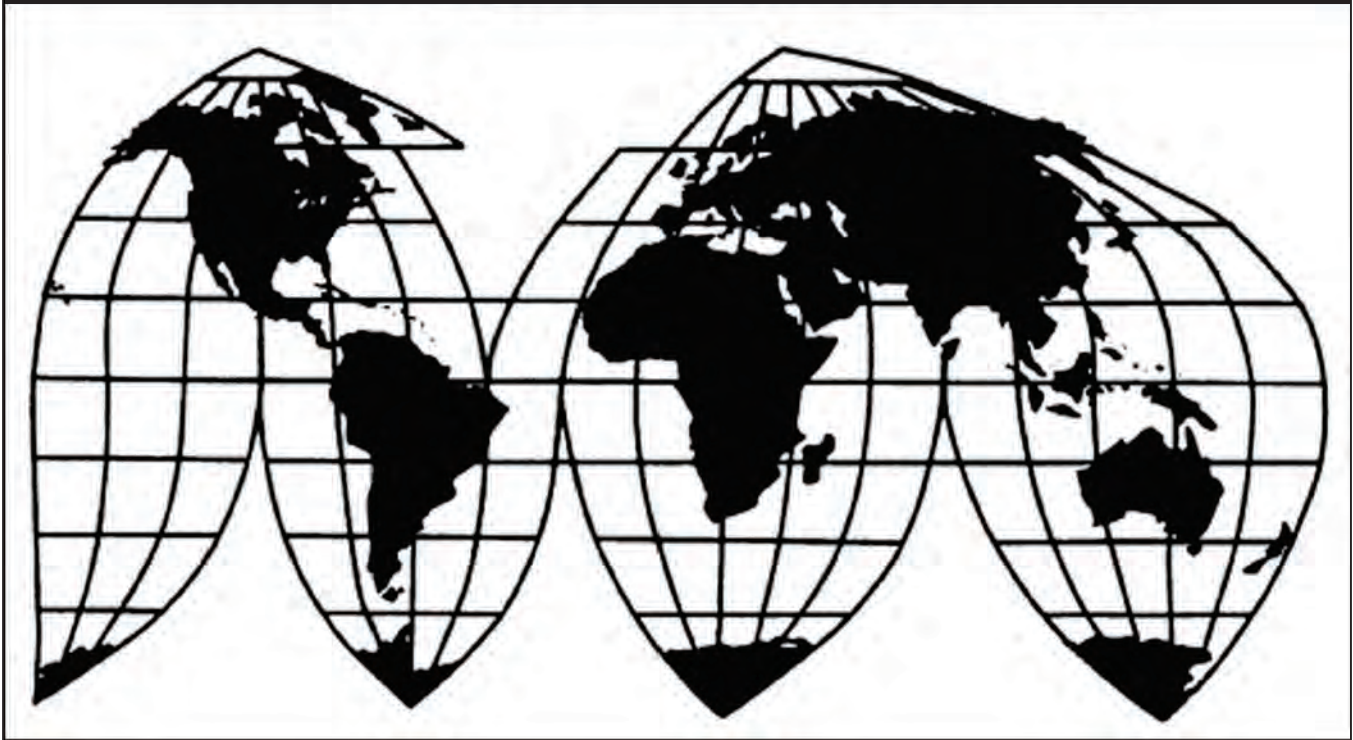
**CERTAIN EARPIECE DEVICES AND  
COMPONENTS THEREOF**

337-TA-1121

**Publication 5078**

**June 2020**

**U.S. International Trade Commission**



Washington, DC 20436

# **U.S. International Trade Commission**

## **COMMISSIONERS**

**David S. Johanson, Chairman**  
**Rhonda K. Schmidlein, Commissioner**  
**Jason E. Kearns, Commissioner**  
**Randolph J. Stayin, Commissioner**  
**Amy A. Karpel, Commissioner**

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

# U.S. International Trade Commission

Washington, DC 20436  
[www.usitc.gov](http://www.usitc.gov)

*In the Matter of*

## CERTAIN EARPIECE DEVICES AND COMPONENTS THEREOF

337-TA-1121



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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW  
AN INITIAL DETERMINATION GRANTING A MOTION TO TERMINATE  
THE INVESTIGATION WITH RESPECT TO U.S. PATENT NO. 9,398,364;  
TERMINATION OF THE INVESTIGATION IN ITS ENTIRETY**

**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”), granting an unopposed motion to terminate the investigation based on withdrawal of the complaint with respect to U.S. Patent No. 9,398,364 (“the ’364 patent”). The investigation is terminated in its entirety.

**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 June 29, 2018, based on a complaint filed on behalf of Bose Corporation (“Bose”) of Framingham, Massachusetts. 83 FR 30,776 (Jun. 29, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”) based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of U.S. Patent Nos.: 9,036,852 (“the ’852 patent”); 9,036,853 (“the ’853

patent”); 9,042,590 (“the ’590 patent”); 8,311,253 (“the ’253 patent”); 8,249,287 (“the ’287 patent”); and the ’364 patent. The complaint further alleges that an industry in the United States exists as required by section 337. The notice of investigation named fourteen respondents. The Office of Unfair Import Investigations was also named as a party in this investigation.

On October 31, 2019, the Commission issued a general exclusion order, a limited exclusion order, and cease and desist orders with respect to one or more asserted claims of the ’852, ’853, ’590, ’287, and ’253 patents. The investigation was thereby terminated with respect to these five patents.

Also, on the October 31, 2019, the Commission remanded the investigation in part to the ALJ for further proceedings with respect to the ’364 patent. Commissioner Schmidlein did not join the decision to remand the investigation. Instead, she would have affirmed on modified grounds the determination that Bose demonstrated the existence of a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the ’364 patent.

On November 20, 2019, Bose filed an unopposed motion to terminate the investigation based on withdrawal of the complaint with respect to the ’364 patent.

On December 2, 2019, the ALJ issued the subject ID (Order No. 20), granting Bose’s motion to terminate the investigation pursuant to Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1). The ALJ found that the motion complies with the Commission Rules, and that no extraordinary circumstances prohibit the termination of this investigation as requested by Bose. *See* Order No. 20 at 3 (Dec. 2, 2019).

No petitions for review were filed. The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

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: December 23, 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, **Todd Taylor, Esq.**, and the following parties as indicated, on **December 23, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoku,  
Shenzhen, CN

REVJAMS

248 Lafayette St.  
New York, NY 10012

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES AND  
COMPONENTS THEREOF**

**Inv. No. 337-TA-1121**

**Order No. 20 (Initial Determination)**

On October 31, 2019, the Commission issued an opinion and a remand order in this investigation. In the remand order, the Commission extended the target date to December 2, 2019, and ordered:

1. The investigation is remanded to the presiding ALJ, Judge Shaw, to conduct further proceedings with respect to the '364 patent as appropriate and consistent with the Commission's opinion herein and to issue a remand initial determination ("RID"), including:
  - a. Pursuant to the procedures set forth in Commission Rule 210.16(b), 19 C.F.R. § 210.16(b), the ALJ should issue a show cause order directed to respondent REVJAMS and, if no response is filed in a timely manner, issue an order finding REVJAMS in default; and
  - b. *If Bose chooses to pursue a violation under subsection 337(d) with respect to the '364 patent*, the ALJ shall take into consideration additional evidence and briefing from the parties concerning the existence of a domestic industry, make appropriate findings as to whether Bose's alleged domestic investments satisfy the domestic industry requirement under subparagraphs 337(a)(3)(A)-(C), and include a recommended determination on remedy and bonding.
2. The RID shall become final 45 days after issuance absent Commission review.
3. The parties may petition for review of the RID within 10 days after service of the RID. Any parties may file a response to the petition(s) within 5 business days after service of the petition(s).
4. The ALJ shall extend the target date for termination of the



investigation by ID pursuant to 19 CFR 210.51(a)(1) to three months after the issuance of the RID.

5. Notice of this Order shall be served on the parties to this investigation.

Remand Order at 5-6 (emphasis added); *see* Comm'n Op. at 38 (providing guidance in the event that Bose chooses not to pursue a violation under subsection 337(d) with respect to the '364 patent on remand).

On November 7, 2019, during a telephone conference called by the administrative law judge, complainant Bose Corporation ("Bose") informed the administrative law judge that it did not choose to pursue a violation under subsection 337(d) with respect to U.S. Patent No. 9,398,364, and that it would file a motion. The precise nature of the motion that Bose would file was not clear at that time. *See* Conf. Tr. 4-6 (Nov. 7, 2019). On November 20, 2019, Bose filed a "Motion to Terminate the Investigation with Respect to Asserted U.S. Patent No. 9,398,364." Motion Docket No. 1121-22. Bose argues:

Pursuant to 19 C.F.R. § 210.21(a)(1), Complainant Bose Corporation ("Bose") hereby moves to voluntarily terminate this investigation as it pertains to all asserted claims of U.S. Patent No. 9,398,364. All agreements concerning the subject matter of this investigation have been identified and previously provided to the presiding Administrative Law Judge and the Commission. *See* Motion Docket Nos. 1121-011, 1121-012, 1121-014, 1121-015, 1121-017, and 1121-018. There are no other agreements concerning the subject matter of this investigation.

Counsel for Bose has conferred with the Office of Unfair Import Investigations ("OUII") attorney assigned to this investigation and has been informed that OUII does not oppose this motion. There are no other parties actively participating in this investigation at this time.

Mot. at 1.

Indeed, OUII informed the office of the administrative law judge that it would not file a response to the motion.

Commission Rule 210.21(a)(1), relied on by Bose, provides:

(1) Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of this section. A motion for termination of an investigation based on withdrawal of the complaint, or for good cause, shall contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion. If the agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, at least one copy of the agreement with such information deleted shall accompany the motion, in addition to a copy of the confidential version. On motion for good cause shown, the administrative law judge may limit service of the agreements to the settling parties and the Commission investigative attorney. The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

19 C.F.R. 210.21(a)(1).

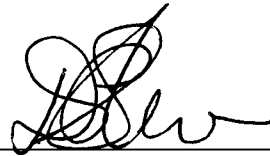
Bose's motion pursuant to Commission Rule 210.21(a)(1) is a withdrawal of the complaint with respect to the '364 patent. *See* Mot. at 1 (not addressing good cause); Conf. Tr. 4-6. Bose has complied with the Commission Rule with respect to agreements concerning the subject matter of this investigation. Furthermore, the administrative law judge does not find any extraordinary circumstance that would prohibit termination of this investigation, in part, as requested by Bose.

Accordingly, it is the initial determination<sup>1</sup> of the undersigned that Motion No. 1121-22 is granted. Thus, as requested by Bose, this investigation is terminated with respect to the '364 patent. As quoted above, the remand order requires the issuance by the administrative law judge

---

<sup>1</sup> Pursuant to 19 C.F.R. § 210.42(d), to the extent that it may be necessary to do so, even in view of the remand order, the administrative law judge states that 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, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

of an RID. As a consequence of Bose's choice to terminate this investigation with respect to '364 patent, it is unclear whether an RID is still required. To the extent that an RID is required, this determination constitutes the RID inasmuch as no further proceedings are to occur before the administrative law judge.<sup>2</sup>



---

David P. Shaw  
Administrative Law Judge

Issued: December 2, 2019

---

<sup>2</sup> If this determination to grant Bose's request not only to refrain from pursuing a violation under subsection 337(d) with respect to the '364 patent (contemplated under the Commission's remand order as a possible occurrence) but further to terminate the investigation as to the '364 patent constitutes an RID, then in accordance with enumerated paragraph four (4) of the remand order, the target date for completion of this investigation may be extended to three months after the issuance of the RID, *i.e.*, March 2, 2020. In that case, presumably the prior target date extension in Order No. 19 (which was necessitated by the approaching target date of December 2, 2019) would no longer be necessary, and this determination and the initial determination contained in Order No. 18 (finding respondent REVJAMS in default) could be considered within the new target date set in place as a consequence of the issuance of an RID.

**CERTAIN EARPIECE DEVICES AND COMPONENTS THEREOF**

**INV. NO. 337-TA-1121**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **Order No. 20 (Initial Determination)** has been served by hand upon the Commission Investigative Attorney, **Todd P. Taylor, Esq.**, and the following parties as indicated, on DEC 02 2019.



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

<b>For Complainant Bose Corporation:</b>	
Andrew Kopsidas, Esq. <b>Fish &amp; Richardson P.C.</b> 1000 Maine Avenue, SW, 10th Floor Washington, DC 20024	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<b>Respondent:</b>	
REVJAMS 248 Lafayette Street New York, NY 10012	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**NOTICE OF COMMISSION DETERMINATION TO VACATE THE DOMESTIC  
INDUSTRY FINDING AS TO ONE ASSERTED PATENT; REMAND THE  
INVESTIGATION IN PART TO THE PRESIDING ADMINISTRATIVE LAW JUDGE  
FOR FURTHER PROCEEDINGS AS TO THAT ASSERTED PATENT; AND EXTEND  
THE TARGET DATE; ISSUANCE OF A GENERAL EXCLUSION ORDER, A  
LIMITED EXCLUSION ORDER, AND CEASE AND DESIST ORDERS AS TO THE  
OTHER FIVE ASSERTED PATENTS**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to vacate the presiding administrative law judge's ("ALJ") domestic industry finding with respect to U.S. Patent No. 9,398,364 ("the '364 patent"), remand the investigation in part to the ALJ for further proceedings with respect to that patent consistent with its concurrently issued opinion and remand order, and extend the target date for completion of the investigation. The Commission has also determined to issue: (1) a general exclusion order prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 ("the '852 patent"); claims 1 and 8 of U.S. Patent No. 9,036,853 ("the '853 patent"); claims 1 and 6 of U.S. Patent No. 9,042,590 ("the '590 patent"); and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 ("the '287 patent"); (2) a limited exclusion order prohibiting respondent V4ink Inc. ("V4ink") from importing certain earpiece devices and components thereof that infringe claim 1 of U.S. Patent No. 8,311,253 ("the '253 patent"); and (3) cease and desist orders against certain respondents that were found in default or had not participated in the above-captioned investigation. The investigation is terminated with respect to these five patents.

**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 June 29, 2018, based on a complaint filed on behalf of Bose Corporation ("Bose") of Framingham, Massachusetts. 83 FR 30,776 (Jun. 29, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of the '852, '853, '590, '253, '287, and '364 patents. The complaint further alleges that an industry in the United States exists as required by section 337.

The notice of investigation named fourteen respondents: (1) 1MORE USA, Inc. ("1MORE") of San Diego, California; (2) APSkins of Seattle, Washington; (3) Beebo Online Limited ("Beebo") of North Las Vegas, Nevada; (4) iHip of Edison, New Jersey; (5) LMZT LLC of Brooklyn, New York; (6) Misodiko of ShenZhen, GuangDong, China; (7) Phaiser LLC ("Phaiser") of Houston, Texas; (8) Phonete of Shenzhen, China; (9) REVJAMS of New York, New York; (10) SMARTOMI Products, Inc. of Ontario, California; (11) Spigen, Inc. of Irvine, California; (12) Sudio AB of Stockholm, Sweden; (13) Sunvalley Tek International, Inc. of Fremont, California; and (14) TomRich of Shenzhen, China. The Office of Unfair Import Investigations ("OUII") was also named as a party in this investigation.

On October 4, 2018, Bose moved to amend the notice of investigation and for leave to file an amended complaint in order, among other things, (i) to correct the name of respondent iHip to Zeikos, Inc.; and (ii) to correct the name and address of respondent SMARTOMI Products, Inc. to V4ink. On October 29, 2018, the ALJ granted the motion. *See* Order No. 10 (Oct. 29, 2018), *not rev'd by* Comm'n Notice (Nov. 23, 2018); 83 FR 61168 (Nov. 28, 2018); 83 FR 62900 (Dec. 6, 2018). Bose filed and served its amended complaint on February 21, 2019.

During the course of the investigation, Bose settled with the following respondents: APSkins; Zeikos, Inc.; LMZT LLC; Spigen, Inc.; Sudio AB; and Sunvalley Tek International, Inc. *See* Order Nos. 8 and 9 (Oct. 19, 2018), *not rev'd by* Comm'n Notice (Nov. 9, 2018); Order No. 11 (Oct. 29, 2018), *not rev'd by* Comm'n Notice (Nov. 27, 2018); Order No. 12 (Nov. 26, 2018), *not rev'd by* Comm'n Notice (Dec. 19, 2018); Order Nos. 14 and 15 (Feb. 21, 2019), *not rev'd by* Comm'n Notice (Mar. 11, 2019). In addition, with the exception of Spigen, Inc., consent orders were issued against all of these respondents. *Id.* Thus, the investigation has been terminated with respect to these six respondents.

Five other respondents have been found in default pursuant to Commission Rule 210.16, 19 CFR 210.16: Beebo; Misodiko; Phaiser; V4ink; and TomRich (collectively, “the Defaulting Respondents”). *See* Order No. 7 (Sep. 20, 2018); Order No. 13 (Dec. 11, 2018), *not rev’d by* Comm’n Notice (Dec. 21, 2018).

On February 8, 2019, Bose moved for summary determination of a violation of section 337. Bose filed a corrected motion on March 1, 2019. Thereafter, Bose filed several replacement exhibits and a supplemental index.

The remaining three respondents, IMORE, Phonete, and REVJAMS (collectively “the Non-Participating Respondents”), have not submitted any response, appeared, or otherwise participated in the investigation despite being served with the complaint or amended complaint, and the motion for summary determination of violation. The three Non-Participating Respondents and the five Defaulting Respondents were the subject of Bose’s motion for summary determination of a violation of section 337. On March 22, 2019, OUII filed a response supporting Bose’s motion in substantial part and supporting the requested remedy of a general exclusion order.

On June 28, 2019, the ALJ issued the subject ID and his Recommended Determination (“RD”) on remedy and bonding. The ID grants in part Bose’s motion for summary determination of a violation of section 337. Specifically, the ALJ found, *inter alia*, that Bose established that the importation requirement is satisfied as to each Defaulting Respondent and Non-Participating Respondent and each accused product; that other than infringement of claim 7 of the ’852 patent with respect to the Misodiko, Phonete, and TomRich products, Bose established infringement of claims 1 and 7 of the ’852 patent; claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; claim 1 of the ’253 patent; claims 1, 7, and 8 of the ’287 patent; and claims 1 and 11 of the ’364 patent; and that Bose satisfied the domestic industry requirement for each asserted patent. In addition, the ALJ recommended that the Commission issue a general exclusion order, cease and desist orders, and impose a 100 percent bond during the period of Presidential review. No petitions for review were filed.

On August 14, 2019, the Commission determined to review the ID in part and requested briefing on one issue it determined to review, and on remedy, the public interest, and bonding. 84 FR 43159-161 (Aug. 20, 2019). Specifically, the Commission determined to review and reverse the ID’s finding that Bose has established infringement of claim 7 of the ’852 patent with respect to Beebo’s Dodocool Earhooks. The Commission also determined to review the ID’s finding that Bose has satisfied the economic prong of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to the ’364 patent. The Commission further determined to review and take no position on the ID’s finding that Bose has satisfied the economic prong of the domestic industry requirement under subparagraph 337(a)(3)(C) with respect to the asserted patents. The Commission determined not to review the remainder of the ID. The Commission’s determination resulted in finding a violation of section 337 by reason of infringement of claims 1 and 7 of the ’852 patent; claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; claim 1 of the ’253 patent; and claims 1, 7, and 8 of the ’287 patent; and the

satisfaction of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to these patents.

On August 28, 2019, Bose and OUII filed initial written submissions regarding the issue on review, and on remedy, the public interest, and bonding. That same day, non-party Anker Innovations Limited (“Anker”) filed a written submission concerning remedy. On September 5, 2019, Bose filed a response to Anker’s submission.

Having examined the record of this investigation, including the ID and the submissions received, the Commission has determined to vacate the ID’s finding that Bose has demonstrated the existence of a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the ’364 patent. Accordingly, the Commission has determined to remand the investigation in part to the ALJ for further proceedings with respect to the ’364 patent consistent with the Commission’s concurrently issued opinion and remand order. The target date is extended to December 2, 2019. Commissioner Schmittlein does not join the decision to remand the investigation. Instead, she would affirm on modified grounds the determination that Bose demonstrated the existence of a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the ’364 patent.

As for the remaining asserted patents, the Commission has determined that the appropriate form of relief in this investigation is: (a) a general exclusion order prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the ’852 patent; claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; and claims 1, 7, and 8 of the ’287 patent; (b) a limited exclusion order prohibiting respondent V4ink from importing certain earpiece devices and components thereof that infringe claim 1 of the ’253 patent; and (c) cease and desist orders prohibiting respondents 1MORE, Beebo, Phaiser, REVJAMS, V4ink, Misodiko, Phonete, and TomRich from further importing, selling, and distributing infringing products in the United States. The Commission has also determined that the public interest factors enumerated in paragraphs 337(d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude the issuance of these remedial orders. Finally, the Commission has determined that the bond during the period of Presidential review pursuant to 19 U.S.C. 1337(j) shall be in the amount of one hundred (100) percent of the entered value of the imported articles that are subject to the exclusion orders. The Commission’s orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is hereby terminated with respect to the ’852, ’853, ’590, ’287, and ’253 patents.

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



By order of the Commission.

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

Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 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, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

REVJAMS

248 Lafayette St.  
New York, NY 10012

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**ORDER REMANDING THE INVESTIGATION IN PART**

The Commission instituted this investigation on June 29, 2018, based on a complaint filed on behalf of Bose Corporation (“Bose”) of Framingham, Massachusetts. 83 *Fed. Reg.* 30,776 (Jun. 29, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”) based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 9,036,852 (“the ’852 patent”); 9,036,853 (“the ’853 patent”); 9,042,590 (“the ’590 patent”); 8,249,287 (“the ’287 patent”); 8,311,253 (“the ’253 patent”); and 9,398,364 (“the ’364 patent”). The complaint further alleges that an industry in the United States exists as required by section 337.

The notice of investigation named fourteen respondents: (1) 1MORE USA, Inc. (“1MORE”) of San Diego, California; (2) APSkins of Seattle, Washington; (3) Beebo Online Limited (“Beebo”) of North Las Vegas, Nevada; (4) iHip of Edison, New Jersey; (5) LMZT LLC of Brooklyn, New York; (6) Misodiko of ShenZhen, GuangDong, China; (7) Phaiser LLC (“Phaiser”) of Houston, Texas; (8) Phonete of Shenzhen, China; (9) REVJAMS of New York, New York; (10) SMARTOMI Products, Inc. of Ontario, California; (11) Spigen, Inc. of Irvine,

California; (12) Sudio AB of Stockholm, Sweden; (13) Sunvalley Tek International, Inc. of Fremont, California; and (14) TomRich of Shenzhen, China. The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation.

On October 4, 2018, Bose moved to amend the notice of investigation and for leave to file an amended complaint in order, among other things, (i) to correct the name of respondent iHip to Zeikos, Inc.; and (ii) to correct the name and address of respondent SMARTOMI Products, Inc. to V4ink Inc. (“V4ink”) of Ontario, California. On October 29, 2018, the presiding administrative law judge (“ALJ”) granted the motion. *See* Order No. 10 (Oct. 29, 2018), *not rev’d by* Comm’n Notice (Nov. 23, 2018); 83 *Fed. Reg.* 61168 (Nov. 28, 2018); 83 *Fed. Reg.* 62900 (Dec. 6, 2018). Bose filed and served its amended complaint on February 21, 2019.

During the course of the investigation, Bose settled with the following respondents: APSkins; Zeikos, Inc.; LMZT LLC; Spigen, Inc.; Sudio AB; and Sunvalley Tek International, Inc. *See* Order Nos. 8 and 9 (Oct. 19, 2018), *not rev’d by* Comm’n Notice (Nov. 9, 2018); Order No. 11 (Oct. 29, 2018), *not rev’d by* Comm’n Notice (Nov. 27, 2018); Order No. 12 (Nov. 26, 2018), *not rev’d by* Comm’n Notice (Dec. 19, 2018); Order Nos. 14 and 15 (Feb. 21, 2019), *not rev’d by* Comm’n Notice (Mar. 11, 2019). In addition, with the exception of Spigen, Inc., consent orders were issued against all of these respondents. *Id.* Thus, the investigation has been terminated with respect to these six respondents.

Five other respondents have been found in default pursuant to Commission Rule 210.16, 19 CFR 210.16: Beebo; Misodiko; Phaiser; V4ink; and TomRich (collectively, “the Defaulting

Respondents”). See Order No. 7 (Sep. 20, 2018); Order No. 13 (Dec. 11, 2018), *not rev’d by* Comm’n Notice (Dec. 21, 2018).

On February 8, 2019, Bose moved for summary determination of a violation of section 337. Bose filed a corrected motion on March 1, 2019. Thereafter, Bose filed several replacement exhibits and a supplemental index.

The remaining three respondents, 1MORE, Phonete, and REVJAMS (collectively “the Non-Participating Respondents”), have not submitted any response, appeared, or otherwise participated in the investigation despite being served with the complaint or amended complaint, and the motion for summary determination of violation. The three Non-Participating Respondents and the five Defaulting Respondents were the subject of Bose’s motion for summary determination of a violation of section 337. On March 22, 2019, OUII filed a response supporting Bose’s motion in substantial part and supporting the requested remedy of a general exclusion order.

On June 28, 2019, the ALJ issued an initial determination (“ID”) and his recommended determination (“RD”) on remedy and bonding. The ID grants in part Bose’s motion for summary determination of a violation of section 337. Specifically, the ALJ found, *inter alia*, that Bose established that the importation requirement is satisfied as to each Defaulting Respondent and Non-Participating Respondent and each accused product; that other than infringement of claim 7 of the ’852 patent with respect to the Misodiko, Phonete, and TomRich products, Bose established infringement of claims 1 and 7 of the ’852 patent; claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; claim 1 of the ’253 patent; claims 1, 7, and 8 of the ’287 patent; and claims 1 and 11 of the ’364 patent; and that Bose satisfied the domestic

industry requirement for each asserted patent. In addition, the ALJ recommended that the Commission issue a general exclusion order, cease and desist orders, and impose a 100 percent bond during the period of Presidential review. No petitions for review were filed.

On August 14, 2019, the Commission determined to review the ID in part and requested briefing on one issue it determined to review, and on remedy, the public interest, and bonding. 84 *Fed. Reg.* 43159-161 (Aug. 20, 2019). Specifically, the Commission determined to review and reverse the ID's finding that Bose has established infringement of claim 7 of the '852 patent with respect to Beebo's Dodocool Earhooks. The Commission also determined to review the ID's finding that Bose has satisfied the economic prong of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to the '364 patent. The Commission further determined to review and take no position on the ID's finding that Bose has satisfied the economic prong of the domestic industry requirement under subparagraphs 337(a)(3)(C) with respect to the asserted patents. The Commission determined not to review the remainder of the ID. The Commission's determination resulted in finding a violation of section 337 by reason of infringement of claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; claim 1 of the '253 patent; and claims 1, 7, and 8 of the '287 patent; and the satisfaction of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to these patents.

On August 28, 2019, Bose and OUII filed initial written submissions regarding the issue on review, and on remedy, the public interest, and bonding. That same day, non-party Anker Innovations Limited ("Anker") filed a written submission concerning remedy. On September 5, 2019, Bose filed a response to Anker's submission.

As explained in the accompanying Commission opinion, the Commission vacates the ID's finding that Bose has demonstrated the existence of a domestic industry under paragraph 337(a)(3) with respect to the '364 patent, and remands the investigation in part to the ALJ for further proceedings with respect to the '364 patent. The target date is extended to December 2, 2019.

The Commission also issued: (a) a general exclusion order with respect to the '852, '853, '590, and '287 patents; (b) a limited exclusion order with respect to the '253 patent; and (c) cease and desist orders against respondents 1MORE, Beebo, Phaiser, REVJAMS, V4ink, Misodiko, Phonete, and TomRich. The Commission determined that the public interest factors enumerated in paragraphs 337(d)(1) and (f)(1) (19 U.S.C. § 1337(d)(1), (f)(1)) did not preclude the issuance of these remedial orders. Finally, the Commission determined that the bond during the period of Presidential review pursuant to subsection 337(j) shall be in the amount of 100 percent of the entered value of the imported articles that are subject to the exclusion orders. 19 U.S.C. § 1337(j). The investigation is therefore terminated with respect to the '852, '853, '590, '287, and '253 patents.

Upon consideration of this matter, the Commission hereby ORDERS that:

1. The investigation is remanded to the presiding ALJ, Judge Shaw, to conduct further proceedings with respect to the '364 patent as appropriate and consistent with the Commission's opinion herein and to issue a remand initial determination ("RID"), including:
  - a. Pursuant to the procedures set forth in Commission Rule 210.16(b), 19 C.F.R. § 210.16(b), the ALJ should issue a show cause order directed to respondent REVJAMS and, if no response is filed in a timely manner, issue an order finding REVJAMS in default; and
  - b. If Bose chooses to pursue a violation under subsection 337(d) with respect to the '364 patent, the ALJ shall take into consideration additional



evidence and briefing from the parties concerning the existence of a domestic industry, make appropriate findings as to whether Bose's alleged domestic investments satisfy the domestic industry requirement under subparagraphs 337(a)(3)(A)-(C), and include a recommended determination on remedy and bonding.

2. The RID shall become final 45 days after issuance absent Commission review.
3. The parties may petition for review of the RID within 10 days after service of the RID. Any parties may file a response to the petition(s) within 5 business days after service of the petition(s).
4. The ALJ shall extend the target date for termination of the investigation by ID pursuant to 19 CFR 210.51(a)(1) to three months after the issuance of the RID.
5. Notice of this Order shall be served on the parties to this investigation.

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

REVJAMS

248 Lafayette St.  
New York, NY 10012

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**GENERAL EXCLUSION ORDER**

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the unlawful importation, sale for importation, or sale within the United States after importation of certain earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 (“the ’852 patent”); claims 1 and 8 of U.S. Patent No. 9,036,853 (“the ’853 patent”); claims 1 and 6 of U.S. Patent No. 9,042,590 (“the ’590 patent”); and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 (“the ’287 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 infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing earpiece 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 issuance of the general exclusion order, and that the

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

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

1. Earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent ("covered articles") are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, 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 a bond in the amount of one hundred (100) percent of entered value of the products pursuant to subsection (j) of section 337 (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (*70 Fed Reg.* 43251), from the day after this Order is received by the United States Trade Representative and until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection ("CBP"), in advance of the date of the entry, pursuant to procedures CBP establishes.

3. At the discretion of CBP and pursuant to 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 as are necessary to substantiate the certification.
4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to 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 Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon CBP.
7. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoku,  
Shenzhen, CN

REVJAMS

248 Lafayette St.  
New York, NY 10012

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_



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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**LIMITED EXCLUSION ORDER**

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), in the unlawful importation, sale for importation, and sale within the United States after importation by Respondent V4ink Inc. (“V4ink”) of Ontario, California of certain earpiece devices and components thereof that infringe claim 1 of U.S. Patent No. 8,311,253 (“the ’253 patent”).

Having reviewed the record of this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting the unlicensed entry of certain earpiece devices and components thereof manufactured abroad by or on behalf of, or imported by or on behalf of, V4ink or any of its affiliated companies, parents, subsidiaries, licensees, or other related business entities, or their successors or assigns.

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 limited exclusion order, and that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value for the articles in question.

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

1. Earpiece devices and components thereof that infringe claim 1 of the '253 patent (“covered articles”), and that are manufactured abroad by or on behalf of, or imported by or on behalf of, V4ink or any of its affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns, 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 such articles pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(j)), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 Fed. Reg. 43,251), from the day after this Order is received by the United States Trade Representative until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order. All entries of covered articles made pursuant to this paragraph are to be reported to U.S. Customs and Border Protection (“CBP”), in advance of the date of the entry, pursuant to procedures CBP establishes.
3. At the discretion of CBP and pursuant to procedures that 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 as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to covered articles 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.



Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

REVJAMS

248 Lafayette St.  
New York, NY 10012

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT RESPONDENT V4ink Inc. cease and desist from** conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 (“the ’852 patent”) and claim 1 of U.S. Patent No. 8,311,253 (“the ’253 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Bose Corporation (“Bose”) of Framingham, Massachusetts.
- (C) “Respondent” shall mean V4ink Inc. (“V4ink”) of Ontario, California.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the ’852 patent and claim 1 of the ’253 patent.

## **II. Applicability**

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

## **III. Conduct Prohibited**

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

For the remaining term of the respective patents, Respondent shall not:

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

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the '852 patent or the '253 patent licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2019. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer



to the investigation number (“Inv. No. 337-TA-1121”) in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant’s counsel.<sup>1</sup>

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

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and

---

<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '852 and '253 patents.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Section V or VI of this Order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which

confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

### **IX. Enforcement**

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

### **X. Modification**

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

### **XI. Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

---

<sup>2</sup> *See* note 1 above.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoku,  
Shenzhen, CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

REVJAMS

248 Lafayette St.  
New York, NY 10012

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT RESPONDENT REVJAMS** cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 (“the ’852 patent”); claims 1 and 8 of U.S. Patent No. 9,036,853 (“the ’853 patent”); claims 1 and 6 of U.S. Patent No. 9,042,590 (“the ’590 patent”); and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 (“the ’287 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Bose Corporation (“Bose”) of Framingham, Massachusetts.
- (C) “Respondent” shall mean REVJAMS of New York, New York.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.



- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the ’852 patent, claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; and claims 1, 7, and 8 of the ’287 patent.

## **II. Applicability**

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

## **III. Conduct Prohibited**

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

For the remaining term of the respective patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products;
- (C) advertise imported covered products;
- (D) solicit United States agents or distributors for imported covered products; or

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

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the '852 patent, the '853 patent, the '590 patent, or the '287 patent licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2019. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to

the Office of the Secretary by noon the next day pursuant to subsection 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1121") in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.<sup>1</sup>

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

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

---

<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

#### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '852, '853, '590, and '287 patents.

#### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Section V or VI of this Order should be made in accordance with section 201.6 of the

Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

#### **IX. Enforcement**

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

#### **X. Modification**

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

#### **XI. Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are

subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

---

<sup>2</sup> *See* note 1 above.

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: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_



**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

REVJAMS

248 Lafayette St.  
New York, NY 10012

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT RESPONDENT** Phonete cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for earpiece devices and components thereof that infringe one or more of claim 1 of U.S. Patent No. 9,036,852 (“the ’852 patent”) and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 (“the ’287 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Bose Corporation (“Bose”) of Framingham, Massachusetts.
- (C) “Respondent” shall mean Phonete of ShenZhen, China.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean earpiece devices and components thereof that infringe one or more of claim 1 of the ’852 patent and claims 1, 7, and 8 of the ’287 patent.

## **II. Applicability**

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

## **III. Conduct Prohibited**

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

For the remaining term of the respective patents, Respondent shall not:

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

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

(A) in a written instrument, the owner of the '852 patent or the '287 patent licenses or authorizes such specific conduct; or

(B) such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2019. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer

to the investigation number (“Inv. No. 337-TA-1121”) in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant’s counsel.<sup>1</sup>

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

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and

---

<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '852 and '287 patents.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Section V or VI of this Order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which

confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

#### **IX. Enforcement**

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

#### **X. Modification**

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

#### **XI. Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

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

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


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

---

<sup>2</sup> *See* note 1 above.



By order of the Commission:

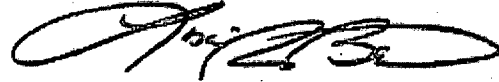
A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoku,  
Shenzhen, CN

REVJAMS

248 Lafayette St.  
New York, NY 10012

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT RESPONDENT** Phaiser LLC cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 (“the ’852 patent”); claims 1 and 8 of U.S. Patent No. 9,036,853 (“the ’853 patent”); claims 1 and 6 of U.S. Patent No. 9,042,590 (“the ’590 patent”); and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 (“the ’287 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Bose Corporation (“Bose”) of Framingham, Massachusetts.
- (C) “Respondent” shall mean Phaiser LLC (“Phaiser”) of Houston, Texas.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the ’852 patent, claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; and claims 1, 7, and 8 of the ’287 patent.

## **II. Applicability**

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

## **III. Conduct Prohibited**

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

For the remaining term of the respective patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products;
- (C) advertise imported covered products;
- (D) solicit United States agents or distributors for imported covered products; or

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

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the '852 patent, the '853 patent, the '590 patent, or the '287 patent licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2019. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to

the Office of the Secretary by noon the next day pursuant to subsection 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1121") in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.<sup>1</sup>

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

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the

---

<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '852, '853, '590, and '287 patents.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Section V or VI of this Order should be made in accordance with section 201.6 of the



Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

#### **IX. Enforcement**

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

#### **X. Modification**

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

#### **XI. Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are

subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

---

<sup>2</sup> See note 1 above.

By order of the Commission.

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

Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**Respondents:**

IMORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery  
 Via Express Delivery  
 Via First Class Mail  
 Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete  
A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

REVJAMS  
248 Lafayette St.  
New York, NY 10012

TomRich  
Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

V4ink, Inc.  
(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT RESPONDENT** Beebo Online Limited cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 (“the ’852 patent”); claims 1 and 8 of U.S. Patent No. 9,036,853 (“the ’853 patent”); and claims 1 and 6 of U.S. Patent No. 9,042,590 (“the ’590 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Bose Corporation (“Bose”) of Framingham, Massachusetts.
- (C) “Respondent” shall mean Beebo Online Limited (“Beebo”) of North Las Vegas, Nevada.

- (D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term "covered products" shall mean earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the '852 patent, claims 1 and 8 of the '853 patent; and claims 1 and 6 of the '590 patent.

## **II. Applicability**

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

## **III. Conduct Prohibited**

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

For the remaining term of the respective patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products;
- (C) advertise imported covered products;

- (D) solicit United States agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the '852 patent, the '853 patent, or the '590 patent licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2019. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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



When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1121") in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.<sup>1</sup>

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

## **VI. Record-Keeping and Inspection**

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

---

<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

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

#### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '852, '853, and '590 patents.

### **VIII. Confidentiality**

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

### **IX. Enforcement**

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

### **X. Modification**

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

### **XI. Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered

products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

---

<sup>2</sup> *See* note 1 above.

order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

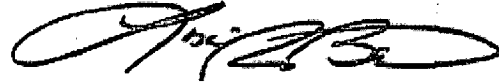
A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

REVJAMS

248 Lafayette St.  
New York, NY 10012

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT RESPONDENT TomRich** cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for earpiece devices and components thereof that infringe one or more of claim 1 of U.S. Patent No. 9,036,852 (“the ’852 patent”) and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 (“the ’287 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Bose Corporation (“Bose”) of Framingham, Massachusetts.
- (C) “Respondent” shall mean TomRich of ShenZhen, China.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.



- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean earpiece devices and components thereof that infringe one or more of claim 1 of the ’852 patent and claims 1, 7, and 8 of the ’287 patent.

## **II. Applicability**

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

## **III. Conduct Prohibited**

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

For the remaining term of the respective patents, Respondent shall not:

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

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

(A) in a written instrument, the owner of the '852 patent or the '287 patent licenses or authorizes such specific conduct; or

(B) such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2019. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer

to the investigation number (“Inv. No. 337-TA-1121”) in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant’s counsel.<sup>1</sup>

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

## **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and

---

<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

#### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '852 and '287 patents.

#### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Section V or VI of this Order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which

confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

### **IX. Enforcement**

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

### **X. Modification**

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

### **XI. Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

---

<sup>2</sup> *See* note 1 above.

By order of the Commission.

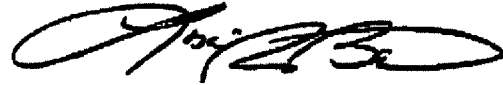
A handwritten signature in black ink, appearing to read 'Lisa R. Barton'.

Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_



**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

REVJAMS

248 Lafayette St.  
New York, NY 10012

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT RESPONDENT 1MORE USA, Inc.** cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 (“the ’852 patent”); claims 1 and 8 of U.S. Patent No. 9,036,853 (“the ’853 patent”); and claims 1 and 6 of U.S. Patent No. 9,042,590 (“the ’590 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Bose Corporation (“Bose”) of Framingham, Massachusetts.
- (C) “Respondent” shall mean 1MORE USA, Inc. (“1MORE”) of San Diego, California.

- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.
- (E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term “covered products” shall mean earpiece devices and components thereof that infringe one or more of claims 1 and 7 of the ’852 patent, claims 1 and 8 of the ’853 patent; and claims 1 and 6 of the ’590 patent.

## **II. Applicability**

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

## **III. Conduct Prohibited**

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

For the remaining term of the respective patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation) imported covered products;
- (C) advertise imported covered products;

- (D) solicit United States agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

- (A) in a written instrument, the owner of the '852 patent, the '853 patent, or the '590 patent licenses or authorizes such specific conduct; or
- (B) such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2019. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1121") in a prominent place on the cover pages and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant's counsel.<sup>1</sup>

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

## **VI. Record-Keeping and Inspection**

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

---

<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

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

#### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '852, '853, and '590 patents.

### **VIII. Confidentiality**

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

### **IX. Enforcement**

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

### **X. Modification**

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

### **XI. Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered

products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

---

<sup>2</sup> *See* note 1 above.



order issued by the Commission based upon application therefore made by Respondent to the Commission.

By order of the Commission.

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

Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

REVJAMS

248 Lafayette St.  
New York, NY 10012

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**CEASE AND DESIST ORDER**

**IT IS HEREBY ORDERED THAT RESPONDENT** Misodiko cease and desist from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States agents or distributors for earpiece devices and components thereof that infringe one or more of claim 1 of U.S. Patent No. 9,036,852 (“the ’852 patent”) and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 (“the ’287 patent”) in violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

**I. Definitions**

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Bose Corporation (“Bose”) of Framingham, Massachusetts.
- (C) “Respondent” shall mean Misodiko of ShenZhen, GuangDong, China.
- (D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority-owned or controlled subsidiaries, successors, or assigns.

- (E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.
- (F) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.
- (G) The term "covered products" shall mean earpiece devices and components thereof that infringe one or more of claim 1 of the '852 patent and claims 1, 7, and 8 of the '287 patent.

## **II. Applicability**

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

## **III. Conduct Prohibited**

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

For the remaining term of the respective patents, Respondent shall not:

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

#### **IV. Conduct Permitted**

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if:

(A) in a written instrument, the owner of the '852 patent or the '287 patent licenses or authorizes such specific conduct; or

(B) such specific conduct is related to the importation or sale of covered products by or for the United States.

#### **V. Reporting**

For purposes of this requirement, the reporting periods shall commence on January 1 of each year and shall end on the subsequent December 31. The first report required under this section shall cover the period from the date of issuance of this order through December 31, 2019. This reporting requirement shall continue in force until such time as Respondent has truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

When filing written submissions, Respondent must file the original document electronically on or before the deadlines stated above and submit eight (8) true paper copies to the Office of the Secretary by noon the next day pursuant to subsection 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.4(f)). Submissions should refer

to the investigation number (“Inv. No. 337-TA-1121”) in a prominent place on the cover pages and/or the first page. (*See Handbook for Electronic Filing Procedures*, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary (202-205-2000). If Respondent desires to submit a document to the Commission in confidence, it must file the original and a public version of the original with the Office of the Secretary and must serve a copy of the confidential version on Complainant’s counsel.<sup>1</sup>

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

#### **VI. Record-Keeping and Inspection**

- (A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.
- (B) For the purposes of determining or securing compliance with this Order and for no other purpose, subject to any privilege recognized by the federal courts of the United States, and upon reasonable written notice by the Commission or its staff, duly authorized representatives of the Commission shall be permitted access and

---

<sup>1</sup> Complainant must file a letter with the Secretary identifying the attorney to receive reports and bond information associated with this order. The designated attorney must be on the protective order entered in the investigation.

the right to inspect and copy, in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, in detail and in summary form, that must be retained under subparagraph VI(A) of this Order.

### **VII. Service of Cease and Desist Order**

Respondent is ordered and directed to:

- (A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;
- (B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this order, a copy of the Order upon each successor; and
- (C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration dates of the '852 and '287 patents.

### **VIII. Confidentiality**

Any request for confidential treatment of information obtained by the Commission pursuant to Section V or VI of this Order should be made in accordance with section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 201.6). For all reports for which



confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

#### **IX. Enforcement**

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

#### **X. Modification**

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

#### **XI. Bonding**

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative, as delegated by the President (70 *Fed. Reg.* 43,251 (Jul. 21, 2005)), subject to Respondent posting of a bond in the amount of one hundred (100) percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond set forth in the exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

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

---

<sup>2</sup> *See* note 1 above.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized and cursive.

Lisa R. Barton  
Secretary to the Commission

Issued: October 31, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Jeffrey Hsu, Esq.**, and the following parties as indicated, on **October 31, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

REVJAMS

248 Lafayette St.  
New York, NY 10012

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**PUBLIC VERSION**

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES  
AND COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**COMMISSION OPINION**

On June 28, 2019, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) (Order No. 16), granting summary determination that certain respondents that were found in default or had not participated in the investigation have violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. The Commission determined to review in part the ID and requested briefing on one issue it determined to review, and on the issues of remedy, the public interest, and bonding. 84 *Fed. Reg.* 43159-161 (Aug. 20, 2019).

Having considered the record of this investigation, including the ID and the various submissions, the Commission has determined to vacate the ID’s summary determination that complainant has demonstrated the existence of a domestic industry with respect to articles protected by the U.S. Patent No. 9,398,364 (“the ’364 patent”). Accordingly, the Commission remands the investigation in part to the ALJ for further proceedings with respect to the ’364 patent consistent with this opinion and the Commission’s concurrently issued remand order.

With respect to the remaining asserted patents for which the Commission found a violation in its Federal Register notice published on August 20, 2019, the Commission has determined that the appropriate form of relief is: (1) a general exclusion order (“GEO”) prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe one or more of claims 1 and 7 of U.S. Patent No. 9,036,852 (“the ’852 patent”); claims 1

## **PUBLIC VERSION**

and 8 of U.S. Patent No. 9,036,853 (“the ’853 patent”); claims 1 and 6 of U.S. Patent No. 9,042,590 (“the ’590 patent”); and claims 1, 7, and 8 of U.S. Patent No. 8,249,287 (“the ’287 patent”); (2) a limited exclusion order (“LEO”) prohibiting respondent V4ink Inc. (“V4ink”) from importing certain earpiece devices and components thereof that infringe claim 1 of U.S. Patent No. 8,311,253 (“the ’253 patent”); and (3) cease and desist orders (“CDO”) against the respondents that were found in default or had not participated in the investigation. The Commission finds that the public interest does not preclude issuance of these remedial orders. The Commission sets a bond during the period of Presidential review in the amount of one hundred (100) percent of the entered value of the imported articles that are subject to the exclusion orders. The investigation is hereby terminated with respect to the ’852, ’853, ’590, ’287, and ’253 patents.

### **I. BACKGROUND**

#### **A. Procedural Background**

The Commission instituted this investigation on June 29, 2018, based on a complaint filed on behalf of Bose Corporation (“Bose”) of Framingham, Massachusetts. 83 *Fed. Reg.* 30776 (Jun. 29, 2018). The complaint alleged violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of the ’852, ’853, ’590, ’253, ’287, and ’364 patents. The complaint further alleged that an industry in the United States exists as required by section 337. The notice of investigation named as respondents:

1. 1MORE USA, Inc. (“1MORE”) of San Diego, California;
2. APSkins of Seattle, Washington;
3. Beebo Online Limited (“Beebo”) of North Las Vegas, Nevada;

## PUBLIC VERSION

4. iHip of Edison, New Jersey;
5. LMZT LLC of Brooklyn, New York;
6. Misodiko of ShenZhen, GuangDong, China;
7. Phaiser LLC (“Phaiser”) of Houston, Texas;
8. Phonete of Shenzhen, China;
9. REVJAMS of New York, New York;
10. SMARTOMI Products, Inc. (“SMARTOMI”) of Ontario, California;
11. Spigen, Inc. (“Spigen”) of Irvine, California;
12. Sudio AB of Stockholm, Sweden;
13. Sunvalley Tek International, Inc. (“Sunvalley Tek”) of Fremont, California; and
14. TomRich of Shenzhen, China.

The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation.

On October 4, 2018, Bose moved to amend the notice of investigation and for leave to file an amended complaint in order, among other things, (i) to correct the name of respondent iHip to Zeikos, Inc.; and (ii) to correct the name and address of respondent SMARTOMI to V4ink. ID at 2. On October 29, 2018, the ALJ issued Order No. 10, granting the motion, and the Commission determined not to review the initial determination. *Id.* (citing 83 *Fed. Reg.* 61168 (Nov. 28, 2018); correction at 83 *Fed. Reg.* 62900 (Dec. 6, 2018)). On February 21, 2019, Bose filed its amended complaint (EDIS Doc ID 667789) and served it on all respondents. *Id.*

During the course of the investigation, Bose settled with the following respondents: APSkins; Zeikos, Inc.; LMZT LLC; Spigen; Sudio AB; and Sunvalley Tek.<sup>1</sup> ID at 3. In

---

<sup>1</sup> Spigen and Sunvalley Tek were the only respondents who entered appearances and responded to the complaint and the notice of investigation. ID at 2.



## PUBLIC VERSION

addition, with the exception of Spigen, consent orders were issued against all of these respondents. Thus, the investigation has been terminated with respect to these six respondents.

*Id.*

Five other respondents have been found in default pursuant to 19 C.F.R. 210.16: Beebo; Misodiko; Phaiser; V4ink; and TomRich. *Id.* (citing Order No. 7 (Sep. 20, 2018) (Order to show cause); Order No. 13 (Dec. 11, 2018) (Order finding default), *not rev'd* by Comm'n Notice (Dec. 21, 2018)).

The remaining three respondents, 1MORE, Phonete, and REVJAMS (“non-participating respondents”), have not submitted any response, appeared, or otherwise participated in the investigation despite being served with at least the complaint or amended complaint, the notice of investigation, and the motion for summary determination of violation. *See id.* at 4; CSub at 16-17. These three non-participating respondents and the five respondents found in default were the subject of Bose’s motion for summary determination seeking a finding of violation of section 337.<sup>2</sup> ID at 4.

On March 22, 2019, OUII filed a response supporting Bose’s motion in substantial part, and supporting the requested remedy of a GEO.<sup>3</sup> Specifically, OUII believed there is no genuine issue of material fact that the defaulting and non-participating respondents’ accused products

---

<sup>2</sup> Bose’s original motion for summary determination was filed on February 8, 2019. Bose filed a corrected motion and memorandum in support of its motion on March 1, 2019, EDIS Doc ID 668877 (“Mem.”). Thereafter, Bose filed several replacement exhibits and a supplement index. *See* EDIS Doc IDs 669857 (replacement Exhibit E with claim charts); 679576 (index of Bose’s filings related to its motion for summary determination); 679568 (replacement Exhibit E-36 and E-37).

<sup>3</sup> *See* Staff’s Response to Bose’s Corrected Motion for Summary Determination of No Violation and for Recommended Determination on Remedy and Bonding, EDIS Doc ID 671068 (Mar. 22, 2019).

## PUBLIC VERSION

infringe the asserted claims except with respect to Bose's claim of indirect infringement of claim 7 of the '852 patent with respect to the Misodiko, Phonete, and TomRich products.

On June 28, 2019, the ALJ issued the subject ID granting in part Bose's motion for summary determination of a violation of section 337. Specifically, the ALJ found, *inter alia*, that Bose established that the importation requirement is satisfied as to each defaulting respondent and non-participating respondent and each accused product; that, subject to the exceptions identified in OUII's response, Bose established infringement of claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; claim 1 of the '253 patent; claims 1, 7, and 8 of the '287 patent; and claims 1 and 11 of the '364 patent; and that Bose satisfied the technical and economic prongs of the domestic industry requirement.

That same day, the ALJ also issued his recommended determination ("RD"). The RD recommended that, in the event the Commission finds a violation of section 337, the Commission should issue a GEO and CDOs directed to each of the five domestic respondents: 1MORE, Beebo, Phaiser, REVJAMS, and V4ink. The RD also recommended imposing a 100 percent bond during the period of Presidential review. No petitions for review were filed.

On August 14, 2019, the Commission determined to review in part the ALJ's determination of a section 337 violation. 84 *Fed. Reg.* 43159-161 (Aug. 20, 2019). Specifically, the Commission determined to review: (1) the ID's finding that Bose has established infringement of claim 7 of the '852 patent with respect to Beebo's Dodocool Earhooks, and, on review, the Commission reversed that finding; (2) the ID's finding that Bose's investments and activities establish a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to articles protected by the '364 patent; and (3) the ID's finding that Bose's investments and activities establish a domestic industry under subparagraph 337(a)(3)(C) with respect to articles

## PUBLIC VERSION

protected by the asserted patents, and, on review, the Commission took no position on that finding. *Id.* at 43160. The Commission determined not to review the remainder of the ID. Accordingly, the Commission found a violation of section 337 by reason of infringement of claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; claim 1 of the '253 patent; and claims 1, 7, and 8 of the '287 patent; and the satisfaction of the domestic industry requirement under subparagraphs 337(a)(3)(A) and (B) with respect to articles protected by these patents. *Id.* The Commission also requested additional briefing from the parties on the issue under review and invited the parties, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. *Id.* at 43160-161.

On August 28, 2019, Bose and the Commission Investigative Attorney (“IA”) filed initial written submissions in response to the Commission’s notice.<sup>4</sup> That same day, non-party Anker Innovations Limited (“Anker”) filed a written submission concerning remedy.<sup>5</sup> On September 5, 2019, Bose filed a reply to Anker’s submission.<sup>6</sup>

### **B. The Asserted Patents**

The '852, '853, '590, '253, and '287 patents each describe aspects of the Bose StayHear® tips and share substantially similar specifications. ID at 10; *see* Mem. Exs. K-O.

---

<sup>4</sup> Complainant Bose Corporation’s Response to Commission Notice to Review In Part an Initial Determination Granting In Part a Motion for Summary Determination of a Section 337 Violation, EDIS Doc ID 686725 (Aug. 28, 2019) (“CSub”); Commission Investigative Staff’s Response to the Commission’s Request for Written Submissions on the Issue Under Review and on Remedy, the Public Interest, and Bonding, EDIS Doc ID 686701 (Aug. 28, 2019) (“IASub”).

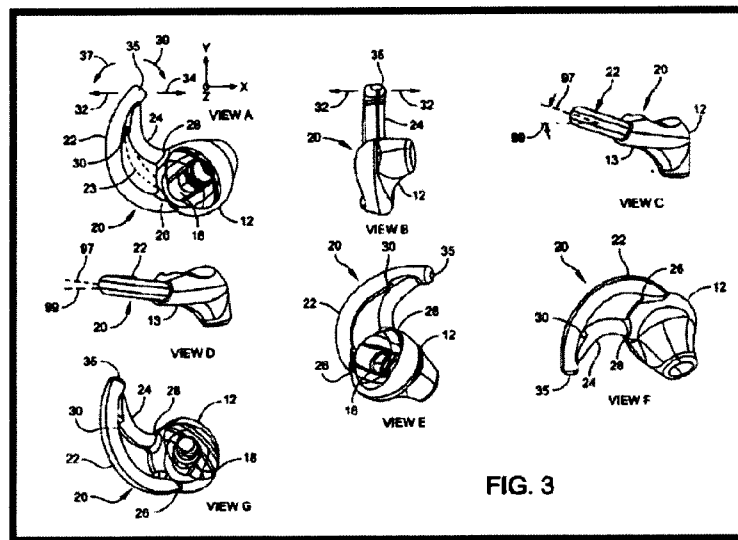
<sup>5</sup> Submission of Interested Non-Party Anker Innovations Limited Regarding the Issue of Remedy, EDIS Doc ID 686716 (Aug. 28, 2019) (“AnkerSub”).

<sup>6</sup> Complainant Bose Corporation’s Reply Submission in Response to Commission Notice to Review In Part an Initial Determination Granting In Part a Motion for Summary Determination of a Section 337 Violation, EDIS Doc ID 687358 (Sep. 5, 2019) (“CReply”).

PUBLIC VERSION

Bose refers to these patents as the “StayHear® Patents.” ID at 10. The remaining asserted patent, the '364 patent, describes the novel aspects of the Bose StayHear®+ tips, and is discussed separately below.

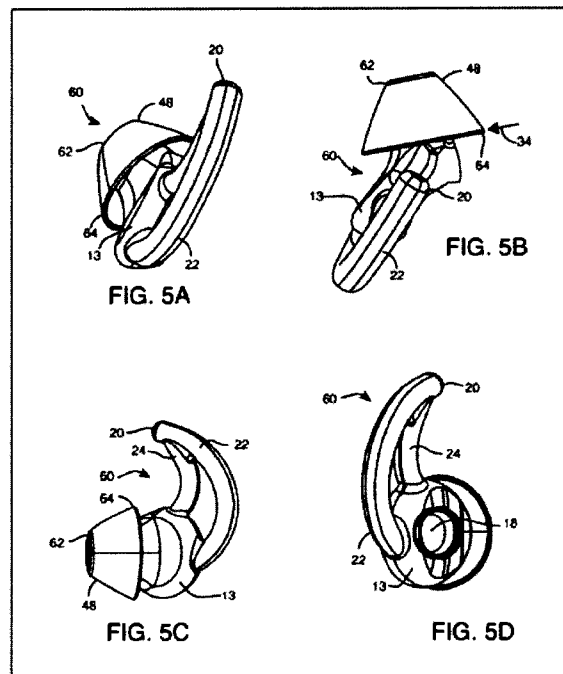
As shown in Fig. 3 below, the StayHear® Patents generally describe an earpiece comprising an acoustic driver, a housing, and an ear interface having a body and a positioning and retaining structure. *Id.* (citing Mem. Ex. N (the '253 patent) at 11:10-31). The patents describe the desirability of placing the earpiece in the user’s ear such that it is oriented properly, it is stable, and it is comfortable to the user. *Id.* (citing Mem. Ex. N at 4:63-65). In one aspect, the positioning and retaining structure, together with the body, holds the earpiece in position without the use of ear hooks or “twist lock” tips, which may be unstable, uncomfortable, or ill fitting. *Id.* (citing Mem. Ex. N at 5:23-29). Bose designed the StayHear® earpiece body to fit the shape of the concha and ear canal entrance while not exerting pressure on ear canal walls. *Id.* at 11. The retaining structure stabilizes and secures the earphone in the user’s ear. *Id.* The overall design facilitates comfort and stability without the need for a very tight, highly attenuating seal in the ear canal. *Id.*



The StayHear® Patents at Fig. 3

## PUBLIC VERSION

The '364 patent generally describes an ear tip for an in-ear earpiece comprising a positioning and retaining structure, a passageway, and a sealing structure as shown in Figs. 5A-5D below. *Id.* at 13 (citing Mem. Ex. P at 5:53-55). The patent describes the desirability of placing the earpiece in the user's ear such that it is properly oriented and stable: in this position, the ear tip provides significant passive attenuation of ambient noise without causing discomfort in the user's ear. *Id.* (citing Mem. Ex. P at 4:12-15). The '364 patent also includes a sealing structure or flap, which may be frusto-conically shaped. *Id.* The flap is designed such that the smaller end of the tip fits inside the ear canal and contacts the entrance of the ear canal but not the inside of the ear canal. *Id.* (citing Mem. Ex. P at 5:66-67; 6:1-4). The ear tip of the '364 patent provides orientation, stability, and good sealing to the entrance of the ear canal without excessive radial pressure and without inward clamping pressure. *Id.* at 13-14 (citing Mem. Ex. P at 4:47-51). The sealing structure provides an optimal combination of comfort, stability and fit for an in-ear earpiece.



The '364 patent at Fig. 5A-5D

## PUBLIC VERSION

The asserted patent claims are generally directed to the structure of an earpiece device, particularly aspects of the fit and retention characteristics of the earpiece devices. *Id.* at 49. Some asserted claims include an “acoustic driver” that converts the received audio signals to acoustic energy, while some do not. *Id.* Bose asserts infringement of the following claims:

- Claims 1 and 7\* of the '852 patent;
- Claims 1\* and 8\* of the '853 patent;
- Claims 1\* and 6\* of the '590 patent;
- Claim 1\* of the '253 patent;
- Claims 1, 7, and 8 of the '287 patent; and
- Claims 1 and 11 of the '364 patent.

An asterisk indicates that the claim requires an “acoustic driver.” A copy of these claims can be found in the ID at pages 31-39.

### C. Products at Issue

The accused products can be grouped into two categories depending on whether the product includes an acoustic driver or must be used with an external device such as Apple AirPods that provides an acoustic driver.

<b>Accused product WITH an acoustic driver</b>	<b>Accused product WITHOUT an acoustic driver</b>
Beebo Dodocool DA 109	Beebo Dodocool Earhooks
Phaiser BHS-730	Misodiko Earhooks
Phaiser BHS-750	TomRich T330
SMARTOMI Q5	Phonete Silicone Rubber Earbuds
1MORE iBFree	
REVJAMS Active Sport Pro	

Bose submitted the following identification of products to satisfy the domestic industry requirement for the asserted patents. As shown below, Bose relies on the same five products to satisfy the domestic industry requirement for the '852, '853, '590, '253, and '287 patents but

**PUBLIC VERSION**

relies on only four of the five products to satisfy the domestic industry requirement for the '364 patent. Further, Bose identifies the (i) Bose SoundSport in-ear headphones, and (ii) Bose SoundSport wireless headphones, as representative of the domestic industry products. ID at 17.

<b>Patent</b>	<b>Practicing Domestic Industry Products</b>
9,036,852	SoundSport® in-ear headphones SoundSport® Pulse Wireless headphones SoundSport® Wireless headphones SoundTrue® Ultra in-ear headphones SoundSport® Free Wireless headphones
9,036,853	SoundSport® in-ear headphones SoundSport® Pulse Wireless headphones SoundSport® Wireless headphones SoundTrue® Ultra in-ear headphones SoundSport® Free Wireless headphones
9,042,590	SoundSport® in-ear headphones SoundSport® Pulse Wireless headphones SoundSport® Wireless headphones SoundTrue® Ultra in-ear headphones SoundSport® Free Wireless headphones
8,311,253	SoundSport® in-ear headphones
	SoundSport® Pulse Wireless headphones SoundSport® Wireless headphones SoundTrue® Ultra in-ear headphones SoundSport® Free Wireless headphones
8,249,287	SoundSport® in-ear headphones SoundSport® Pulse Wireless headphones SoundSport® Wireless headphones SoundTrue® Ultra in-ear headphones SoundSport® Free Wireless headphones
9,398,364	SoundSport® Pulse Wireless headphones SoundSport® Wireless headphones SoundTrue® Ultra in-ear headphones SoundSport® Free Wireless headphones

See Complainant Bose Corporation’s Identification of Products It Will Rely Upon to Satisfy the Domestic Industry Requirement, EDIS Doc ID 654098 (Aug. 27, 2018); ID at 16-17, 54-55.

## PUBLIC VERSION

### II. LEGAL STANDARDS

#### A. Standard on Review

As noted above, the Commission determined to review the ID in part. Once the Commission determines to review an ID, its review is conducted *de novo*. *Certain Polyethylene Terephthalate Yarn and Prods. Containing Same*, Inv. No. 337-TA-457, USITC Pub. No. 3550, Comm'n Op. at 9 (June 18, 2002). Upon review, the "Commission has 'all the powers which it would have in making the initial determination,' except where the issues are limited on notice or by rule." *Certain Flash Memory Circuits and Prods. Containing Same*, Inv. No. 337-TA-382, USITC Pub. 3046, Comm'n Op. at 14 (Jun. 26, 1997) (quoting *Certain Acid-Washed Denim Garments and Accessories*, Inv. No. 337-TA-324, USITC Pub. No. 2576, Comm'n Op. at 5 (Aug. 28, 1992)). Commission practice in this regard is consistent with the Administrative Procedure Act. *See* 5 U.S.C. § 557(b).

When reviewing an ID, "the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge." 19 C.F.R. § 210.45. "The Commission may also make any findings or conclusions that in its judgment are proper based on the record in the proceeding." *Id.* This rule reflects the fact that the Commission is not an appellate court, but is the body responsible for making the final agency decision.

#### B. Summary Determination Standard

A motion for summary determination will be granted if the "pleadings and any depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to summary determination as a matter of law." 19 C.F.R. § 210.18(b).



## PUBLIC VERSION

“[I]n deciding a motion for summary judgment, ‘the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.’”<sup>7</sup> *Leibel-Flarsheim Co. v. Medrad, Inc.*, 481 F.3d 1371, 1377 (Fed. Cir. 2007) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). “The summary judgment movant has the initial responsibility of identifying the legal basis of its motion, and of pointing to those portions of the record that it believes demonstrate the absence of a genuine issue of material fact.” *Novartis Corp. v. Ben Venue Labs., Inc.*, 271 F.3d 1043, 1046 (Fed. Cir. 2001) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

Furthermore, a complainant’s allegations cannot be contested by a defaulting respondent. *See* 19 C.F.R. § 210.16(b)(4) (“A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.”).

Other than the defaults listed in § 210.16, a party’s failure to act “may provide a basis for the [ALJ] or the Commission to draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930), and orders that are adverse to the party who fails to act.” 19 C.F.R. § 210.17. Such failures include “[f]ailure to respond to a motion for summary determination under § 210.18.” *Id.*

---

<sup>7</sup> The standards for summary judgment in district courts apply to summary determinations at the U.S. International Trade Commission. *See Amgen Inc. v. Int’l Trade Comm’n*, 565 F.3d 846, 849 (Fed. Cir. 2009) (citing *Hazani v. U.S. Int’l Trade Comm’n*, 126 F.3d 1473, 1476 (Fed. Cir. 1997)).

**PUBLIC VERSION**

**III. DISCUSSION**

**A. Violation Issue Under Review**

The Commission determined to review the ID's finding that Bose's investments and activities establish a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the '364 patent. 84 *Fed. Reg.* 43160. To assist with its review, the Commission requested responses from the parties to the following question:

1. The record evidence shows that Bose aggregated its domestic investments in Fiscal Year 2018 for domestic industry products that practice the StayHear® Patents and the '364 patent to establish a domestic industry under sections 337(a)(3)(A) and (B). Bose, however, relies on a subset of its domestic industry products to satisfy the domestic industry requirement with respect to the '364 patent. Please provide an appropriate allocation of the domestic investments and discuss whether such allocated investments establish a domestic industry under sections 337(a)(3)(A) and (B) with respect to the '364 patent.

**1. Domestic Industry With Respect to the '364 Patent**

**a. *The ID***

Relying on the uncontested declaration of Mr. Maguire, the Director of Product Planning and Management at Bose, the ID determined that there is no dispute as to any material fact establishing that Bose satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A), (B), and (C) based on Bose's domestic activities, related to its domestic industry products, which include research, development, engineering, and design. ID at 56-61 (citing Mem. at 28-30; Mem. Ex. S (Maguire Decl.)).

During its most recent full fiscal year, which ended on March 31, 2018 ("Fiscal Year 2018"), the ID stated that Bose had net revenues of approximately [REDACTED] in approximately 134 countries. *Id.* at 57 (citing Mem. Ex. S, ¶ 4). The ID also stated that [REDACTED]. *Id.*

During this period, the ID found that "Bose's net revenues in the United States totaled

**PUBLIC VERSION**

approximately [REDACTED], including approximately [REDACTED]  
[REDACTED].” *Id.*

With respect to subparagraph (A), the ID found the evidence shows that “Bose’s research and development facilities at Framingham, Massachusetts and Stowe, Massachusetts total over [REDACTED] square feet valued at approximately [REDACTED].” *Id.* at 57 (citing Mem. Ex. S, ¶ 6). The ID also found that research and development facilities in Framingham, Massachusetts and Stowe, Massachusetts related to Bose’s Consumer Electronic Division (“CED”), which is primarily responsible for the domestic industry products, include approximately [REDACTED] square feet valued at over [REDACTED]. *Id.* (citing Mem. Ex. S, ¶ 6). The ID stated that the “CED’s activities related to the domestic industry products include:

- development of products for manufacturing and sale;
- research, which encompasses invention and enhancement, into technologies that might be incorporated into future earpiece devices;
- core support for engineering functions used in the process of designing the domestic industry products, such as computer-aided design (CAD) tools; and
- industrial design of the domestic industry products.”

*Id.* at 57-58 (citing Mem. Ex. S, ¶ 5). Furthermore, the ID found that “Bose has approximately [REDACTED] (at cost) of equipment for research and development, including approximately [REDACTED] (at cost) of equipment for research and development in the United States related to the domestic industry products.” *Id.* at 58 (citing Mem. Ex. S, ¶ 7). Still further, the ID found that “Bose’s technical support and warranty service facilities in Westborough, Massachusetts directed to the domestic industry products include approximately [REDACTED] valued at approximately [REDACTED].” *Id.* (citing Mem. Ex. S, ¶ 9).

## PUBLIC VERSION

With respect to subparagraph (B), the ID found that “Bose has made substantial employment of U.S. labor in connection with its investments in research, advanced development, engineering, and design associated with the domestic industry products.” *Id.* (citing Mem. Ex. S, ¶ 8). The ID explained that “[a]s of April 23, 2018, Bose employs approximately [REDACTED] employees dedicated to research and development ([REDACTED] of which are based in the United States), including [REDACTED] research and development employees working on the domestic industry products in the United States.” *Id.* at 59. Furthermore, the ID stated that “[i]n fiscal year 2018, Bose spent over [REDACTED] on technical support and warranty service of its CED products in the U.S., including over [REDACTED] for the domestic industry products.” *Id.* (citing Mem. Ex. S, ¶ 9). The ID found that “Bose employs over [REDACTED] employees dedicated to technical support and warranty service ([REDACTED] of which are based in the United States), including seven for the domestic industry products.” *Id.* The ID also found that Bose sells the domestic industry products (i) in its own network of 68 retail stores in the United States; (ii) through various retail channels in the United States; and (iii) through its own direct (online) sales channel organizations, which in total employ approximately [REDACTED] persons in the United States as of March 31, 2018. *Id.*

### **b. *The Parties’ Submissions***

Bose contends that it “has made significant investments in plant and equipment in the United States and significant employment of labor and capital in the United States” with respect to the ’364 patent. CSub at 3. In connection with its initial submission in response to the Commission’s notice, Bose filed a declaration of Brian Trybulski, the Financial & Business Advisor for Bose. *Id.* at 2. According to Brian Trybulski, the following chart was generated from Bose’s internal sales records and shows, for Bose’s Fiscal Year 2018, the sales revenue and unit sales for certain Bose in-ear headphones:

**PUBLIC VERSION**

Product Family	FY18 Net Trade Sales	FY18 Units
SoundSport Android		
SoundSport Apple		
SoundSport Audio		
SoundTrue Ultra Android		
SoundTrue Ultra Apple		
SoundSport Pulse		
SoundSport Wireless		
SoundSport Free		
<b>Total</b>		

Trybulski Decl., Ex. A, ¶ 2. Bose claims that the SoundSport Wireless product “accounts for [REDACTED] the domestic industry products.” CSub at 2. “Using the more conservative sales-based allocation of [REDACTED],” Bose asserts that “the ’364 patent’s contribution to Bose’s domestic investments . . . yields the following allocations:”

Domestic Investment Type	Total Amount for DI Products	Amount Allocated to Product Protected by 364 Patent [REDACTED]
Plant & Equipment (19 U.S.C. § 1337(a)(3)(A))		
Labor & Capital (19 U.S.C. § 1337(a)(3)(B))		
<b>TOTAL</b>		

*Id.* at 3 (citing ID at 57-59).<sup>8</sup> Bose explains that these investments are for its activities performed by its CED located in Massachusetts. *Id.* at 4; *see* ID at 57-58.

<sup>8</sup> The [REDACTED] is derived from Exhibit S to Bose’s motion for summary determination at ¶ 6 (listing [REDACTED] attributable to plant costs for the domestic industry products), ¶ 7 (listing [REDACTED] attributable to equipment costs for the domestic industry products), and ¶ 9 (listing an additional [REDACTED] attributable to plant costs for the domestic industry products). CSub at 3 n.1; *see also* ID at 57-58. The [REDACTED] is derived from Exhibit S to Bose’s motion for summary determination at ¶ 6 (listing [REDACTED] attributable to labor and capital investment for the domestic industry products) and ¶ 9 (listing an additional [REDACTED] attributable to labor and capital investment for the domestic industry products). CSub at 3 n.2; *see also* ID at 58-59.

## PUBLIC VERSION

The IA submits that “it is unclear from the record the magnitude of the investments related to the SoundSport Wireless headphones” and therefore “the allocation of such an investment to each asserted patent is also unclear.” IASub at 2. “To the extent that Bose fails to identify evidence in the record of the specific allocation of investments for the ‘364 patent,” the IA recommends that the Commission “remand the case to the [ALJ] for further fact finding.” *Id.*

### c. *Analysis*

The Commission vacates the ID’s summary determination that Bose has demonstrated the existence of a domestic industry with respect to the ’364 patent. For that reason, the Commission finds that Bose is not entitled to a summary determination of a section 337 violation with respect to the ’364 patent, and remands the investigation in part to the ALJ for further proceedings with respect to the ’364 patent consistent with the analysis below and the Commission’s concurrently issued remand order.

The domestic industry requirement under paragraph 337(a)(3) requires evidence that sufficient economic activities and investments as set forth in subparagraphs (A), (B), or (C) have taken place or are taking place with respect to the articles protected by the asserted patent. *See* 19 U.S.C. § 1337(a)(3); *Certain Variable Speed Wind Turbines & Components Thereof*, Inv. No. 337-TA-376, Comm’n Op. at 21 (Nov. 1996). To demonstrate the existence of a domestic industry under paragraph 337(a)(3) before the ALJ, Bose aggregated its activities and investments for all of the domestic industry products regardless of the asserted patent. However, as discussed above, the domestic industry products that practice the ’364 patent are not coextensive with the domestic industry products that practice the StayHear® Patents. *See supra* at Section (I)(C). That is because the patented technology relevant to the ’364 patent is different from the patented technology relevant to the StayHear® Patents. *See supra* at Section (I)(B).

## PUBLIC VERSION

Therefore, in order to meet the domestic industry requirement of paragraph 337(a)(3) before the ALJ, Bose needed to provide an allocation of its investments relevant to the subset of domestic industry products that practice the '364 patent and to show that these investments are significant or substantial. *See, e.g., Certain Concealed Cabinet Hinges and Mounting Plates*, Inv. No. 337-TA-289, Comm'n Op. at 32 (Jan. 8, 1990) (“‘significance’ as used in the statute denotes an assessment of the relative importance of the domestic activities”).

In response to the Commission’s notice, Bose submitted a new declaration of Brian Trybulski, the Financial & Business Advisor for Bose, to support an allocation of investments for the '364 patent. The Commission hereby declines to consider Bose’s new evidence in the first instance because this declaration is not part of the certified record and was not considered by the ALJ. *See Certain Collapsible Sockets for Mobile Electronic Devices and Components Thereof*, Inv. No. 337-TA-1056, Comm’n Op. at 14 (Jun. 14, 2018) (citing 19 C.F.R. § 210.38) (determining not to consider a new supplemental declaration on Commission review of a summary determination on violation because the declaration was not before the ALJ and thus was not part of the record certified to the Commission by the ALJ). Other than the Trybulski declaration, Bose has identified no record evidence to support its proposed allocation for the '364 patent.

Even if the Commission were to consider the Trybulski declaration, Bose has not shown that it is entitled to summary determination on violation with respect to the '364 patent because Bose has failed to show that its expenditures with respect to the '364 patent are significant or substantial in any appropriate context. Bose claims that at least its SoundSport Wireless product practices at least one claim of the '364 patent. CSub at 2. Bose also claims that the SoundSport Wireless product accounts for [REDACTED] of revenue attributable to the domestic industry products.

## PUBLIC VERSION

*Id.* Using this sales-based allocation of [REDACTED], Bose asserts that the '364 patent's contribution to its domestic investments yields approximately [REDACTED] in plant and equipment investment and approximately [REDACTED] in labor and capital investment. *Id.* at 3. But other than providing these numerical amounts of its domestic investments, Bose has not shown how they are significant or substantial in any appropriate context of Bose's operations, the marketplace, or the industry in question. *See Certain Carburetors and Products Containing Such Carburetors*, Inv. No. 337-TA-1123 ("*Certain Carburetors*"), Comm'n Op. at 17, 19 (Oct. 28, 2019) (complainant must provide evidence or arguments to substantiate the nature and significance of its domestic activities and investments with respect to the protected articles).

The Commission most recently explained in *Certain Carburetors* that the "use of a sales-based allocation is one acceptable way to determine the numerical value of domestic industry investments for each Asserted Patent," but the Commission has never "determined the quantitative significance of a complainant's domestic industry investments based solely on the absolute value of those investments." *Id.* at 17. Rather, the Commission has "sought to place the value of domestic investments in the context of the relevant marketplace, such as by comparing a complainant's domestic expenditures to its foreign expenditures or considering the value added to the product from a complainant's activities in the United States." *Id.* at 18. In this case, Bose has failed to explain and substantiate with record evidence the nature and significance of its domestic activities with respect to the '364 patent. Bose's sales-based comparison of the '364 patent's contribution to the investments for its domestic industry products does not provide context of the company's operations, the marketplace, or the industry in question necessary to understand whether the relative value of its domestic activities and investments is significant or substantial.



## PUBLIC VERSION

For these reasons, Bose has not established that a domestic industry exists with respect to the '364 patent on summary determination. Accordingly, the Commission finds that Bose is not entitled to summary determination on violation with respect to the '364 patent. Because the Commission vacates the grant of summary determination, the Commission remands this part of the investigation to the ALJ for further proceedings as to the '364 patent. If Bose chooses to pursue a violation under subsection 337(d) with respect to the '364 patent, these further proceedings would include consideration of the Trybulski declaration in the first instance and any other evidence, including contextual evidence, Bose submits to support the existence of a domestic industry with respect to articles protected by the '364 patent under subparagraphs 337(a)(3)(A), (B), or (C).<sup>9</sup>

---

<sup>9</sup> Commissioner Schmidlein does not support the decision to remand the investigation to the ALJ for further proceedings. Instead, she would affirm on modified grounds the ALJ's summary determination that Bose established based on substantial, reliable, and probative evidence the existence of a domestic industry under subsections 337(a)(3)(A) and (B) with respect to the '364 patent. She observes that Bose filed the Trybulski declaration in connection with Bose's initial submission in response to the Commission's notice. CSub at 2, Ex. A. Commissioner Schmidlein would accept the Trybulski declaration and certify it into the record given that the briefing question in the notice requested Bose to provide an appropriate allocation with respect to the '364 patent. *See* 19 C.F.R. § 210.38. In her view, the declaration establishes that the Bose product that practices at least one claim of the '364 patent, *i.e.*, the SoundSport Wireless product, accounts for ██████ of revenue and ██████ of unit sales attributable to the domestic industry products. CSub at 2, Ex. A. Using a sales-based allocation method, Bose establishes that the '364 patent's contribution to Bose's domestic investments, as detailed in Exhibit S to Bose's Motion for Summary Determination (and the ID at 57-59), yields approximately ██████ in plant and equipment investment and approximately ██████ in labor and capital investment. CSub at 3.

The record shows that these investments in plant and equipment and labor and capital were made in support of Bose's research and development activities that take place in Bose facilities located in Massachusetts. *See* Ex. S at ¶¶ 5-6. Bose argues that the investments are significant when considered in the context of Bose's global research and development activities related to the SoundSport Wireless product. CSub at 4. Commissioner Schmidlein agrees. Specifically, as noted in Exhibit S, over ██████ of Bose's global employees dedicated to research and development are located in the United States. Ex. S at ¶ 8. Applying this ██████ ratio to the domestic activities related to the '364 patent, as argued by Bose, it can be

## PUBLIC VERSION

### B. Remedy

To assist with its determination on remedy, the Commission requested responses from the parties to the following questions:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.
3. Please explain with citation to the record whether respondents 1MORE USA, Inc., Phonete, and REVJAMS satisfy the requirements of subsections (A)-(E) of section 337(g)(1). *See* SD at 4.

#### 1. The RD

The RD recommended that, in the event the Commission finds a violation of section 337, the Commission should issue (1) a GEO with respect to the '852, '853, '590, '287, and '364

---

inferred that “at least [REDACTED] of Bose’s research and development activities for the product protected by the '364 patent occurs in the United States.” CSub at 4. In other words, there is a basis in the record to conclude that the [REDACTED] in expenditures support [REDACTED] of the global research and development activities for the SoundSport Wireless product. This conclusion is consistent with the record evidence showing the important nature of the activities that take place in the Massachusetts facilities. Ex. S at ¶ 5. In addition, several of the significance findings made in the ID for the other asserted patents, which were not reviewed by the Commission, are applicable to the '364 patent. *See* ID at 59 (“Bose sells the domestic industry products in its own network of 68 retail stores located throughout the United States and through various retail channels, including Apple® stores, Best Buy, and Target, also located throughout the United States.”). Commissioner Schmidlein finds that the record is sufficient to establish the significance of the investments. For these reasons, and because there is no dispute as to any material fact, Commissioner Schmidlein would affirm the determination that Bose established the domestic industry requirement under subsections 337(a)(3)(A) and (B) for the '364 patent based on substantial, reliable, and probative evidence. She takes no position on whether Bose established the existence of a domestic industry under subsection 337(a)(3)(C).

## PUBLIC VERSION

patents; (2) an LEO with respect to the '253 patent; and (3) CDOs directed to each of the five domestic respondents: 1MORE, Beebo, Phaiser, REVJAMS, and V4ink.

### a. *General Exclusion Order*

As for all of the asserted patents except for the '253 patent, the RD found that a “GEO is warranted in this investigation both to prevent circumvention of an exclusion order limited to products of named entities, and because there is a pattern of violation of section 337 and it is difficult if not impossible to identify the source of infringing products.” RD at 63.

With respect to subparagraph 337(d)(2)(A), the RD found that Bose has provided evidence showing that it is difficult to obtain information about the entities selling infringing earpiece devices. *Id.* at 69. Specifically, the ALJ found that “[m]any of the companies selling these devices use false or non-existent addresses” or use “misleading or inaccurate address information on their websites or seller profiles.” *Id.* (citing NOI Returned from 1MORE USA, Inc. (EDIS Doc. ID No. 650945); NOI Returned from Phonete (EDIS Doc. ID No. 650270); Order No. 2 Returned from Misodiko (EDIS Doc. ID No. 654344); Order No. 2 Returned from Misodiko (EDIS Doc. ID No. 654379); Order No. 34 Returned from PLC VIP Shop d/v/a VIP Tech Ltd. (EDIS Doc. ID No. 654345); Order Nos. 8, 9, 10 and 11 Returned from REVJAMS (EDIS Doc. ID No. 661320); Order Nos. 5, 6, 7, 8, and 9 Returned from SMARTOMI Products, Inc., (EDIS Doc. ID No. 661327); and Order Nos. 10 and 11 Returned from SMARTOMI Products, Inc. (EDIS Doc. ID No. 661842)).

The RD also found the “evidence shows that all of the respondents use e-commerce websites such as Amazon.com, eBay, Groupon, Alibaba, or A4C to sell their products in the United States.” *Id.* (citing *see, e.g.*, Mem. Ex. F (Wilhem Decl.), ¶ 8, Mem. Ex. G (Dreiblatt Decl.), ¶ 10, Mem. Ex. H (Saideh Decl.) ¶ 10; Mem. Ex. I (Gawell Decl.); Mem. Ex. J (Fung

## PUBLIC VERSION

Decl.), ¶ 7). Moreover, the RD found that certain respondents “conduct operations anonymously via Amazon, eBay and other online marketplaces while providing little or no information about the company behind the products.” *Id.* at 69-70 (citations omitted).

The RD further found that respondents would be “highly capable of evading a limited exclusion order” given the large number of importers importing the infringing devices under a wide variety of names and aliases and the availability of online retail and manufacturing sources creating low barriers to entry. *Id.* at 72, 73. Still further, the RD found the evidence shows that “there is established foreign manufacturing capability” but companies import their products in small quantities and generic packaging making it difficult to identify the source. *Id.* at 71-72.

Finally, the RD found that “there is a significant incentive encouraging defaulting (or non-participating) respondents to circumvent an LEO” because “[r]espondents are able to sell infringing earpieces at substantial margins while simultaneously underselling Bose at substantial margins.” *Id.* at 74 (citing Mem. at 37-39, Mem. Ex. E (Schuler 1st Decl.), ¶¶ 14, 20, 24, 28, 41).

With respect to subparagraph 337(d)(2)(B), the RD found that Bose presented substantial, reliable, and probative evidence for the issuance of GEO due to a pattern of violation and the difficulty in identifying the source of infringing earpiece devices. *Id.* at 76. In particular, the RD found that the evidence shows a pattern of violation of infringement by respondents who either defaulted, did not participate, or admitted infringement, and possibly others. *Id.* at 76-77. And as discussed above, the RD found the evidence also established that it would be difficult to identify the sources of the allegedly infringing products. *Id.* at 77-78 (citations omitted). The RD noted that Bose identified 16 allegedly infringing products being sold online in the United

## PUBLIC VERSION

States through a variety of online platforms, which supports a finding that unauthorized use of Bose's patents is widespread. *Id.* at 78.

### **b. Limited Exclusion Order**

As to the '253 patent, the RD found that the evidence does not support the issuance of a GEO because Bose only identified one defaulting respondent, V4ink., Inc., as a source of infringing products. *Id.* at 75, 78-79. Thus, the RD found that Bose had not met its burden of showing a pattern of violation or difficulty in identifying the source of other infringing earpiece devices with respect to the '253 patent.

### **c. Cease and Desist Orders**

With respect to the defaulting (or non-participating) respondents located in the United States, the RD found that the evidence supports the inference that they maintain commercially significant inventories in the United States or have significant domestic operations. *Id.* at 82 (citing *Certain Hand Dryers and Housing for Hand Dryers* ("Hand Dryers"), Inv. No. 337-TA-1015, Comm'n Op. at 24 (Oct. 30, 2017) ("Because US Air is located in the United States, the Commission infers that US Air maintains commercially significant inventory in the United States, and finds that the issuance of a CDO against US Air is appropriate."); *Certain Mobile Device Holders and Components Thereof* ("Mobile Device"), Inv. No. 337-TA-1028, Comm'n Op. at 27 (Mar. 22, 2018) (stating that because three domestic defaulting respondents "maintain addresses in the United States. . . . the Commission infers that the domestic respondents have commercially significant inventory and significant domestic operations"))).

With respect to the foreign respondents found in default under paragraph 337(g)(1), the ALJ declined to presume the presence of domestic inventories in the United States that would support the issuance of a cease and desist order. *Id.* at 83 (citing *Mobile Device*, Inv. No. 337-

## PUBLIC VERSION

TA-1028, Comm'n Op. at 24). The ALJ found the evidence does not support the issuance of cease and desist orders against the three foreign defaulting (or non-participating) respondents: Misodiko, Phonete, and TomRich. *Id.* Specifically, the ALJ found Bose's evidence with regard to Misodiko's inventory was not of record at the time the pending motion and the IA's response were filed. *Id.* (citing Mem. Ex. E (Schuler 1st Decl.) ¶ 49 (citing Exhibit 36 (Gosalia Decl.))). As to Phonete and TomRich, the ALJ found that the evidence suggests that infringing products sold online are fulfilled from China. *Id.* at 84.

### 2. The Parties' Submissions

#### a. General Exclusion Order

Bose agrees with the RD's finding that there is substantial, reliable, and probative evidence showing that "any limited exclusion order issued in this investigation would likely be subject to evasion." CSub at 7. Bose explains that the RD made the following findings in support of its conclusion that a GEO is necessary to prevent circumvention of an LEO:

- Many companies selling infringing products use "false or non-existent addresses," RD at 69;
- Some respondents were difficult to serve because of misleading or inaccurate address information on their websites or seller profiles, *id.*;
- All of the defaulting respondents use e-commerce websites such as Amazon, eBay, Alibaba, etc., *id.*;
- At least some of the respondents utilize online marketplaces so as to act anonymously, *id.* at 69-70;
- There exist entities that were unable to be named as respondents who market infringing products online and who can readily change names as well as online "storefronts" so as to evade any limited exclusion order, *id.* at 70;
- Many of the respondents obtain their products from factories in China willing to make the infringing product for companies other than the named respondents, *id.* at 70-71;

## PUBLIC VERSION

- Non-respondent online sellers ship their products with little or no identifying information, and will change their URL upon being identified as a source of infringing goods so as to frustrate enforcement efforts by Bose, *id.* at 71-72;
- There is a large number of importers importing infringing goods under a wide variety of names and aliases, many of whom simply rebrand these goods and continue to ship once they are identified, *id.* at 72;
- Many companies ship their products in small quantities and generic packaging, making it difficult to identify the seller, *id.* at 72-73; and
- Business conditions with respect to earpiece devices and components thereof create low barriers of entry and incentives to a respondent to continue selling infringing articles, *id.* at 73-75.

CSub at 7.

Bose argues that the RD also found the evidence supports finding there is a widespread pattern of violation where it is difficult to identify the source of infringing products. *Id.* at 8. In particular, Bose asserts that the RD “found that each of the defaulting respondents had been found to sell infringing products,” and “three respondents as to whom the investigation had been terminated on the basis of consent orders, admitted that their products infringe certain claims of the asserted patents.” *Id.* (citing RD at 76). Further, Bose states that the RD found Bose had “identified 16 other products sold online in the United States which Bose has identified as infringing.” *Id.* (citing RD at 77). Under very similar circumstances, Bose asserts that “the Commission has found that the presence of numerous online sales of infringing goods can constitute a pattern of violation of section 337.” *Id.* (citing *Certain Loom Kits for Creating Linked Articles* (“*Loom Kits*”), Inv. No. 337-TA-923, Comm’n Op. at 14 (Jun. 26, 2015)).

The IA agrees with the RD’s recommendation. IASub at 3-4.

### **b. Limited Exclusion Order**

To the extent that a GEO is not issued with respect to the ’253 patent, Bose requests that an LEO is entered against the defaulting respondent, V4ink, accused of infringing claim 1 of the

## PUBLIC VERSION

'253 patent. *See* Amended Compl. ¶ 188. The IA agrees with the RD's determination that substantial, reliable, and probative evidence supports finding defaulting respondent V4ink sells earpiece devices that infringe claim 1 of the '253 patent, and that an LEO directed to V4ink would be sufficient to stop the importation of the infringing products. IASub at 4 (citing ID at 42-52; RD at 75).

In response to the Commission's question regarding paragraph 337(g)(1), the IA states that the evidence appears to support finding that REVJAMS—but not IMORE and Phonete—satisfy the requirements of elements (A)-(E) of paragraph 337(g)(1). *Id.* at 4-5. With respect to element (A), the IA points out that the original complaint and the amended complaint named all three respondents. *Id.* at 5. As for element (B), the IA asserts that Bose has shown that the Commission served the complaint and NOI on REVJAMS but served only the amended complaint on IMORE and Phonete. *Id.* In other words, the IA contends that Bose has not come forward with reliable evidence to show that the Commission served the NOI on IMORE and Phonete. With respect to element (C), the IA states that all three respondents failed to respond to the complaint or the amended complaint. *Id.* With respect to element (D), the IA argues that “[a]lthough Bose did not move for an order to show good cause why these entities should not be found in default,” Bose served its corrected motion for summary determination on these respondents and “explicitly requested that they be found in default.” *Id.* at 6. Moreover, the IA believes that “the ALJ found these entities in default” because these respondents have not appeared or responded to “Bose's motion to argue a lack of good cause.” *Id.* As for element (E), the IA points out that Bose did not seek LEOs in its corrected motion for summary determination but Bose sought such relief in its amended complaint. *Id.*



## PUBLIC VERSION

Bose submits that the requirements of elements (A) through (E) of paragraph 337(g)(1) have been met with respect to 1MORE, Phonete, and REVJAMS. With respect to 1MORE and Phonete, Bose explains that after the Commission was unable to serve the complaint and NOI on these two respondents, the ALJ granted Bose leave to attempt personal service of the amended complaint and the notice of investigation on them. CSub at 16 (citing Order No. 6 (Sep. 20, 2018)). Bose asserts that it was successful in serving these parties and submitted proof of delivery for 1MORE and Phonete with its motion for summary determination. *Id.* (citing Mem. Exs. A & B, EDIS Doc. Nos. 1399360 and 1399361). As for REVJAMS, Bose explains that this respondent was served by the Secretary's office on June 26, 2018. *Id.* Bose contends "[t]hese parties failed to respond to the complaint and notice or otherwise appear in the investigation or show cause why they should not be found in default." *Id.* Under circumstances such as this, Bose argues "the Commission has ruled that a non-participating respondent will be deemed to have received both documents and can therefore be found in default." *Id.* at 17 (citing *Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, Such As Sildenafil Citrate, And Products Containing Same* ("Sildenafil"), Inv. No. 337-TA-489, Order No. 12 (May 13, 2003) and cases cited therein). As such, Bose believes the requirements of paragraph 337(g)(1) are met with respondents 1MORE, Phonete, and REVJAMS, and requests that LEOs are entered against these respondents to the extent that a GEO is not issued in this investigation.

### c. *Cease and Desist Orders*

Bose seeks CDOs against all of the defaulting and non-participating respondents. In response to the Commission's questions regarding CDOs and evidence of domestic inventory, Bose asserts that the defaulting domestic respondents are presumed to have commercially significant U.S. inventories and/or business operations. CSub at 10 (citing *Certain Video Game*

## PUBLIC VERSION

*Systems, Accessories, and Components Thereof* (“*Video Game Systems*”), Inv. No. 337-TA-473, Comm’n Op. at 2 (Dec. 24, 2002); *Certain Hand Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm’n Op. at 29 (Feb. 13, 2017)).

Even though Bose believes it does not need to produce any evidence of commercially significant inventory in the United States to be entitled to a CDO against defaulting domestic respondents, Bose asserts that Amazon.com produced certain information in response to a subpoena in this investigation establishing that the defaulting domestic respondents are based in the United States, have commercial operations in the United States, and in some cases, maintain inventory at Amazon warehouses in the United States. CSub at 10-11 (citing Schuler Decl., Ex E-36, EDIS Doc. No. 1452890).

With respect to the foreign respondents—Misodiko, Phonete, V4Ink,<sup>10</sup> and TomRich—Bose asserts that Amazon provided evidence that Misodiko conducts commercial operations in the United States and maintains inventory at Amazon warehouses in the United States. *Id.* at 12-13 (citing Schuler Decl., Ex E-36, EDIS Doc. No. 1452890). According to Bose, Amazon further provided evidence that Misodiko, V4Ink, and Tom Rich maintain Amazon storefronts through which they conduct business in the United States. *Id.* at 12. Bose argues that the Commission has issued CDOs against foreign defaulting respondents who utilize Amazon facilities in the United States to fulfill their orders. *Id.* at 13 (citing *Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 11). With respect to Phonete, Bose argues that Phonete conducts

---

<sup>10</sup> Bose identifies V4ink as a foreign respondent even though its corporate address is Ontario, California, not Ontario, Canada. *See* 83 *Fed. Reg.* 62900 (Dec. 6, 2018); Order No. 10 at 1-2 (Oct. 29, 2018). As discussed above, the RD groups V4ink with the other defaulting domestic respondents.

## PUBLIC VERSION

commercial operations in the United States because it maintains its own website (not via Amazon) through which it conducts sales in the United States. *Id.* at 14 n.5.

Finally, Bose argues that “[r]egardless of whether the foreign Defaulting Respondents maintain inventories within the United States, their conduct of business operations in the United States that constitute *infringing acts* that cease and desist orders are designed to stop is sufficient basis to issue cease and desist orders against them.” *Id.* at 14 (citing *Mobile Device*, Inv. No. 337-TA-1028, Comm’n Op. at 23). In addition, Bose asserts that it “could be powerless to stop the multitude of foreign infringers who use online merchants such as Amazon.com to facilitate the offering for sale, selling, marketing, and advertising of their infringing products online within the United States” because “online merchants such as Amazon.com typically require a court order before they will delist an infringing item.” *Id.* at 15.

The IA agrees with the RD’s recommendation to issue CDOs directed to the domestic respondents: Beebo, Phaiser, REVJAMS, and V4ink. IASub at 6. To the extent that Bose comes forward with evidence that the NOI was also served on 1MORE, the IA believes that the record also supports issuing a CDO directed to 1MORE. *Id.* at 6-7.

### 3. Non-Party Anker’s Submission

Non-party Anker submits that a GEO is not warranted in view of additional facts not before the ALJ concerning the number and size of non-respondents selling earpiece devices in the United States. AnkerSub at 1. In particular, Anker explains that it is one of many established companies who sell earpiece devices through online retailers like Amazon as well as other sales channels in the United States. *Id.* at 3. Despite emphasizing the widespread availability of non-infringing alternatives from competitors in its public interest statement, Anker argues that Bose chose to file this investigation against several smaller companies while naming

## PUBLIC VERSION

none of the major sellers of earpiece devices, including Anker, as respondents. *Id.* at 1-2, 4. Anker contends that “Bose’s allegations and the ALJ’s findings in support of a GEO do not apply to Anker or other established manufacturers such as those named above, who have invested in established brands and have firm and consistent addresses, provide copious, readily-available information about the company behind their products, ship and sell their products in packaging that clearly identifies the products and their source, have not changed their names in response to this investigation, and are easy to find online and elsewhere.” *Id.* at 4.

Anker also asserts that although it has no reason to believe that its products infringe any valid and enforceable patent asserted in this investigation, there is a high risk that a GEO could be applied incorrectly and inappropriately to block products of Anker and other major competitors. *Id.* at 1. Specifically, Anker explains that “Bose has admitted that noninfringing alternatives from other competitors are ‘widely available’ in ‘immense quantities’ from competitors other than the named Respondents, without identifying any such specific competitors or competing products.” *Id.* at 5. But, according to Anker, “the typical language of a GEO . . . provides Customs with no guidance whatsoever on how to identify the many non-infringing competitor products and differentiate them from infringing products.” *Id.*

Accordingly, Anker claims that it “(and the other major sellers of earpiece devices, none of whom were named as respondents) unfairly risks exclusion of its non-infringing products.” *Id.*

Furthermore, Anker argues that “issuing a GEO here would incentivize complainants to not name their biggest competitors as respondents (to the extent that any such competitors are selling allegedly infringing devices), knowing that those competitors would likely raise stronger defenses than smaller competitors who are more likely to default or enter consent orders.” *Id.* Anker points out that the Commission has previously recognized the danger inherent in this type

## PUBLIC VERSION

of scenario in denying a request for a GEO. *Id.* (citing *Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, Comm'n Op. at 24 (June 1, 1991)).

Finally, Anker argues that the foregoing discussion shows that there is no widespread “pattern of violation” where “it is difficult to identify the source of infringing products” because Bose has admitted that noninfringing alternatives from other competitors are “widely available” in “immense quantities” from competitors other than the named Respondents. *Id.* at 6. Yet, Anker asserts that Bose does not identify any such specific competitors or competing products, while at the same time arguing that infringement is so widespread and difficult to detect that a GEO is necessary. *Id.* Anker contends these two contentions are in obvious tension. *Id.* According to Anker, that is because a “widespread pattern of violation cannot exist when a majority of the market either is non-infringing or is openly selling clearly identified products, as is the case here.” *Id.*

In response to Anker’s submission, Bose argues “Anker cites no support for its contention that identification of specific noninfringing alternatives and market share data are required to issue a general exclusion order.” CReply at 1. As for Anker’s concern that the exclusion order will unfairly prejudice its products, Bose argues that Anker should have intervened in the investigation or, alternatively, Bose asserts “there are procedures at both the Commission and U.S. Customs and Border Protection for Anker to obtain a ruling as to whether any particular product should be considered within the scope of the exclusion order.” *Id.* at 2. Bose contends that nothing in Anker’s submission stands in the way of the Commission issuing a GEO because Bose has satisfied all of the statutory requirements for a GEO. *Id.*

## PUBLIC VERSION

### 4. Analysis

As discussed herein, the Commission determines to issue a GEO with respect to the '852, '853, '590, and '287 patents and an LEO with respect to the '253 patent under subsection 337(d).<sup>11</sup> The Commission also finds that the record evidence supports issuing CDOs against all of the defaulting and non-participating respondents (*i.e.*, 1MORE, Beebo, Phaiser, REVJAMS, V4ink, Misodiko, Phonete, and TomRich) under subsection 337(f).

#### a. *Exclusion Orders With Respect to the StayHear® Patents*

The traditional remedy under subsection 337(d) is a limited exclusion order, which applies to the articles of specific parties before the Commission in the investigation. *See Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1356 (Fed. Cir. 2008). However, a general exclusion order, which bars the importation of infringing products of the named respondents found in violation of section 337 as well as infringing products of other entities that were not named in the notice of investigation, is warranted under two exceptional circumstances. *Id.* First, under subparagraph (d)(2)(A), the Commission may issue a GEO if it is “necessary to prevent circumvention of an exclusion order limited to products of named persons.” *Id.* Second, under subparagraph (d)(2)(B), the Commission may issue a GEO if “there is a pattern of violation of this section and it is difficult to identify the source of infringing products.” *Id.* A GEO may be granted if one or both of these subparagraphs are satisfied. *See Fuji Photo Film Co. v. Int'l Trade Comm'n*, 474 F.3d 1281, 1286 (Fed. Cir. 2007).

In determining whether either criterion is satisfied, the Commission may look not only to the infringing activities of active respondents, and respondents who have defaulted or been

---

<sup>11</sup> Commissioner Schmidlein finds that the LEO with respect to the '253 patent should be issued under subsection 337(g)(1) given that V4ink was found in default and satisfies the conditions of subsections (A) through (E).

## PUBLIC VERSION

terminated from an investigation, but also to those of non-respondents. *See Certain Electronic Paper Towel Dispensing Devices and Components Thereof*, Inv. No. 337-TA-718, Comm'n Op. at 13-14, 16 (Dec. 1, 2011); *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm'n Op. at 59 (April 14, 2010).

Section 337 includes two paragraphs that address when the Commission may issue a GEO: 337(d)(2) and 337(g)(2). The principal difference between these two paragraphs is that paragraph (d)(2) applies where one or more persons has appeared to contest the investigation, while paragraph (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 paragraph 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 paragraph 337(d)(2) must also rest upon a violation established by the same standard of proof. *See Sildenafil*, Inv. No. 337-TA-489, Comm'n Op. at 4 (explaining that “a violation of section 337 may not be found unless supported by ‘reliable, probative, and substantial evidence,’” regardless of whether paragraphs (d)(2) or (g)(2) applies); H.R. Rep. No. 100-40, at 161 (1987) (“Relief in the form of a general exclusion order must be supported by a Commission finding of violations of the Act based on substantial, reliable, and probative evidence.”). Paragraph 337(g)(2) also explicitly incorporates the requirements of paragraph (d)(2) among its own requirements. 19 U.S.C. § 1337(g)(2).

Here, where some respondents defaulted or did not participate in the investigation, but other respondents appeared and were terminated based on settlement and/or consent order, subparagraph 337(d)(2) provides the correct legal framework to analyze whether a GEO is an appropriate remedy. *See Certain Self-Anchoring Beverage Containers* (“*Beverage Containers*”),

## PUBLIC VERSION

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” to the analysis of whether a GEO is warranted in an investigation). As discussed below, the record demonstrates that both types of exceptional circumstances under paragraph (d)(2) exist with respect to the '852, '853, '590, and '287 patents: (a) a GEO is necessary to prevent circumvention of a LEO, and (b) there is both a pattern of violation of section 337 and it is difficult to identify the source of the products infringing those patents.

The record demonstrates that a GEO with respect to the '852, '853, '590, and '287 patents is necessary to prevent circumvention of an order limited to products of the named respondents. *See* RD at 69-75. Among others, the RD identified four factors that the Commission has found to contribute to the satisfaction of subparagraph (d)(2)(A). **First**, the respondents conduct their business through the anonymity of the internet. *Id.* at 69 (all of the respondents use e-commerce websites to sell their products in the United States), 69-70 (at least some of the respondents conduct operations anonymously via online marketplaces). **Second**, multiple respondents have provided incorrect addresses, and many companies selling infringing products are capable of changing names, facilities, or corporate structure to avoid detection. *Id.* at 69 (many companies selling infringing products use “false or non-existent addresses”), *id.* (some respondents were difficult to serve because of misleading or inaccurate address information on their websites or seller profiles), *id.* at 70-72 (some non-respondents who market infringing products online can readily change names or their URL so as to evade any LEO). **Third**, numerous companies rebrand essentially the same infringing product for use with different sales channels or sell the same product to multiple distributors who consequently import the product under various names. *Id.* at 70-71 (many of the respondents obtain their



## PUBLIC VERSION

products from factories in China willing to make the infringing product for companies other than the named respondents), *id.* at 72 (there is a large number of importers importing infringing goods under a wide variety of names and aliases, many of whom simply rebrand these goods and continue to ship once they are identified). **Fourth**, it is common practice to use generic packaging and ambiguous labeling practices not revealing the manufacturer. *Id.* at 71-72 (non-respondent online sellers ship their products with little or no identifying information), *id.* at 72-73 (many companies ship their products in small quantities and generic packaging, making it difficult to identify the seller).

The Commission has found subparagraph 337(d)(2)(A) satisfied under similar circumstances in other investigations. *See, e.g., Certain LED Lighting Devices and Components Thereof*, Inv. No. 337-TA-1107, Comm'n Op. at 6-7 (Sep. 11, 2019) (finding a GEO is warranted because the record evidence showed numerous foreign entities offer what appear to be products that are identical to those sold and imported by defaulting respondents and nearly all the foreign sellers identified in the record offer their products through online sites); *Certain Personal Transporters, Components Thereof, and Manuals Therefor*, Inv. No. 337-TA-935, Comm'n Op. at 7-9 (Apr. 20, 2016) (finding a GEO is warranted because the record evidence showed there are many companies on the internet that are selling the respondent's product in the U.S. and it is unknown which company actually manufactures the infringing products, and foreign entities could continue to import infringing products under a different corporate name or product name); *Certain Arrowheads with Arcuate Blades and Components Thereof*, Inv. No. 337-TA-1033, Comm'n Op. at 5-6 (May 1, 2018) (finding a GEO is warranted because the record evidence showed respondents have changed or are capable of changing names, facilities, or corporate

## PUBLIC VERSION

structures, importers use generic packaging, infringing products are shipped under false and misleading labels, and some respondents listed false or incorrect addresses and evaded service).

In addition to the evidence discussed above establishing difficulty in identifying the source of infringing products, the record also supports finding a widespread pattern of violation of the '852, '853, '590, and '287 patents to satisfy subparagraph 337(d)(2)(B). *See* RD at 69-72, 76-79. In particular, each of the defaulting respondents has been found to sell infringing products, three respondents that were terminated based on consent orders admitted that their products infringe the asserted patents, and Bose identified 16 other infringing products sold online in the United States. *Id.* at 76-77. Under similar circumstances, “the Commission has found that the presence of numerous online sales of infringing goods can constitute a pattern of violation of section 337.” *See, e.g., Loom Kits*, Inv. No. 337-TA-923, Comm’n Op. at 14; *Beverage Containers*, Inv. No. 337-TA-1092, Comm’n Op. at 16. Thus, the Commission finds that Bose’s evidence supports a finding of a pattern of violation with respect to the '852, '853, '590, and '287 patents.

As for the '253 patent, the RD found that the evidence does not support the issuance of a GEO because Bose has only identified one defaulting respondent, V4ink, as a source of infringing products. RD at 75, 78-79. Although Bose requests the issuance of a GEO as to all products that infringe each of the asserted patents, Bose’s submission on remedy does not address the RD’s recommendation with respect to the '253 patent. For example, Bose identified a number of other allegedly infringing products sold online (Mem. at 44), but it did not explain how that evidence relates to the '253 patent and it makes no attempt to explain why the ALJ’s findings related to the need for a GEO can be applied to the '253 patent and the V4ink respondent. We therefore find that Bose has not met its burden of showing a pattern of violation

## PUBLIC VERSION

or difficulty in identifying the source of other infringing earpiece devices with respect to the '253 patent.<sup>12</sup> Accordingly, the Commission has determined to issue the traditional remedy of an LEO directed to the articles of V4ink that infringe the '253 patent.

For the reasons discussed above, the Commission determines to issue a GEO under paragraph 337(d)(2) as to the '852, '853, '590, and '287 patents and an LEO under paragraph 337(d)(1) as to the '253 patent.<sup>13</sup>

### **b. *No Limited Exclusion Order With Respect to the '364 Patent***

Even though the Commission concludes that Bose is not entitled to summary determination on violation with respect to the '364 patent, the Commission provides the following analysis in order to guide the ALJ's proceedings on remand.

In the event that Bose chooses not to pursue a violation under subsection 337(d) with respect to the '364 patent on remand, Bose may request limited relief against defaulting respondents, subject only to public interest concerns, if all prerequisites of subparagraph 337(g)(1) are satisfied. *See Laerdal Med. Corp. v. Int'l Trade Comm'n*, 910 F.3d 1207, 1212 (Fed. Cir. 2018) (holding that "the statute, on its face, unambiguously requires the Commission to grant relief against defaulting respondents, subject only to public interest concerns, if all prerequisites of § 1337(g)(1) are satisfied").

---

<sup>12</sup> By declining to issue a GEO as to the '253 patent, the Commission is not endorsing or adopting a rule that a GEO is unavailable when there is only one named respondent accused of infringing the patent.

<sup>13</sup> As explained above in footnote 9, Commissioner Schmiddlein finds that Bose has established the domestic industry requirement as to the '364 patent based on substantial, reliable, and probative evidence. She therefore finds that Bose is entitled to summary determination on violation with respect to the '364 patent. She would include the '364 patent in the GEO being issued today, consistent with the ALJ's recommendation.

## PUBLIC VERSION

Subsection 337(g) provides, in relevant part:

If—

- (A) a complaint is filed against a person under this section;
- (B) the complaint and a notice of investigation are served on the person;
- (C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;
- (D) the person fails to show good cause why the person should not be found in default; and
- (E) the complainant seeks relief limited solely to that person;

the Commission shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.

19 U.S.C. § 1337(g)(1).

Three respondents are accused of infringing the '364 patent. Two of the respondents, Beebo and Phaiser, have been found in default under paragraph 337(g)(1) and Commission Rule 210.16. As such, elements (A) through (E) are satisfied for paragraph (g)(1) with respect to Beebo and Phaiser since they have both been formally found in default. The third respondent, REVJAMS, has failed to respond or appear under Commission Rule 210.17. The Commission asked the parties to brief whether non-participating respondent REVJAMS satisfies the requirements of elements (A) through (E) of paragraph 337(g)(1). The IA and Bose argue that the RD has effectively found REVJAMS in default given that REVJAMS has not responded to the amended complaint and NOI, has not appeared in this investigation, and has not responded to the motion for SD in which Bose expressly requested that REVJAMS be found in default if needed. As explained below, the Commission finds their position is contrary to the express language of paragraph 337(g)(1) and the Commission Rules.

## PUBLIC VERSION

The express language of paragraph 337(g)(1) requires a formal finding of default. In addition to proper service of the complaint and notice of investigation, according to paragraph 337(g)(1), the issuance of a limited exclusion order against a defaulting named respondent is predicated upon a finding that the “person fails to show good cause why the person should not be found in default.” 19 U.S.C. § 1337(g)(1)(D). Accordingly, a limited exclusion order issued under paragraph 337(g)(1) requires a formal order declaring the party in default.

Bose has not demonstrated that element (D) of paragraph 337(g)(1) is satisfied with respect to REVJAMS pursuant to Commission Rule 210.16. That Rule sets forth the procedure for determining default:

*Procedure for determining default.*

(1)(i) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue upon his own initiative, an order directing respondent to show cause why it should not be found in default.

(ii) If the respondent fails to make the necessary showing pursuant to paragraph (b)(1)(i) of this section, the administrative law judge shall issue an initial determination finding the respondent in default. An administrative law judge’s decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

37 C.F.R. § 210.16(b). Bose did not file a motion for, nor did the ALJ on his own initiative issue a show cause order. The ALJ also did not issue an initial determination finding REVJAMS in default. Therefore, on remand, if Bose desires a remedy to issue against REVJAMS under paragraph 337(g)(1), it must follow the procedure under Rule 210.16 for determining default and move for a show cause order directed to REVJAMS. This formal finding of default as to REVJAMS is necessary to satisfy the requirements of paragraph 337(g)(1) in order for the Commission to find a violation and determine the appropriate remedy with respect to articles that infringe the ’364 patent.

## PUBLIC VERSION

### c. *Cease and Desist Orders*

The Commission has authority to issue a CDO directed to entities found to violate section 337, ordering them to cease and desist from engaging in the unfair methods or acts involved. 19 U.S.C. § 1337(f)(1), (g)(1). The Commission has generally issued CDOs when, with respect to the imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order. *See, e.g., Certain Table Saws Incorporating Active Injury Mitigation Technology & Components Thereof*, Inv. No. 337-TA-965, Comm'n Op. at 4-6 (Feb. 1, 2017); *Certain Integrated Repeaters*, Inv. No. 337-TA-435, Comm'n Op. at 27 (Aug. 16, 2002) (issuing CDOs where respondents maintain a “commercially significant” domestic inventory of subject articles that have already been imported, in order to prevent distribution of violating articles in the United States).

The RD recommended that the Commission issue CDOs against the defaulting and non-participating domestic respondents, but not against the defaulting and non-participating foreign respondents. The RD's recommendation was based on an inference that the defaulting and non-participating domestic respondents maintain commercially significant domestic inventories or have significant domestic operations with respect to the infringing articles. *See* RD at 82 (citing *Hand Dryers*, Inv. No. 337-TA-1015, Comm'n Op. at 24; *Mobile Device*, Inv. No. 337-TA-1028, Comm'n Op. at 27; *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof*, Inv. No. 337-TA-486, Comm'n Op. at 18 (Aug. 19, 2003)). *See also* 19 C.F.R. § 210.17; *Video Game Systems*, Inv. No. 337-TA-473, Comm'n Op. at 2. Consistent with the Commission's practice of inferring significant inventories or domestic operations as to named respondents in the United States who fail to participate in an investigation, the

## PUBLIC VERSION

Commission issues CDOs against the defaulting and non-participating domestic respondents here under subsection 337(f): 1MORE, Beebo, Phaiser, REVJAMS, and V4ink.

With respect to the defaulting and non-participating foreign respondents, the Commission has declined to presume the presence of domestic inventories or other business operations in the United States that would support the issuance of a cease and desist order. RD at 83 (citing *Mobile Devices*, Inv. No. 337-TA-1028, Comm'n Op. at 24). Rather, the Commission has looked to “where the complaint alleges facts showing that a defaulting foreign respondent either maintains domestic inventories of subject products or engages in extensive domestic activities with respect to the subject products[.]” *Certain Digital Photo Frames and Image Display Devices and Components Thereof*, Inv. No. 337-TA-807 (“*Digital Photo Frames*”), Comm'n Op. at 9 (Mar. 27, 2013); *see also Certain Abrasive Products Made Using a Process for Making Powder Preforms and Products Containing Same*, Inv. No. 337-TA-449, Comm'n Op., 2002 WL 31093610, at \*4 (May 9, 2002) (directing a CDO to a foreign respondent where the foreign respondent's agent maintained a commercially significant inventory of infringing product in the United States). For example, the Commission has previously issued CDOs directed against foreign defaulting respondents where complainant alleged internet sales and submitted evidence of sales to U.S. customers and CBP's detainment of shipments to U.S. customers. *Id.*; *see Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-829, Comm'n Op. at 10-11 (Jul. 29, 2013) (public version); *Certain Birthing Simulators and Associated Systems*, Inv. No. 337-TA-759, Comm'n Notice (Aug. 29, 2011); *Certain Automotive Vehicles and Designs Therefor*, Inv. No. 337-TA-722, Comm'n Notice (Mar, 10, 2011)).

In this case, the evidence supports the issuance of a CDO against foreign respondents Misodiko, Phonete, and TomRich under subsection 337(f). With respect to Misodiko, Bose

## PUBLIC VERSION

submitted a declaration from an Amazon.com employee establishing that Misodiko conducts commercial operations in the United States and maintains inventory at Amazon warehouses in the United States. CSub at 12-13 (citing Schuler Decl. Ex E-36, EDIS Doc. No. 1452890).<sup>14</sup> As Bose points out, the Commission has issued CDOs against foreign defaulting respondents who utilize Amazon facilities in the United States to fulfill their orders. *Id.* at 13 (citing *Hand Dryers*, Inv. No. 337-TA-1015, Comm'n Op. at 11). Consistent with Commission precedent, the Commission finds this evidence supports the inference that Misodiko maintains a commercially significant inventory of infringing articles in the United States, and supports the issuance of a CDO against Misodiko.

As for foreign respondents Phonete and TomRich, Bose alleged facts in its complaint and in its motion for summary determination showing that they engage in significant domestic activities, such as importing and selling infringing articles in the United States via online sales. *See* Amended Compl. ¶ 159 (citing Ex. 33 (Phonete.com screenshot showing online purchase for U.S. shipment and Amazon.com sales receipt showing TomRich order for U.S. shipment)); Mem. at 50-51, Ex. E (1<sup>st</sup> Schuler Decl.) ¶¶ 22, 26, Ex. E-1 (same). Bose further alleged facts

---

<sup>14</sup> The ALJ declined to consider Bose's evidence with regard to Misodiko's inventory because it was not of record at the time the pending motion and the IA's response was filed. RD at 83. Having reviewed the record, the evidence suggests that Bose inadvertently forgot to attach the Gosalia declaration (Schuler Decl., Ex. E-36) at the time it filed its motion for summary determination because the declaration is in fact referenced in Bose's motion for summary determination. *See* Mem. at 47 (citing Schuler Decl. Ex. E, ¶ 49, in turn citing Gosalia Decl. Ex. 36), EDIS Doc ID 668877 (Mar. 1, 2019). On June 27, 2019, Bose submitted a letter to the Secretary of the Commission enclosing the Gosalia declaration and stating that "[d]ue to a technical issue, sub-exhibits E-36 and E-37 were inadvertently omitted from the electronic copy of Exhibit E (Declaration of David Schuler)." Bose Letter to Secretary Barton, EDIS Doc ID 679568 (Jun. 27, 2019). Under such circumstances, the Commission has determined to consider the Gosalia declaration in determining an appropriate remedy especially in view of the Commission's practice recognizing that complainants are not able to obtain detailed information in discovery to support a request for a CDO because a defaulted respondent has chosen not to participate in the proceeding.



## PUBLIC VERSION

showing that foreign respondents Phonete and TomRich import their products into the United States and sell their products through online merchants such as Amazon. *See id.* The Commission finds these activities establish sufficient domestic ties to warrant imposition of a CDO. *See Digital Photo Frames*, Inv. No. 337-TA-807, Comm’n Op. at 10. Accordingly, the Commission finds that the issuance of CDOs against Phonete and TomRich are appropriate.<sup>15</sup>

---

<sup>15</sup> Commissioner Schmidlein supports issuance of CDOs against the defaulting and non-participating respondents although based on a different rationale from the majority. In her view, the basis for the issuance of a CDO does not turn on whether the respondent is domestic or foreign, but instead on whether the requested CDO is governed by section 337(f)(1) or section 337(g)(1). Commissioner Schmidlein finds that CDO relief for the defaulting respondents is governed by section 337(g)(1) since those parties satisfy the conditions of subsections (A) through (E). In prior investigations, Commissioner Schmidlein has explained her view that absent public interest considerations to the contrary the “shall, upon request, issue” language in section 337(g)(1) does not grant the Commission discretion to decline to issue a requested CDO when the conditions of subsections (A) through (E) are satisfied. *See Certain Industrial Automation Systems and Components Thereof Including Control Systems, Controllers, Visualization Hardware, Motion and Motor Control Systems, Networking Equipment, Safety Devices, and Power Supplies*, Inv. No. 337-TA-1074, Comm’n Op. Dissenting Views of Commissioner Schmidlein (April 23, 2019). Consistent with that view, Commissioner Schmidlein finds that the Commission is required to issue CDOs against each of the defaulting respondents.

Commissioner Schmidlein finds that the CDO relief requested against the non-participating respondents is governed by section 337(f)(1) since those parties do not satisfy the conditions of subsections 337(g)(1)(A) through (E). Section 337(f)(1), in contrast to section 337(g)(1), states that the Commission “may issue” a requested CDO. Section 337(f)(1) thereby grants the Commission discretion in determining whether to issue a requested CDO. Recognizing this grant of discretion, Commissioner Schmidlein has not adopted the commercially significant inventory test. Instead, Commissioner Schmidlein has found that the presence of some infringing domestic inventory or domestic operations, regardless of commercial significance, provides a basis to issue a CDO. *See Certain Road Construction Machines and Components Thereof*, Inv. No. 337-TA-1088, Comm’n Op. at 53, n.55 (July 15, 2019); *Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof*, Inv. No. 337-TA-965, Comm’n Op. at 6-7, n.2 (Feb. 1, 2017). Commissioner Schmidlein supports issuance of the CDOs in this investigation against the non-participating respondents due to evidence in the record of domestic operations and/or maintenance of infringing inventory, regardless of the commercial significance of either the operations or inventory.

## PUBLIC VERSION

### C. The Public Interest

Before issuing any remedial order, the Commission must “consider[] the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.” *See, e.g.*, 19 U.S.C. § 1337(d)(1). “[T]he statute does not require the Commission to determine that a remedial order would advance the public interest factors but rather requires the Commission to consider whether issuance of such an order will adversely affect the public interest factors.” *Loom Kits*, Inv. No. 337-TA-923, Comm’n Op., 2015 WL 5000874, at \*9 (citation omitted).

Bose argues that “[i]ssuance of the requested remedial orders will protect Bose’s intellectual property rights and investments, as well as serve the public interest of stopping infringement,” and “will not adversely affect public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles, or United States consumers.” CSub at 17.

The IA states that “[t]here is no evidence in the record to indicate that the issuance of a GEO and CDOs would be contrary to the public interest, nor is OUII aware of any such issues.” IASub at 7. Therefore, the IA “believes that the statutory public interest factors do not preclude the issuance of remedial orders in this investigation.” *Id.*

The Commission finds the record in this investigation contains no evidence that a remedial order 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), (f)(1). As asserted by Bose, the “earpiece devices subject to exclusion are accessories to electronic entertainment and communication devices that do not implicate public health or welfare concerns.” CSub at 17.

## PUBLIC VERSION

Moreover, as Bose points out, “headphones and earpiece devices of other manufacturers [e.g., [REDACTED]] that do not infringe the asserted patents are widely available on the market in the United States.” *Id.* at 18. Thus, even after exclusion of the products at issue in this investigation, the record supports finding that “consumers will still have a wide variety of non-infringing products to choose from.” *Id.* Further, there is no evidence that these remedies would impact domestic production of like or directly competitive products or on competitive conditions in the United States. Accordingly, based on the record of this investigation, the Commission determines that the public interest does not preclude the issuance of a GEO, LEO, and CDOs.

Non-party Anker’s submission argues that a GEO is not warranted in this case because none of the major competitors of earpiece devices including Anker was named as a respondent and the RD’s concerns about possible circumvention of an LEO or widespread pattern of violation and difficulty in identifying the sources of the violation are not pertinent to these major competitors. AnkerSub at 3-4, 6. Anker believes a GEO would unfairly exclude non-infringing products of Anker and other major competitors and incentivize complainants to not name their biggest competitors as respondents. *Id.* at 4-5.

Neither the statute nor the Commission’s Rules require a complainant seeking a GEO to name all known manufacturers, importers, or sellers of the accused products in its complaint. There is also no requirement that a complainant must identify all noninfringing products or their market shares as a prerequisite to obtaining a GEO. As discussed above, the Commission finds the requirements of paragraph 337(d)(2) for issuance of a GEO have been satisfied with respect to the ’852, ’853, ’590, and ’287 patents. There are procedures at both the Commission and U.S. Customs and Border Protection for Anker to obtain a ruling as to whether any particular product

## PUBLIC VERSION

is within the scope of the exclusion order. The Commission denies Anker's request that it not issue a GEO or, in the alternative, to expressly exclude Anker's products from the scope of the Commission's GEO.

### **D. Bonding**

During the 60-day Presidential review period under 19 U.S.C. § 1337(j), "articles directed to be excluded from entry under subsection (d) . . . shall . . . be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury." *See* 19 U.S.C. § 1337(j)(3). "The Commission typically sets the bond based on the price differential between the imported infringing product and the domestic industry article or based on a reasonable royalty. However, where the available pricing or royalty information is inadequate due to the default of the respondent, the bond may be set at one hundred (100) percent of the entered value of the infringing product." *Loom Kits*, Inv. No. 337-TA-923, Comm'n Op., 2015 WL 5000874, at \*11 (citations omitted).

The ALJ recommended a bond of 100 percent of entered value during the period of Presidential review. The RD states "[i]nasmuch as the evidence shows that the sales were made online at various price points and quantities, calculating an average price would be difficult." RD at 85. Moreover, the RD found "[g]iven this state of the evidentiary record, and the fact that all of the affected respondents have defaulted rather than provide discovery, a bond value of 100% is appropriate." *Id.*

Bose and the IA agree with the RD's recommendation that the defaulting respondents be required to post a bond of 100 percent of the entered value of the accused products during the 60-day period of Presidential review. CSub at 20; IASub at 7-8.

The Commission determines to set the bond in the amount of 100 percent of the entered value of infringing products imported during the period of Presidential review. As the RD

## PUBLIC VERSION

found, there is no reliable pricing information in this investigation given the state of the record evidence and all of the respondents that will be affected by this bond chose to default rather than participating in this investigation, including providing discovery. In addition, as noted by the RD, the record shows that sales of imported infringing products were made online at various price points and quantities, making the calculation of an average price differential and a reasonable royalty extremely difficult. The Commission has set the bond at 100 percent in similar circumstances. *See Loom Kits*, Inv. No. 337-TA-923, Comm'n Op., 2015 WL 5000874, at \*12 (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.”).

#### IV. CONCLUSION

For the reasons discussed above, the Commission has determined to vacate the ID's finding of a violation on summary determination by reason of infringement of claims 1 and 11 of the '364 patent. The Commission remands the investigation in part to the ALJ for further proceedings with respect to the '364 patent. The Commission adopts all findings and conclusions in the ID that are not inconsistent with this opinion.

The Commission also (1) determines to issue a GEO prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent; (2) determines to issue an LEO directed to V4ink prohibiting the unlicensed importation of certain earpiece devices and components thereof that infringe claim 1

**PUBLIC VERSION**

of the '253 patent; (3) determines to issue CDOs against the defaulting and non-participating respondents; (4) finds that the statutory public interest factors will not be adversely affected by the issuance of these remedial orders; and (5) sets the bond during the period of Presidential review at 100 percent of the entered value of the infringing products. The investigation is therefore terminated with respect to the '852, '853, '590, '287, and '253 patents.

By order of Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: November 8, 2019

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **OPINION, COMMISSION** has been served by hand upon the Commission Investigative Attorney, **Todd Taylor, Esq.**, and the following parties as indicated, on **November 8, 2019**.



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete

A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

REVJAMS

248 Lafayette St.  
New York, NY 10012

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

TomRich

Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

V4ink, Inc.

(d/b/a SMARTOMI Products, Inc.)  
1251 S Rockefeller Ave Unit B  
Ontario, CA 91761-2238

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_



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

**In the Matter of**

**CERTAIN EARPIECE DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-1121**

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART  
AN INITIAL DETERMINATION GRANTING IN PART A MOTION FOR  
SUMMARY DETERMINATION OF A SECTION 337 VIOLATION;  
SCHEDULE FOR FILING WRITTEN SUBMISSIONS**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 16) granting in part a summary determination on violation of section 337 by certain defaulting and non-participating respondents in the above-captioned investigation. The Commission is requesting written submissions from the parties on an issue under review, and requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** 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 June 29, 2018, based on a complaint filed on behalf of Bose Corporation of Framingham, Massachusetts ("Bose"). 83 FR 30,776 (Jun. 29, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337") based upon

the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 9,036,852 (“the ’852 patent”); 9,036,853 (“the ’853 patent”); 9,042,590 (“the ’590 patent”); 8,311,253 (“the ’253 patent”); 8,249,287 (“the ’287 patent”); and 9,398,364 (“the ’364 patent”). The ’852, ’853, ’590, ’253, and ’287 patents are herein referred to as the StayHear® Patents. The complaint further alleges that an industry in the United States exists as required by section 337.

The notice of investigation named fourteen respondents: (1) IMORE USA, Inc. of San Diego, California; (2) APSkins of Seattle, Washington; (3) Beebo Online Limited (“Beebo”) of North Las Vegas, Nevada; (4) iHip of Edison, New Jersey; (5) LMZT LLC of Brooklyn, New York; (6) Misodiko of ShenZhen, GuangDong, China; (7) Phaiser LLC of Houston, Texas; (8) Phonete of Shenzhen, China; (9) REVJAMS of New York, New York; (10) SMARTOMI Products, Inc. of Ontario, California; (11) Spigen, Inc. of Irvine, California; (12) Sudio AB of Stockholm, Sweden; (13) Sunvalley Tek International, Inc. of Fremont, California; and (14) TomRich of Shenzhen, China. The Office of Unfair Import Investigations (“OUII”) was also named as a party in this investigation.

On October 4, 2018, Bose moved to amend the notice of investigation and for leave to file an amended complaint in order, among other things, (i) to correct the name of respondent iHip to Zeikos, Inc.; and (ii) to correct the name and address of respondent SMARTOMI Products, Inc. to V4ink, Inc. On October 29, 2018, the ALJ granted the motion. *See* Order No. 10 (Oct. 29, 2018), *not rev’d* by Comm’n Notice (Nov. 23, 2018); 83 FR 61168 (Nov. 28, 2018); 83 FR 62900 (Dec. 6, 2018). Bose filed and served its amended complaint on February 21, 2019.

During the course of the investigation, Bose settled with the following respondents: APSkins; Zeikos, Inc.; LMZT LLC; Spigen, Inc.; Sudio AB; and Sunvalley Tek International, Inc. *See* Order Nos. 8 and 9 (Oct. 19, 2018), *not rev’d* by Comm’n Notice (Nov. 9, 2018); Order No. 11 (Oct. 29, 2018), *not rev’d* by Comm’n Notice (Nov. 27, 2018); Order No. 12 (Nov. 26, 2018), *not rev’d* by Comm’n Notice (Dec. 19, 2018); Order Nos. 14 and 15 (Feb. 21, 2019), *not rev’d* by Comm’n Notice (Mar. 11, 2019). In addition, with the exception of Spigen, Inc., consent orders were issued against all of these respondents. *Id.* Thus, the investigation has been terminated with respect to these six respondents.

Five other respondents have been found in default pursuant to Commission Rule 210.16, 19 CFR 210.16: Beebo; Misodiko; Phaiser LLC; V4ink, Inc.; and TomRich (collectively, “the Defaulting Respondents”). *See* Order No. 7 (Sep. 20, 2018); Order No. 13 (Dec. 11, 2018), *not rev’d* by Comm’n Notice (Dec. 21, 2018).

On February 8, 2019, Bose moved for summary determination of a violation of section 337. Bose filed a corrected motion on March 1, 2019. Thereafter, Bose filed several replacement exhibits and a supplemental index.

The remaining three respondents, 1MORE USA, Inc., Phonete, and REVJAMS (collectively “the Non-Participating Respondents”), have not submitted any response, appeared, or otherwise participated in the investigation despite being served with the complaint or amended complaint, and the motion for summary determination of violation. The three Non-Participating Respondents and the five Defaulting Respondents were the subject of Bose’s motion for summary determination of a violation of section 337. On March 22, 2019, OUII filed a response supporting Bose’s motion in substantial part and supporting the requested remedy of a general exclusion order.

On June 28, 2019, the ALJ issued the subject ID and his Recommended Determination (“RD”) on remedy and bonding. The ID grants in part Bose’s motion for summary determination of a violation of section 337. Specifically, the ALJ found, *inter alia*, that Bose established that the importation requirement is satisfied as to each Defaulting Respondent and Non-Participating Respondent and each accused product; that other than infringement of claim 7 of the ’852 patent with respect to the Misodiko, Phonete, and TomRich products, Bose established infringement of claims 1 and 7 of the ’852 patent; claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; claim 1 of the ’253 patent; claims 1, 7, and 8 of the ’287 patent; and claims 1 and 11 of the ’364 patent; and that Bose satisfied the domestic industry requirement for each asserted patent. In addition, the ALJ recommended that the Commission issue a general exclusion order, cease and desist orders, and impose a 100 percent bond during the period of Presidential review.

No petitions for review were filed.

Having reviewed the record of this investigation, including the ID, the Commission has determined to review the ID in part. Specifically, the Commission has determined to review the following findings, which were based on the substantial, reliable, and probative evidence standard: (1) the ID’s finding that Bose has established infringement of claim 7 of the ’852 patent with respect to Beebo’s Dodocool Earhooks, and, on review, reverse that finding; (2) the ID’s finding that Bose has satisfied the economic prong of the domestic industry requirement under sections 337(a)(3)(A) and (B) with respect to the ’364 patent; and (3) the ID’s finding that Bose has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(C) with respect to the asserted patents, and, on review, take no position on that finding. The Commission has determined not to review the remainder of the ID. Accordingly, the Commission finds a violation of section 337 by reason of infringement of claims 1 and 7 of the ’852 patent; claims 1 and 8 of the ’853 patent; claims 1 and 6 of the ’590 patent; claim 1 of the ’253 patent; and claims 1, 7, and 8 of the ’287 patent; and the satisfaction of the domestic industry requirement under sections 337(a)(3)(A) and (B) with respect to the StayHear® Patents.

The parties are requested to brief their positions on only the following issue under review.

1. The record evidence shows that Bose aggregated its domestic investments in Fiscal Year 2018 for domestic industry products that practice the StayHear® Patents and the '364 patent to establish a domestic industry under sections 337(a)(3)(A) and (B). Bose, however, relies on a subset of its domestic industry products to satisfy the domestic industry requirement with respect to the '364 patent. Please provide an appropriate allocation of the domestic investments and discuss whether such allocated investments establish a domestic industry under sections 337(a)(3)(A) and (B) with respect to the '364 patent.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue cease and desist order(s) that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *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). In addition, if a party seeks issuance of any cease and desist orders, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order against a respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.
2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

3. Please explain with citation to the record whether respondents IMORE USA, Inc., Phonete, and REVJAMS satisfy the requirements of subsections (A)-(E) of section 337(g)(1). *See* SD at 4.

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 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 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

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

Complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the asserted patents expire, the HTSUS numbers under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on **August 28, 2019**. Reply submissions must be filed no later than the close of business on **September 5, 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 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission Rule 210.4(f), 19 C.F.R. 210.4(f). Submissions should refer to the investigation number (Inv. No. 337-TA-1121) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/secretary/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf)*). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: August 14, 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, **Todd Taylor, Esq.**, and the following parties as indicated, on 8/14/2019



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phonete  
A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

REVJAMS  
248 Lafayette St.  
New York, NY 10012

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**PUBLIC VERSION**

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

**In the Matter of**

**CERTAIN EARPIECE DEVICES AND  
COMPONENTS THEREOF**

**Inv. No. 337-TA-1121**

**Order No. 16**

**INITIAL DETERMINATION**

**Granting in Part Complainants' Motion for Summary Determination of Violation**

*And*

**RECOMMENDED DETERMINATION**

**On Remedy and Bonding**



**PUBLIC VERSION**

**TABLE OF CONTENTS**

I.	Background .....	1
	A. Institution of the Investigation; Procedural History .....	1
	B. The Parties .....	6
	C. Technological Background .....	10
	D. The Products at Issue .....	14
II.	Jurisdiction .....	17
III.	General Principles of Applicable Law .....	17
IV.	Summary Determination .....	25
	A. Importation .....	26
	B. Infringement .....	31
	1. Asserted Patents .....	31
	2. A Person of Ordinary Skill in the Art .....	39
	3. Claim Construction .....	40
	4. Infringement Analysis of the Asserted Claims .....	42
	C. Validity .....	52
	D. Domestic Industry (Technical Prong) .....	53
	E. Domestic Industry (Economic Prong) .....	55
V.	Recommended Determination on Remedy and Bonding .....	61
	A. General Exclusion Order .....	62
	B. Cease and Desist Orders .....	79
	C. Bond .....	84
VI.	Initial Determination and Order .....	86

## PUBLIC VERSION

### I. Background

#### A. Institution of the Investigation; Procedural History

By publication of a notice in the *Federal Register* on June 29, 2018, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

[W]hether 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 products identified in paragraph (2) by reason of infringement of one or more of claims 1, 5, 7, 9, and 14 of the '852 patent [U.S. Patent No. 9,036,852]; claims 1–3, 6, 8, 10, and 11 of the '853 patent [U.S. Patent No. 9,036,853]; claims 1, 3, 4, 6, 7, and 10 of the '590 patent [U.S. Patent No. 9,042,590]; claims 1, 3, 4, and 6 of the '253 patent [U.S. Patent No. 8,311,253]; claims 1 and 6–8 of the '287 patent [U.S. Patent No. 8,249,287]; and claims 1, 2, 5, 8, 11, and 16 of the '364 patent [U.S. Patent No. 9,398,364]; and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

83 Fed. Reg. 30776 (June 29, 2018).

The complainant is Bose Corporation of Framingham, Massachusetts. The named respondents are:

1. IMORE USA, Inc. of San Diego, California;
2. APSkins of Seattle, Washington;
3. Beebo Online Limited of North Las Vegas, Nevada;
4. iHip of Edison, New Jersey;
5. LMZT LLC of Brooklyn, New York;
6. Misodiko of ShenZhen, GuangDong, China;
7. Phaiser LLC of Houston, Texas;
8. Phonete of Shenzhen, China;
9. REVJAMS of New York, New York;
10. SMARTOMI Products, Inc. of Ontario, California;

**PUBLIC VERSION**

11. Spigen, Inc. of Irvine, California;
12. Sudio AB of Stockholm, Sweden;
13. Sunvalley Tek International, Inc. of Fremont, California; and
14. TomRich of Shenzhen, China.

The Office of Unfair Import Investigations (“OUII” or “Staff”) is a party to this investigation. *Id.*

The target date for completion of this investigation was set at sixteen months, *i.e.*, October 29, 2019. *See* Order No. 3 at 2 (July 3, 2018). Accordingly, the initial determination on alleged violation of section 337 is due on June 28, 2019.

Only two respondents, *i.e.*, Spigen, Inc. (“Spigen”) and Sunvalley Tek International, Inc. (“Sunvalley Tek”), have entered appearances and responded to the complaint and notice of investigation. *See* Spigen Notice of Appearance (EDIS Doc. ID No. 650456); Spigen Answer (EDIS Doc. ID No. 654757); Sunvalley Tek Appearance (EDIS Doc. ID No. 650254); Sunvalley Tek Answer (EDIS Doc. ID No. 650523).

On October 4, 2018, Bose moved to amend the notice of investigation and for leave to file an amended complaint in order, among other things, (i) to correct the name of respondent iHip to Zeikos, Inc.; and (ii) to correct the name and address of respondent Smartomi Products, Inc. to V4ink, Inc. Motion Docket No. 1121-13. The administrative law judge granted the motion, Order No. 10 (Oct. 29, 2018), and the Commission determined not to review the initial determination. *See* 83 Fed. Reg. 61168 (Nov. 28, 2018); correction at 83 Fed. Reg. 62900 (Dec. 6, 2018). On February 21, 2019, Bose filed its amended complaint and served it on all respondents. *See* First Am. Compl., (EDIS Doc. ID No. 667789).

## PUBLIC VERSION

During the course of the investigation, Bose settled with the following six respondents:

- APSkins
- Zeikos, Inc.
- LMZT LLC
- Spigen
- Sudio AB
- Sunvalley Tek

The investigation has been terminated as to these respondents. *See* Commission Notices (EDIS Doc. ID Nos. 664652, 662643, 661554, 669160).

### **Defaulting (or Non-Participating) Respondents**

As to the eight remaining respondents, five have been found in default.

Specifically, on September 4, 2018, Bose moved for an order to show cause why (i) Beebo Online Limited, (ii) Misodiko, (iii) Phaiser LLC, (iv) SMARTOMI Products, Inc., (*i.e.*, V4ink, Inc.), and (v) TomRich should not be found in default for failing to respond to the complaint and notice of investigation. Motion Docket No. 1121-9. The administrative law judge granted the motion and issued an order to show cause. *See* Order No. 7 (Sept. 20, 2018). On December 11, 2018, the administrative law judge found these five respondents in default (Order No. 13 (Dec, 11, 2018)), and the Commission determined not to review the initial determination. *See* Notice of Comm'n Determination Not to Review an Initial Determination Finding Certain Respondents in Default (EDIS Doc. ID No. 664971) (Dec. 21, 2019).

As to the three other respondents—(i) 1MORE USA, Inc., (ii) Phonete, and (iii) REVJAMS—Bose moved, to the extent necessary, in the pending motion for a finding of default. *See* Mem. at 3 n.3.

## PUBLIC VERSION

Although the Commission was unable to serve the complaint and notice of investigation on 1MORE USA, Inc. and Phonete (returned from 1MORE USA, Inc. (EDIS DOC ID No. 650945); returned from Phonete (EDIS Doc. ID No. 650270), Bose apparently served the amended complaint on 1MORE USA, Inc. and Phonete. *See* Mem. Exs. A, B. As to REVJAMS, the Commission served the complaint and notice of investigation on the respondent. However, Order Nos. 8-11 were returned to the Commission with the comment: “Company or Person Unknown.” *See* Order Nos. 8-11 Returned from REVJAMS (EDIS Doc. ID No. 661320).

On December 7, 2018, Bose moved to suspend the procedural schedule and represented that “Bose is in the process of preparing a motion for summary determination that will conclude this investigation.” Motion Docket No. 1121-16 at 1. In an e-mail on December 10, 2018, the administrative law judge granted the motion.

Despite being served with the complaint or amended complaint, and the redacted corrected motion for summary determination, respondents (i) 1MORE USA, Inc., (ii) Phonete, and (iii) REVJAMS have not submitted any response, appeared, or otherwise participated in the investigation. These three non-participating respondents and the five respondents found in default are the subject of Bose’s pending motion for summary determination seeking a finding of a violation of section 337 and requesting entry of a general exclusion order (“GEO”) and cease and desist orders (“CDOs”) directed at all defaulting (or non-participating) respondents. Mot. at 1-2.

### **Corrected Motion for Summary Determination**

On February 8, 2019, pursuant to Commission Rule 210.18, Bose Corporation (“Bose”) filed a motion for summary determination of violations by certain respondents

## PUBLIC VERSION

who are in default, and for a recommended determination on remedy and bonding. Motion Docket No. 1121-20. As noted above, the defaulting (or non-participating) respondents are 1MORE USA, Inc., Beebo Online Limited, Misodiko, Phaiser LLC, Phonete, REVJAMS, TomRich, and V4Ink, Inc. (d/b/a SMARTOMI Products, Inc.). On March 1, 2019, Bose filed a corrected motion. On March 12, 2019, Bose filed a replacement Exhibits E to the corrected motion for summary determination. *See* EDIS Doc. ID No. 669857 (Replacement Exhibit E to Bose Corrected Motion for Summary Determination).

On June 27, 2019, Bose filed a “Supplement to Complainant Bose Corporation’s Corrected Motion for Summary Determination” which includes an “Index of Bose MSD filings.” *See* EDIS Doc. ID No. 679576. The index provides descriptive titles of all of the exhibits attached to (1) the original motion filed on February 8, 2019; (2) the corrected motion filed on March 1, 2019; and (3) the Replacement Exhibit E filed on March 12, 2019. Additionally, on June 27, 2019, Bose filed “replacement Exhibits for Schuler Declaration (Exs. E-36 and E-37).” *See* EDIS Doc. ID No. 679568 (Letter to Secretary Barton enclosing replacement Exhibits for Schuler Declaration (Exs. E-36 and E-37)).

Bose argues that substantial, reliable, and probative evidence supports the following requested relief:

1. An initial determination that the defaulting respondents have violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §1337, through their importation into the United States, sale for importation into the United States, and/or sale within the United States after importation of earpiece devices that infringe claims 1 and 7 of U.S. Patent No. 9,036,852; claims 1 and 8 of U.S. Patent No. 9,036,853; claims 1 and 6 of U.S. Patent No. 9,042,590; claim 1 of U.S. Patent

**PUBLIC VERSION**

No. 8,311,253; claims 1, 7, and 8 of U.S. Patent No. 8,249,287; and claims 1 and 11 of U.S. Patent No. 9,398,364;

2. An initial determination that complainant has satisfied the domestic industry requirement; and
3. A recommended determination that the Commission (a) issue a general exclusion order pursuant to 19 U.S.C. §1337(d)(2) covering earpiece devices that infringe claims 1 and 7 of U.S. Patent No. 9,036,852; claims 1 and 8 of U.S. Patent No. 9,036,853; claims 1 and 6 of U.S. Patent No. 9,042,590; claim 1 of U.S. Patent No. 8,311,253; claims 1, 7, and 8 of U.S. Patent No. 8,249,287; and claims 1 and 11 of U.S. Patent No. 9,398,364; (b) issue cease and desist orders against the defaulting respondents; and (c) set the bond for the Presidential Review period at 100% of the entered value of the infringing earpiece devices.

Mot. at 1-2.

On March 22, 2019, the Staff filed a response supporting the motion in substantial part, and supporting the requested remedy of a general exclusion order. *See* EDIS Doc.

ID No. 671068 (Staff’s Response to Bose’s Corrected Motion for Summary

Determination of No Violation and for Recommend Determination on Remedy and Bonding). The Staff argues:

The Staff supports the motion for a summary determination of violation. In short, there is no genuine issue as to any material fact that there has been a violation of Section 337 as to the six patents at issue. In the event that a violation is found, the evidence also supports the issuance of a general exclusion order (“GEO”) directed to five of the six patents and cease and desist orders (“CDOs”) directed to domestic defaulting respondents.

Staff Resp. at 1.

**B. The Parties**

**1. Complainant**

Complainant Bose is a corporation organized and existing under the laws of the state of Delaware with a principal place of business at 100 The Mountain Road,

## PUBLIC VERSION

Framingham, Massachusetts 01701. Since its founding in 1964, Bose has designed and developed unique sound solutions for a host of audio applications, including home entertainment and home audio, portable audio such as headphones, aviation and automotive industries, and the military. Bose also designs professional sound systems for many applications, including stadiums and auditoriums, houses of worship, retail businesses, department stores and restaurants. Bose designs, develops, manufactures, and supports a wide range of products including: automotive music systems; professional audio systems; and home audio equipment, such as stereos, speakers, headphones, headsets, tabletop, and home theater systems. Bose's product offerings also extend to conversation-enhancing headphones, noise-masking sleep earbuds, and audio eyeglasses. *See Mem. at 3-4.*

### **2. Respondents**

As noted above, fourteen respondents were originally named in this investigation.

The named respondents are:

1. 1MORE USA, Inc. of San Diego, California;
2. APSkins of Seattle, Washington;
3. Beebo Online Limited of North Las Vegas, Nevada;
4. iHip of Edison, New Jersey;
5. LMZT LLC of Brooklyn, New York;
6. Misodiko of ShenZhen, GuangDong, China;
7. Phaiser LLC of Houston, Texas;
8. Phonete of Shenzhen, China;
9. REVJAMS of New York, New York;
10. SMARTOMI Products, Inc. of Ontario, California;
11. Spigen, Inc. of Irvine, California;
12. Sudio AB of Stockholm, Sweden;



**PUBLIC VERSION**

13. Sunvalley Tek International, Inc. of Fremont, California; and
14. TomRich of Shenzhen, China.

83 Fed. Reg. 30776 (June 29, 2018).

**Defaulting (or Non-Participating) Respondents**

As discussed above, the defaulting (or non-participating) respondents (1MORE, Beebo, Misodiko, Phaiser, Phonete, REVJAMS, V4Ink, and TomRich) failed to respond to Bose's complaint or the notice of investigation. These respondents are companies based in the United States, China, and Canada that manufacture, offer for sale, and sell earpiece devices through Internet sites like Amazon.com, eBay, and Alibaba. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 11; *see also e.g.*, Mem. Ex. F, ¶ 8; Mem. Ex. G at App. C-1; Mem. Ex. H, ¶ 10; Mem. Ex. I, ¶ 10; Mem. Ex. J, ¶ 7. The evidence demonstrates that these respondents use well-known shipping companies like DHL and FedEx to import their products directly to consumers in the United States, often in small quantities. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 12; *see also e.g.*, Mem. Ex. I, ¶ 6. These respondents are not licensed to use the asserted patents. Mem. Ex. E (Schuler 1st Decl.), ¶ 13.

As noted above, despite being served with the complaint or amended complaint, and the redacted corrected motion for summary determination, respondents (i) 1MORE USA, Inc., (ii) Phonete, and (iii) REVJAMS have not submitted any response, appeared, or otherwise participated in the investigation. These three non-participating respondents and the five respondents found in default are the subject of Bose's pending motion for summary determination seeking a finding of a violation of section 337 and requesting entry of a GEO and CDOs directed at all defaulting (or non-participating) respondents. Mot. at 1-2.

**PUBLIC VERSION**

**The Terminated Respondents**

As noted above, Bose settled with the following six respondents:

- APSkins
- Zeikos, Inc.
- LMZT LLC
- Spigen
- Sudio AB
- Sunvalley Tek

The investigation has been terminated as to these respondents. *See Commission Notices*

(EDIS Doc. ID Nos. 664652, 662643, 661554, 669160).

The status of each respondent is summarized below:

<b>Respondent</b>	<b>Status</b>
IMORE USA, Inc.	Failed to respond or appear
Beebo Online Limited	Found in default
APSKins	Terminated
Zeikos, Inc.	Terminated
LMZT LLC	Terminated
Misodiko	Found in default
Phaiser LLC	Found in default
Phonete	Failed to respond or appear
REVJAMS	Failed to respond or appear
V4Ink, Inc.	Found in default
Spigen, Inc.	Terminated
Sudio AB	Terminated
Sunvalley Tek	Terminated
TomRich	Found in default

## PUBLIC VERSION

### C. Technological Background

#### The '852, '853, '590, '253, and '287 StayHear® Patents

The '852, '853, '590, '253, and '287 patents (Mem. Exs. K-O, respectively) each describes the novel aspects of the Bose StayHear® tips and share substantially similar specifications. Bose refers to these patents as the “StayHear® Patents.” *See* Mem. at 6. The StayHear® Patents generally describe an earpiece comprising an acoustic driver, a housing, and an ear interface having a body and a positioning and retaining structure. *See* Mem. Ex. N ('253 Patent) at 11:10-31.<sup>1</sup> The patents describe the desirability of placing the earpiece in the user’s ear such that it is oriented properly, it is stable, and it is comfortable to the user. *Id.* at 4:63-65. In one aspect, the positioning and retaining structure, together with the body, holds the earpiece in position without the use of ear hooks or “twist lock” tips, which may be unstable, uncomfortable, or ill-fitting. *Id.* at 5:23-29.

---

<sup>1</sup> All citations for the StayHear® Patents are to the '253 patent. Similar disclosures can be found in each of the asserted patents. *See* Mem. at 7 n.4.

PUBLIC VERSION

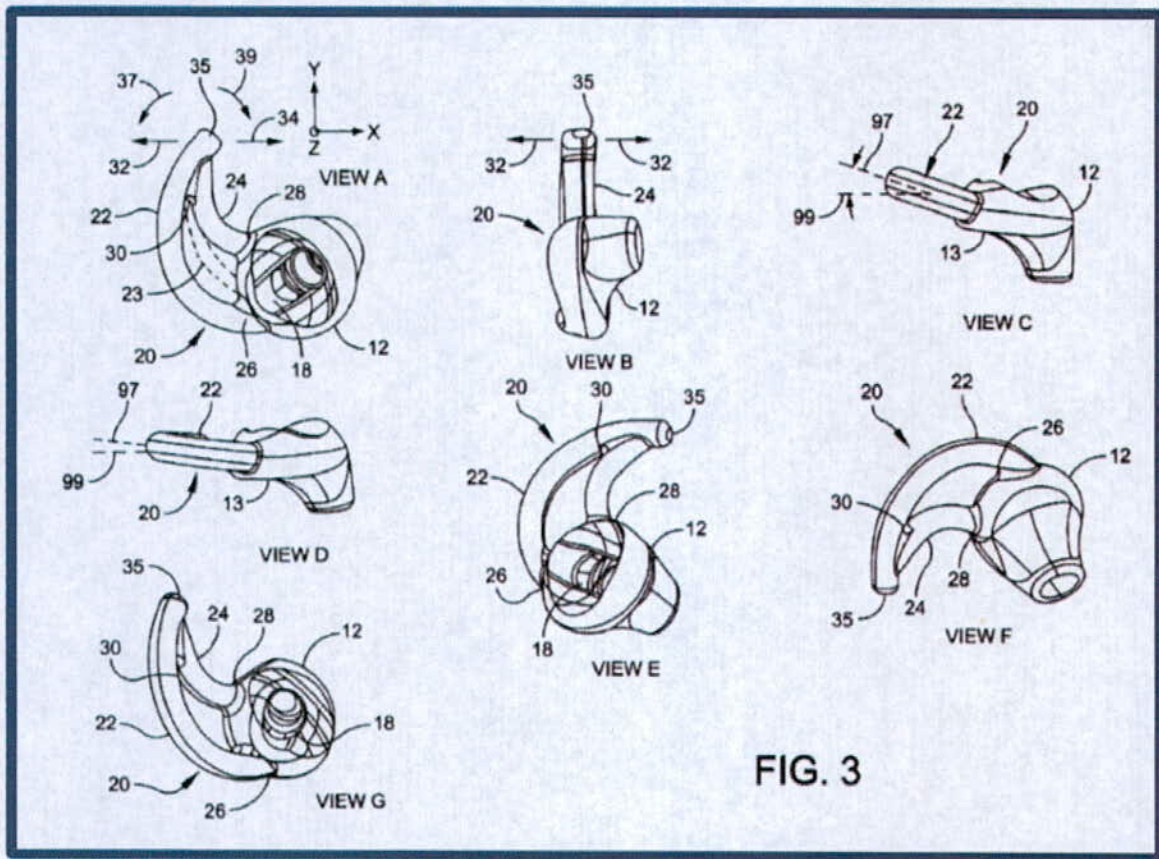


FIG. 3

Previous in-ear earpiece designs were uncomfortable, unstable, and difficult to insert in the user's ear. Other in-ear earpiece designs provide too much sealing, reducing ambient noise but also reducing the user's ambient awareness. *See Mem.* at 7. Bose designed the StayHear® earpiece to fit the shape of the concha and ear canal entrance while not exerting pressure on ear canal walls. The retaining structure stabilizes and secures the earphone in the user's ear. The overall design facilitates comfort and stability without the need for a very tight, highly attenuating seal in the ear canal.

**U.S. Patent No. 9,036,852**

The '852 patent, entitled "Earpiece Positioning and Retaining," issued on May 19, 2015, to named inventors Ryan C. Silvestri, Eric M. Wallace, Kevin P. Annunziato, Ian M. Collier, and Michael Monahan. *See Mem.* Ex. K ('852 Patent). It is assigned to Bose.

## PUBLIC VERSION

*See* First Am. Compl., ¶ 49; Ex. 2. The ‘852 patent generally discloses a positioning and retaining structure for an in-ear earpiece. *See* Mem. Ex. K (‘852 Patent) at Abstract.

### **U.S. Patent No. 9,036,853**

The ‘853 patent, entitled “Earpiece Positioning and Retaining,” issued on May 19, 2015, to named inventors Ryan C. Silvestri, Eric M. Wallace, Kevin P. Annunziato, Ian M. Collier, and Michael Monahan. *See* Mem. Ex. L (‘853 Patent). It is assigned to Bose. *See* First Am. Compl., ¶ 52; Ex. 5. The ‘853 patent generally discloses a positioning and retaining structure for an in-ear earpiece. *See* Mem. Ex. L (‘853 Patent) at Abstract.

### **U.S. Patent No. 9,042,590**

The ‘590 patent, entitled “Earpiece Positioning and Retaining,” issued on May 26, 2015, to named inventors Ryan C. Silvestri, Eric M. Wallace, Kevin P. Annunziato, Ian M. Collier, and Michael Monahan. *See* Mem. Ex. M (‘590 Patent). It is assigned to Bose. *See* First Am. Compl., ¶ 55; Ex. 8. The ‘590 patent generally discloses a positioning and retaining structure for an in-ear earpiece. *See* Mem. Ex. M (‘590 Patent) at Abstract.

### **U.S. Patent No. 8,311,253**

The ‘253 patent, entitled “Earpiece Positioning and Retaining,” issued on November 13, 2012, to named inventors Ryan C. Silvestri, Eric M. Wallace, Kevin P. Annunziato, Ian M. Collier, and Michael Monahan. *See* Mem. Ex. N (‘253 Patent). It is assigned to Bose. *See* First Am. Compl., ¶ 58; Ex. 11. The ‘253 patent generally discloses an earpiece that fits into the right ear. *See* Mem. Ex. N (‘253 Patent) at 4:36-37.

### **U.S. Patent No. 8,249,287**

The ‘287 patent, entitled “Earpiece Positioning and Retaining,” issued on August

## PUBLIC VERSION

21, 2012, to named inventors Ryan C. Silvestri, Eric M. Wallace, Kevin P. Annunziato, Ian M. Collier, and Michael Monahan. *See* Mem. Ex. O ('287 Patent). It is assigned to Bose. *See* First Am. Compl., ¶ 61; Ex. 14. The '287 patent generally discloses a positioning and retaining structure for an in-ear earpiece. *See* Mem. Ex. O ('287 Patent) at Abstract.

### **The '364 StayHear®+ Patent**

The '364 patent, entitled "Earpiece Passive Noise Attenuating," issued on July 19, 2016, to named inventors Michael Monahan, Ryan C. Silvestri, Eric M. Wallace, and Kevin P. Annunziato. *See* Mem. Ex. P ('364 Patent). It is assigned to Bose. *See* First Am. Compl., ¶ 64; Ex. 17. Bose refers to the '364 patent as the StayHear®+ Patent. *See* Mem. at 8. The '364 patent generally discloses a structure for providing passive noise attenuation by an in-ear earpiece and for positioning and retaining the earpiece in the ear. *See* Mem. Ex. P ('364 Patent) at 1:12–14. The '364 patent generally describes an ear tip for an in-ear earpiece comprising a positioning and retaining structure, a passageway, and a sealing structure. *See* Mem. Ex. P at 5:53-55. The patent describes the desirability of placing the earpiece in the user's ear such that it is properly oriented and stable: in this position, the ear tip provides significant passive attenuation of ambient noise without causing discomfort in the user's ear. *Id.* at 4:12-15. The '364 patent also includes a sealing structure or flap, which may be frusto-conically shaped. The flap is designed such that the smaller end of the tip fits inside the ear canal entrance and contacts the entrance of the ear canal but not the inside of the ear canal, thereby improving comfort. *Id.* at 5:66-67; 6:1-4. The ear tip of the '364 patent provides orientation, stability, and good sealing to the entrance of the ear canal without excessive radial pressure and

## PUBLIC VERSION



without inward clamping pressure. *Id.* at 4:47-51; 5:29-33; *see also* Figures 5A-5D, below. The sealing structure provides an optimal combination of comfort, stability and fit for an in-ear earpiece.

### D. The Products at Issue






#### 1. The Accused Products

The accused products in this investigation are earpiece devices and components thereof, including the identified accused products of the defaulting (or non-participating) respondents. *See* First Am. Compl., ¶ 45, Ex. 35; *see also* Joint Stipulation Regarding Representative Products at Issue (EDIS Doc. ID No. 659488) (Oct. 22, 2018).

Below is a table that provides a summary of the defaulting (or non-participating) respondents' accused products, including a photograph of each accused product, and a reference to alleged infringement of the asserted claims for each product:




<b>Defaulting Respondent</b>	<b>Accused Product(s)</b>	<b>Exemplary Product Image</b>	<b>Asserted Patents (Claims)</b>
<b>1MORE USA, Inc.</b>	1More iBFree		'852 patent (1, 7); '590 patent (1, 6); and '853 patent (1, 8).
<b>Beebo Online Limited</b>	Dodocool DA 109		'852 patent (1, 7); '590 patent (1, 6); '853 patent (1, 811); and '364 patent (1, 11).

PUBLIC VERSION

Defaulting Respondent	Accused Product(s)	Exemplary Product Image	Asserted Patents (Claims)
	Dodocool Earhooks		'852 patent (1, 7).
<b>Misodiko</b>	Misodiko Earhooks		'852 patent (1, 7); and '287 patent (1, 6, 7, 8).
<b>Phaiser LLC</b>	Phaiser BHS-730		'852 patent (1, 7); and '287 patent (1, 6, 7, 8).
	Phaiser BHS-750		'852 patent (1, 7); '287 patent (1, 6, 7, 8); '590 patent (1, 6); '853 patent (1, 8); and '364 patent (1, 11).
<b>Phonete</b>	Phonete Silicone Rubber Earbuds		'852 patent (1, 7); and '287 patent (1, 6, 7, 8).



**PUBLIC VERSION**

<b>Defaulting Respondent</b>	<b>Accused Product(s)</b>	<b>Exemplary Product Image</b>	<b>Asserted Patents (Claims)</b>
<b>REVJAMS</b>	REVJAMS Active Sport Pro		'852 patent (1, 7); '287 patent (1, 6, 7, 8); '590 patent (1, 6); '853 patent (1, 8); and '364 patent (1, 11).
<b>TomRich</b>	TomRich T330		'852 patent (1, 7); and '287 patent (1, 6, 7, 8).
<b>V4Ink, Inc.</b>	SMARTOMI Q5		'852 patent (1, 7); and '253 patent (1, 3, 4, 6).

See Mem. at 24-26

**2. The Domestic Industry Products**

Bose has identified the Bose SoundSport® in-ear headphones, SoundSport® Pulse wireless headphones, SoundSport® wireless headphones, SoundTrue® Ultra in-ear headphones, and SoundSport® Free wireless headphones as the domestic industry products. See Mem. at 28 n.8; Mem. Ex. S (Maguire Decl.) ¶ 3; First Am. Compl., ¶ 172, Exs. 31, 32; Bose Identification of Products It Will Rely Upon to Satisfy the Domestic Industry Requirement (EDIS Doc. ID No. 654098) (Aug. 27, 2018).

## PUBLIC VERSION

Further, Bose identifies the (i) Bose SoundSport® in-ear headphones, and (ii) Bose SoundSport® wireless headphones, as representative of the domestic industry products. *See* Mem. at 27-28, Mem. Ex. S (Maguire Decl.) at 2 n.1.

### **II. Jurisdiction**

No party has contested the Commission's *in rem* jurisdiction over the accused products. Evidence of specific instances of importation of the accused products is discussed in the importation section of this initial determination. Accordingly, it is found that the Commission has *in rem* jurisdiction over the accused products.

As indicated in the Commission's notice of investigation, discussed above, this investigation involves the importation of products alleged to infringe United States patents in a manner that violates section 337 of the Tariff Act, as amended. No party has contested the Commission's jurisdiction over the subject matter of this investigation. It is found that the Commission has subject matter jurisdiction over this investigation.

No party has contested the Commission's personal jurisdiction over it. In particular, the respondents are all deemed to have received notice of this investigation at least through service of the complaint and notice of investigation. It is therefore found that the Commission has personal jurisdiction over all parties.

### **III. General Principles of Applicable Law**

#### **A. Summary Determination**

Section 337 prohibits "[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that (i) infringe a valid and enforceable United States patent ...."

## PUBLIC VERSION

19 U.S.C. § 1337(a)(1)(B). A complainant need only prove importation of a single accused product to satisfy the importation element. *See Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm'n Op. at 7-8, USITC Pub. No. 1605 (Nov. 1984).

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

### **B. Claim Construction**

Claim construction begins with the plain language of the claim.<sup>2</sup> 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.<sup>3</sup> *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006).

---

<sup>2</sup> Only those claim terms that are in controversy need to be construed, and only to the extent necessary to resolve the controversy. *Vanderlande Indus. Nederland BV v. Int'l Trade Comm.*, 366 F.3d 1311, 1323 (Fed. Cir. 2004); *Vivid Tech., Inc. v. American Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

<sup>3</sup> Factors that may be considered when determining the level of ordinary skill in the art include: “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Environmental Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 696 (Fed. Cir. 1983), *cert. denied*, 464 U.S. 1043 (1984).

## PUBLIC VERSION

In some instances, claim terms do not have particular meaning in a field of art, and claim construction involves little more than the application of the widely accepted meaning of commonly understood words. *Phillips*, 415 F.3d at 1314. “In such circumstances, general purpose dictionaries may be helpful.” *Id.*

In many cases, claim terms have a specialized meaning, and it is necessary to determine what a person of skill in the art would have understood the disputed claim language to mean. “Because the meaning of a claim term as understood by persons of skill in the art is often not immediately apparent, and because patentees frequently use terms idiosyncratically, the court looks to ‘those sources available to the public that show what a person of skill in the art would have understood disputed claim language to mean.’” *Phillips*, 415 F.3d at 1314 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)). The public sources identified in *Phillips* include “the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Id.* (quoting *Innova*, 381 F.3d at 1116).

In cases in which the meaning of a claim term is uncertain, the specification usually is the best guide to the meaning of the term. *Phillips*, 415 F.3d at 1315. As a general rule, the particular examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996). The specification is, however, always highly relevant to the claim construction analysis, and is usually dispositive. *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90

## PUBLIC VERSION

F.3d 1576, 1582 (Fed. Cir. 1996)). 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.

### C. Infringement

#### 1. Direct Infringement

Under 35 U.S.C. §271(a), direct infringement consists of making, using, offering to sell, or selling a patented invention without consent of the patent owner. The complainant in a section 337 investigation bears the burden of proving infringement of the asserted patent claims by a “preponderance of the evidence.” *Certain Flooring Products*, Inv. No. 337-TA-443, Comm’n Notice of Final Determination of No Violation of Section 337, 2002 WL 448690, at \*59, (Mar. 22, 2002); *Enercon GmbH v. Int’l Trade Comm’n*, 151 F.3d 1376 (Fed. Cir. 1998).

Literal infringement of a claim occurs when every limitation recited in the claim appears in the accused device, *i.e.*, when the properly construed claim reads on the accused device exactly.<sup>4</sup> *Amhil Enters., Ltd. v. Wawa, Inc.*, 81 F.3d 1554, 1562 (Fed. Cir. 1996); *Southwall Tech. v. Cardinal IG Co.*, 54 F.3d 1570, 1575 (Fed. Cir. 1995).

#### 2. Indirect Infringement

##### a. Induced Infringement

Section 271(b) of the Patent Act provides: “Whoever actively induces infringement of a patent shall be liable as an infringer.” 35 U.S.C. § 271(b).

---

<sup>4</sup> 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). If an accused device lacks a limitation of an independent claim, the device cannot infringe a dependent claim. See *Wahpeton Canvas Co. v. Frontier, Inc.*, 870 F.2d 1546, 1552 n.9 (Fed. Cir. 1989).

## PUBLIC VERSION

“To prevail on a claim of induced infringement, in addition to inducement by the defendant, the patentee must also show that the asserted patent was directly infringed.” *Epcon Gas Sys. v. Bauer Compressors, Inc.*, 279 F.3d 1022, 1033 (Fed. Cir. 2002). Further, “[s]ection 271(b) covers active inducement of infringement, which typically includes acts that intentionally cause, urge, encourage, or aid another to directly infringe a patent.” *Arris Group v. British Telecomm. PLC*, 639 F.3d 1368, 1379 n.13 (Fed. Cir. 2011). The Supreme Court held that “induced infringement under § 271(b) requires knowledge that the induced acts constitute patent infringement.” *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766 (2011). The Court further held: “[g]iven the long history of willful blindness<sup>5</sup> and its wide acceptance in the Federal Judiciary, we can see no reason why the doctrine should not apply in civil lawsuits for induced patent infringement under 35 U.S.C. § 271(b).” *Global-Tech*, 563 U.S. at 768 (footnote omitted).

### **b. Contributory Infringement**

Section 271(c) of the Patent Act provides: “Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a

---

<sup>5</sup> “While the Courts of Appeals articulate the doctrine of willful blindness in slightly different ways, all appear to agree on two basic requirements: (1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact. We think these requirements give willful blindness an appropriately limited scope that surpasses recklessness and negligence.” *Global-Tech*, 563 U.S. at 769.

## PUBLIC VERSION

staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer. 35 U.S.C. § 271(c).

Section 271(c) “covers both contributory infringement of system claims and method claims.”<sup>6</sup> *Arris*, 639 F.3d at 1376 (footnotes omitted). To hold a component supplier liable for contributory infringement, a patent holder must show, *inter alia*, that (a) the supplier’s product was used to commit acts of direct infringement; (b) the product’s use constituted a material part of the invention; (c) the supplier knew its product was especially made or especially adapted for use in an infringement” of the patent; and (d) the product is not a staple article or commodity of commerce suitable for substantial noninfringing use. *Id.*

### **D. Domestic Industry**

A violation of section 337(a)(1)(B), (C), (D) or (E) can be found “only if an industry in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned, exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2). Section 337(a) further provides:

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

---

<sup>6</sup> “Claims which recite a ‘system,’ ‘apparatus,’ ‘combination,’ or the like are all analytically similar in the sense that their claim limitations include elements rather than method steps. All such claims can be contributorily infringed by a component supplier.” *Arris*, 639 F.3d at 1376 n.8.

PUBLIC VERSION

(C) substantial investment in its exploitation, including engineering, research and development.

19 U.S.C. § 1337(a)(3).

These statutory requirements consist of an economic prong (which requires certain activities)<sup>7</sup> and a technical prong (which requires that these activities relate to the intellectual property being protected). *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm'n Op. at 13 (May 16, 2008) (“*Stringed Musical Instruments*”). The burden is on the complainant to show by a preponderance of the evidence that the domestic industry requirement is satisfied. *Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-694, Comm'n Op. at 5 (July 22, 2011) (“*Navigation Devices*”).

“With respect to section 337(a)(3)(A) and (B), the technical prong is the requirement that the investments in plant or equipment and employment in labor or capital are actually related to ‘articles protected by’ the intellectual property right which forms the basis of the complaint.” *Stringed Musical Instruments*, Comm'n Op. at 13-14.

---

<sup>7</sup> The Commission practice is usually to assess the facts relating to the economic prong at the time that the complaint was filed. See *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-560, Comm'n Op. at 39 n.17 (Apr. 14, 2010) (“We note that only activities that occurred before the filing of a complaint with the Commission are relevant to whether a domestic industry exists or is in the process of being established under sections 337(a)(2)-(3).”) (citing *Bally/Midway Mfg. Co. v. U.S. Int'l Trade Comm'n*, 714 F.2d 1117, 1121 (Fed. Cir. 1983)). In some cases, however, the Commission will consider later developments in the alleged industry, such as “when a significant and unusual development occurred after the complaint has been filed.” See *Certain Video Game Systems and Controllers*, Inv. No. 337-TA-743, Comm'n Op., at 5-6 (Jan. 20, 2012) (“[I]n appropriate situations based on the specific facts and circumstances of an investigation, the Commission may consider activities and investments beyond the filing of the complaint.”).



## PUBLIC VERSION

“The test for satisfying the ‘technical prong’ of the industry requirement is essentially same as that for infringement, i.e., a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). “With respect to section 337(a)(3)(C), the technical prong is the requirement that the activities of engineering, research and development, and licensing are actually related to the asserted intellectual property right.” *Stringed Musical Instruments*, Comm’n Op. at 13.

With respect to the economic prong, and whether or not section 337(a)(3)(A) or (B) is satisfied, the Commission has held that “whether a complainant has established that its investment and/or employment activities are significant with respect to the articles protected by the intellectual property right concerned is not evaluated according to any rigid mathematical formula.” *Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Comm’n Op. at 27 (Feb. 17, 2011) (citing *Certain Male Prophylactic Devices*, Inv. No. 337 TA-546, Comm’n Op. at 39 (Aug. 1, 2007)). Rather, the Commission examines “the facts in each investigation, the article of commerce, and the realities of the marketplace. *Id.* “The determination takes into account the nature of the investment and/or employment activities, ‘the industry in question, and the complainant’s relative size.’” *Id.* (citing *Stringed Musical Instruments*, Comm’n Op. at 26).

With respect to section 337(a)(3)(C), whether an investment in domestic industry is “substantial” is a fact-dependent inquiry for which the complainant bears the burden of proof. *Stringed Musical Instruments*, Comm’n Op. at 14. There is no minimum monetary expenditure that a complainant must demonstrate to qualify as a domestic industry under the “substantial investment” requirement of this section. *Id.* at 25. There

## PUBLIC VERSION

is no need to define or quantify an industry in absolute mathematical terms. *Id.* at 26. Rather, “the requirement for showing the existence of a domestic industry will depend on the industry in question, and the complainant’s relative size.” *Id.* at 25-26.

### **E. Default**

“In any motion requesting the entry of default or the termination of the investigation with respect to the last remaining respondent in the investigation, the complainant shall declare whether it is seeking a general exclusion order.” 19 C.F.R. § 210.16(b)(4)(2). “A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.” 19 C.F.R. § 210.16(b)(4). After a respondent has been found in default by the Commission, “[t]he facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent.” 19 C.F.R. § 210.16(c).

### **IV. Summary Determination**

Bose argues that substantial, reliable, and probative evidence supports a finding of infringement by the defaulting (or non-participating) respondents of the following claims:

- claims 1 and 7 of U.S. Patent No. 9,036,852;
- claims 1 and 8 of U.S. Patent No. 9,036,853;
- claims 1 and 6 of U.S. Patent No. 9,042,590;
- claim 1 of U.S. Patent No. 8,311,253;
- claims 1, 7, and 8 of U.S. Patent No. 8,249,287; and
- claims 1 and 11 of U.S. Patent No. 9,398,364.

Mot. at 1.

The Staff argues that “there is substantial, reliable and probative evidence supporting Bose’s motion.” Staff Resp. at 19.

## PUBLIC VERSION

### A. Importation

Section 337 prohibits “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that – (i) infringe a valid and enforceable United States patent . . . .” 19 U.S.C. § 1337(a)(1)(B). A complainant “need only prove importation of a single accused product to satisfy the importation element.” *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Order No. 17 at 5 (Sept. 23, 2004); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Views of the Commission at 7-8 (Aug. 29, 1984), USITC Pub. No. 1605 (Nov. 1984), *available as* 1984 WL 951859 (importation of product sample sufficient to establish violation, even though sample “had no commercial value and had not been sold in the United States”).

Bose argues the evidence shows that each of the defaulting (or non-participating) respondents has imported accused products and/or sold such products within the United States after importation. *See* Mem. at 19-22. The Staff argues that “[t]here is no genuine issue as to any material fact that the accused products of each defaulting respondent have been imported into the United States.” Staff Resp. at 20.

As discussed below, there is no factual dispute related to importation of accused products by each of the defaulting (or non-participating) respondents. Bose’s complaint, the facts in which must be presumed to be true as to the defaulting respondents, under 19 C.F.R. § 210.16(c)(1), and the testimony of Mr. David Schuler (Mem. Ex. E (Schuler 1st Decl.)), provide substantial, reliable, and probative evidence that the defaulting (or non-

## PUBLIC VERSION

participating)<sup>8</sup> respondents import into the United States, have others make for import into the United States, and/or sell after importation into the United States earpiece devices that infringe at least one claim of each asserted patent. *See Mem.* at 19-22.

In particular, Bose submitted a declaration from David Schuler, the Chief Intellectual Property Counsel for Bose. *See Mem. Ex. E (Schuler 1st Decl.)*, ¶ 1. The Schuler declaration provides evidence of specific instances of importation by each of the defaulting (or non-participating) respondents. The declaration states that the defaulting (or non-participating) respondents offered for sale earpiece devices on Amazon.com, eBay, and Alibaba, and using well-known shipping companies, including at least FedEx and DHL, import their products directly to consumers in the United States. *See id.*, ¶¶ 11-12. Mr. Schuler states that Bose purchased accused earpiece devices of each defaulting respondent “in the United States.” *See id.*, ¶¶ 14, 16, 18, 20, 22, 24, 26, 28. Invoices attached to the Schuler declaration indicate that the devices were purchased in the United States. *Mem. Ex. E-1 (attached to Ex. E (Schuler 1st Decl.))*. Labels on the devices or the packaging, or tracking information indicates that the devices were manufactured in China or shipped from China. *See Mem. Ex. E (Schuler 1st Decl.)*, ¶¶ 15, 17, 19, 21, 23, 25, 27, 29; *see also Mem. Exs. E-2–E-9 (photographs attached to Schuler 1st Decl.)*.

---

<sup>8</sup> Commission Rule 210.17 provides that “[f]ailure to respond to a motion for summary determination under § 210.18” “may provide a basis for the presiding administrative law judge or the Commission to draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930), and orders that are adverse to the party who fails to act.” 19 C.F.R. § 210.17. Additionally, Commission Rule 210.15(c) provides that “a nonmoving party ... shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion.” 19 C.F.R. § 210.15(c).

**PUBLIC VERSION**

**1MORE USA, Inc.**

Complainant purchased a representative 1MORE iBFree in the United States. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 14. The Schuler Declaration includes photographs showing an invoice indicating the product was purchased in the United States. Labels on the device and/or product packaging for the representative 1MORE iBFree indicate that the accused product was manufactured in China. *See id.*, ¶ 15.

**Beebo Online Limited**

Complainant purchased a representative Dodocool AirPods Earhook in the United States. *See id.*, ¶ 16. The Schuler Declaration includes photographs showing an invoice indicating the product was purchased in the United States. Labels on the device and/or product packaging for the representative Dodocool AirPods Earhook indicate that the accused product was manufactured in China. *See id.*, ¶ 17.

**Misodiko**

Complainant purchased a representative Misodiko Earhooks in the United States. *See id.*, ¶ 18. The Schuler Declaration includes photographs showing an invoice indicating the product was purchased in the United States. Labels on the device and/or product packaging for the representative Misodiko Earhooks indicate that the accused product was manufactured in China. *See id.*, ¶ 19.

**Phaiser LLC**

Complainant purchased representative Phaiser BHS-730 and BHS-750 headphones in the United States. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 20. The Schuler Declaration includes photographs showing an invoice indicating the products were purchased in the United States. Labels on the devices and/or product packaging for the

## PUBLIC VERSION

representative Phaiser BHS-730 and BHS-750 headphones indicate that the accused products were manufactured in China. *See id.*, ¶ 21.

### **Phonete**

Complainant purchased a representative Phonete Silicone Rubber Earbuds in the United States. *See id.*, ¶ 22. The Schuler Declaration includes photographs showing a receipt indicating the product was purchased in the United States. Labels on the device and/or product packaging for the representative Phonete Silicone Rubber Earbuds indicate that the accused product was manufactured in China. *See id.*, ¶ 23.

### **REVJAMS**

Complainants purchased a representative REVJAMS Active Sport Pro headphones in the United States. *See id.*, ¶ 24. The Schuler Declaration includes photographs showing an invoice indicating the product was purchased in the United States. Labels on the device and/or product packaging for the representative REVJAMS Active Sport Pro headphones indicate that the accused product was manufactured in China. *See id.*, ¶ 25.

### **TomRich**

Complainant purchased a representative TomRich T330 in the United States. *See Mem. Ex. E (Schuler 1st Decl.)*, ¶ 26. The Schuler Declaration includes photographs showing an invoice indicating the product was purchased in the United States. Labels on the device and/or product packaging for the representative TomRich T330 indicate that the accused product was manufactured in China. *See id.*, ¶ 27.

**PUBLIC VERSION**

**V4Ink, Inc.**

Complainant purchased a representative SMARTOMI Q5 in the United States. *See id.*, ¶ 28. The Schuler Declaration includes photographs showing an invoice indicating the product was purchased in the United States. Labels on the device and/or product packaging for the representative SMARTOMI Q5 indicate that the accused product was manufactured in China. *See id.*, ¶ 29.

The evidence regarding importation by the defaulting (or non-participating) respondents includes:

<b>Defaulting Respondent</b>	<b>Principal Place of Business</b>	<b>Evidence of Purchase</b>	<b>Evidence of Source of Product</b>
1MORE USA, Inc.	San Diego, CA	Mem. Ex. E-1 at 5–7	Mem. Ex. E-2 at 1 (manufactured in China)
Beebo Online Limited	Las Vegas, NV	Mem. Ex. E-1 at 9–12	Mem. Ex. E-3 at 1–2, 20 (manufactured in China)
Misodiko	China	Mem. Ex. E-1 at 5–7	Mem. Ex. E-4 at 1 (manufactured in China)
Phaiser LLC	Houston, TX	Mem. Ex. E-1 at 5–7	Mem. Ex. E-5 at 2–3 (manufactured in China)
Phonete	China	Mem. Ex. E-1 at 3–4	Mem. Ex. E-6 at 2 (shipped from China)
REVJAMS	New York, NY	Mem. Ex. E-1 at 5–7	Mem. Ex. E-7 at 2 (manufactured in China)
V4ink, Inc.	Ontario, CA	Mem. Ex. E-1 at 5–7	Mem. Ex. E-9 at 2 (manufactured in China)
TomRich	China	Mem. Ex. E-1 at 5–7	Mem. Ex. E-8 at 2 (manufactured in China)

Accordingly, the evidence shows that the importation requirement for finding a violation of section 337 has been satisfied for each defaulting respondent (or non-participating respondent).

**B. Infringement**

As noted above, Bose argues that substantial, reliable, and probative evidence supports a finding of infringement by the defaulting (or non-participating) respondents of the following claims:

- claims 1 and 7 of U.S. Patent No. 9,036,852;
- claims 1 and 8 of U.S. Patent No. 9,036,853;
- claims 1 and 6 of U.S. Patent No. 9,042,590;
- claim 1 of U.S. Patent No. 8,311,253;
- claims 1, 7, and 8 of U.S. Patent No. 8,249,287; and
- claims 1 and 11 of U.S. Patent No. 9,398,364.

Mot. at 1.

**1. Asserted Patents**

Bose argues that the defaulting (or non-participating) respondents infringe certain claims of the following asserted patents.

**U.S. Patent No. 9,036,852**

Bose argues that all of the defaulting (or non-participating) respondents infringe claims 1 and 7 of the '852 patent. The asserted claims are recited below:

**Claim 1:**

An ear interface for an in-ear headphone, the ear interface comprising:

a body portion that fits beneath the tragus and anti-tragus and occupies substantially the entire concha of a user's ear when worn by the user,

a compliant outlet extending into at least the entrance of the user's ear canal when worn by the user, and

a compliant retaining member extending from the body portion and terminating at an extremity,



**PUBLIC VERSION**

wherein the retaining member applies pressure to the antihelix of the user's ear along substantially the entire length of an outer edge of the retaining member when the ear interface is fit into the user's ear, and

the extremity of the retaining member seats at the end of the anti-helix under the base of the helix of the user's ear.

**Claim 7:**

An earphone comprising:

an acoustic driver that converts applied audio signals to acoustic energy;

a housing containing the acoustic driver, the housing including a front chamber acoustically coupled to the acoustic driver; and

an ear interface comprising:

a body portion that fits beneath the tragus and anti-tragus and occupies substantially the entire lower concha of a user's ear when worn by the user,

a compliant outlet extending into at least the entrance of the user's ear canal when worn by the user, and

a compliant retaining member extending from the body portion and terminating at an extremity,

wherein the retaining member applies pressure to the antihelix of the user's ear along substantially the entire length of an outer edge of the retaining member when the ear interface is fit into the user's ear, and

the extremity of the retaining member seats at the end of the anti-helix under the base of the helix of the user's ear.

'852 Patent at claims 1, 7.

## PUBLIC VERSION

### U.S. Patent No. 9,036,853

Bose argues that certain defaulting (or non-participating) respondents infringe claims 1 and 8 of the '853 patent. The asserted claims are recited below:

#### **Claim 1:**

An earphone comprising:

an acoustic driver that converts applied audio signals to acoustic energy by moving a diaphragm along a first axis;

a housing containing the acoustic driver, the housing including a front chamber acoustically coupled to the acoustic driver and a nozzle acoustically coupled to the front chamber, wherein the nozzle extends the front chamber towards the user's ear canal along a second axis that is not parallel to the first axis; and

an ear interface comprising:

a body portion that occupies the lower concha of a user's ear when worn by the user,

an outlet extending from the body and into at least the entrance of the user's ear canal entrance when worn by the user, wherein the outlet at least partially surrounds the nozzle of the housing, and

a retaining member formed of a compliant material, wherein the retaining member applies pressure to the antihelix of the user's ear along at least a portion of a length of the retaining member when the ear interface is worn by the user.

#### **Claim 8:**

An earphone comprising:

an acoustic driver that converts applied audio signals to acoustic energy;

a housing containing the acoustic driver, the housing including a front chamber acoustically coupled to the acoustic driver, wherein the housing includes a nozzle that extends the front chamber towards the ear canal of a user when the earphone is worn; and

## PUBLIC VERSION

an ear interface comprising:

a body portion that occupies substantially the entire lower concha of a user's ear when worn by the user,

an outlet extending from the body portion and into at least the entrance of the user's ear canal when worn by the user, wherein the outlet at least partially surrounds the nozzle of the housing and provides a passageway for conducting acoustic energy to the user's ear canal, and

a retaining member extending from the body portion, wherein the retaining member is formed of a compliant material and applies pressure to the antihelix of the user's ear along substantially the entire length of the retaining member when the ear interface is worn by the user.

'853 Patent at claims 1, 8.

### **U.S. Patent No. 9,042,590**

Bose argues that certain defaulting (or non-participating) respondents infringe claims 1 and 6 of the '590 patent. The asserted claims are recited below:

#### **Claim 1:**

An earphone comprising:

an acoustic driver that converts applied audio signals to acoustic energy;

a housing containing the acoustic driver, the housing including a front chamber acoustically coupled to the acoustic driver, wherein the housing includes a nozzle that extends the front chamber towards the ear canal of a user when the earphone is worn; and

an ear interface comprising:

an outlet extending from the body portion and into at least the entrance of the user's ear canal when worn by the user,

wherein the outlet at least partially surrounds the nozzle of the housing and provides a passageway for conducting acoustic energy to the user's ear canal, and

**PUBLIC VERSION**

a retaining member extending from the body portion,

wherein the retaining member is formed of a compliant material and applies pressure to the antihelix of the user's ear along substantially the entire length of the retaining member when the ear interface is worn by the user,

the retaining member lies in a plane when not worn by the user, and

the plane in which the retaining member is angled relative to the housing, such that the retaining member is tilted outward from the side of the user's head when the earphone is seated in a user's ear.

**Claim 6:**

An earphone comprising:

an acoustic driver that converts applied audio signals to acoustic energy by moving a diaphragm along a first axis;

a housing containing the acoustic driver; and

a removable ear interface comprising:

a body portion that fits beneath the tragus and anti-tragus and occupies the lower concha of a user's ear when worn by the user,

an outlet extending from the body portion and into at least the entrance of the user's ear canal when worn by the user, wherein the outlet extends towards the user's ear canal along a second axis that is not parallel to the first axis, and

a retaining member extending from the body portion at terminating an extremity, wherein the retaining member is formed of a compliant material and applies pressure to the antihelix of the user's ear along substantially the entire length of the retaining member when the ear interface is fit into the user's ear, and the extremity of the retaining member seats at the end of the anti-helix under the base of the helix of the user's ear.

'590 Patent at claims 1, 6.

**PUBLIC VERSION**

**U.S. Patent No. 8,311,253**

Bose argues that respondent V4ink, Inc. infringes claim 1 of the '253 patent.<sup>9</sup>

The asserted claim is recited below:

**Claim 1:**

An earphone, comprising:

an acoustic driver that transduces applied audio signals to acoustic energy;

a housing containing the acoustic driver, the housing including a front chamber acoustically coupled to the acoustic driver and a nozzle acoustically coupled to the front chamber;

an ear interface comprising a unitary structure having a body and a positioning and retaining structure,

the body being configured to fit within the concha of a user's ear, and further including an outlet dimensioned and arranged to fit inside the user's ear canal entrance, the outlet being coupled to the nozzle of the housing and providing a passageway for conducting acoustic energy from the acoustic driver to the user's ear canal;

the positioning and retaining structure including a member extending from the body and configured to rest against and apply outward pressure to the antihelix of the user's ear to retain the earphone in the user's outer ear.

'253 Patent at claim 1.

**U.S. Patent No. 8,249,287**

Bose argues that certain defaulting (or non-participating) respondents infringe claims 1, 7, and 8 of the '287 patent.<sup>10</sup> The asserted claims are recited below:

---

<sup>9</sup> See Mot. at 1. Thus, reference to asserted claims 3, 4, and 6 of the '253 patent at page 26 of the memorandum appears to refer to additional claims that were asserted against V4ink, Inc. during the investigation, and not to claims for which Bose is currently seeking a summary determination of a violation. See Mem. at 26.

<sup>10</sup> See Mot. at 1. Thus, reference to asserted claim 6 of the '287 patent at pages 25-26 of

**PUBLIC VERSION**

**Claim 1:**

A positioning and retaining structure for an in-ear earpiece comprising:

an outer leg and an inner leg attached to each other at an attachment end and attached to a body of the earpiece at the other end, the outer leg lying in a plane, the positioning and retaining structure having a stiffness that is greater when force is applied to the attachment end in a counterclockwise direction in the plane of the outer leg than when force is applied to the attachment end in a clockwise direction in the plane of the outer leg.

**Claim 7:**

A positioning structure for an in-ear earpiece comprising:

a first leg and a second leg attached to each other at an attachment end to form a tip and attached to a body of the earpiece at the other end,

wherein the positioning structure provides at least three modes for preventing clockwise rotation of the earpiece past a rotational position, the modes including

the tip contacting the base of the helix;

the tip becoming wedged under the anti-helix in the cymba concha region;

and the inner leg contacting the base of the helix.

**Claim 8:**

A positioning and retaining structure for an in-ear earpiece, comprising:

an inner leg and an outer leg attached at attachment end to each other to form a tip and at a second end to an earpiece body, the inner leg and outer leg arranged to provide at least three modes for preventing clockwise rotation of the earpieces, the modes including

---

the memorandum appears to refer to an additional claim that was asserted during the investigation, and not to a claim for which Bose is currently seeking a summary determination of a violation. *See Mem.* at 25-26.

## PUBLIC VERSION

the tip contacts the base of the helix;

the tip becomes wedged under the anti-helix; and

the inner leg contacts the base of the helix; the inner leg and the outer leg further arranged so that with the earpiece in its intended position, the outer leg is urged against the anti-helix at the rear of the concha, the body engages the ear canal; and

at least one of

tip is under the anti-helix; or

a portion of at least one of the body and the outer leg are under the anti-tragus.

'287 Patent at claims 1, 7, 8.

### **U.S. Patent No. 9,398,364**

Bose argues that certain defaulting (or non-participating) respondents infringe claims 1 and 11 of the '364 patent. The asserted claims are recited below:

#### **Claim 1:**

An ear tip for an in-ear earpiece, comprising:

a body shaped to fit in the lower concha of a wearer's ear, the body having a generally flat surface that rests against the surface of the concha;

a nozzle extending from the body towards the ear canal of the wearer's ear, the nozzle including an acoustic passage to conduct sound waves to the ear canal of the wearer;

an ear-canal sealing structure extending from the nozzle; and

a retaining structure extending from the body towards the antihelix of the wearer's ear;

wherein the sealing structure comprises a thin layer of material forming a hollow frusto-conical shape surrounding the nozzle,

## PUBLIC VERSION

the sealing structure is joined to the nozzle at a narrow end of the frusto-conical shape,

a wide end of the frusto-conical shape is larger than a typical ear canal is wide, and

when the ear tip is placed in an ear,

the retaining structure presses against the antihelix along an outer edge of the retaining structure and thereby presses the body and the nozzle towards the ear canal,

the sealing structure seals the entrance to the ear canal, and

the body prevents the nozzle and sealing structure from extending into the ear canal beyond the entrance.

### **Claim 11:**

An ear-tip for an in-ear earpiece, comprising:

a disc-shaped base, the disc shape lying in a plane;

a nozzle extending from the base, the nozzle being tapered to smoothly transition from a surface of the base to an end of the nozzle in a direction away from the plane in which the disc lies;

a frusto-conical flap surrounding the nozzle, with a narrow end of the flap joined to the end of the nozzle, and the flap having a stiffness to maintain a gap between the flap and the nozzle absent external forces; and

a retaining leg extending from and curving around a portion of the base, wherein when the ear-tip is placed in a users ear; the retaining leg applies pressure to the antihelix of the user's ear along an outer edge of the retaining member, the flap seals the entrance to the ear canal, and the base prevents the nozzle and flap from extending into the ear canal beyond the entrance.

'364 Patent at claims 1, 11.

## **2. A Person of Ordinary Skill in the Art**

Bose did not offer any arguments concerning the technical qualifications of a



## PUBLIC VERSION

person of ordinary skill in the art at the time of the claimed inventions. The Staff discussed the qualifications of a technical expert in the context of the infringement analysis. *See* Staff Resp. at 26-27.

The administrative law judge has determined to discuss the technical qualifications in the infringement analysis section of this initial determination.

### 3. Claim Construction

“Determination of a claim of infringement involves a two step inquiry. First, the claims are construed, a question of law in which the scope of the asserted claims is defined.” *Advanced Cardiovascular Sys.*, 261 F.3d at 1336. To ascertain the meaning of a claim term, the courts rely on intrinsic evidence: the claims, specification, and prosecution history for the patent at issue. *Phillips*, 415 F.3d 1303, 1313-14 (Fed. Cir. 2005) (*en banc*); *Vitronics*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Extrinsic evidence may be considered if necessary to explain scientific principles, technical terms, and terms of art that appear in the patent and prosecution history. Extrinsic evidence consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises. *Vitronics*, 90 F.3d at 1582-83.

A court need not construe every term in a claim, but may limit its analysis to terms that do not have a readily apparent ordinary meaning and are relevant to the dispute. *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1360 (Fed. Cir. 2008); *U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997).

Bose argues that only three claim terms need to be construed: (i) “frusto-conical,” (ii) “outward pressure,” and (iii) “configured to rest against and apply outward pressure to the antihelix.” Mem. at 22-24. However, during the investigation, Bose, terminated

**PUBLIC VERSION**

respondent Spigen, and the Staff filed a Joint Claim Construction Chart identifying five claim terms having agreed-upon constructions:

<b>Claim Term</b>	<b>Patent (s)</b>	<b>Agreed-Upon Construction</b>
“frusto-conical”	‘364 Patent (claims 1, 8, 11, 16)	Having a substantially conical shape truncated before the pointed end
“outward pressure”	‘253 Patent (claim 1)	Should be construed in the context of the larger phrase in which it appears
“configured to rest against and apply outward pressure to the antihelix”	‘253 Patent (claim 1)	Configured to rest against the antihelix and apply pressure to the antihelix along the Z axis in a direction away from the head
“body portion”	‘852 Patent (claims 1, 7); ‘853 Patent (claims 1, 8); ‘590 Patent (claim 6)	Main section of the ear interface
“body of the earpiece”/ “earpiece body”	‘287 Patent (claims 1, 7, 8)	The main section of the physical structure of the earpiece device

See Staff Resp. at 21-22 (citing Joint Claim Construction Chart at 1-3 (EDIS Doc. ID No. 662055) (Nov. 16, 2018)). No other party filed a list of disputed claim terms and proposed constructions.

The Joint Claim Construction Chart identifies 11 claim terms as having agreed-upon constructions of plain and ordinary meaning. Joint Claim Construction Chart at 2-3. The chart also identifies four disputed claim terms, but as of the filing of the pending motion, there does not appear to be any current dispute. *Id.* at 3-4. For these terms, Bose and the Staff proposed a plain and ordinary meaning, while respondent Spigen disagreed and offered alternative constructions. *Id.* However, on December 20, 2018, Bose and

## PUBLIC VERSION






Spigen jointly moved to terminate the investigation as to Spigen in view of a settlement agreement “resolving the present disputes between Bose and Spigen.” Thus, Spigen no longer disputes the construction of these claim terms. As a result, these four claim terms previously identified as disputed should be construed according to their plain and ordinary meaning.

There is no dispute as to the agreed-upon constructions for the five claim terms identified above. As for the remaining claims terms, there is no dispute as to whether those terms should be construed according to their plain and ordinary meaning. Thus, the remaining terms (and other claim terms not identified for construction) should be construed according to their plain and ordinary meaning. *See Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313, 1318-29 (Fed. Cir. 2007) (“[c]laim construction is directed to claims or claim terms whose meaning is disputed as applied to the patentee’s invention in the context of the accused device. When there is no dispute as to the meaning of a term that could affect the disputed issues of the litigation, ‘construction’ may not be necessary.”); *Phillips*, 415 F.3d at 1314.






#### **4. Infringement Analysis of the Asserted Claims**

Bose provides the following “chart summarizing infringement of the asserted patents among the defaulting (or non-participating) respondents in the investigation”:

PUBLIC VERSION

Defaulting Respondent	Accused Product(s)	Exemplary Product Image	Asserted Patents (Claims)
<b>1MORE USA, Inc.</b>	1More iBFree		'852 patent (1, 7); '590 patent (1, 6); and '853 patent (1, 8).
<b>Beebo Online Limited</b>	Dodocool DA 109		'852 patent (1, 7); '590 patent (1, 6); '853 patent (1, 811); and '364 patent (1, 11).
	Dodocool Earhooks		'852 patent (1, 7).
<b>Misodiko</b>	Misodiko Earhooks		'852 patent (1, 7); and '287 patent (1, 6, 7, 8).
<b>Phaiser LLC</b>	Phaiser BHS-730		'852 patent (1, 7); and '287 patent (1, 6, 7, 8).

PUBLIC VERSION

Defaulting Respondent	Accused Product(s)	Exemplary Product Image	Asserted Patents (Claims)
	Phaiser BHS-750		'852 patent (1, 7); '287 patent (1, 6, 7, 8); '590 patent (1, 6); '853 patent (1, 8); and '364 patent (1, 11).
<b>Phonete</b>	Phonete Silicone Rubber Earbuds		'852 patent (1, 7); and '287 patent (1, 6, 7, 8).
<b>REVJAMS</b>	REVJAMS Active Sport Pro		'852 patent (1, 7); '287 patent (1, 6, 7, 8); '590 patent (1, 6); '853 patent (1, 8); and '364 patent (1, 11).
<b>TomRich</b>	TomRich T330		'852 patent (1, 7); and '287 patent (1, 6, 7, 8).
<b>V4Ink, Inc.</b>	SMARTOMI Q5		'852 patent (1, 7); and '253 patent (1, 3, 4, 6).

See Mem. at 24-26.

**PUBLIC VERSION**

Bose argues that accused earpiece devices of the defaulting (or non-participating) respondents infringe certain claims of the following asserted patents:




Defaulting Respondent	'852 Patent		'853 Patent		'590 Patent		'253 Patent	'287 Patent			'364 Patent	
	1	7	1	8	1	6	1	1	7	8	1	11
1MORE USA, Inc.	x	x	x	x	x	x						
Beebo Online Limited	x	x	x	x	x	x					x	x
Misodiko	x	x						x	x	x		
Phaiser LLC	x	x	x	x	x	x		x	x	x	x	x
Phonete	x	x						x	x	x		
REVJAMS	x	x	x	x	x	x		x	x	x	x	x
V4ink, Inc.	x	x					x					
TomRich	x	x						x	x	x		

See Mot. at 1; Mem. at 24-26.






The Staff provides the following table showing the specific exhibit numbers of the photographs and infringement claim charts for each of the defaulting (or non-participating) respondents' products that allegedly infringe certain claims of the asserted patents:

Defaulting Respondent	Accused Product	Photographs	Asserted Claims	Claim Chart
1MORE USA, Inc.	iBFree BT	E-2	'852 patent, claims 1, 7	E-10
			'853 patent, claims 1, 8	E-11
			'590 patent, claims 1, 6	E-12

PUBLIC VERSION


				
Beebo Online Limited	Dodocool Earhooks 	E-3	'852 patent, claims 1, 7	E-13
	Dodocool DA-109 	E-3	'852 patent, claims 1, 7	E-13
			'853 patent, claims 1, 8	E-14
			'590 patent, claims 1, 6	E-15
			'364 patent, claims 1, 11	E-16
Misodiko	Misodiko Earhooks 	E-4	'852 patent, claims 1, 7	E-18
			'287 patent, claims 1, 7, 8	E-19

PUBLIC VERSION

Phaiser LLC	BHS-730	E-5	'852 patent, claims 1, 7	E-20
			'287 patent, claims 1, 7, 8	E-23
			'364 patent, claims 1, 11	E-24
	BHS-750	E-5	'852 patent, claims 1, 7	E-20
			'853 patent, claims 1, 8	E-21
			'590 patent, claims 1, 6	E-22
Phonete	Phonete Earbuds	E-6	'852 patent, claims 1, 7	E-25
			'287 patent, claims 1, 7, 8	E-26
REVJAMS	Active Pro Sport	E-7	'852 patent, claims 1, 7	E-27
			'853 patent, claims 1, 8	E-28
			'590 patent, claims 1, 6	E-29
			'287 patent, claims 1, 7, 8	E-30
			'364 patent, claims 1, 11	E-31
V4ink, Inc.	SmartOmi Q5	E-9	'852 patent, claims 1, 7	E-34
			'253 patent, claim 1	E-35



**PUBLIC VERSION**

TomRich	T330 Earhook	E-8	'852 patent, claims 1, 7	E-32
			'287 patent, claims 1, 7, 8	E-33

See Staff Resp. at 24-26 (citing Mem. Exs. E-2 to E-16, E-18 to E-35 (attached to Ex. E (Schuler 1st Decl.)).

Bose submitted two declarations of David Schuler, the Chief Intellectual Property Counsel for Bose. In his first declaration, Mr. Schuler declares that the defaulting (or non-participating) respondents' accused products infringe numerous claims of the asserted patents and that the claim charts "illustrate the infringement." Mem. Ex. E (Schuler 1st Decl.), ¶¶ 30-37. In the second declaration, he declares that certain accused products include a housing having an "acoustic driver."<sup>11</sup> Mem. Ex. II (Schuler 2nd Decl.) (EDIS Doc. Attachment ID No. 668877-1404635), ¶¶ 3-11.

In both declarations, Mr. Shuler states: "I . . . have personal knowledge of or have been informed of the facts set forth in this declaration." Mem. Ex. E (Schuler 1st Decl.) at 1; Mem. Ex. II (Schuler 2nd Decl.) at 1.<sup>12</sup> In any event, this investigation does

<sup>11</sup> See claim 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claim 1 of the '253 patent.

<sup>12</sup> The declarations do not set forth Mr. Schuler's technical qualifications, particularly with respect to one of ordinary skill in the art. Therefore, it is unclear whether Mr. Schuler is qualified as a technical expert in the claimed subject matter. See *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1362 (Fed. Cir. 2008) ("Unless a patent lawyer is also a qualified technical expert, his testimony on these kinds of technical issues is improper and thus inadmissible. Because [the witness] was never offered as a technical expert, and in fact was not qualified as a technical expert, it was an abuse of

**PUBLIC VERSION**

not appear to be sufficiently complex so as to require explanatory expert testimony. *See Centricut, LLC v. Esab Group, Inc.*, 390 F.3d 1361, 1369 (Fed. Cir. 2004) (“In many patent cases expert testimony will not be necessary because the technology will be easily understandable without the need for expert explanatory testimony.”) (quotation omitted).

The asserted claims are generally directed to the structure of an earpiece device, particularly aspects of the fit and retention characteristics of the earpiece devices. *See, e.g.*, Mem. Ex. S (Maguire Decl.), ¶ 2. Some asserted claims include an “acoustic driver” that converts the received audio signals to acoustic energy. *See, e.g.*, ‘852 Patent at 1:28-30 (claim 7). Additionally, the factual inquiries underlying a finding of direct infringement are not in dispute. As discussed below, as to the alleged indirect infringement by certain accused products (Misodiko, Phonete, and TomRich), Bose did not offer substantial, reliable and probative evidence.

The infringement claim charts and photographs of the accused products depict or describe each of the claimed elements of the following asserted claims in relation to the accused products of the defaulting (or non-participating) respondents:

<b>Defaulting Respondent</b>	<b>Accused Product</b>	<b>Asserted Claims</b>
1MORE USA, Inc.	iBFree BT	‘852 patent, claims 1, 7
		‘853 patent, claims 1, 8
		‘590 patent, claims 1, 6
Beebo Online Limited	Dodocool Earhooks	‘852 patent, claims 1, 7
	Dodocool DA-109	‘852 patent, claims 1, 7

---

discretion for the district court to permit him to testify as an expert on the issues of noninfringement or invalidity.”); *Raylon, LLC v. Complis Data Innovations, Inc.*, 700 F.3d 1361, 1376 (Fed. Cir. 2012) (“patent practitioners are unqualified to opine on the issue of infringement.”). As discussed above, the questions presented in the pending motion do not require such a qualification.

**PUBLIC VERSION**

		'853 patent, claims 1, 8
		'590 patent, claims 1, 6
		'364 patent, claims 1, 11
Misodiko	Misodiko Earhooks	'852 patent, claim 1
		'287 patent, claims 1, 7, 8
Phaiser LLC	BHS-730	'852 patent, claims 1, 7
		'287 patent, claims 1, 7, 8
		'364 patent, claims 1, 11
	BHS-750	'852 patent, claims 1, 7
		'853 patent, claims 1, 8
		'590 patent, claims 1, 6
		'287 patent, claims 1, 7, 8
Phonete	Phonete Earbuds	'852 patent, claim 1
		'287 patent, claims 1, 7, 8
REVJAMS	Active Pro Sport	'852 patent, claims 1, 7
		'853 patent, claims 1, 8
		'590 patent, claims 1, 6
		'287 patent, claims 1, 7, 8
		'364 patent, claims 1, 11
V4ink, Inc.	SmartOmi Q5	'852 patent, claims 1, 7
		'253 patent, claim 1
TomRich	T330 Earhook	'852 patent, claim 1
		'287 patent, claims 1, 7, 8

There is no dispute as to this evidence offered by Bose. Thus, there is no genuine issue of material fact that the defaulting (or non-participating) respondents' accused products infringe the claims identified above with the exception of claim 7 of the '852 patent with respect to Misodiko, Phonete, and TomRich products.

Bose did not offer substantial, reliable, and probative evidence regarding indirect infringement of claim 7 of the '852 patent with respect to Misodiko, Phonete, and TomRich products.

<b>Defaulting Respondent</b>	<b>Accused Product</b>	<b>Asserted Claims</b>
Misodiko	Misodiko Earhooks	'852 patent, claim 7
Phonete	Phonete Earbuds	'852 patent, claim 7

**PUBLIC VERSION**

TomRich	T330 Earhook	'852 patent, claim 7
---------	--------------	----------------------

For example, claim 7 of the '852 patent recites, among other things, an “earphone comprising . . . an acoustic driver that converts applied audio signals to acoustic energy.”

'852 patent at claim 7. However,, the Misodiko Earhook, depicted below, does not include an “acoustic driver.”



*See* Mem. Exs. E-4, E-18 (attached to Ex. E (Schuler 1st Decl.).

Instead, Bose relies on the Misodiko Earhooks “when used with Apple AirPods” to find the claimed “acoustic driver.” *See* Mem. Ex. E-18 (attached to Ex. E (Schuler 1st Decl.) at 5. Bose did not offer sufficient evidence that Misodiko induces or contributes to the infringement of claim 7 of the '852 patent. Although Bose did not offer sufficient evidence that Misodiko, Phonete, and TomRich indirectly infringe claim 7 of the '852 patent, Bose has offered substantial, reliable, and probative evidence that the same products of these defaulting (or non-participating) respondents infringe claim 1 of the '852 patent, as discussed above.

\* \* \*

Accordingly, with the exception discussed above, Bose has provided substantial, reliable and probative evidence that the defaulting (or non-participating) respondents'

## PUBLIC VERSION

accused products were imported into the United States and infringe certain claims of the asserted patents, thereby making summary determination appropriate as to the following patent claims:

- U.S. Patent No. 9,036,852 — claims 1 and 7
- U.S. Patent No. 9,036,853 — claims 1 and 8
- U.S. Patent No. 9,042,590 — claims 1 and 6
- U.S. Patent No. 8,311,253 — claim 1
- U.S. Patent No. 8,249,287 — claims 1, 7, and 8
- U.S. Patent No. 9,398,364 — claims 1 and 11.

### C. Validity

The patents at issue are presumed valid as a matter of law. 35 U.S.C. § 282. This presumption of validity may be overcome only by “clear and convincing evidence.” *Pfizer, Inc. v. Apotex, Inc.*, 480 F.3d 1348, 1359 (Fed. Cir. 2007). Bose argues that “[s]ince no party has raised any invalidity challenges to the Asserted Patents in this proceeding, there is no issue of material fact as to their validity.” Mem. at 18. Bose argues that each of the asserted patents is “valid, enforceable, and currently in full force and effect.” *Id.* at 18-19. The Staff states that it is “not aware of any prior art or other evidence that would rebut the presumption that the asserted patents are valid and enforceable.” Staff Resp. at 29. No party has challenged the validity or enforceability of any of the patents at issue. Thus, there is no issue of material fact as to the validity or enforceability of the asserted patents. *See Lannom Mfg. Co., Inc. v. International Trade Comm’n*, 799 F.2d 1572, 1580 (Fed. Cir. 1986) (Commission did not have authority to redetermine patent validity when no defense of invalidity had been raised).

## PUBLIC VERSION

### D. Domestic Industry (Technical Prong)

In a section 337 investigation, the complainant has the burden of proving the existence (or establishment) of a domestic industry relating to articles protected by the patent-at-issue. 19 U.S.C. § 1337(a)(2). For a patent-based claim, the domestic industry requirement consists of a technical prong and an economic prong. *See, e.g., Certain Variable Speed Wind Turbines & Components Thereof*, Inv. No. 337-TA-376, Comm'n Op. at 14-17, USITC Pub. No. 3003 (Nov. 1996) ("*Wind Turbines*"). The complainant bears the burden of establishing that both prongs have been satisfied. *See, e.g., Certain Concealed Cabinet Hinges & Mounting Plates*, Inv. No. 337-TA-289, 1990 WL 710375, Comm'n Op. at 22 (Jan. 8, 1990).

With regard to the technical prong, the requirement is satisfied here for each patent at issue if the domestic industry products are shown to practice at least one claim of the asserted patent. *Wind Turbines* at 15; *Certain Point of Sale Terminals & Components Thereof*, Inv. No. 337-TA-524, Order No. 40 at 17-18 (Apr. 11, 2005) ("The test for claim coverage for the purposes of the domestic industry requirement is the same as that for infringement.").

Bose argues that "substantial, reliable, and probative evidence shows that a domestic industry exists under 19 U.S.C. § 1337(a)(2)." Mem. at 27.

Bose argues:

Bose develops and sells in the United States a variety of products that practice claims of the asserted patents. For example, the Bose® SoundSport® in-ear headphones and the Bose® SoundSport® Wireless, which are representative of the domestic products identified in Bose's complaint, practice at least one claim of each asserted patent. Maguire Decl., ¶ 3 (Mem. Ex. S). Exhibits AA, BB, CC, DD, EE, and FF, attached

**PUBLIC VERSION**

hereto, show how the representative domestic industry products practice at least one claim of each asserted patent.

*Id.* at 27-28 (citations omitted) (footnote omitted).

The Staff argues:

The Staff is not aware of any dispute as to the evidence offered by Bose. In the Staff’s view, Bose has presented substantial, reliable, and probative evidence that the technical prong of the domestic industry requirement has been satisfied with respect to each asserted patent. Therefore, Bose is entitled to a summary determination that it has satisfied the technical prong of the domestic industry requirement for each asserted patent.

Staff Resp. at 30-31.

Bose asserts that the representative domestic industry products, *i.e.*, the (i) Bose SoundSport® in-ear headphones, and (ii) Bose SoundSport® wireless headphones, practice at least one claim of each asserted patent. *See* Mem. at 27-28.

In support of its motion, Bose submitted the declaration of Brian Maguire, the Director of Product Planning and Management at Bose and claim charts for each asserted patent. *See* Mem. at 27-28, Mem. Ex. S (Maguire Decl.). Mr. Maguire states that he “understand[s] that the SoundSport® Wireless practices at least one claim of each of the asserted patents” and “the SoundSport® in-ear headphones practice at least one claim of U.S. patent Nos. 9,036,852, 9,036,853, 9,042,590, 8,311,253, and 8,249,287.” Mem. Ex. S (Maguire Decl.), ¶ 3. Bose also submitted claim charts showing how the representative domestic industry products practice one claim of each asserted patent:

<b>Practiced Claim</b>	<b>DI Product(s)</b>	<b>Claim Chart</b>
‘852 patent, claim 1	Bose SoundSport®; Bose SoundSport® wireless	Mem. Ex. AA
‘853 patent, claim 1	Bose SoundSport®; Bose SoundSport®	Mem. Ex. BB

**PUBLIC VERSION**

	wireless	
'590 patent, claim 6	Bose SoundSport®; Bose SoundSport® wireless	Mem. Ex. CC
'253 patent, claim 1	Bose SoundSport®; Bose SoundSport® wireless	Mem. Ex. DD
'287 patent, claim 7	Bose SoundSport®; Bose SoundSport® wireless	Mem. Ex. EE
'364 patent, claim 1	Bose SoundSport® wireless	Mem. Ex. FF

See Mem. Exs. AA, BB, CC, DD, EE, FF.

There is no dispute with respect to the evidence offered by Bose. Bose has presented substantial, reliable, and probative evidence that the technical prong of the domestic industry requirement has been satisfied with respect to each asserted patent. Therefore, Bose is entitled to a summary determination that it has satisfied the technical prong of the domestic industry requirement for each asserted patent.

**E. Domestic Industry (Economic Prong)**

With respect to the economic prong, and whether or not section 337(a)(3)(A) or (B) is satisfied, the Commission has held that “whether a complainant has established that its investment and/or employment activities are significant with respect to the articles protected by the intellectual property right concerned is not evaluated according to any rigid mathematical formula.” *Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Comm’n Op. at 27 (Feb. 17, 2011) (citing *Certain Male Prophylactic Devices*, Inv. No. 337 TA-546, Comm’n Op. at 39 (Aug. 1, 2007)). Rather, the Commission examines “the facts in each investigation, the article of commerce, and the realities of the marketplace. *Id.* “The determination takes into account the nature of



## PUBLIC VERSION

the investment and/or employment activities, ‘the industry in question, and the complainant’s relative size.’” *Id.* (citing *Stringed Musical Instruments*, Comm’n Op. at 26).

With respect to section 337(a)(3)(C), whether an investment in domestic industry is “substantial” is a fact-dependent inquiry for which the complainant bears the burden of proof. *Stringed Musical Instruments*, Comm’n Op. at 14. There is no minimum monetary expenditure that a complainant must demonstrate to qualify as a domestic industry under the “substantial investment” requirement of this section. *Id.* at 25. There is no need to define or quantify an industry in absolute mathematical terms. *Id.* at 26. Rather, “the requirement for showing the existence of a domestic industry will depend on the industry in question, and the complainant’s relative size.” *Id.* at 25-26.

Bose argues:

Pursuant to 19 U.S.C. §§ 1337(a)(3)(A), (B), and (C), an industry in the United States exists for each of the asserted patents. The evidence shows that, with respect to articles protected by each asserted patent, Bose has made significant investments in plant and equipment in the United States; significant employment of labor and capital in the United States; and substantial investment in its exploitation, including engineering, and research and development.

Mem. at 28.

The Staff argues: “Bose has set forth substantial, reliable, and probative evidence to support a summary determination that it satisfies the economic prong of the domestic industry requirement under § 337(a)(3)(A), (B), or (C).” Staff Resp. at 33.

Bose argues that a domestic industry exists under 19 U.S.C. §1337(a)(3)(A), (B), and (C) based on its domestic activities related to the domestic industry products that includes research, development, engineering, and design. Bose relies on the uncontested

## PUBLIC VERSION

declaration of Mr. Maguire, the Director of Product Planning and Management at Bose.

*See* Mem. at 28-30; Mem. Ex. S (Maguire Decl.).

During its most recent full fiscal year, which ended on March 31, 2018 (“fiscal year 2018”), Bose had net revenues of [ ] in approximately 134 countries. *See* Mem. Ex. S (Maguire Decl.), ¶ 4. North America is Bose’s largest market, accounting for [ ] of Bose’s net revenues in fiscal year 2018. *See id.* During this period, Bose’s net revenues in the United States totaled [ ] including [ ] from the [ ] domestic industry products sold. As of April 23, 2018, Bose employs approximately [ ] people worldwide, including approximately [ ] employees in the United States. *See id.*

### **Plant and Equipment (Section 337(a)(3)(A))**

The evidence shows that Bose’s headquarters is located in Framingham, Massachusetts. *See* Mem. Ex. S (Maguire Decl.), ¶ 1. Bose’s research and development facilities at Framingham, Massachusetts and Stowe, Massachusetts total over [ ] square feet valued at [ ]. *See id.*, ¶ 6. Bose’s Consumer Electronic Division (“CED”), located at multiple facilities in Massachusetts, is primarily responsible for the domestic industry products. *See id.*, ¶ 5. Research and development facilities in Framingham, Massachusetts and Stowe, Massachusetts related to the domestic industry products include approximately [ ] square feet valued at over [ ]. *Id.*, ¶ 6. The CED’s activities related to the domestic industry products include:

- development of products for manufacturing and sale;

**PUBLIC VERSION**

- research, which encompasses invention and enhancement, into technologies that might be incorporated into future earpiece devices;
- core support for engineering functions used in the process of designing the domestic industry products, such as computer-aided design (CAD) tools; and
- industrial design of the domestic industry products.

*Id.*, ¶ 5.

Bose has [ ] of equipment for research and development, including [ ] of equipment for research and development in the United States related to the domestic industry products. *See id.*, ¶ 7. In addition, Bose’s technical support and warranty service facilities in Westborough, Massachusetts directed to the domestic industry products include approximately [ ] square feet valued at [ ]. *Id.*, ¶ 9.

There is no dispute as to any material fact establishing that Bose satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A).

**Labor and Capital (Section 337(a)(3)(B))**

As of April 23, 2018, Bose employs approximately [ ] people worldwide, including approximately [ ] employees in the United States. *See Mem. Ex. S (Maguire Decl.)*, ¶ 4.

Bose has made substantial employment of U.S. labor in connection with its investments in research, advanced development, engineering, and design associated with the domestic industry products. *See id.*, ¶ 8. As of April 23, 2018, Bose employs approximately [ ] employees dedicated to research and development [ ] of which are based in the United States), including [ ] research and development employees working on the domestic industry products in the United States. *Id.*

## PUBLIC VERSION

In fiscal year 2018, Bose spent [ ] on technical support and warranty service of its CED products in the U.S., including [ ] for the domestic industry products. *See id.*, ¶ 9. Technical support and warranty service includes the following activities:

- a call center of approximately [ ] telephonic sales representatives [ ] of which are based in the United States), and other professionals;
- replacement parts and products in the U.S. totaling [ ] and
- [ ] of additional costs to cover any outstanding warranty liability.

*Id.* Bose employs over [ ] employees dedicated to technical support and warranty service [ ] of which are based in the United States), including seven for the domestic industry products. *Id.*

Bose sells the domestic industry products in its own network of 68 retail stores located throughout the United States and through various retail channels, including Apple® stores, Best Buy, and Target, also located throughout the United States. *See id.*, ¶ 10. Bose also sells and supports the domestic industry products through its own direct (online) sales channel organizations which in total employ approximately [ ] persons in the United States as of March 31, 2018. *Id.*

Thus, the record evidence establishes that Bose has made significant investments in labor and capital with respect to the products protected by the asserted patents. There is no dispute as to any material fact establishing that Bose satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(B).

PUBLIC VERSION

**Exploitation of the Asserted Patents (Section 337(a)(3)(C))**

The evidence shows that in fiscal year 2018, Bose spent [ ] on research and development, including [ ] directed to the domestic industry products. *See* Mem. Ex. S (Maguire Decl.), ¶ 6. Bose's total cumulative research and development investment over the past five fiscal years is [ ] including [ ] directed to the domestic industry products. *Id.*

As noted above, [ ] employees based in the United States were dedicated to research and development work on domestic industry products. *See* Mem. Ex. S (Maguire Decl.), ¶ 8. In view of the significant number of U.S. employees involved in research and development on domestic industry products, Bose's research and development costs are substantial. Inasmuch as the domestic industry products were designed and developed in the United States at Bose's Consumer Electronics Division, located at multiple facilities in Bose's Massachusetts campus, its domestic industry products would not exist without them. Under the required contextual analysis, Bose's research and development costs are substantial.

Accordingly, there is no dispute as to any material fact, and it is found that Bose satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(C).

\* \* \*

There is no dispute with respect to the evidence offered by Bose. Bose has presented substantial, reliable, and probative evidence that the economic prong of the domestic industry requirement has been satisfied. Therefore, Bose is entitled to a

## PUBLIC VERSION

summary determination that it has satisfied the economic prong of the domestic industry requirement.

### V. Recommended Determination on Remedy and Bonding

The Commission has broad discretion in selecting the form of the remedy in a section 337 proceeding. *See Fuji Photo Film v. International Trade Comm'n*, 386 F.3d 1095, 1106-07 (Fed. Cir. 2004); *Certain Hydraulic Excavators and Components Thereof*, Inv. No. 337-TA-582, Comm'n Op. at 15 (Feb. 3, 2009), USITC Pub. No. 4115 (Dec. 2009). Where a violation is found, the Commission generally issues a limited exclusion order directed against products imported by persons found in violation of the statute. In certain circumstances, however, the Commission may issue a general exclusion order directed against all infringing products. 19 U.S.C. § 1337(d)(2).

Bose argues:

Section 1337(g) “unambiguously requires the Commission to grant relief against defaulting respondents, subject only to public interest concerns, if all prerequisites of § 1337(g)(1) are satisfied.” *Laerdal Med. Corp. v. ITC*, 2018 U.S. App. LEXIS 34465 at \*8 (Dec. 7, 2018).

Bose respectfully requests that, upon entry of summary determination finding a violation, the administrative law judge:

1. Issue a recommended determination that the Commission should issue a general exclusion order pursuant to 19 U.S.C. §1337(d)(2) covering earpiece devices that infringe claims 1 and 7 of U.S. Patent No. 9,036,852; claims 1 and 8 of U.S. Patent No. 9,036,853; claims 1 and 6 of U.S. Patent No. 9,042,590; claim 1 of U.S. Patent No. 8,311,253; claims 1, 7, and 8 of U.S. Patent No. 8,249,287; and claims 1 and 11 of U.S. Patent No. 9,398,364;
2. Issue a recommended determination that the Commission should issue cease and desist orders against each of the defaulting respondents; and
3. Set the bond for the Presidential Review period at 100% of the entered value of the infringing earpiece devices.

Mem. at 30-31.

## PUBLIC VERSION

### A. General Exclusion Order

A GEO is warranted when “a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons” or “there is a pattern of violation of this section and it is difficult to identify the source of infringing products.” 19 U.S.C. § 1337(d)(2)(A)-(B). Satisfaction of either criterion is sufficient for imposition of a GEO. *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm’n Op. at 24 (Oct. 1, 2009). The Commission “now focus[es] principally on the statutory language itself” when determining whether a GEO is warranted. *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25 (Mar. 27, 2009). The Commission may look not only to the activities of active respondents, but also to those of non-respondents as well as respondents that have defaulted or been terminated from an investigation. *See, e.g., Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm’n Op. at 59 (Apr. 14, 2010).

The Commission has long recognized that it has the authority to issue a general exclusion order when all respondents have been found in default. *See, e.g., Certain Plastic Molding Machines With Control Systems Having Programmable Operator Interfaces Incorporating General Purpose Computers, and Components Thereof II*, Inv. No. 337-TA-462, Comm’n Opinion, 2003 WL 24011979 at \*8 (April 2, 2003) (The Commission made clear that section 1337(g)(2) applied not only to situations in which all respondents were found in default, but also to situations where some respondents were in default and others were not.).

## PUBLIC VERSION

A GEO is warranted in this investigation both to prevent circumvention of an exclusion order limited to products of named entities, and because there is a pattern of violation of section 337 and it is difficult if not impossible to identify the source of infringing products, as discussed below.

In the event the Commission does not issue a GEO, the administrative law judge finds that the default determination is sufficient to establish a violation for the purpose of issuing limited exclusion orders directed to the defaulting (or non-participating) respondents.<sup>13</sup> *See* 19 C.F.R. § 210.16(c)(1).

Bose argues that a GEO should issue because (i) it is necessary to prevent circumvention of a limited exclusion order, and (ii) there is “widespread pattern of infringement by both respondents and non-respondents” and that it is difficult to identify the source of infringing products. *See* Mem. at 31-45.

Bose requests the administrative law judge to:

Issue a recommended determination that the Commission should issue a general exclusion order pursuant to 19 U.S.C. §1337(d)(2) covering earpiece devices that infringe claims 1 and 7 of U.S. Patent No. 9,036,852; claims 1 and 8 of U.S. Patent No. 9,036,853; claims 1 and 6 of U.S. Patent No. 9,042,590; claim 1 of U.S. Patent No. 8,311,253; claims 1, 7, and 8 of U.S. Patent No. 8,249,287; and claims 1 and 11 of U.S. Patent No. 9,398,364.

Mem. at 30.

---

<sup>13</sup> “After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent only after considering the effect of such order(s) upon the public [interest.]” 19 C.F.R. § 210.16(c)(1).



## PUBLIC VERSION

The Staff argues:

When a violation of Section 337 is found, the Commission has “broad discretion in selecting the form, scope and extent of the remedy.” *Viscofan, S.A. v. U.S. Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986). For the reasons set forth below, the Staff is of the view that the appropriate remedy in this investigation is a GEO covering earpiece devices that infringe the following claims:

- U.S. Patent No. 9,036,852 — claims 1 and 7
- U.S. Patent No. 9,036,853 — claims 1 and 8
- U.S. Patent No. 9,042,590 — claims 1 and 6
- U.S. Patent No. 8,249,287 — claims 1, 7, and 8
- U.S. Patent No. 9,398,364 — claims 1 and 11

(“GEO Patents.”) As to claim 1 of the ‘253 patent, however, the Staff does not believe that the evidence supports the issuance of a GEO.

Staff Resp. at 33.<sup>14</sup>

The Commission has recognized that it has the authority to issue a GEO where some respondents have been terminated based on settlement and consent order, while others have been found in default. *See, e.g., Certain Lighting Control Devices Including Dimmer Switches and Parts Thereof*, Inv. No. 337-TA-776, Order No. 18 at 6-7, 34 (June 7, 2012) (un-reviewed in relevant part) (motion for summary determination granted in part after all remaining respondents found in default, but request for GEO denied on evidentiary grounds); *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-740, Order No. 26 at 3-5 (June 1, 2011) (un-reviewed) (motion for summary determination granted, GEO recommended, after all remaining respondents found in default).

In this investigation, the respondents have been terminated, found in default, or have failed to participate in the investigation:

---

<sup>14</sup> The administrative law judge adopts the Staff’s reference to the five asserted patents as “GEO Patents.”

**PUBLIC VERSION**

<b>Respondent</b>	<b>Status</b>
1MORE USA, Inc.	Failed to respond or appear
Beebo Online Limited	Found in default
APSkins	Terminated
Zeikos, Inc.	Terminated
LMZT LLC	Terminated
Misodiko	Found in default
Phaiser LLC	Found in default
Phonete	Failed to respond or appear
REVJAMS	Failed to respond or appear
V4Ink, Inc.	Found in default
Spigen, Inc.	Terminated
Sudio AB	Terminated
Sunvalley Tek	Terminated
TomRich	Found in default

The three respondents that failed to participate, (i) 1MORE USA, Inc., (ii) Phonete, and (iii) REVJAMS, are essentially in default. *See Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof*, 337-TA-604, Comm'n Op. at 99–100 (Apr. 28, 2009). Specifically, in *Certain Sucralose*, involving respondents that were found in default or that failed to participate, the Commission analyzed whether to issue a GEO. *Id.* After identifying the respondents that had been found in default under 19 C.F.R. § 210.16, the Commission addressed the remaining respondents that had not been found in default but had failed to participate in the investigation. *Id.* The Commission noted that it could draw adverse inferences

**PUBLIC VERSION**

against respondents that had failed to participate under 19 C.F.R. § 210.17, and concluded that the case was “essentially a default case.” *Id.* at 100.<sup>15</sup>

In this investigation, (i) IMORE USA, Inc., (ii) Phonete, and (iii) REVJAMS failed to respond or appear throughout the entirety of the investigation. After the Commission failed to serve IMORE USA, Inc. and Phonete, Bose moved to attempt personal service upon these respondents. *See* Motion Docket No. 1121-8 (the copies of the complaint and notice of investigation had been returned as undelivered); Mem. Exs. A, B (proof of personal service). As to REVJAMS, there is no proof that the complaint, notice of investigation, or Orders 1-7 were undeliverable. *See Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate and Products Containing the Same*, Inv. No. 337-TA-489, Order No. 12 at 3 (May 13, 2003) (non-participating respondents found in default even when there was no evidence that they received the complaint and notice of investigation). Therefore, for purposes of determining whether a GEO is appropriate in this investigation, non-participating respondents (i) IMORE USA, Inc., (ii) Phonete, and (iii) REVJAMS will be treated as defaulting respondents for failing to act under 19 C.F.R. § 210.17.<sup>16</sup>

---

<sup>15</sup> Other cases have explicitly found a respondent in default under § 210.17 so to allow the administrative law judge to find violation. *See, e.g., Certain Electrical Connectors and Products Containing Same*, 337-TA-374, 1996 WL 964844 at \*2 (Feb. 9, 1996) (affirmed by Commission) (finding respondent to be in default under § 210.17 because of its failure to “respond to Complainants’ Motion” and “participate meaningful [sic] in the investigation”); *Certain Composite Wear Components and Products Containing*, 337-TA-644, Order No. 26 at 14 (June 8, 2009) (finding respondent in default under § 210.17, and adverse inferences justified, for failing to file a pre-hearing brief).

<sup>16</sup> Commission Rule 210.17 provides that “[f]ailure to respond to a motion for summary determination under § 210.18” “may provide a basis for the presiding administrative law judge or the Commission to draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337

## PUBLIC VERSION

The Commission's authority to issue a GEO in a situation such as this one, where some respondents have been terminated and the remaining respondents have been found in default, is found in 19 U.S.C. § 1337(d)(2). *See Certain Handbags, Luggage, Accessories, and Packaging Thereof*, Inv. No. 337-TA-754, Comm'n Op. at 5 n.3 (June 13, 2012) ("Although 19 U.S.C. § 1337(g)(2) governs the consideration of whether to issue a GEO in default cases, this provision applies only when no respondent appears to contest the investigation. In this case, since several respondents did appear and were later terminated based on consent orders or settlement agreements, section 337(g)(2) does not apply.").

Section 337(d)(2) states in relevant part:

(d) Exclusion of articles from entry . . .

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

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

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

19 U.S.C. § 1337(d)(2). "The standards for finding a violation of 337 under section 337(d)(2) are the same as those for finding a violation under 337(g)(2)." *Certain Digital Multimeters, and Products with Multimeter Functionality*, Inv. No. 337-TA-588, Comm'n Op. at 4 (June 3, 2008). In other words, a violation of section 337 under

---

of the Tariff Act of 1930), and orders that are adverse to the party who fails to act." 19 C.F.R. § 210.17. Additionally, Commission Rule 210.15(c) provides that "a nonmoving party ... shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion." 19 C.F.R. § 210.15(c).

## PUBLIC VERSION

337(d)(2) must be supported by “substantial, reliable, and probative evidence.” *Id.* at 4 (citing *Certain Sildenafil or any Pharmaceutically Acceptable Salt Thereof Such as Sildenafil Citrate, and Products Containing Same*, Inv. 337-TA-489, Comm’n Op. at 5 (Feb. 9, 2004) (under the Administrative Procedure Act, 5 U.S.C. § 556, a violation under section 337(d) must be supported by “reliable, probative, and substantial evidence”; there is no difference between this standard and the “substantial, reliable, and probative evidence” standard of 337(g)(2)).

### 1. Necessary to Prevent Circumvention of an LEO

Under section 337(d)(2)(A), the Commission considers whether conditions are ripe for circumvention of a limited exclusion order. *See Certain Electronic Paper Towel Dispensing Devices and Components Thereof*, Inv. No. 337-TA-718, Comm’n Op. (Pub. Version), at 8, 16 (Jan. 20, 2012). In considering whether conditions are ripe for circumvention, the Commission has relied on “evidence [that] shows the following: (1) there is a strong demand for the [patented products]; (2) the importation and sale of infringing products can be extremely profitable...; (3) extensive domestic marketing and distribution networks already exist which allow foreign manufacturers to widely distribute infringing [products] throughout the United States...; (4) large online marketplaces ... have emerged which provide both foreign manufacturers and domestic retailers a dedicated, flexible way to sell to consumers; (5) it is difficult to identify the sources of infringing products because of the ability to package infringing [products] in unmarked, generic packaging, . . . and (6) manufacturers can easily evade a limited exclusion order by establishing shell offshore distribution companies with unclear ties to the original manufacturer.” *Certain Inkjet Ink Supplies & Components Thereof* (“*Inkjet*

## PUBLIC VERSION

*Ink*”), Inv. No. 337-TA-730, Comm’n Op. (Pub. Version), at 4-5 (Feb. 24, 2012).

As discussed below, Bose has presented substantial, reliable, and probative evidence that a GEO is necessary under section 337(d)(2)(A) to prevent circumvention of a LEO.

Bose has provided evidence showing that it is difficult to obtain information about the entities selling infringing earpiece devices. *See* Mem. at 32. Many of the companies selling these devices use false or non-existent addresses. *See* NOI Returned from 1MORE USA, Inc. (EDIS Doc. ID No. 650945); NOI Returned from Phonete (EDIS Doc. ID No. 650270). Some respondents were difficult to serve because of misleading or inaccurate address information on their websites or seller profiles. *See* Order No. 2 Returned from Misodiko (EDIS Doc. ID No. 654344); Order No. 2 Returned from Misodiko (EDIS Doc. ID No. 654379); Order No. 34 Returned from PLC VIP Shop d/v/a VIP Tech Ltd. (EDIS Doc. ID No. 654345); Order Nos. 8, 9, 10 and 11 Returned from REVJAMS (EDIS Doc. ID No. 661320); Order Nos. 5, 6, 7, 8, and 9 Returned from SMARTOMI Products, Inc., (EDIS Doc. ID No. 661327); Order Nos. 10 and 11 Returned from SMARTOMI Products, Inc. (EDIS Doc. ID No. 661842).

The evidence shows that all of the respondents use e-commerce websites such as Amazon.com, eBay, Groupon, Alibaba, or A4C to sell their products in the United States. *See, e.g.*, Mem. Ex. F (Wilhem Decl.), ¶ 8, Mem. Ex. G (Dreiblatt Decl.) at App. C-1, Mem. Ex. H (Saideh Decl.) ¶ 10; Mem. Ex. I (Gawell Decl.); Mem. Ex. J (Fung Decl.), ¶ 7.

Respondents such as Misodiko and Beebo conduct operations anonymously via Amazon, eBay and other online marketplaces while providing little or no information

## PUBLIC VERSION

about the company behind the products. *See* Mem. at 33-34 (citing *e.g.* <https://www.amazon.com/s?marketplaceID=ATVPDKIKX0DER&me=AFUJM8UR8X25D&merchant=AFUJM8UR8X25D> (showing Beebo’s Amazon storefront including products sold under numerous names including dodocool, Homgeek, and CACAGOO)). Other respondents such as TomRich operate under alternative names. *See* Mem. at 33 (citing First Am. Compl., ¶ 182). Companies such as 1MORE (<https://usa.1more.com>) and Smartomi ([www.smartomi.com](http://www.smartomi.com)) maintain websites that advertise and sell their products without providing any address information. *See* Mem. at 33 (citing Mem. Ex. E (Schuler 1st Decl.), ¶ 52).

Bose also identified additional allegedly infringing products being sold on various online shopping sites. *See* Mem. at 44-45, Mem. Ex. E (Schuler 1st Decl.), ¶ 48. Based on the lack of identifying information, it is clear that manufacturers of these infringing earpiece devices can easily change names and set up new online “storefronts” with retailers like Amazon to circumvent any limited exclusion order. *See Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm’n Op. at 55-56 (Apr. 28, 2017) (noting “that counterfeit manufacturers of broadhead arrowheads conduct their operations anonymously via Amazon, eBay, Alibaba, and AliExpress, providing little or no information about the company behind the products” and “counterfeiters often change or repost the listing after the take-down in order to continue their activities.”).

Many of the respondents obtain their allegedly infringing products from factories in China. *See* Mem. at 34 (citing *e.g.* Mem. Ex. G, ¶ 2; Mem. Ex. H, ¶ 2; Mem. Ex. I, ¶ 2; Mem. Ex. J, ¶ 2). The fact that factories exist that are prepared to manufacture

## PUBLIC VERSION

additional infringing product for other companies if the named respondents in this case become subject to a limited exclusion order shows that a general exclusion order is necessary. *See Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. at 16-17 (Feb. 13, 2017) (“*Skin Care Devices*”) (citing “low barriers to entry into the market” and prevalence of other companies in addition to named respondents producing infringing goods in support of general exclusion order). Moreover, such evidence establishes (1) that the ultimate sources of the infringing products are unknown or difficult to identify, and (2) that market conditions exist to facilitate other infringers currently in the market and new infringers to enter the market.

The record demonstrates that there is established foreign manufacturing capability. *See* Mem. at 34, Mem. Ex. G (Dreiblatt Decl.) ¶ 2, Mem. Ex. H (Saideh Decl.) ¶ 2, Mem. Ex. I (Gawell Decl.), Mem. Ex. J (Fung Decl.) ¶ 2. However, Bose found many companies with too little identifying information to name them as respondents in this investigation. *See* Mem. at 35. There is evidence that these companies, which sell earpiece devices under names such as ALXCD, Lunies, WERO, TopGo, Tricon, and Tutor, import their products into the United States in nondescript packaging with little or no identifying information. *See* Mem. at 35, Mem. Ex. E (Schuler 1st Decl.), ¶ 38. These sellers often remove their products from Amazon before Bose is able to seek relief against them. Non-respondent sellers such as Pantheon Wireless and ihomx sold allegedly infringing products on Amazon as of October 2017, but as of the filing of Bose’s complaint, the same URLs led to different products. *See*



## PUBLIC VERSION

First Am. Compl., ¶ 186. As another example, non-respondent Tutor changed its name to Yuping after institution of this investigation. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 39.

Given the large number of importers importing the infringing devices under a wide variety of names and aliases, it is difficult, if not impossible, for Bose to determine which of these companies have stopped importing allegedly infringing goods, and which have simply rebranded themselves and their products to continue importing the same goods under new aliases. *See Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm'n Op. at 13 (June 26, 2015) (“[A] large number of anonymous infringing sales on the Internet [] supports a likelihood of circumvention under subparagraph (A) and also supports a determination that it is difficult to identify the source of infringing products under subparagraph (B).”). These business practices support the conclusion that the defaulting (or non-participating) respondents would be highly capable of evading a limited exclusion order. *Certain Portable Electronic Devices*, Inv. No. 337-TA-861/867, Comm'n Op. at 9 (Jul. 10, 2014) (“[T]he Commission finds that the respondents have, or are capable of, changing names, facilities, or corporate structure to avoid detection.”); *see also Skin Care Devices*, at 15 (citing name changes to escape detection); *Arrowheads*, at 56 (same); *Mounting Apparatuses*, at 89 (same).

Furthermore, the evidence shows that companies import their products in small quantities and generic packaging making it difficult to identify the seller. *See* Mem. at 36-37. For example, Bose purchased the following products which arrived in packaging that contained little or no description of the seller or product origin:

PUBLIC VERSION



TopGo

Tricon

Tutor



*Lunies Generic Packaging 1*



*Lunies Generic Packaging 2*

See First Am. Compl., ¶¶ 184-85. Such evidence shows that the identity of infringers is difficult to discern and that a limited exclusion order could easily be evaded.

The availability of online retail and manufacturing sources creates low barriers to entry, allowing entities easily to replace respondents. See *Skin Care Devices*, at 16.

## PUBLIC VERSION

Finally, there is a significant incentive encouraging defaulting (or non-participating) respondents to circumvent an LEO. Respondents are able to sell infringing earpieces at substantial margins while simultaneously underselling Bose at substantial margins. *See* Mem. at 37-39, Mem. Ex. E (Schuler 1st Decl.), ¶¶ 14, 20, 24, 28, 41. Bose's SoundSport products sell for \$100-\$200. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 41. 1More sells its iBFree earphones for \$60; Phaiser sells its BHS-730 and BHS-750 earphones for \$36; V4Ink sells its SMARTOMI Q5 earphones for \$24; and REVJAMS sells its Active Plus Wireless earphones sell for \$23. *See* Mem. Ex. E (Schuler 1st Decl.), ¶¶ 14, 20, 28, 24.

These companies have an unfair advantage in that they do not have to pay costs associated with research and development, physical locations, marketing, or distribution that Bose pays. *See Arrowheads*, at 57-58 (noting the respondents' unfair advantage because "they avoid costs that [the complainant] must pay, including federal excise taxes and expenses for research and development, marketing, distribution, and quality control, thereby allowing respondents to undercut [the complainant's] price by about 75%.").

Moreover, inasmuch as these companies do not pay any significant overhead, they sell their products at considerable profit margins. For example, Zeikos's iHip Warrior earphones cost less than \$4 per unit to manufacture, yet sell for approximately \$10.00. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 45; Mem. Ex. H, ¶ 3. Sudio's Tre earphones cost less than \$13-14 per unit to manufacture, yet sell for \$99.00, at a profit margin as high as 50%. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 46; Mem. Ex. I, ¶¶ 3, 7. Sunvalleytek's TaoTronics's BH-06 earbuds cost \$12 per unit to manufacture, but sell for \$26, a 54% profit margin. *See* Mem. Ex. E (Schuler 1st Decl.), ¶ 47; Mem. Ex. J ¶ 3.

## PUBLIC VERSION

Inasmuch as selling infringing earpiece devices is a highly profitable enterprise, respondents and non-respondents alike have a large financial incentive to circumvent any limited exclusion order that the Commission would impose upon them. *See Arrowheads*, at 58 (noting the respondents' extremely low prices induce would-be FeraDyne customers to purchase counterfeits instead); *Skin Care Devices*, at 15-16 (noting price comparisons and "demand for the infringing products is strong and profits are high" as support for general exclusion order). The fact that the defaulting (or non-participating) respondents have ignored proceedings in this investigation (which resulted in them being found in default) suggests that they would not abide by the terms of any LEO order that the Commission may impose.

Substantial, reliable, and probative evidence establishes that a general exclusion order is necessary to prevent circumvention of an exclusion order limited to products of named persons. Thus, the evidence supports the issuance of a GEO under 19 U.S.C. § 1337(d)(2)(A) directed to the identified claims of the GEO Patents. As to the '253 patent, however, the evidence does not support the issuance of a GEO under 19 U.S.C. § 1337(d)(2)(A). Although there is evidence that one defaulting respondent, *i.e.*, V4ink., Inc., sells earpiece devices that infringe claim 1 of the '253 patent, an LEO directed to V4ink., Inc. would be sufficient to stop the importation of the infringing products.

Accordingly, the issuance of a general exclusion order under 19 U.S.C. § 1337(d)(2)(A) is appropriate with respect to the GEO Patents, but not as to the '253 patent.

**PUBLIC VERSION**

**2. Widespread Pattern of Violation Where It Is Difficult to Identify the Source of Infringing Products**

As discussed below, Bose has presented substantial, reliable, and probative evidence for the issuance of GEO under section 337(d)(2)(B) directed to the identified claims of the GEO Patents due to a pattern of violation and the difficulty in identifying the source of infringing earpiece devices.

The evidence shows a pattern of infringement by respondents and possibly others. *See Mem.* at 39-45. As discussed above in the infringement section of this initial determination, there is sufficient evidence that at least the following defaulting (or non-participating) respondents infringe the claims identified:

<b>Defaulting Respondent</b>	<b>'852 Patent</b>		<b>'853 Patent</b>		<b>'590 Patent</b>		<b>'253 Patent</b>	<b>'287 Patent</b>			<b>'364 Patent</b>	
	<b>1</b>	<b>7</b>	<b>1</b>	<b>8</b>	<b>1</b>	<b>6</b>	<b>1</b>	<b>1</b>	<b>7</b>	<b>8</b>	<b>1</b>	<b>11</b>
1MORE USA, Inc.	x	x	x	x	x	x						
Beebo Online Limited	x	x	x	x	x	x					x	x
Misodiko	x	x						x	x	x		
Phaiser LLC	x	x	x	x	x	x		x	x	x	x	x
Phonete	x	x						x	x	x		
REVJAMS	x	x	x	x	x	x		x	x	x	x	x
V4ink, Inc.	x	x					x					
TomRich	x	x						x	x	x		

Moreover, three terminated respondents—APskins; Zeikos, Inc.; and Sudio AB—admitted that their products infringed certain claims of the asserted patents. *See Mem.* at 40, *Mem. Ex. U* (APskins Consent Order Stip.), ¶ 3, *Mem. Ex. V* (Zeikos, Inc. Consent

## PUBLIC VERSION

Order Stip.), ¶ 3, Mem. Ex. W (Sudio AB Consent Order Stip.), ¶ 3. In addition to the respondents, Bose has identified 16 other allegedly infringing products sold online in the United States. *See* Mem. at 44, Mem. Ex. E (Schuler 1st Decl.), ¶ 48. “The Commission has found in other investigations that numerous online sales of infringing imported goods can constitute a pattern of violation of Section 337.” *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm’n Op. at 14 (June 26, 2015) (citing cases).

The evidence also establishes that it would be difficult to identify the sources of the allegedly infringing products. For example, Bose has presented evidence that sellers use fake names and addresses, and generic or unmarked packaging to disguise the actual manufacturer and seller of infringing earpiece devices, thereby making it difficult to identify the source of the products. *See* Mem. at 35-36, 41-42; Am. Compl., ¶¶ 184-86.

Such evidence supports a finding of a widespread pattern of unauthorized use. *See Arrowheads*, at 61; *Mounting Apparatuses*, at 91; *Beverage Containers*, at 26. Many sellers on Amazon.com remove their products before Bose is able to seek relief against them. *See* First Am. Compl., ¶¶ 184-86. For example, sellers such as Pantheon Wireless and ihomx sold products on Amazon as of October 2017, but after Bose filed its complaint, the same URLs now lead to different products. *See* Mem. at 35-36, 42-43; Am. Compl., ¶ 186. Even though terminated respondent LMZT LLC stopped selling its accused product in July 25, 2018, and had no inventory as of August 1, 2018, LMZT LLC is aware of at least four other entities that have sold or are currently selling its accused product without permission. *See* Mem. at 45, Mem. Ex. F (Wilhem Decl.), ¶¶ 6-7, 9.

**PUBLIC VERSION**

Sellers offering allegedly infringing products on e-commerce sites such as Amazon.com, eBay, and Alibaba are ubiquitous, which supports a finding that unauthorized use of Bose's patents is widespread. *See Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm'n Op. at 14 (Jun. 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."). For example, Bose has identified 16 allegedly infringing products being sold online in the United States through a variety of online platforms. *See Mem.* at 44 citing Schuler Decl., ¶ 48 (Mem. Ex. E).

Moreover, these companies often employ Fulfillment By Amazon (FBA) accounts which provide the overseas sellers with the inventory-handling and distribution infrastructure they would otherwise need to distribute their infringing products themselves.<sup>17</sup>

Based on the undisputed evidence presented, Bose has met its burden of establishing (with respect to the GEO Patents) a pattern of infringement by respondents, and that it is difficult to identify the sources of infringing products. *See* 19 U.S.C. § 1337(d)(2)(B). Therefore, the circumstances of this particular industry are such that a GEO is necessary to provide Bose with an effective remedy.

As to the '253 patent, however, the evidence does not support the issuance of a GEO under 19 U.S.C. § 1337(d)(2)(B). Given that Bose has only identified one defaulting respondent, V4ink., Inc., as a source of infringing products, Bose has not met

---

<sup>17</sup> *See Mem.* at 45 n.9 citing <https://services.amazon.com/fulfillment-by-amazon/benefits.html> ("With Fulfillment by Amazon (FBA), you store your products in Amazon's fulfillment centers, and we pick, pack, ship, and provide customer service for these products.").

## PUBLIC VERSION

its burden of showing a pattern of violation or difficulty in identifying the source of other infringing earpiece devices.<sup>18</sup> *See, e.g., Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm'n Op. at 26-27 (Mar. 26, 2009) (holding “we do not regard infringement by four respondents to establish a ‘pattern of violation’ of the type to be sufficient to justify the imposition of a general exclusion order when a limited exclusion order is available instead”).

Accordingly, the issuance of a GEO under 19 U.S.C. § 1337(d)(2)(B) is appropriate with respect to the GEO Patents, but not as to the ‘253 patent.

### **B. Cease and Desist Orders**

Bose seeks cease and desist orders against all domestic and foreign defaulting (or non-participating) respondents. *See* Mem. at 46-52. Bose identifies four domestic defaulting (or non-participating) respondents: 1MORE, Beebo, Phaiser, and REVJAMS; and four foreign defaulting (or non-participating) respondents: Misodiko, Phonete, V4Ink, and TomRich. Mem. at 47. However, the evidence suggests that V4Ink is a domestic respondent.<sup>19</sup> Therefore, as summarized below, there are five domestic and three foreign defaulting (or non-participating) respondents:

---

<sup>18</sup> Although Bose identified additional infringing products of non-respondents, it is unclear from the record whether any of the products specifically infringe claim 1 of the ‘253 patent. *See* Mem. at 44; Mem. Ex. E (Schuler 1st Decl.), ¶ 38.

<sup>19</sup> *See* 83 Fed. Reg. 62900 (Dec. 6, 2018) (correcting address of V4ink, Inc. from “Canada” to “Ontario, California”); *see also* <https://www.manta.com/c/mb58b0y/v4ink-inc>; <https://www.amazon.com/sp?seller=A2LWXBWN4DTXYS>; <https://www.linkedin.com/company/v4ink/about/>.



**PUBLIC VERSION**

<b>Defaulting Respondent</b>	<b>Principal Place of Business</b>	<b>Evidence of Purchase</b>	<b>Evidence of Source of Product</b>
1MORE USA, Inc.	San Diego, CA	Mem. Ex. E-1 at 5–7	Mem. Ex. E-2 at 1 (manufactured in China)
Beebo Online Limited	Las Vegas, NV	Mem. Ex. E-1 at 9–12	Mem. Ex. E-3 at 1–2, 20 (manufactured in China)
Misodiko	China	Mem. Ex. E-1 at 5–7	Mem. Ex. E-4 at 1 (manufactured in China)
Phaiser LLC	Houston, TX	Mem. Ex. E-1 at 5–7	Mem. Ex. E-5 at 2–3 (manufactured in China)
Phonete	China	Mem. Ex. E-1 at 3–4	Mem. Ex. E-6 at 2 (shipped from China)
REVJAMS	New York, NY	Mem. Ex. E-1 at 5–7	Mem. Ex. E-7 at 2 (manufactured in China)
V4ink, Inc.	Ontario, CA	Mem. Ex. E-1 at 5–7	Mem. Ex. E-9 at 2 (manufactured in China)
TomRich	China	Mem. Ex. E-1 at 5–7	Mem. Ex. E-8 at 2 (manufactured in China)

See Mem. Ex. E (Schuler 1st Decl.), ¶¶ 3-10; First Am. Compl. at 5-11.

For the reasons discussed below, the evidence supports issuance of cease and desist orders directed to all of the domestic defaulting (or non-participating) respondents but not the foreign defaulting (or non-participating) respondents.

Section 337(g)(1) authorizes the Commission to issue cease and desist orders against defaulted respondents. 19 U.S.C. § 1337(g)(1); see also *Certain Hand Dryers and Housing for Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 9-10 (Oct. 30, 2017) (“*Hand Dryers*”). This provision provides, in relevant part:

If—

(A) a complaint is filed against a person under this section;

(B) the complaint and a notice of investigation are served on the person;

## PUBLIC VERSION

(C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;

(D) the person fails to show good cause why the person should not be found in default; and

(E) the complainant seeks relief limited solely to that person;

19 U.S.C. § 1337(g)(1). When these requirements are satisfied, the Commission “shall presume the facts alleged in the complaint to be true and shall, upon request, issue an exclusion from entry or a cease and desist order, or both, limited to that person unless, after considering the effect of such exclusion or order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such exclusion or order should not be issued.” *Id.*

As discussed above, the Commission has personal jurisdiction over all the respondents in this investigation. Nevertheless, “[i]n determining whether the issuance of a CDO against a defaulted respondent is appropriate, the Commission considers whether the defaulted respondent maintains commercially significant inventories in the United States or has significant domestic operations that could undercut the remedy provided by an exclusion order.” *Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 10; *see also Skin Care Devices*, at 21-31 (discussion of statutory provision and Commission precedent).<sup>20</sup> The Commission’s practice recognizes that inasmuch as a defaulted respondent has chosen not to participate in the investigation, complainants are not able to

---

<sup>20</sup> Bose argues for a change in Commission policy with respect to the issue of cease and desist orders. *See Mem.* at 47-52.

## PUBLIC VERSION

obtain detailed information in discovery to support a request for a cease and desist order. *See Hand Dryers*, Inv. No. 337-TA-1015, Comm'n Op. at 10.

As to domestic respondents found in default under section 337(g)(1), the Commission has consistently inferred the presence of commercially significant inventories in the United States and granted complainant's request for relief in the form of a cease and desist order. *See Hand Dryers*, Inv. No. 337-TA-1015, Comm'n Op. at 24 (citing *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof*, Inv. No. 337-TA-486, Comm'n Op. at 17-18 (July 14, 2003)); *Certain Mobile Device Holders and Components Thereof*, Inv. No. 337-TA-1028, Comm'n Op. at 24 (Mar. 22, 2018) ("*Mobile Devices*").

In this investigation, inasmuch as the domestic defaulting (or non-participating) respondents are located in the United States, the evidence supports the inference that they maintain commercially significant inventories in the United States or have significant domestic operations. *See, e.g., Mobile Devices*, Inv. No. 337-TA-1028, Comm'n Op. at 27 (because three domestic defaulting respondents "maintain addresses in the United States. . . . "the Commission infers that the domestic respondents have commercially significant inventory and significant domestic operations"); *Hand Dryers*, Inv. No. 337-TA-1015, Comm'n Op. at 24 ("Because US Air is located in the United States, the Commission infers that US Air maintains commercially significant inventory in the United States, and finds that the issuance of a CDO against US Air is appropriate.>"). Thus, the evidence warrants the issuance of a cease and desist orders against all domestic defaulting (or non-participating) respondents.

## PUBLIC VERSION

With respect to the foreign respondents found in default under section 337(g)(1), the Commission has declined to presume the presence of domestic inventories in the United States that would support the issuance of a cease and desist order. *Mobile Devices*, Inv. No. 337-TA-1028, Comm'n Op. at 24. Rather, the Commission has examined whether the facts alleged in the complaint and any other record evidence support the inference that the foreign defaulting respondent or its agents maintains a commercially significant inventory and/or engages in significant commercial operations in the United States. *See id.*; *Hand Dryers*, Inv. No. 337-TA-1015, Comm'n Op. at 11.

For example, the Commission has examined “circumstantial evidence of U.S. distribution of infringing products with corresponding supporting documents relating to those sales by foreign defaulting respondents.” *Mobile Devices*, Inv. No. 337-TA-1028, Comm'n Op. at 24-25 (citing *Skin Care Devices*, at 31; *Arrowheads* at 18-20).

In this investigation, the evidence does not support the issuance of cease and desist orders against the three foreign defaulting (or non-participating) respondents: Misodiko, Phonete, and TomRich.

With regard to Misodiko, Bose argues that “[r]eliable evidence obtained from subpoenaed third party Amazon.com indicates that at least Misodiko maintains inventory in the United States through a Fulfillment By Amazon (“FBA”) account. (Ex. E, ¶ 49.)” Mem. at 47. The cited Schuler Declaration, Exhibit E, ¶ 49, states: “The Declaration of Forma Gosalia, Litigation Paralegal in the Litigation and Regulatory sector for Amazon, is attached hereto as Exhibit 36.” Mem. Ex. E (Schuler 1st Decl.) ¶ 49. However, the cited Exhibit 36 was not of record at the time the pending motion and the Staff’s response was filed. *See Staff Resp.* at 45; Replacement Exhibit E to Bose Corrected Motion for

## PUBLIC VERSION

Summary Determination (Motion Docket No. 1121-20) (EDIS Doc. ID No. 669857) (Mar. 12, 2019). Thus, there is insufficient evidence to support the issuance of cease and desist order against Misodiko.

As to Phonete and TomRich, the evidence suggests that infringing products sold online are fulfilled from China. *See* Mem. Ex. E-6 at 2 (tracking information for Phonete product showing Shenzhen); E-1 at 5 (Amazon order showing TomRich product sold by “Holder-Mate”); Mem. Ex. E-8 at 2 (“Holder-Mate Direct storefront” seller located in China). “The Commission, however, has specifically found that sales from a foreign country shipped directly to U.S. customers does not support the inference that a foreign respondent maintains a commercially significant inventory in the United States and/or engages in significant commercial operations in the United States.” *Hand Dryers, Inv.* No. 337-TA-1015, Comm’n Op. at 11-12. Thus, the evidence also does not support the issuance of cease and desist orders against Phonete and TomRich.

Accordingly, the administrative law judge recommends that cease and desist orders issue only to the five domestic defaulting (or non-participating) respondents: 1MORE, Beebo, Phaiser, REVJAMS, and V4ink.

### C. Bond

Pursuant to section 337(j)(3), the administrative law judge and the Commission must determine the amount of bond to be required of a respondent, during the 60-day Presidential review period following the issuance of permanent relief, in the event that the Commission determines to issue a remedy. The purpose of the bond is to protect the complainant from any injury. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii),

## PUBLIC VERSION

When reliable price information is available, the Commission has often set bond by eliminating the differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24 (1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. *See Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41 (1995). A 100 percent bond has been required when no effective alternative existed. *See Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26-27 (July 1997) (a 100% bond imposed when price comparison was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be *de minimis* and without adequate support in the record).

Bose argues: "In view of the fact that all respondents remaining in this investigation are in default, the bond amount should be set at 100 percent of the entered value of the accused products during the Presidential Review period." Mem. at 53. The Staff agrees. Staff Resp. at 46-47.

A bond of 100% is appropriate in this investigation. Inasmuch as the evidence shows that the sales were made online at various price points and quantities, calculating an average price would be difficult. Given this state of the evidentiary record, and the fact that all of the affected respondents have defaulted rather than provide discovery, a bond value of 100% is appropriate. Under these circumstances, the administrative law

## PUBLIC VERSION

judge recommends that the defaulting (or non-participating) respondents be required to post a bond of 100% of entered value during the 60-day Presidential review period. This amount should be sufficient to prevent any harm to Bose during the period of Presidential review.

### **VI. Initial Determination and Order**

It is the initial determination of the administrative law judge that Bose's Motion No. 1121-20 for summary determination of violation of section 337 by the defaulting (or non-participating) respondents is granted to the extent indicated in this initial determination.

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, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

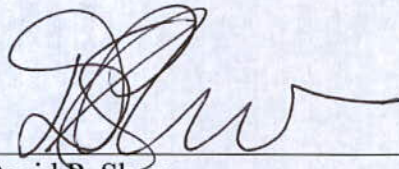
Further, it is recommended that the Commission issue a general exclusion order with respect to the GEO Patents, issue certain CDOs discussed above, and that a 100 percent bond be established for importation during the Presidential review period.

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

To expedite service of the public version, each party is hereby ordered to file with the Commission Secretary no later than July 9, 2019, a copy of this initial and recommended determination with brackets to show any portion considered by the party

**PUBLIC VERSION**

(or its suppliers of information) to be confidential, accompanied by a list indicating each page on which such a bracket is to be found. At least one copy of such a filing shall be served upon the office of the undersigned, and the brackets shall be marked in red. If a party (and its suppliers of information) considers nothing in the initial determination to be confidential, and thus makes no request that any portion be redacted from the public version, then a statement to that effect shall be filed.<sup>21</sup>



---

David P. Shaw  
Administrative Law Judge

Issued: June 28, 2019

---

<sup>21</sup> Confidential business information (“CBI”) is defined in accordance with 19 C.F.R. § 201.6(a) and § 210.5(a). When redacting CBI or bracketing portions of documents to indicate CBI, a high level of care must be exercised in order to ensure that non-CBI portions are not redacted or indicated. Other than in extremely rare circumstances, block-redaction and block bracketing are prohibited. In most cases, redaction or bracketing of only discrete CBI words and phrases will be permitted.



**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **Order No. 16 (Initial Determination)** has been served by hand upon the Commission Investigative Attorney, **Todd Taylor, Esq.**, and the following parties as indicated, on 7/25/2019



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

**On Behalf of Complainants Bose Corporation:**

Andrew Kopsidas, Esq.  
**FISH & RICHARDSON P.C.**  
1000 Maine Avenue, S.W., 10<sup>th</sup> Floor  
Washington, DC 20024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**Respondents:**

1MORE USA, Inc.  
10225 Barnes Canyon Rd., Suite A202  
San Diego, CA 92121

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Beebo Online Limited  
3837 Bay Lake Trail, Suite 115  
North Las Vegas, NV 89030

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Misodiko  
NanShanQu XiLiJieDao PingShanCun  
192 Dong 509  
ShenZhen GuangDong 518055 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

Phaiser LLC  
909 Silber Road  
Houston, TX 77024

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN EARPIECE DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-1121**

Certificate of Service – Page 2

Phonete  
A-201 No. 1 Qianwan Yilu  
Qianhai Shenggang hezuoqu,  
Shenzhen, CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

REVJAMS  
248 Lafayette St.  
New York, NY 10012

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

V4ink, Inc.  
1241 S. Rockfeller Ave Unit B  
Ontario, CA 91761

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_

TomRich  
Room 842, 3B, HuaNanXiYuan  
PingHu town, LongGang District  
Shenzhen, 518100 CN

- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_