

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN BATTERIES AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-1244

**ORDER NO. 15: INITIAL DETERMINATION ON VIOLATION WITH
RECOMMENDATION ON REMEDY AND BOND:
GRANTING IN-PART AND DENYING IN-PART
COMPLAINANTS' MOTION FOR SUMMARY
DETERMINATION [MOTION DOCKET NO. 1244-006]**

(March 25, 2022)

I. INTRODUCTION

Pursuant to Commission Rule 210.18, on June 21, 2021, Complainants One World Technologies, Inc. (“One World”) and Techtronic Power Tools Technology, Ltd. (“TTP”) and with One World, “Complainants”) filed a motion for summary determination (“Motion”) together with a memorandum of law in support thereof (“Memo.”) that ten (10) Defaulted¹

¹ Complainants’ Motion also refers to these Respondents as the “Defaulting Respondents.” (Motion at 1.).

As Staff has noted, Complainants mistakenly also identified as Respondents three (3) additional former Respondents Shenzhen Liancheng Weiye Industrial Co., Ltd., Shenzhen Ollop Technology Co. Ltd., and Shenzhen Tuo Yu Technology Co., Ltd. as among the Respondents (“Terminated Respondents”) against whom they seek summary determination of violation. (*Id.*). Complainants were unable to effect service on those three (3), and so the Complaint was withdrawn against them, i.e. the Terminated Respondents. (*Id.*; see also Doc. ID No. 739628 (April 12, 2021); Order No. 7 (April 21, 2021); Commission Notice (Doc. ID No. 742708 (May 17, 2021); see also Compl. at ¶¶ 12-58.).

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Respondents Darui Development Limited (“Darui Development”); Dongguan Xinjitong Electronic Technology Co., Ltd. (“Dongguan Electronic”); Shenzhen Laipaili Electronics Co., Ltd. (“Shenzhen Laipaili”); Shenzhen MingYang Creation Electronic Co., Ltd. (“Shenzhen MingYang”); Shenzhen Rich Hao Yuan Energy Technology Co., Ltd. (“Shenzhen Rich Hao”); Shenzhen Runsensheng Trading Co., Ltd. (“Shenzhen Runsensheng”); Shenzhen Saen Trading Co., Ltd. (“Shenzhen Saen”); Shenzhen Shengruixiang E-Commerce Co., Ltd. (“Shenzhen E-Commerce”); Shenzhen Uni-Sun Electronics Co., Ltd. (“Shenzhen Uni-Sun”); and Shenzhen Vmartego Electronic Commerce Co. (“Shenzhen Vmartego”) (collectively, the “Defaulted Respondents”) have violated Section 337 of the Tariff Act of 1930 by infringing three (3) design patents: U.S. Design Patent No. D579,868 (“the ’868 patent”), U.S. Design Patent No. D580,353 (“the ’353 patent”), and D953,944 (“the ’944 patent” and with the ’968 patent and the ’353 patent, the “the Asserted Patents.”).² (See 19 U.S.C. § 1337; Motion Docket No. 1230-006 (2021); Memo. at 1.).³

Pursuant to Ground Rule 2.4, Complainants submitted as part of their Motion “Complainants’ Statement of Undisputed Material Facts in Support of Their Motion for Summary Determination of Violation and For Recommended Determination on Remedy and Bonding” (“SMF”), (Doc. ID No. 745193 (June 21, 2021), together with exhibits.

² (See Compl. at Exs. 31, 33 and 35, respectively.).

³ Complainants certified pursuant to Ground Rule 2.2 that it notified the Office of Import Investigations (“Commission Staff”) and Commission Investigative Staff (“Staff”) at least two (2) days before it filed its Motion and Memorandum (Motion at 2.). Complainants certified that Staff indicated that it would take a position after reviewing Complainants’ Motion and Memorandum. (*Id.*). After Complainants filed their Motion and Memorandum, Staff supported Complainants in part, but disputed certain issues of material fact. (*See infra.*). In Commission Investigative Staff’s Response to Complainants’ Motion for Summary Determination of Violation and For a Recommended Determination on Remedy and Bonding (“Staff. Resp.”), Staff agrees that there is infringement by all of the named Defaulted Respondents, but disagrees with the proof on importation sale, and sale after importation with respect to six (6) of the remaining Defaulted Respondents. (*See infra.*).

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Complainants also seek a summary determination that they satisfy the technical and economic prongs of the domestic industry requirement. (Motion at 1; Memo. at 1, 74.).

Complainants have asked for a recommended determination recommending entry of a general exclusion order (“GEO”) and a bond rate of 100% during the Presidential review period. (Motion at 1, Memo. at 1, 74-75.).

On June 22, 2021, Complainants filed, accompanied by an unopposed motion to file out of time, certain additional exhibits to Complainants’ Motion for Summary Determination. (*See* EDIS Doc. IDs 745224, 745230, 745231, 745233, 745234.).

On July 16, 2021, Commission Investigative Staff (“Staff”) filed its response to Complainants’ Motion and Memorandum in which it supports summary determination against only four (4) of the Defaulted Respondents: Darui Development, Dongguan Electronic, Shenzhen Rich Hao, and Shenzhen Saen. (Commission Investigative Staff’s Response to Complainants’ Motion for Summary Determination of Violation and For a Recommended Determination on Remedy and Bonding (“Staff Resp.”), Doc. ID No. 744100; Staff. Resp. at 1, 2.). Staff found that certain of the evidence that Complainants submitted did not sufficiently tie the importation, sale, or sale after importation of certain of the Accused Products to the companies that may have sold or branded them and are among the Defaulted Respondents. (*See* Staff Resp. at 21.). To that end, Staff also filed as part of Staff’s Response a statement of the SMF Nos. which it disputes (“Staff Resp. 2). These include Complainants’ SMF Nos. 18-20, 29, 37, 57, 61, 65, 92, 119, 148, 178, 187-188, 268-308, 327-328, and 333. (Staff Resp. 2, Doc. ID No. 1661270, that is part of Doc. ID No. 747132 (July 16, 2021.).

Staff’s challenges to Complainants’ SMF, as identified, reflect Staff’s disputes with respect to: (1) importation; (2) whether certain Defaulted Respondents’ allegedly Accused

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Products have been proven to be sold or imported by those Defaulted Respondents; and (3) domestic industry and whether Complainants' investments in plant and equipment and labor for technical publications and packaging should be included as qualifying investments.

Otherwise, Staff generally supports a finding that Complainants have satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A) and (B). Staff also supports Complainants' remedy requests. (Staff. Resp. at 1, 89-90.).

This ID generally agrees with Staff's positions with respect to the disputed issues of material fact. The Summary Findings and Recommendations on each primary issue are provided below and addressed in greater detail in this ID.

II. SUMMARY FINDINGS AND RECOMMENDATION

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

For the reasons described below, Complainants' Motion is *granted in-part*.

It is a finding that there is a violation of Section 337 by only four (4) of the Defaulted Respondents: Darui Development, Dongguan Electronic, Shenzhen Rich Hao, and Shenzhen Saen. There are no material disputes of fact with respect to the four (4) identified Defaulted Respondents. Therefore, Complainants are entitled to a judgment as a matter of law with respect to those Defaulted Respondents.

A. Overview

This ID does not agree with Complainants that they are entitled to a judgment as a matter of law against six (6) Defaulted Respondents: Shenzhen Laipaili, Shenzhen MingYang, Shenzhen Runsensheng, Shenzhen E-Commerce, Shenzhen Uni-Sun, and Shenzhen Vmartego. There is a lack of evidence that would link clearly the six (6) identified Defaulted Respondents as the owners and/or

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sellers of the Accused Products that are offered for sale on e-commerce websites, and from which samples of the Accused Products were purchased. Staff has disputed the SMF with respect to importation and the six (6) identified Defaulted Respondents. Therefore, summary determination has not been granted with respect to those six identified Defaulted Respondents.

Certain recommended findings have been adapted or adopted from Complainants' SMF and from the unrebutted and extensive, detailed sworn testimony of the various witnesses who have proven through their testimonies and exhibits the conclusions reached in this ID.

Generally, this ID agrees with Staff's position that evidence linking importation of certain Accused Products to specific sellers of Accused Products is weak to non-existent, and certainly disputed with respect to six (6) of the Defaulted Respondents.

Additionally, this ID agrees with Staff's position that the Complainants' qualifying investments in their Domestic Industry should not include technical publications and packaging.

B. Specific Findings of Fact, Law or Mixed Questions of Fact and Law

The following are a summary of findings of fact or law, and of mixed questions of fact and law:

1. Complainant One World ("One World") is a Delaware corporation that has its principal place of business located in Anderson, South Carolina. (SMF No.1; Compl. at ¶ 6.)
2. Complainant TTI ("TTI" and with One World, "Complainants"), formerly known as Eastway Fair Company Limited, is a corporation organized under the laws of the British Virgin Islands and has its principal place of business at in Tortola, British Virgin Islands. (SMF No. 14; Compl. at ¶10.).
3. TTI is a holding company for intellectual property rights, including the Asserted Patents, which are used by, and for the benefit of, entities belonging to the TTI family of

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companies, including Complainant One World. (SMF No. 15; Compl. at ¶ 10.).

4. Complainants have satisfied the requirements for subject matter jurisdiction because they filed a complaint alleging that the Defaulted Respondents violated 19 U.S.C. § 1337(a)(1)(B), and therefore have stated a cause of action. *See Amgen, Inc. v. U. S. Int'l Trade Comm'n*, 902 F.2d 1532, 1536 (Fed. Cir. 1990).

5. Section 337 investigations are *in rem*. *In personam* jurisdiction is unnecessary. *See Sealed Air Corp. v. U.S. Int'l Trade Comm'n*, 645 F.2d 976, 985-86 (C.C.P.A. 1981). Therefore, jurisdiction is satisfied.

6. Each of the Asserted Patents at issue, the '868 patent, the '353 and the '944 patent, has been infringed.

7. Complainants have satisfied the technical prong of the domestic industry requirement because it is undisputed that their RYOBI™ ONE+ SYSTEM, including the 18V ONE+ battery packs (“DI Products”)⁴ practice one or more of the three (3) design Asserted Patents as supported by the testimony of Complainants’ technical expert Mr. Timothy Fletcher through his Declaration at ¶ 12 at Doc. ID No. 745172, at Exhibit 8 (“Fletcher Decl.”).⁵

⁴ “RYOBI™” is used interchangeably with “Ryobi,” RYOBI” and “Ryobi or RYOBI™ DI Products.” The model numbers that comprise the RYOBI™ DI Products.

⁵ Mr. Timothy Fletcher provided his testimony in the aforementioned Declaration which is dated June 21, 2021. Mr. Fletcher’s Curriculum Vita is attached as Ex. 1 to his Declaration. Mr. Fletcher is the President of One Business Design, LLC. (Ex. 1 at 1.). Mr. Fletcher holds a B.A. of Environmental Design in Product Design from North Carolina University, and a Master of Design from Hong Kong Polytechnic University. (*Id.*; *see also* Fletcher Decl. at ¶¶ 14-18.). Mr. Fletcher describes himself as having over 30 years of experience in designing, developing and managing the development of a variety of products. (*See* Fletcher Decl. at ¶¶ 21-26.). He describes in his Declaration the various methods he used in his analyses based upon the German “Gestalt” principles of design, which involves principles of “wholeness,” or that people perceive objects as a whole (Fletcher Decl. at 27-35); and on “Familiarity Theory” which is based upon neuroscience and how people recognize objects and products. Mr. Fletcher describes each of those concepts. (Fletcher Decl. at ¶¶ 36-38.). Mr. Fletcher provided a definition of a

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8. Complainants have proven that a domestic industry (“DI”) exists within the United States related to articles protected by the three (3) Asserted Patents.

9. With his Declaration Mr. Fletcher provided claim charts of the RYOBI™ DI Products that provide uncontested evidence that the DI Products practice the Asserted Patents. (Exs. 5-7 to Fletcher Decl.). Mr. Fletcher examined the Complainants’ DI Products. (See Fletcher Decl. at ¶ 8.). Mr. Fletcher testified that his analyses confirm that the design of the DI Products “is similar or substantially the same as that of the Asserted Patents.” (See Fletcher Decl. at ¶ 12.). Mr. Fletcher has been accepted as an expert on the design of the DI Products as one or more of them practices the Asserted Patents, and on infringement by all of the examined Accused Products.

10. The overall designs of the Accused Products, and specifically those that Mr. Fletcher examined, i.e. jolege, Enegitech, Lasica, Biswaye, Fhybat, FUZADEL, Topbatt, SUN POWER, energup and Powilling, infringe all three (3) Asserted Patents. (See Fletcher Decl. at ¶ 8.). Mr. Fletcher provided claim charts that discuss how each of the Accused Products practice the three (3) design Asserted Patents. (Exs. 8-10 to Fletcher Decl.).

11. All of the Accused Products infringe one or more of the Asserted Patents because they are “similar or substantially the same as” the designs of the Asserted Patents, such that the resemblance would deceive the ordinary consumer into purchasing one supposing it to be the other.” (See Fletcher Decl. at ¶ 13.).

12. Complainants have proven by a preponderance of evidence that the Defaulted

“Person of Ordinary Skill in the Art and used that definition to analyze the Asserted Patents. (Fletcher Decl. at ¶¶ 83-85.).

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Respondents, Darui Development, Dongguan Electronic, Shenzhen Rich Hao, and Shenzhen Saen, have violated Section 337 of the Tariff Act of 1930 as amended, by importing into the United States, selling for importation, or selling within the United States after importation certain battery packs that infringe all three (3) Asserted Patents.

13. Complainants have not proven by a preponderance of evidence that the remaining six (6) Defaulted Respondents, Shenzhen Rich Hao, Shenzhen Runsensheng, Shenzhen Saen, Shenzhen E-Commerce, Shenzhen Uni-Sun, and Shenzhen Vmartego, have violated Section 337. There are material disputes of fact whether importation is satisfied with respect to the identified, six (6) Defaulted Respondents.

14. The Asserted Patents are valid and enforceable. “A patent shall be presumed valid.” 35 U.S.C. § 282. Patents can only be proven invalid by clear and convincing evidence. (*See Microsoft Corp.. v. i4i Ltd. Partnership*, 564 U.S. 91 (2011)). The validity and enforceability of the Asserted Patents are undisputed.

15. Complainants have proven, and it is undisputed, that they satisfy the economic prong of the domestic industry requirement under Section 337(a)(3)(A) and (a)(3)(B) through their domestic investments. The investments are significant or substantial as supported by the unrebutted testimony of Complainants’ economic expert Ms. Kelly Campbell in her Declaration of Kelly M. Campbell Relating to Domestic Industry and Bond (“Campbell Decl.”) together with the exhibits that contain the information to which Ms. Campbell testified.⁶ (*See* Doc. ID No.

⁶ Ms. Kelly Campbell provided her testimony on the economic prong of the DI requirement in the aforementioned Campbell Declaration (“Campbell Decl.”) dated June 9, 2021. According to her Declaration at ¶¶ 8-11, and her Curriculum Vita, which is attached as Exhibit 1 to her Declaration, Ms. Campbell is employed by Financial Valuation Services. She has B.S. in Economics with minors in Business Management and Phronesis from the University of Houston, and an M.S. in Economics from

745194.). Ms. Campbell has been accepted as an expert on the topics for which she was asked to testify.

16. A General Exclusion Order is recommended.

17. A bond during the Recommended Presidential Review is recommended in the amount of 100% of the entered value of the infringing imported Accused Products.

III. PROCEDURAL HISTORY

On December 30, 2020, Complainants, One World Technologies, Inc. (“One World”) and Techtronic Power Tools Technology Ltd. (“TTI” and with One World, “Complainants”) filed their complaint claiming the unlawful importation into the United States, sale for importation into the United States, and/or sale within the United State after importation of certain battery packs and products containing the same (the “Accused Products”). The Complaint sought relief in the form of a general exclusion order or, in the alternative, a limited exclusion order, a cease and desist order, and a bond that would cover any importation of covered articles during the

Texas A & M University. (Ex. 1 to Decl. at 1.). Ms. Campbell has extensive experience evaluating intellectual property damages. Ms. Campbell is accepted as an expert on the matters upon which she has called to testify. As Ms. Campbell notes in her Declaration at ¶ 14, Ms. Campbell has relied, *inter alia*, for her conclusions and analyses based upon the information about Complainants’ products, engineering and development, investments in equipment and capital, and in labor as taken from the Declarations of Scott Tennant (Senior V.P. of Engineering), Corey Little (Senior Director of Customer Support), Wade Franks (Senior V.P. of Creative Services), Elaine Nash (Former Technical Publications Manager), Marcus Moore (Technical Publications Mgr.), Jhan Nixon (V.P. of Facilities), Barry Pears (VP of CPT Engineering), Joe Zhao Jang (Engineering Director, Ryobi Engineering Pack and Charger Team), Jess Wright (V.P. and Marketing), Randy Davis (President of Sales), Eric Frazier (Group Product Manager), Robert Patrick (Senior V.P. /General Manager of Product Management for Consumer Power Tools, and Nataraj Chandrasekharan (Engineering Manager); *see also* Campbell Decl. at ¶ 15 for the materials she reviewed in support of her analyses, conclusions and opinions. For the purposes of this ID, any reference to Ms. Campbell’s opinion includes the facts that she relied upon from the Complainants’ employees/fact witnesses without necessarily attributing data to them in this ID. Generally, Complainants cite to each of its witness Declarations and the evidence that supports Complainants’ arguments in its Statement of Material Facts (“SMF”).

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Presidential review period. The Complainants asserted three (3) design patents which they claim have been infringed: U.S. Patent No. D579,868 (“the ’868 patent”), U.S. Patent No. D580,353 (“’353 patent”), and U.S. Patent No. D593,944 (“the ’944 patent”).

On January 12, 2021, Complainants filed a Supplement to the Complaint. (Doc. ID 730325.).

On February 1, 2021, the Commission instituted this Investigation. (Doc ID. 732586. The Notice of Investigation (“NOI”) was published in the Federal Register on February 5, 2021. 86 Fed. Reg. 8379.

The Complaint and NOI name thirteen (13) Respondents, all of whom are identified above or below as either the “Terminated Respondents” or as “Defaulted Respondents.”

On April 12, 2021, Complainants filed a motion to terminate the investigation based upon the withdrawal of the Complaint with respect to Respondents Shenzhen Liancheng Weiye Industrial Co., Ltd., Shenzhen Ollop Technology Co. Ltd., and Shenzhen Tuo Yu Technology Co., Ltd., (“Terminated Respondents”) after Complainants were unable to serve these three (3) Respondents with copies of the Complaint and NOI. (Doc Id. 739628). On April 21, 2021, Complainants’ motion to terminate those three (3) named Respondents was granted. (*See* Order No. 7 (Doc. ID 740546).). On May 17, 2021, the Commission declined to review Order No. 7. (*See* Comm’n Notice (Doc. ID 742708).).

On April 20, 2021, Complainants filed a motion for an order to show cause why the remaining ten (10) named Respondents should not be found in default. (*See* Mot. Dkt. No. 1244-003, EDIS Doc. ID 740349.). On May 4, 2021, the motion was granted and an order to show cause was issued. (Doc ID 741550, Order No. 8 (May 4, 2021)).

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On June 3, 2021, when they failed to respond to the order to show cause, ten (10) Respondents, i.e. Darui Development, Dongguan Electronic, Shenzhen Laipaili, Shenzhen MingYang, Shenzhen Rich Hao, Shenzhen Runsensheng, Shenzhen Saen, Shenzhen E-Commerce, Shenzhen Uni-Sun and Shenzhen Vmartego (“Defaulted Respondents”) were found to be in default. (See Doc ID 743884, Order No. 9 (June 3, 2021); *see also* Doc ID 745335, Comm’n Notice Not to Review (June 23, 2021).).

Complainants did not request claim construction. There were no disputed claim terms.

IV. JURISDICTION

The Complaint states a cause of action under 19 U.S.C. § 1337, and therefore, the Commission has jurisdiction over the subject matter of this Investigation. *See Amgen, Inc. v. U.S. Int’l Trade Comm’n*, 902 F.2d 1532, 1536 (Fed. Cir. 1990). Section 337 investigations are *in rem*, making *in personam* jurisdiction unnecessary. *See Sealed Air Corp. v. U.S. Int’l Trade Comm’n*, 645 F.2d 976, 985-86 (C.C.P.A. 1981). Therefore, jurisdiction is satisfied.

V. PARTIES AND DOMESTIC INDUSTRY PRODUCTS

A. Complainants

1. One World Technologies, Inc.

One World Technologies, Inc. (“One World”) is a Delaware corporation that has its principal place of business in Anderson, South Carolina. (SMF No.1; Compl. at ¶ 6.). One World describes itself “as one of the world’s largest and most innovative manufacturers of indoor and outdoor power tools that specializes in making affordable, pro featured power tools and outdoor products, such as power drills, circular saws, and leaf blowers, for a wide variety of applications.” (SMF No. 2.). One World is a subsidiary of Techtronic Industries Company Limited (“TTI”). (SMF No. 3), which One World describes a “ fast-growing world leader in

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Power Tools, Accessories, Hand Tools, Outdoor Power Equipment, and Floorcare for Do-It-Yourself (DIY), professional, and industrial users in the home improvement, repair, maintenance, construction, and infrastructure industries.” (SMF No. 4.).

Of particular noteworthiness, is One World’s RYOBI brand of DIY cordless power tools, the RYOBI+ONE SYSTEM with its 18V ONE + battery pack. (SMF No. 5; *see also* Memo. at 2). The RYOBI™ brand offers many indoor and outdoor power tools that can be used with the 18V ONE+ battery, such as a Screw Gun, a Bolt Cutter, an Air Compressor and other compatible tools. (Compl. at ¶ 9.). This is Complainants domestic industry (“DI”) product. One World might be viewed as one of the RYOBI™ brand’s operations in the United States that conducts activities that for the purposes of this comprise the RYOBI™ brand’s United States domestic industry.

2. Techtronic Power Tools Technology Ltd. (“TTI”)

Techtronic Power Tools Technology Ltd. (“TTI”) is a holding company for intellectual property rights, including the Asserted Patents, which are used by, and for the benefit of, entities belonging to the TTI family of companies, including One World. (SMF No. 15; Compl. at ¶ 10.). Techtronic Power Tools, or TTI which is formerly known as Eastway Fair Company Limited, is a corporation organized under the laws of the British Virgin Islands, with its principal place of business in Tortola, the British Virgin Islands. (SMF No. 14, Compl. at ¶ 10.).

B. The Defaulted Respondents and Their Accused Products

Identified below, and in Table 1, below, are the Respondents against whom default orders entered after notices to show cause issued, together with the products that they manufactured and allegedly imported. The last column in Table 1 identifies those Defaulted Respondents who are found to have infringed the patents at issue and also for whom there is sufficient evidence of the

importation, or sale, or sale after importation their Accused Products such that there is a violation of Section 337.

1. Darui Development/Accused Product: Topbatt®

Darui Development is a corporation that exists under the laws of China. It has a principal place of business at No. 34, Jiancha South Lane, Xiaojiuya Street, Kuduer Town, Yakeshi, Neimenggu, China. (*See* Compl. at ¶ 13.). Complainants allege that Darui Development imports, sells for importation, or sells after importation the accused Topbatt® batteries. (*See* Compl. at ¶ 15; Memo. at 19-20.).

2. Dongguan Electronic/Accused Products: energup® / Powilling®

Dongguan Electronic is a corporation that exists under the laws of China. It has its principal place of business at 27 Xiangrong Road, Songmushan, Dalang Town, Dongguan City, Guangdong Province, China. (*See* Compl. at ¶ 17.). Complainants allege that Dongguan Electronic imports, sells for importation, or sells after importation the accused energup® and Powilling® batteries. (*See* Compl. at ¶ 19; Memo. at 13-14, 17-18.).

3. Shenzhen Laipaili/Accused Product: energup®

Shenzhen Laipaili is a corporation that exists under the laws of China. It has its principal place of business at 1113B, Huiyi Caifu Center, No. 9, Zhongxin Road, Gaofeng Community, Dalang Street, Longhua New District, Shenzhen China. (*See* Compl. at ¶ 21.). Complainants allege that Shenzhen Laipaili imports, sells for importation, or sells after importation the accused energup® batteries. (*See* Compl. at ¶ 22; Memo. at 13-14.).

4. Shenzhen MingYang /Accused Products: Lasica® & Biswaye®

Shenzhen MingYang is a corporation that exists under the laws of China. It has its principal place of business at No. 4, 3F, Building 2, Huafeng Logistics Industry Park, Dayang

Road, Dayangtian, Fuyong Street, Bao'an District, Shenzhen China. (*See* Compl. at ¶ 30.).

Complainants allege that Shenzhen MingYang imports, sells for importation, or sells after importation the accused Lasica ® and Biswayee® batteries. (*See* Compl. at ¶ 32; Memo. at 11-12, 17.).

5. Shenzhen Rich Hao/Accused Product: Fhybat®

Shenzhen Rich Hao is a corporation existing under the laws of China. It has its principal place of business at Shenzhen Baoan District, Fuyong Street, San Tin Industrial Village, Chicken Industrial, A11, 31 Fuji Industrial Park, Building B, C 2/F China. (Compl. at ¶ 37.).

Complainants allege that Shenzhen Rich Hao imports, sells for importation, or sells after importation the accused Fhybat ® batteries. (Compl. at ¶ 39; Memo. at 14-15.).

6. Shenzhen Runsensheng/Accused Product: Enegitech®

Shenzhen Runsensheng is a corporation that exists under the laws of China. It has its principal place of business at A-4/F, Shangtian Building No. 70, Nanyuan Road, Futian District, Shenzhen China. (*See* Compl. at ¶ 41.). According to its website, Shenzhen Runsensheng also has an alternative principal place of business at 2505, Building World, Xinghe, No.1, Yabao Road, Bantian Sub-District, Longgang District, Shenzhen. (*See* Compl. at ¶ 42.). Complainants allege that Shenzhen Runsensheng has imported, sold for importation, or sold after importation the accused Enegitech® batteries. (*See* Compl. at ¶ 43; Memo. at 12-13.).

7. Shenzhen Saen /Accused Product: SUN POWER

Shenzhen Saen is a corporation that exists under the laws of China. It has its principal place of business at No. A709 Guangfa Building B804 Mabu Community Xixiang Street Bao'an District Shenzhen Guangdong China 518100. (*See* Compl. at ¶ 45.). Complainants allege that

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Shenzhen Saen imports, sells for importation, or sells after importation the accused SUN POWER batteries. (*See* Compl. at ¶ 46; Memo. at 19.).

8. Shenzhen E-Commerce/Accused Product: FUZADEL®

Shenzhen E-Commerce is a corporation existing under the laws of the People's Republic of China, with its principal place of business at 302, Building 42, Chaoyang New Village, Minzhi Street, Longhua New District, Shenzhen, China. (*See* Compl. at ¶ 48.). Complainants allege that Shenzhen E-Commerce imports, sells for importation, or sells after importation the accused FUZADEL® batteries. (*See* Compl. at ¶ 49; Memo. at 15-16.).

9. Shenzhen Uni-Sun/Accused Product: jolege®

Shenzhen Uni-Sun is a corporation existing under the laws of China, with its principal place of business at Building A, No. 43 Lan Er Road, Long Xin Community, Longgang District, Shenzhen, Guangdong, China. (*See* Compl. at ¶ 54.). Complainants allege that Shenzhen Uni-Sun imports, sells for importation, or sells after importation the accused jolege® batteries. (*See* Compl. at ¶ 55; Memo. at 16-17.).

10. Shenzhen Vmartego/Accused Product: Enegitech®

Shenzhen Vmartego is a corporation that exists under the laws of the People's Republic of China. It has its principal place of business at 1901, No. 15-1, Haitian Road, Block A, Excellent Times Square, N23, Haiwang Community, Xin'an Street, Bao'an District, Shenzhen. (*See* Compl. at ¶ 57.). Based on their Unified Social Credit Code, Respondents Shenzhen Vmartego and Shenzhen Weima Tesco E-Commerce Co., Ltd. are believed to be the same entity. (*Id.*). Complainants allege that Shenzhen Vmartego imports, sells for importation, or sells after importation the accused Enegitech® batteries. (*See* Compl. at ¶ 58; Memo. at 12-13.).

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Table 1 below is adapted from a Table in the Complaint of the Defaulted Respondents and their Accused Products that allegedly infringe the Asserted Patents. (Compl. at ¶ 12; Staff Resp. at 8.). However, Table 1 also contains a column for Defaulted Respondents and their Accused Products for which there is supported, clear evidence of sale, importation and/or sale after importation based upon the various Declarations that were provided by witnesses and Complainants' exhibits. (See Compl. at ¶¶ 12, 78-114.).

Table 1. Defaulted Defendants and Their Accused Products That Infringe the Asserted Patents and That Violate Section 337 Because of Proof of Sale/Importation

<i>Defaulted Respondents</i>	<i>Accused Products/Brand</i>	<i>D579,868</i>	<i>D580,353</i>	<i>D593,944</i>	<i>Clear Proof of Sale/Importation by Respondent</i>
Darui Development Limited	Topbatt	X	X	X	X
Dongguan Xinjitong Electronic Technology Co., Ltd.	energup	X	X	X	X
	Powilling	X	X	X	
Shenzhen Laipaili Electronics Co., Ltd.	energup	X	X	X	
Shenzhen MingYang Creation Electronic Co., Ltd.	Biswaye	X	X	X	
	Lasica	X	X	X	
Shenzhen Rich Hao Yuan Energy					

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Technology Co., Ltd.	Fhybat	X	X	X	X
	Topbatt	X	X	X	
Shenzhen Runsensheng Trading Co., Ltd.	Enegitech	X	X	X	
Shenzhen Saen Trading Co., Ltd.	SUN POWER	X	X	X	X
Shenzhen Shengruixiang E-Commerce Co., Ltd.	FUZADEL	X	X	X	
Shenzhen Uni-Sun Electronics Co., Ltd.	jolege	X	X	X	
Shenzhen Vmartego Electronic Commerce Co., Ltd.	Enegitech	X	X	X	

(Adapted from Compl. at ¶ 12; see also *id.* at ¶¶ 78-114; Staff Resp. at 8.).

C. Asserted Domestic Industry (“DI”) Products

The Asserted DI Products are the RYOBI™ ONE+ SYSTEM battery packs. Each of the battery packs and their features in the RYOBI™ ONE+SYSTEM and the RYOBI™ 18V

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battery platform ⁷is alleged to satisfy the claims of each of the three (3) Asserted Patents. (*See* Compl. at ¶¶ 156-158; Memo. at 27-28, 36-37, 44-45; Fletcher Decl. at ¶¶ 115-121, 182-187, 253-258, Exs. 5-7; SMF Nos. 93, 115-118 ('858 patent); SMF Nos. 143-147 ('353 patent); SMF Nos. 150, 171-174 ('944 patent).).

It is a finding of this decision that it is undisputed that the RYOBI™ ONE+ SYSTEM together with its 18V ONE+ SYSTEM battery pack meets the technical prong of the DI requirement. Moreover, a preponderance of the record evidence in support of such a finding is substantial, well-documented and describes pictorially through exhibits, and through the declarations of a number of fact witnesses together with the Declaration of Complainants' expert, Mr. Fletcher, Ex. 8 to Motion and Memorandum.

In addition to the evidence in Mr. Fletcher's Declaration, Mr. C. Scott Tennant, the Senior Vice President of Engineering for Techtronic Cordless GP, explained that the RYOBI™ brand and the RYOBI™ ONE+ SYSTEM outdoor products come in two (2) varieties: corded and cordless. (Tennant Decl. at ¶ 3.).⁸ According to Mr. Tennant, "[t]he majority of One World's cordless power tool products are marketed as part of the RYOBI ONE+ SYSTEM." (Tennant Decl. at ¶ 3.).

⁷ "RYOBI™" or "RYOBI" or "Ryobi" may be used in shortened form interchangeably with the RYOBI™ ONE+ SYSTEM with its 18V ONE + SYSTEM battery pack.

⁸ When he provided his Declaration ("Tennant Decl.," dated June 1, 2021, in support of Complainants' Motion, Mr. C. Scott Tennant was Senior Vice-President of Engineering for Techtronic Cordless GP, a position he has held since 2020. (Doc. ID No. 164458 with exhibits through 1644503 (45 Exs.) which is part of Doc. ID No. 745138; Tennant Decl. at ¶ 1.). Mr. Tennant provided supported testimony of his personal knowledge on the components of Complainants' DI Products that are comprised of the RYOBI ONE+ SYSTEM. (Tennant Decl. at ¶ 5.). Additionally, as is explained in more detail in the discussion on the economic prong, Mr. Tennant is familiar with, and describes the research and engineering that the Complainants conduct in various locations in the United States. (Tennant Decl. at ¶ 5.).

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According to Mr. Tennant, “the RYOBI ONE+ SYSTEM is an integrated suite of over 200 unique power tool products sold under the RYOBI brand. Every power tool in the RYOBI™ ONE+ SYSTEM relies on the 18V ONE+ battery platform, which is comprised of cordless, 18-volt, lithium-ion or Ni-Cd rechargeable batteries. These 18V ONE+ batteries can be used with any of the power tools in the RYOBI ONE+ SYSTEM.” (*Id.*). As Mr. Tennant describes, the Models that comprise the battery packs in the RYOBI 18V ONE+ SYSTEM incorporate the designs claimed in one or more of the Asserted Patents, including, but not limited to, the following battery models: **P102** 18V ONE+ Compact Lithium-Ion Battery; **P105** 18V ONE+ High Capacity Lithium-Ion Battery; **P107** 18V ONE+ Company Lithium+ Battery; **P108** 18V ONE+ High Capacity Lithium+ Battery; **P189** 18V ONE+ 1.5AH Compact Lithium Battery; **P190** 18V ONE+ 2.0AH Compact Lithium Battery; **P191** 18V ONE+Lithium+HP High Capacity Battery; **P192** 18V ONE+ Lithium+HP 4.0AH High Capacity Battery; **P193** 18V ONE+ Lithium+HP 6.0AH High Capacity Battery; **P194** 18V ONE+ Lithium+HP 9AH High Capacity Battery; **P195** 18V ONE+ Lithium+HP 3.0AH High Capacity Battery; **P197** 18V ONE+ 4.0AH Lithium-Ion Battery; **PBP002** 18V ONE+ 1.5AH Lithium-Ion Battery; **PBP003** 18V ONE+ 2.0AH Compact Lithium-Ion High Performance Battery; **PBP004** 18V ONE+ 4.0AH Lithium-Ion High Performance Battery; **PBP005** 18V ONE+ Lithium-Ion 4.0AH Battery; and **PBP006** 18V ONE+ 2.0AH Compact Lithium-Ion Battery (collectively, the Domestic Industry (“DI”) Batteries).” (Tennant Decl. at ¶ 5 (bolding in original)).

VI. LEGAL STANDARDS: SUMMARY DETERMINATION ON VIOLATION AND IMPORTATION

A. Summary Determination

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Summary determination under Commission Rule 210.18 is analogous to summary judgement under Federal Rule of Civil Procedure 56 and may be granted only where the evidence shows “that there is no genuine issue as to any material fact and that the moving party is entitled to summary determination as a matter of law.” *See* 19 C.F.R. § 210.18(b). “Any party may move with any necessary supporting affidavits for a summary determination in [its] favor upon all or any part of the issues to be determined in the investigation.” 19 C.F.R. § 210.18(a).

The party moving for summary determination bears the initial burden of establishing that there is an absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary determination should therefore be granted when a hearing on the matter at issue would serve no useful purpose and the movant is entitled to judgment as a matter of law. *See Certain Recombinant Erythropoietin*, Inv. No. 337-TA-281, U.S.I.T.C. Pub. No. 2186, I.D. at 70 (Jan. 10, 1989).

When the Commission finds respondents to be in default, as in this case, the facts alleged in the complaint will be presumed true with respect to those respondents. *See* 19 C.F.R. § 210.16(c); *see also Certain Opaque Polymers*, Inv. No. 337-TA-883, Comm’n Op. at 18-19 (Apr. 30, 2015).

A finding of default can lead to a substantive finding of a Section 337 violation, and issuance of a general exclusion order. *See Certain Collapsible Sockets For Mobile Electronic Devices and Components Thereof*, Inv. No. 337-TA-1056, Comm’n Op. at 1-2 (July 9, 2018) (issuing general exclusion order against thirteen defaulted respondents); *Certain Arrowheads With Arcuate Blades and Components Thereof*, Inv. No. 337-TA-1033, Comm’n Op. at 2-3 (May 1, 2018) (issuing general exclusion order against five defaulted respondents); *Certain Mobile*

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Device Holders and Components Thereof, Inv. No. 337-TA-1028, Comm’n Op. at 3-6, 30 (Mar. 22, 2018) (issuing general exclusion order against twenty defaulted respondents).

B. Violation of Section 337 And Importation

To establish a violation of Section 337(a)(1)(B), a complainant must prove: (1) the importation, the sale for importation, and/or the sale after importation within the United States; (2) infringement of a valid and enforceable United States patent; and (3) a domestic industry in the United States. 19 U.S.C. §§ 1337(a)(1)(B), 1337(a)(2); *Alloc, Inc. v U.S. Int’l Trade Comm’n*, 342 F.3d 1361, 1365 (Fed. Cir. 2003).

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, Initial Determination at 5 (Sep. 23, 2004) (“*Protective Gloves*”); *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm’n Action & Order at 7-8 (Nov. 1984) (finding importation requirement satisfied by the importation of single wheel assembly). The importation requirement can be established through a summary determination motion. *See Certain Mobile Communications & Computer Devices & Components Thereof*, Inv. No. 337-TA-704, Initial Determination at 3 (Oct. 5, 2010) (granting summary determination on importation).

C. Infringement: Design Patents

To prove infringement, a complainant must establish, by a preponderance of the evidence, that each and every limitation of an asserted claim is present in an accused product. *See Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1310 (Fed. Cir. 2005). The infringement analysis for a design patent is a two-step process where “(1) the court first construes the claim to determine its meaning and scope; [and] (2) the fact finder then compares the properly construed claim to the accused design.” *Lanard Toys Ltd. v. Dolgencorp*,

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LLC, 958 F.3d 1337, 1341 (Fed. Cir. 2020) (quoting *Elmer v. ICC Fabricating, Inc.*, 67 F.3d 1571, 1577 (Fed. Cir. 1995)). “In evaluating a claim of design patent infringement, a trier of fact must consider the ornamental aspects of the design as a whole and not merely isolated portions of the patented design.” *Braun Inc. v. Dynamics Corp. of Am.*, 975 F.2d 815, 820 (Fed. Cir. 1992). In a Section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims by a preponderance of the evidence. *Enercon GmbH v. Int’l Trade Comm’n*, 151 F.3d 1376, 1384 (Fed. Cir. 1998). If any claim limitation is absent, there is no literal infringement of that claim as a matter of law. *Bayer AG v. Elan Pharm. Research Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000).

However, “[D]esign patents are typically claimed as shown in drawings and claim construction must be adapted to a pictorial setting.” *Crocs, Inc. v. Int’l Trade Comm’n*, 509 F.3d 1294, 1302 (Fed. Cir. 2010) (citation omitted). The Federal Circuit does not “require that the trial court attempt to provide a detailed verbal description of the claimed design, as is typically done in the case of utility patents.” *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 679 (Fed. Cir. 2008) (en banc) (citation omitted). Nonetheless, “a court may find it helpful to point out ... various features of the claimed design as they relate to the accused design and the prior art.” *Id.* at 680.

“A design patent only protects the novel, ornamental features of the patented design,” not the functional elements. *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1405 (Fed. Cir. 1997) (citing to *KeyStone Retaining Wall Sys., Inc. v. Westrock, Inc.*, 997 F.2d 1444, 1450 (Fed. Cir. 1993)). “Where a design contains both functional and non-functional elements, the scope of the claim must be construed to identify the non-functional aspects of the design as shown in the patent.” *Sport Dimension, Inc. v. Coleman Co.*, 820 F.3d 1316, 1320 (Fed. Cir. 2016) (citing to *OddzOn*, 122 F.3d at 1405). “[I]t is the non-functional, design aspects that are pertinent to determinations of infringement.” *Lee v. Dayton-Hudson Corp.*, 838 F.2d 1186, 1188 (Fed. Ci

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The test for determining infringement of a design patent is the “ordinary observer” test. *See Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 678 (Fed. Cir. 2008) (*en banc*). In defining the “ordinary observer” test, the Supreme Court stated:

[I]f, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.

Gorham Mfg. Co. v. White, 81 U.S. 511, 528 (1871).

Therefore, “the test for design patent infringement is not identity, but rather sufficient similarity.” *Pacific Coast Marine Windshields, Ltd. v. Malibu Boats, LLC*, 739 F.3d 694, 701 (Fed. Cir. 2014); *see also L.A. Gear, Inc. v. Thom McAn Shoe Co.*, 988 F.2d 1117, 1125 (Fed. Cir. 1993) (design patent infringement requires determining “whether ‘the effect of the whole design [is] substantially the same.’”). Or stated another way, design infringement arises from “the similarities in the overall design, not of similarities in ornamental features in isolation.” *Crocs v. International Trade Comm’n*, 598 F.3d 1294, 1303 (Fed. Cir. 2010). Indeed, the Federal Circuit has repeatedly warned that “the concentration on small differences in isolation distract[s] from the overall impression of the claimed ornamental features.” *Id.* at 1303-04. For this reason, “minor differences between a patented design and an accused article's design cannot, and shall not, prevent a finding of infringement.” *Id.* at 1303 (quoting *Payless Shoesource, Inc. v. Reebok Intern. Ltd.*, 998 F.2d 985, 991 (Fed. Cir. 1993)).

The Federal Circuit’s decision in *Crocs v. ITC* is particularly instructive. There, the Federal Circuit vacated a finding of no infringement after finding that “the Commission placed undue emphasis on particular details of its written description of the patented design,” which “became a mistaken checklist for infringement.” *Crocs*, 598 F.3d at 1303. “Without a view to the

design as a whole, the Commission used minor differences between the patented design and the accused products to prevent a finding of infringement. In other words, the concentration on small differences in isolation distracted from the overall impression of the claimed ornamental features.” *Id.* at 1303-04. Rather, “[t]he proper comparison requires a side-by-side view of the drawings of the [patented] design and the accused products,” as shown below. *Id.* at 1304.

D. Domestic Industry: Technical Domestic Industry and the Economic Prong

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

“In order to satisfy the technical prong of the domestic industry requirement, it is sufficient to show that the domestic industry practices any claim of that patent, not necessarily an asserted claim of that patent.” *Certain Ammonium Octamolybdate Isomers*, Inv. No. 337-TA-477, Comm’n Op. at 55 (U.S.I.T.C. Jan. 5, 2004).

The test for claim coverage for the purposes of the technical prong of the domestic industry requirement is the same as that for infringement. *Certain Doxorubicin and Preparations Containing Same*, Inv. No. 337-TA-300, Initial Determination at 109, 1990 WL 710463 (U.S.I.T.C. May 21, 1990), *aff’d*, views of the Commission at 22 (October 31, 1990). “First, the claims of the patent are construed. Second, the complainant’s article or process is

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examined to determine whether it falls within the scope of the claims.” *Id.* The technical prong of the domestic industry can be satisfied either literally or under the doctrine of equivalents.

Certain Dynamic Sequential Gradient Devices and Component Parts Thereof, Inv. No. 337-TA-335, Initial Determination at 44, Pub. No. 2575 (U.S.I.T.C. Nov. 1992).

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

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

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

However, under Section 337(a)(3), a complainant must substantiate the nature and the significance of its activities with respect to the articles protected by the patent at issue. *Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Comm’n Op. at 30 (Feb. 17, 2011). In explaining this, the Commission has also interpreted Sections 337(a)(3)(A) and (B) to relate to investments in plant and equipment and labor and capital “with respect to the products presented by the patent.” *Certain Ground Faults Interrupters and Prods. Containing Same*, Inv. No. 337-TA-739, 2012 WL 2394435 at *50, Comm’n Op. at 78 (June 8, 2012) (quoting U.S.C. §§ 1337(a)(3)(7)). It is not enough for the “substantial investment” under paragraph (C) to merely relate to articles protected by the asserted patents. Rather, “the complainant must establish that there is a nexus between the claimed investment and asserted patent regardless of whether the domestic- industry showing is based on licensing, engineering, research and development.” *Certain Integrated Circuit Chips & Prods. Containing*, Inv. No. 337-TA-845, Final Initial Determination, 2013 WL 3463385 at *14 (June 7, 2013).

To determine whether investments are “significant” or “substantial,” the actual amounts of a complainant’s investments or a quantitative analysis must be performed. *Lelo Inc. v. Int’l Trade Comm’n*, 786 F.3d 879, 883-84 (Fed. Cir. 2015) (“*Lelo*”). However, even after *Lelo*, which requires some quantification of a complainant’s investments, there is still no bright line as to a threshold amount that might satisfy an economic industry requirement. It is the

complainant's burden to show by a preponderance of evidence that each prong of the domestic industry requirement is satisfied. *Certain Prods. Containing Interactive Program Guide and Parental Control Tech.*, Inv. No. 337-TA-845, Final Initial Determination, 2013 WL 3463385 at*14 (June 7, 2013). The Commission makes its determination by "an examination of the facts in each investigation, the article of commerce, and the realities of the marketplace." *Certain Male Prophylactic Devices*, Comm'n Op. at 39) (quoting *Certain Double Sided-Floppy Disk Drives and Components Thereof*, Inv. No. 337-TA-215, Comm'n Op. at 17, USITC Pub. 1859 (May 1986)).

VII. IMPORTATION

It is uncontested that each of the Accused Products has been imported into the United States. (SMF No. 17; Compl. at ¶¶ 117-151; First Supp. Resp. to Staff First ROGs at 13-22.). 19 U.S.C. § 337(a)(1)(B). However, Complainants have been unsuccessful at linking the importation and/or sale of the Accused Products with all of the Defaulted Respondents where either the ownership of the website was unclear, the name of the party who owned brand was unclear, or where the purchased Accused Product could not be attributed to the named, Defaulted Respondent. (*Accord*, Staff Resp. at 21-37, generally.). As stated above, the four (4) Defaulted Respondents who meet all requirements for a violation of Section 337 are: Darui Development, Dongguan Electronic, Shenzhen Rich Hao, and Shenzhen Saen.

A. Defaulted Respondents/Accused Products That Satisfy Importation Under 19 U.S.C. § 337(a)(1)(B)

1. Defaulted Respondent Darui Development/Topbatt® Accused Product

Complainants and Staff agree that Defaulted Respondent Darui Development can be linked directly to the importation, sale, and/or sale after importation of the Topbatt® Accused

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Product. (Memo. at 19; Staff Resp. at 21; SMF Nos. 87-91.). Darui Development maintains a storefront on Amazon. (SMF No. 87; Ex. 51 to Compl.). The Darui Development Amazon storefront shows that the battery that Darui sells is an Accused Product that is described as an “18V 6.0Ah P108 Battery Replacement for RYOBI 18 Volt Battery Lithium P102 P103 P104 P105 P107 P109 P122 Cordless Tool.” (Ex. 51 to Compl., TTI__000364-000373). The RYOBI™ battery models identified on the Darui Development storefront on Amazon that are offered for sale are among the RYOBI™ models in this investigation. The clearly identified Darui Development storefront on Amazon also states that its products are “Compatible with P102, P103, P104, P105, P107, P108, P109 and Fit All Ryobi 18V ONE + System Cordless Power Tools.” (*Id.*). The Amazon Darui Development website notes that Dariu Development is located in “Shenzhen Guangdong 518000 CN.” (Ex. 50 to Compl., TTI__000361.). Darui Development is registered in Colorado as of April 2021, but there is no other information in the Colorado registration other than that its principal place of business is in China. (Ex. 1 to Compl.). The Topbatt website, www.Topbatt.cn references Darui Development Limited “under ‘about us.’ (SMF 354 (other citations omitted.)). Interestingly, Defaulted Respondent Shenzhen Rich Hao is the registrant and owner of the Topbatt trademark in the United States. (SMF No. 352.). According to Complainants, a Tobbatt battery, which also is shown on the Darui Development Amazon storefront, was purchased on January 22, 2019 through the Darui Development Amazon website, and “was received in the United States on January 23, 2019, and is clearly labeled ‘Made in China.’” (SMF No. 90; Ex. 50 to Compl.). In sum, there is no dispute of material fact of the importation of the Accused Product that is linked with the Defaulted Respondent, Darui Development. That is the finding of this ID.

2. Dongguan Electronic/Powilling Accused Product

Complainants and Staff agree that Defaulted Respondent Dongguan Electronic can be linked directly to the importation, sale, and/or sale after importation of the Powilling Accused Product. (Memo. at 17-18; Staff Resp. at 22-23; SMF No. 70; generally SMF Nos. 75-79.). Dongguan Electronic is the owner of the trademark Powilling in China. (SMF No. 71.). The Powilling trademark has been registered in the United States, with third-party Mr. Xiaoling Yu identified in Trademark Electronic Search Records (“TESS”) as the registrant and/or owner of the United States Trademark Powilling and as a shareholder in Dongguan Electronic. (SMF Nos. 71- 73; Exs. 7-14 to Compl.). The XNJTG storefront on Amazon prominently displays the Powilling mark and describes Powilling as “a professional manufacturer for cordless tools [*sic*] batteries for more than 10 years.” (SMF No. 74; TTI__000416-000417.). The Powilling brand is described as “Designed specifically for the Ryobi 18 Volts Cordless Tools Rechargeable Lithium-ion 18 Volts 5.0Ah/980Vh” and as a “Replacement part for Ryobi BPL-1815, PBL1820G, BPL18-151, BPL-1820, P102, P103, P104, P105, P106, P107, P108, P109.” (TTI__000421- TTI__00422). The RYOBI™ model numbers offered for sale on the XNJTG Amazon website are among the DI Products identified in this investigation. Dongguanshi Xinjitong Electronics Co., Ltd. is identified as the “Business Name” under the heading “Detailed Seller Information,” with a “Business Address” in Shenzhen, China. (SMF No. 75.) The “Business Address” provided on the XNJTG storefront is the former address of Dongguan Electronic. (SMF No. 76.). On January 22, 2019, a Powilling Battery was purchased from the “XNJTG” storefront on the Amazon website. (SMF No. 74; TTI__000429-TTI__000430.). In sum, there is no dispute of material fact of the importation of the Accused Product that is linked with the Defaulted Respondent, Darui Development. That is the finding of this ID.

3. Shenzhen Rich Hao/Fhybat Accused Product

Complainants and Staff agree that Defaulted Respondent Dongguan Shenzhen Rich Hao can be linked directly to the importation, sale, and/or sale after importation of the Powilling Accused Product. (Memo. at 14-15; Staff Resp. at 29; SMF No. 49; generally SMF Nos. 50-56.). Defaulted Respondent Shenzhen Rich Hao is the registrant and/or owner of the United States Trademark Fhybat. (SMF No. 50). On July 20, 2018, the Fhybat battery was purchased from the “Novcor Factory Store” on Amazon. (SMF No. 51.). The Novcor Factory Store storefront states, *inter alia*, that “Novcor is an electronics manufacturer with sales in . . . North America,” and that “‘Fhybat’ is the brand name for Novcor.” (SMF No. 51; TTI__000547-TTI__000549.). The Fhybat Battery is described as “Fhybat for Ryobi 18v Battery Replacement ONE+ P100 P104 P105 P110 130224007 High Capacity Cordless Power Tools 18 Volt Batteries 2 Packs.” (SMF No. 54; TTI__000550.). The RYOBI™ model numbers offered for sale on the Novcor Factory Amazon website are among the DI Products identified in this investigation. The Fhybat Battery was received in the United States on July 23, 2018 and is marked “Made in China.” (SMF No. 55.). The Fhybat-branded battery packs also were offered for sale through the Novcor Factory Store storefront as of March 27, 2021. (SMF No. 56.). With respect to the Novcor Factory Store storefront on Amazon, third party “zhangguoyou” is identified as the “Business Name” under the heading “Detailed Seller Information,” with a “Business Address” in Shenzhen, China. (SMF. No. 52; TTI__000547-TTI__000547.). Company information for Shenzhen Rich Hao appears to indicate that “zhangguoyou” is a reference to natural person Zhang Guoyou who is also identified as general manager of Shenzhen Rich Hao. (SMF No. 53.). In sum, there is no dispute of material fact of the importation of the Accused Product that is linked with the Defaulted Respondent, Darui Development. That is the finding of this ID.

4. Shenzhen Saen/SUN POWER Accused Product

Complainants and Staff agree that Defaulted Respondent, Dongguan Shenzhen Rich Hao, can be linked directly to the importation, sale, and/or sale after importation of the Powilling Accused Product. (Memo. at 19; Staff Resp. at 32-33; SMF No. 80; generally SMF Nos. 80-85.). On July 20, 2018, a SUN POWER Battery was purchased from the “SUN POWER” storefront on the Amazon website. The SUN POWER storefront states, *inter alia*, that “SUN POWER is specialize [sic] in producing and resarching [sic] batteries of power tools,” and that “SUN POWER sells batteries are [sic] a [sic] extremely low prices cause [sic] we are [sic] manufacturer.” (SMF No. 81.). Shenzhen Saen is identified as the “Business Name” under the heading “Detailed Seller Information,” with a “Business Address” in Shenzhen, China. (SMF No. 82; TTI__000585.). The SUN POWER battery offered for sale on the Amazon storefront is described as a “SUN POWER 2500mAh for Ryobi 18v One Plus Lithium Ion Battery P102 P103 P105 P107 P108 P109 Compact ONE+ Cordless Tool (2-Pack).” (SMF No. 83; TTI__000589.). The RYOBI™ model numbers that are offered for sale on the SUN POWER/Shenzhen Sain Amazon website are among the DI Products identified in this investigation. According to Complainants, a SUN POWER battery was received in the United States on July 23, 2018; it is clearly marked “Made in China.” (SMF No. 84.). Similar battery packs, which appear to infringe at least one of the asserted patents, are now offered for sale under the Forrat brand through the SUN POWER storefront as of March 27, 2019. (SMF No. 85.). In sum, there is no dispute of material fact of the importation of the Accused Product that is linked with the Defaulted Respondent, Darui Development. That is the finding of this ID.

B. Defaulted Respondents Who Do Not Satisfy Importation Under 19 U.S.C. § 337(a)(1)(B)

1. Shenzhen Laipaili/energup® Accused Product

Complainants have asserted and argued that Defaulted Respondent, Shenzhen Laipaili, has met the requirement for importation sale, and/or sale after importation of the energup® Accused Product. (Memo. at 13; SMF No. 37; generally SMF Nos. 37-48.). While Staff agrees that Complainants have provided evidence that the energup® Accused Product has been imported into the United States, Staff contends that there is a genuine dispute of material fact whether there is sufficient evidence that Defaulted Respondent Laipaili is the owner of the website or the seller of the infringing energup® battery pack. (Staff Resp. at 23-24.).

It is uncontested that there is Energup® storefront on Amazon, and that on July 20, 2018, an energup® battery was purchased from the “Energup” storefront. (SMF No. 43.). The Energup storefront displays the energup® mark and also provides an e-mail address in “.CN” or China. (*Id.*). The Energup storefront states “Energup is a reputed professional manufacturer of high quality power tool batteries and battery-related accessories.” (SMF No. 44.). The energup® batteries are described as an “Energup P108 4000mAh Ryobi 18V Lithium Battery Pack Replacement for Ryobi 18-Volt ONE+ P104 P105 P102 P103 P107 Tool.” (SMF No. 46; TTI__000391-401.). The RYOBI™ model numbers on the Energup® Amazon website are among the DI Products identified in this investigation. While reported third party “Opson” is identified as the “Business Name” under the heading “Detailed Seller Information,” with a “Business Address” in Shenzhen, China (SMF No. 45), Complainants acknowledge that they were unable to verify the relationship that exists between Opson and Defaulted Respondent Laipaili. Complainant has been able to establish some type of common business relationship

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between Defaulted Respondents Shenzhen Laipaili and Shenzhen Dongguan Electronic (Memo. at 13-14), but not who is the owner or seller of the energup® infringing batteries.

In sum, there is a material dispute of fact whether there is sufficient evidence that Defaulted Respondent Shenzhen Laipaili is the owner of or seller of the energup® that was imported into the United States. That is the finding of this ID.

2. Shenzhen MingYang/Biswaye and Lasica Accused Products

Complainants have asserted and argued that Defaulted Respondent Shenzhen MingYang (alone or in association with third party Shenzhen Jinjunye Electronics, Co. Ltd.) has met the requirement for importation sale, and/or sale after importation of the Biswaye and Lasica Accused Products. (Memo. at 11-12, 17, 19; SMF Nos. 20-21 and 65-69, respectively.). While Staff agrees that Complainants have provided evidence that the Biswaye and Lasica Accused Products have been imported into the United States, Staff contends that there is a genuine dispute of material fact whether there is sufficient evidence that Defaulted Respondent MingYang is the owner of the pertinent websites on Amazon or the seller of the infringing Biswaye and Lasica battery packs. (Staff Resp. at 25-27 (Biswaye) and 27-28 (Lasica)).

It is uncontested that there is a GDLIFE storefront on the Amazon website that offers for sale the Biswaye battery. (Memo. at 11; SMF Nos. 22-25.). On July 20, 2021, a Biswaye battery was purchased from the “GDLIFE” storefront that is clearly labeled as “Made in China.” (Memo. at 11; SMF Nos. 22, 28.). According to Complainants’ evidence, Biswaye-branded battery packs were offered for sale on the GDLIFE Amazon website as recently as March 27, 2021. (Memo. at 11, SMF No. 28.). The GDLIFE storefront displays the Biswaye trademark, and as Complainants state that “[o]ur company was established in 2003, located [sic] in ShenZhen of China.” (*Id.*). Third party Shenzhen Jinjunye Electronics Co., Ltd. (“Shenzhen

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Jinjunye”) is identified as the “Business Name” under the heading “Detailed Seller Information,” with a “Business Address” in Shenzhen, China. (Memo. at 11; SMF No. 23.). As Complainants detail, business information for Shenzhen Jinjunye states that one of its shareholders, Miao Feilong, is also a shareholder of Defaulted Respondent Shenzhen MingYang. (Memo. at 11; SMF No. 24). The accused Biswaye battery that is offered for sale is described on the Amazon GDLIFE website as a “Biswaye P108 5000m Lithium Ion Rechargeable Replacement Battery for Ryobi ONE+ Cordless Power Tool P102 P103 P104 P100” (SMF No. 26.). The RYOBI™ model numbers for the Biswaye battery that GDLIFE offers for sale on the Amazon website are among the DI Products identified in this investigation.

With respect to the Lasica accused battery pack, Complainants argue and Staff agrees, that a Lasica battery pack was purchased on July 20, 2018 from the “Lasica Direct US” storefront on the Amazon website that displays the Lasica mark. (Memo. at 17; SMF Nos. 65, 67; Staff Resp. at 28.). The Lasica battery that was offered for sale on the Amazon website is described as a “Lasica Lithium 18V Battery 4.0 Ah for All Ryobi 18-Volt Battery P108 P103 P102 P104 P105 P107 P109 P122 P206 with On-Board Fuel Gauge (4.0Ah 1 pack) High Capacity.” (Memo. at 17; SMF No. 68). The model numbers of the Lasica batteries that Defaulted Respondent Shenzhen MingYang offered for sale on the Amazon website are among the DI Products identified in this investigation. A Lasica battery that was purchased from the Defaulted Respondent Shenzhen MingYang Amazon website was received in the United States on July 23, 2018 and is clearly marked as “Made in China.” (Memo. at 17; SMF No. 69.). According to TESS records, Defaulted Respondent Shenzhen MingYang is the registrant/owner of the United States trademark “Lasica.” (Memo. at 17; SMF No. 66.). However, as Complainants acknowledge, “[T]here is no evidence that Shenzhen MingYang has licensed ‘the

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jolege [sic]’(i.e. Lasica) mark to another entity”... or that any other entity is involved in the sale for importation, importation and/or sale after importation of the Lasica battery. (Memo. at 17.). Nonetheless, Complainants argue that the circumstantial evidence of the ownership of the Trademark by MingYang, and the sale of the Lasica battery from the “Lasica Direct US” Amazon website, and its importation into the United States are sufficient evidence in combination to conclude that MingYang is the owner of the “Lasica Direct US” website and sold the imported Lasica battery. (*Id.* at 17.).

Complainants argue that Defaulted Respondent Shenzhen MingYang and Shenzhen Jinjunye are under common ownership, and that they are “working toward a common business objective: importing and/or selling the Accused Biswaye batteries.” (*Id.* at 11 (citing *Certain Height-Adjustable Desk Platforms and Components Thereof*, Inv. No. 337-TA-1125, Order no. 33 at 20 (Sept. 13, 2020)(importation is established where there is common ownership of company by multiple owners and that one of the companies owned the pertinent trademark)(“*Desk Platforms*”). However, unlike in *Desk Platforms*, in this case there are photographs of the purchased accused batteries that are marked as “Made in China.” (*See* Compl at Exs. 60, 68, 72, 77, 81, 85.). There is no information who the sellers are and no pictures of packaging to show where the Accused Product batteries came from. This is true for all of the samples of the Accused Product batteries that Complainants purchased. (*Id.*)

Staff contends that there is a genuine material dispute of fact whether Defaulted Respondent MingYang is the owner or seller of the Lasica battery that Complainants purchased. Staff questions whether Complainants have linked the sale and importation of the Lasica battery to MingYang and Shenzhen Jinjunye. (Staff Resp. at 28.).

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Because there is a failure of proof, and because there is a genuine dispute of material fact whether the Defaulted Respondent MingYang is the owner or seller of the Lasica and/or Biswaye Accused Products, summary determination on importation is not appropriate with respect to MingYang and Shenzhen Jinjunye,

3. Shenzhen Runsensheng & 4. Shenzhen Vmartego/ Enegitech Accused Product

Complainants have asserted and argued that Defaulted Respondents Shenzhen Runsensheng and Shenzhen Vmartego's Accused Product, the Enegitech battery, have been imported into the United States. (Memo. at 13; SMF No. 37; generally SMF Nos. 37-48.). While Staff agrees that Complainants have provided evidence that an Enegitech accused battery has been imported into the United States, Staff contends that there is a material dispute of fact whether the Defaulted Respondent Shenzhen Runesensheng, either alone or in association with Defaulted Respondent Vmartego, is the owner of the website or the seller of the infringing Enegitech battery pack. (Staff Resp. at 23-24.).

According to TESS records, the Enegitech mark was registered on November 22, 2016 in the name of Shezhen Runsensheng. (Memo. at 12; SMF No. 30.). Shenzhen Runsensheng held ownership of the Enegitech mark until December 7, 2018 when it was assigned, with a change in name to Shenzhen Vmartego. (Memo. at 12; SMF No. 31.). As of the date the Complainants filed their Complaint in this investigation, Defaulted Respondent Shenzhen Vmartego was the owner of the United States Trademark Enegitech. (Memo. at 12; SMF No. 32.). It is undisputed that an Enegitech battery was purchased from the "Enegitech" storefront on Amazon that prominently displays the Enegitech mark. (Memo. at 13; SMF Nos. 33, 34.). A third party Yudong (Shenzhen) Investment Co., Ltd. ("Shenzhen Yudong") is identified on the Enegitech

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storefront website as the “Business Name” under the heading “Detailed Seller Information,” with a “Business Address” in Shenzhen, China. (Memo. at 12; SMF No. 34.). Complainants have acknowledged that “they were unable to determine whether Shenzhen Yudong is involved in the manufacture, importation, or sale of Enegitech-branded battery packs or whether there is a connection between Shenzhen Yudong on the one hand, and Shenzhen Runesensheng and/orShenzhen Vmarteto on the other hand.” (Memo. at 13.).

The Enegitech battery that is offered for sale on the Enegitech website was described as an “Enegitech 18V P108 Lithium ion Battery Replacement 4000mAh for Ryobi One Plus P108 P109 P122 P102 P103 P104 P105 P107 Cordless Power Tools.” (Memo. at 13; SMF No. 35). The Enegitech batteries that are offered for sale on the Enegitech Amazon website are among the models that are identified as DI Products in this investigation. According to uncontested evidence, an Enegitech battery was received in the United States on September 19, 2018 and is clearly labeled “Made in China.” (Memo. at 13; SMF No. 36.). Complainants argue that because Defaulted Respondent Shenzhen Runsensheng was the owner of the Enegitech mark as of the date of purchase and receipt of the Enegitech battery, that is sufficient proof that Defaulted Respondent Shenzhen Runensheng is the owner/seller of the Enegitech battery. (*Id.*).

Staff disagrees. There is a genuine dispute of material fact whether the Defaulted Respondent MingYang is the owner or seller of the Lasica Accused Product. Therefore, summary determination on the importation requirement cannot be granted.

4. Shenzhen E-Commerce/FUZADEL Accused Product

It is undisputed that Defaulted Respondent Shenzhen E-Commerce has sold for importation, imported, and/or sold in the United States after importation the accused FUZADEL Battery. (Memo. at 15-16; SMF No. 57; Staff Resp. at 33.). On July 20, 2018, the FUZADEL

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Battery was purchased from the “UP-First” storefront on a prominent Internet e-commerce website. The FUZADEL Battery was described as a “FUZADEL 4.0Ah Battery Replacement for Ryobi 18v One Plus Lithium-Ion Battery P122 P105 P102 P107 P108 P103.” (SMF No. 59.). According to Complainants’ evidence, FUZADEL battery was received in the United States on July 23, 2018 and is clearly marked “Made in China.” (SMF No. 60.). The RYOBI™ battery pack model numbers that are offered for sale as a FUZADEL battery pack that Defaulted Respondent Shenzhen E-Commerce offers for sale on the Amazon website are among the DI Products identified in this investigation. While Staff agrees that Complainants have provided evidence that the FUZADEL Accused Product has been imported into the United States, Staff contends that there is a genuine dispute of material fact whether Defaulted Respondent Shenzhen E-Commerce is the owner of the website or the seller of the infringing FUZADEL Accused Product. (Staff Resp. at 33.). No evidence was provided that Shenzhen E-Commerce has licensed the FUZADEL mark to another entity, or that another entity is involved in the sale for importation, importation, and/or sale after importation of battery packs bearing the FUZADEL mark, including the accused FUZADEL battery.

There is a genuine dispute of material fact whether the Defaulted Respondent Shenzhen E-Commerce is the owner or seller of the FUZADEL Accused Product. Therefore, summary determination on the importation requirement cannot be granted with respect to Defaulted Respondent Shenzhen E-Commerce.

5. Shenzhen Uni-Sun/jolege Accused Product

It is undisputed that a jolege battery was sold for importation, imported, and/or sold in the United States after importation. (Memo. at 15-16; SMF No. 57; Staff Resp. at 34.). On July 18, 2018, the jolege battery was purchased from the “JolegeUS” storefront on the Amazon website.

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(SMF at 59.). The jolege battery that Complainants purchased is described on the Amazon website as a “jolege Ryobi P108 18V 4.0Ah Lithium Battery Replacement for Ryobi P108 One Plus P104 P105 P102 P103 P107P109 P122 P206 P507 BPL-1815 BPL-1820G BPL18151 18-Volt Ryobi Cordless Power Tools.” (SMF No. 60.). The jolege battery was received in the United States on July 23, 2018. (SMF No. 64.). The RYOBI™ model numbers identified on the jolege battery pack that Defaulted Respondent Shenzhen Uni-Sun offers for sale on the Amazon website are among the DI Products identified in this investigation. Defaulted Respondent Shenzhen Uni-Sun is the registrant or owner of the United States trademark “jolege.” (SMF. No. 62.). Complainants argue that because there is no evidence that Defaulted Respondent Shenzhen Uni-Sun has licensed the jolege mark to another entity, an inference should be drawn from circumstantial evidence that Defaulted Respondent is the owner of the Amazon website and seller/importer of the jolege Accused Product. (Memo. at 16.).

While Staff agrees that Complainants have provided evidence that the jolege Accused Product has been sold and imported into the United States, Staff contends that there is a dispute of material fact whether there is sufficient evidence to link Defaulted Respondent Shenzhen Uni-Sun as the seller/owner of the jolege Accused Product on the Amazon website and the importer. (Staff Resp. at 34-35.). Staff’s position is that there is not a direct evidentiary link beyond the inference that as the owner of the trademark, that Shenzhen Uni-sun also is the seller of the jolege Accused Product. There is a genuine dispute of material fact whether the Defaulted Respondent Shenzhen E-Commerce is the owner or seller of the jolege Accused Product. Therefore, summary determination on the importation requirement cannot be granted.

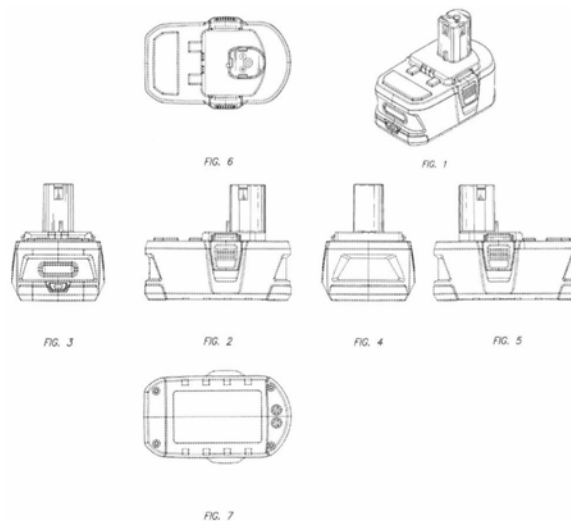
VIII. U.S. PATENT NO. D579,868 (“the ’868 patent”)

A. Overview of the ’868 Patent

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The '868 Patent, entitled “Battery,” was issued to Ryan Harrison on November 4, 2008. (See Compl. at Ex. 31.). The '868 patent issued from U.S. Design Patent Application Serial No. 29/305,871, filed on March 28, 2008. (*Id.*). The '868 Patent expires on November 4, 2022. (Compl. at ¶ 62.). The '868 Patent has one (1) claim, which claims “[t]he ornamental design for a battery, as shown and described” in the figures of the patent. (See Compl. at Ex. 31.).

Figure 1. Figures 1-7 of the '868 Patent



(‘868 patent, at Figures 1-7, Ex. 31 to Compl.).

As a starting point, it should be noted that there were no disputed claim terms, and no need for a *Markman* hearing with respect to the '868 patent or with respect to the other two (2) Asserted Patents. Mr. Fletcher examined physical samples of each of the Accused Products that was imported into the United States, in addition to five (5) representative DI Products. (Ex. 4 to Fletcher Decl.). His analyses clearly compare all of these to the descriptions he has provided for his analyses of the Asserted Patents. (Exs. 4-10.).

Mr. Fletcher’s explanations describe the '868 sole claim in great detail. As described in the '868 patent, and as Mr. Fletcher confirms, the figures of the '868 Patent depict a battery pack

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comprised of three general regions: (1) a Stem that transfers power from the battery to the tool, (2) a Foot Platform that seats the battery pack to the tool and includes latches to lock the battery pack to the tool, and (3) a Bucket that houses the batteries. (Compl. at Ex. 31.). However, the '868 Patent states that “[t]he ornamental design which is claimed is shown in solid lines in the drawings,” adding that “[a]ny broken lines in the drawings are for illustrative purposes only and form no part of the claimed design.” (Compl. at Ex. 31; *see also* SMF at 94.).

According to Mr. Fletcher, the three (3) terms “Stem,” “Foot Platform” and “Bucket” are common to the designs of each of the '868, '353 and '944 patents. (Fletcher Decl. at ¶¶ 43-45.). As Mr. Fletcher describes, the specific elements cited above are part of the RYOBI™ “Design Language” that in this instance is the “form-making process used by industrial designers to allow the form to give the user visual clues about the nature of and use of the product in question. Design language can visually explain the environment that the product is built for as well as how a portion of the product is to be used.” (Fletcher Decl. at ¶ 57.).

Mr. Fletcher also testified that the “One World battery Pack,” i.e. the DI Products, are an example of the one Design Language that RYOBI™ employs because they convey “Rugged, Durable and Aggressive” visually, or that they are durable, and together the Stem, Foot Platform and Bucket areas of the RYOBI™ battery pack DI Products convey the same. (Fletcher Decl. at ¶¶ 58, 59.).

As depicted in Figure 2, below, is that portion of a RYOBI™ battery pack, all of which incorporate as design elements the feature or structure that Mr. Fletcher describes as the Stem. The Stem is part of the primary design element:

The primary design element, upper face comprised of a rectangle that has one end rounded completely and the corners of the other end chamfered, are the correct proportions to give the assurance that the Stem

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will not break during use. This is further conveyed by the length of the extrusion of this face to the Foot Platform. If it were extruded longer the appearance of durability would disappear. The secondary design elements including the three sunken rectangular surfaces at the contact points and the lower extruded rectangle use aggressive straight lines with no radii to further convey the Design Language terms.

(See Fletcher Decl. at ¶ 60.).

Also, as depicted in Figure 2 below is the section of the representative RYOBI™ battery pack that incorporate from all the Asserted Patents the design element that Mr. Fletcher describes as the “Foot Platform,” which is also part of a primary design element:

The primary design element, upper face comprised of a rectangle that has one end rounded completely, are the correct proportions to give the assurance that the Foot Platform will firmly seat with the tool it is connecting with. This is further conveyed by the length of the extrusion of this face to the Foot Platform. If it were extruded longer the appearance of durability would disappear.

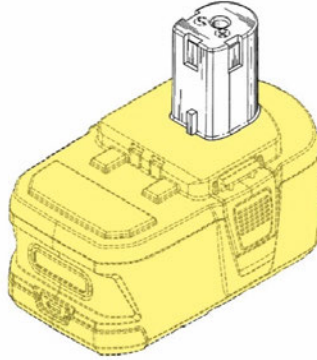
(See Fletcher Decl. at ¶ 61.).

Finally, as depicted in Figure 2 below is the section of a representative RYOBI™ battery pack that incorporates from all the Asserted Patents the design element that Mr. Fletcher describes as the “Bucket:”

The primary design element, upper face comprised of a rectangle that has one end rounded completely and the corners of the other end chamfered, are the correct proportions to give the assurance that the batteries are securely encased and protected from damage. In order to make the Bucket not appear overly bulky, the Chamfered Mouths cut into the body of the Bucket to break up the mass giving it a lighter weight look; however, the aggressive chamfered cuts of the Chamfered Mouths re-convey Rugged and Durable. The secondary design elements including the raised trapezoidal shaped area around the Release Button and the trapezoidal outline of the Release Button use aggressive straight lines with little radii to further convey the Design Language terms. Further in the surface finish of the battery packs, the grey colored plastic parts also include texturing to the plastic surface to further imply Rugged.

(See Fletcher Decl. at ¶ 62; *see also* SMF No. 95.).

Figure 2: Stem, Foot Platform and Bucket Features of the '868 Patent



(Memo. at 22; SMF No. 94; *see also* Fletcher Decl. at ¶¶ 44-45; Ex. 5 to Fletcher Decl.)

The '868 Patent's figures show the Stem portion of the battery is entirely defined by solid black lines and thus claimed by the '868 Patent. (*See* Compl. at Ex. 31; Memo at 21-22.).

Depicted above is the representation of the "Stem" part of a Ryobi Battery that Mr. Fletcher has shown with the red arrows as it would correspond to the (Fletcher Decl. at ¶ 43.). In contrast, the Foot Platform and Bucket shown in yellow are drawn with broken lines in the '868 Patent's figures and therefore those features "are for illustrative purposes only and form no part of the claimed design." (Compl. at Ex. 31; Memo at 21-22; SMF. Nos. 94-98; *see* Fletcher Decl. and Ex. 5 to Fletcher Decl.).

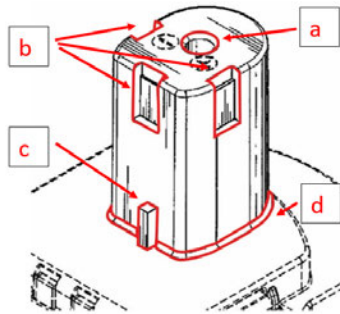
There is no dispute, and it is a finding of the ID, based upon Mr. Fletcher's analysis and opinion, that the Stem in the '868 patent is entirely defined by black lines and, therefore, is claimed by the '868 patent. (Memo. at 22; Staff Resp. at 9, 10.). It is also undisputed that the Foot Platform and Bucket are not part of the claimed design of the '868 patent, but rather are "environmental" structures. (Memo at 22; SMF at 94; Staff Resp. at 39.).

Mr. Fletcher offered his opinion that the appearance of the claimed design "consists

primarily of the top surface of the Stem...” which “draws the ordinary observer’s eyes to the contrast between the Stem’s profile and the ground.” (Memo. at 22; SMF No. 95 and Fletcher Decl. therein.). Mr. Fletcher also defined the secondary design elements of the ’868 patent as: “(a) a Round hole in the top surface; (b) three sunken rectangular surfaces at the contact points; and (c) the lower extruded rectangle; and (d) the radius between the extruded surface and the Foot Platform. (Memo. at 23; SMF at 97.).

Depicted below in Figure 3 are the four (4) secondary design elements that Mr. Fletcher opined would contribute to an overall appearance of the ’868 patent but would not be the immediate points of a battery incorporating the design of the ’868 patent to which an observer’s eyes or attention would be drawn. (SMF at 97.). As described in Figure 3, the red arrows are those Mr. Fletcher drew to each of the four (4) secondary design elements of the ’868 battery.

Figure 3. Secondary Design Elements of the ’868 Patent



(Memo. at 24; SMF No. 98; Fletcher Decl. at ¶ 110.).

B. The RYOBI™ DI Products Practice the ’868 Patent

It is undisputed, and it is a finding of this ID that the primary and secondary design features of the ’868 patent are practiced by the RYOBI™ 18V One + battery pack DI Products.

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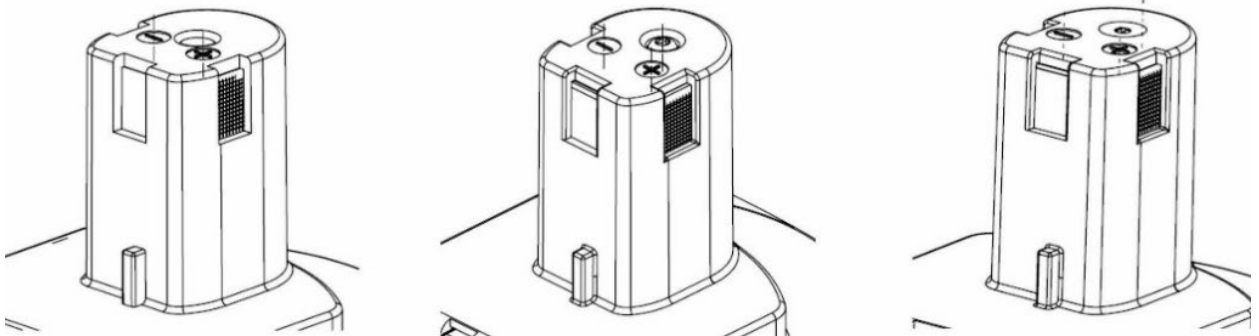
(Memo. at 24; *accord* Staff Resp. at 40-42; Fletcher Decl. at ¶ 118.). It is a finding that the RYOBI™ DI Products satisfy the technical prong of the domestic industry product.

According to Mr. Jesse J. Jerabek,⁹ Senior Design Director of Technetronic Design, the RYOBI™ DI Products were designed explicitly with a Stem and with “defined terminals on the Stem using sharp, aggressive lines consistent with the RYOBI visual brand language.” (SMF No. 94.). The RYOBI™ DI Products also adopted a “rectangular form factor with the size and proportions necessary to convey durability” that generally comport with the Foot Platform and the Bucket of the ’868 patent. (*Id.*).

Exhibit 5 to Mr. Fletcher’s Declaration compares each design element of the ’868 patent with the RYOBI™ One + System battery pack DI Products (i.e. P102, P189 and P190, P105, P107, P108 and P197, P191 and P192, P193, P194, PBP002 and PBP006, PBP003, PBP004) that are representative of the ’868 patent in some 32 pages of comparisons from different top down, side and bottom views. (Ex. 5 to Fletcher Decl.). Part of Mr. Fletcher’s comparison of representative RYOBI™ is shown in Figure 4 below.

⁹ When Mr. Jesse J. Jerabek provided his Declaration (“Jerabek Decl.”), dated June 20, 2021, in support of Complainants’ Motion, Mr. Jerabek was the Senior Design Director for the Power Tool Group at Techtronic Corless, GP, an affiliate of the Complainants. (Doc. ID No. 745172, Ex. 12 at ¶ 1.). Mr. Jerabek described himself as an industrial designer who has more than 21 years of experience designing consumer products, and more than 14 years designing power tools and rechargeable batteries for power tools. (*Id.* at ¶ 5.). Mr. Jerabek was part of the design team that designed the 18V ONE + System Jerabek stated that his description of the design elements of the RYOBI™ 18V ONE + System battery platform external housing but not the interior features. (Jerabek Decl. at Ex. 12 at ¶¶ 8-10.). These included the Stem, the Bucket and portions of the Foot Platform. (*Id.* at 10-14.). In part, as Mr. Jerabek describes the battery pack features of the RYOBI ONE + System incorporates the RYOBI “Visual Design Language” that Mr. Fletcher describes, and that the RYOBI™ ONE+ SYSTEM and 18V ONE+ battery platform were designed specifically both for their ornamental features and also for their compatibility to functionally coordinate with RYOBI ONE+ System tools. (*Id.*, generally and at ¶¶ 14-15.).

Figure 4. DI Battery Packs in Comparison with Similar Design Features '868 Patent Design Features as Depicted in Figure 3 Above



RYOBI P189 & 190

RYOBI P191 & P192

RYOBI B003

(Memo. at 28; SMF No.118; Fletcher Decl. at ¶ 118.).

A representative photographic depiction of a RYOBI™ battery pack with its Stem, Bucket and Foot Platform that can be compared to the '868 patent features as show in Figure 5 below. (See Fletcher Decl. at Ex. 5.).

Another photographic depiction of a RYOBI™ battery pack depicts its Stem, Bucket and Foot Platform that can be compared to the '868 patent features as shown in Figure 5, below. (See e.g. Fletcher Decl. at ¶¶ 44-46.).

Figure 5. A RYOBI™ Battery Pack That Incorporates '868 Design Features



(See Fletcher Decl. at ¶ 43; Mem. at 22 (citing SMF Nos. 94-96.).

C. The Accused Products Infringe the '868 Patent

There is no dispute of material fact that each of the Accused Products incorporates design features of the '868 patent. (Memo. at 25 (citing SMF Nos. 100-111, Ex. 8 to the Fletcher Decl.; *accord* Staff Resp. at 2, 44-45.)). Mr. Fletcher compared pictures and features of each of the Accused Products' designs against the design features of the '868 patent. (Memo. at 25-26; SMF Nos. 100-110; Fletcher Decl. at ¶¶ 122-124 (jolege); ¶¶ 125-127 (Enegitech); ¶¶ 128-130 (Lasica); ¶¶ 131-133 (Biswaye); ¶¶ 134-136 (FUZADEL); ¶¶ 137-41 (Topbatt); ¶¶ 142-146 (Sun Power); ¶¶ 147-151 (Energup); ¶¶ 152-156 (Powilling); and ¶¶ 157-161 (Fhybat).). (Exs. 4-10.).

Mr. Fletcher opined, that using the “ordinary observer” test, each of the Accused Products practices the primary design features of the '868 patent, i.e. the RYOBI™ Visual Design Language. (SMF No.102; Fletcher Decl. at ¶ 164.). Specifically, each of the Accused Products practices “an upper face comprised of a rectangle that has one end rounded completely and the corners of the other end chamfered and the extrusion of this surface to the Foot Platform...” (Memo at 26 (citing SMF No. 102 and Fletcher Decl. at upper end chamfered and the extrusion of this surface to the Foot Platform....” (Memo. at 26 (citing SMF No. 102); Fletcher Decl. at ¶¶ 123 (jolege); ¶ 126 (Enegitech); ¶ 129 (Lasica); ¶ 132 (Biswaye); ¶ 135 (FUZADEL); ¶ 138 (Topbatt); ¶ 143 (SUN POWER) ¶ 143 (energup); ¶ 153 (Powilling) and ¶ 158 (Fhybat).).

Additionally, according to Complainants and Mr. Fletcher, many of the same Accused Products practice many, if not all of the secondary design elements of the '868 Patent—*i.e.*, “a) a round hole in the top surface, b) three sunken rectangular surfaces at the contact points, c) the lower extruded rectangle and d) and the radius between the extruded surface and the Foot

Platform.” (*Id.*). As testified to by Mr. Fletcher, the “primary and secondary design features of the ’868 Patent convey the Ryobi Visual Design Language... and that the Accused Products also incorporate these same primary and secondary design features of the ’868 Patent.” (SMF Nos. 103, 104; *see also id.*, Fletcher Decl.).

Additionally, with respect to prior art, Mr. Fletcher’s testimony is un rebutted that the “overall appearance of the Accused Products departs from the body of prior art in a nearly identical way as the design of the ’868 patent.” (SMF No. 106; Fletcher Decl. at ¶ 162.).

Additionally, Mr. Fletcher offered his uncontested opinion that the ’868 patent “creates a unique overall shape, style and appearance for the battery pack design.” (Memo. at 26-27; SMF Nos. 105, 107-114; Fletcher Decl. at ¶¶ 162, 163, 166-169.).

Therefore, for the reasons explained, based upon the testimony provided by Mr. Fletcher, together with the un rebutted evidence and other testimonies upon which he relied, it is a finding of this ID that the Defaulted Respondents’ Accused Products each infringe the ’868 patent. There is no material dispute of fact on this issue.

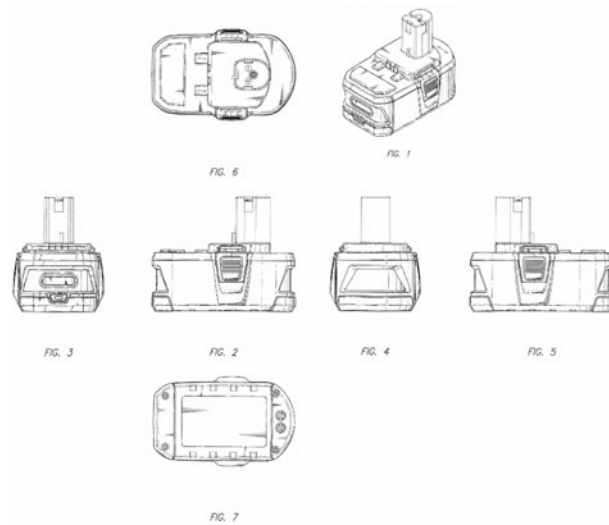
IX. U.S. Patent No. D580,353 (“the ’353 patent”)

A. Overview of the ’353 Patent

The ’353 Patent, entitled “Battery,” issued to Ryan Harrison and David M. Smith on November 11, 2008. (*See* Compl. at Ex. 33.). The ’353 Patent issued from U.S. Design Patent Application Serial No. 29/305,870, filed on March 28, 2008. (*Id.*). The ’353 Patent expires on November 11, 2022. (Compl. at ¶ 66.). The ’353 Patent has one (1) claim, which claims “[t]he ornamental design for a battery, as shown and described” in the figures of the patent. (Compl. at Ex. 33.).

Figure 6. Figures 1-7 of the ’353 Patent

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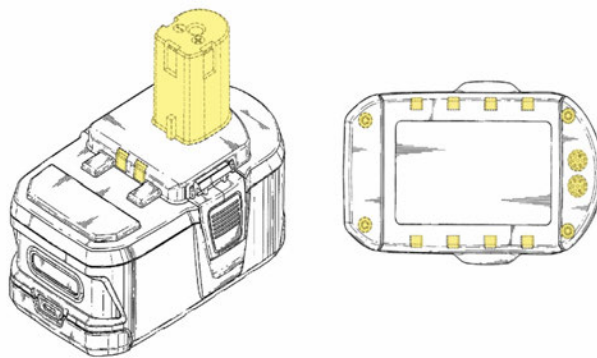
(Ex. 33 to Compl.: Memo. at 29 (citing SMF No. 121.)).

Like the '868 patent, the figures of the '353 patent depict a battery pack comprised of three regions: (1) a Stem that transfers power from the battery to the tool; (2) a Foot Platform that seats the battery pack to the tool and includes latches to lock the battery pack to the tool; and (3) a Bucket that houses the batteries. (Compl. at Ex. 33.) The '353 patent states that “[t]he ornamental design which is claimed is shown in solid lines in the drawings,” and adds that “[a]ny broken lines in the drawings are for illustrative purposes only and form no part of the claimed design. (Compl. at Ex. 30; Fletcher Decl. at ¶ 172.). Like the '868 patent, the '353 patent includes representations of a Stem, a Bucket and a Foot Platform which generally have the same functions as described in the '868 patent. (Fletcher Decl. at ¶ 171.).

However, unlike in the '868 patent, the '353 patent's figures show that the Bucket and the Foot Platform of the battery is defined by the solid black lines and thus it is claimed by the '353 patent. (Compl. at Ex. 33; Memo. at 29-30; Fletcher Decl. at ¶¶ 172-173.). The Stem and certain terminals on the Foot Platform and Bucket are drawn as broken lines in the '353 patent's figures. Those features that are shown with broken lines around them “are for illustrative

purposes only and form no part of the claimed design.” (Compl. at Ex. 33; Memo. at 29-30; SMF No. 121; Fletcher Decl. at ¶¶ 172-175.).¹⁰ Depicted below, as taken from Complainants’ Memorandum, is a colored depiction of the claimed, portions of the ’353 patent with unbroken lines with the unclaimed portions shown in broken lines.

Figure 7. Depiction of the Claimed and Unclaimed Regions of the Battery of the ’353 Patent



(Memo. at 30; SMF 121-122; Fletcher Decl. at ¶ 172; *see also* Ex. 6 to Fletcher Decl.).

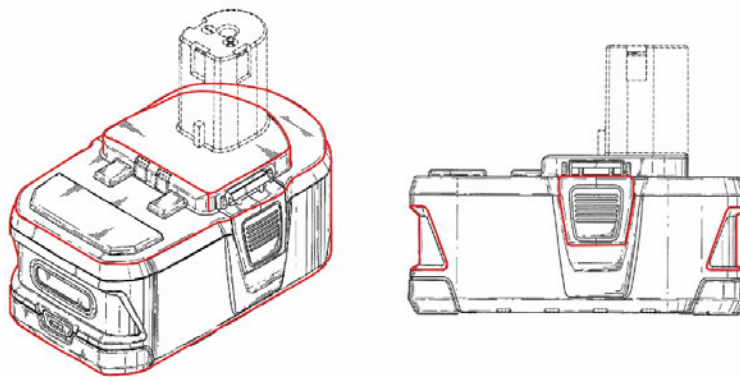
While it cannot be seen clearly in Figure 7 above, the Foot Platform and the Bucket (minus certain less distinguishable features that Mr. Fletcher describes) are defined entirely by black lines and are claimed by the ’353 patent, while the Stem is not claimed. (Fletcher Decl. at ¶ 172.). The claimed and unclaimed portions of the ’353 patent are described in more detail in the Fletcher Declaration and in Complainants’ Memorandum. (Memo. at 30; SMF No. 122; Fletcher Decl. at ¶¶ 171-177; Ex. 6 to Fletcher Decl.).

¹⁰ Mr. Fletcher explains in his Declaration that he adopted the requirements of 37 C.F.R. 1.152 “Design Drawings” and the U.S. Patent and Trademark Office’s (“USPTO”) Design Application Guide and the “Vocabulary of Lines Used In Design Patent Drawings” to explain and analyze the Asserted Patents. (Fletcher Decl. at ¶¶ 75-78.).

Again, relying upon the standard of the “ordinary observer” and the Gestalt, Neuroscience and Familiarity design techniques that Mr. Fletcher employs as described in his Declaration (and as explained in brief, above), Mr. Fletcher offered his opinion that an ordinary person’s impression would be drawn first to the primary design characteristics of the claimed battery pack, i.e. the Bucket and the Foot Platform and then only to the secondary features of the claimed battery pack, some of which are obscured or would require multiple views. (Memo. at 31 (citing SMF at 123; Fletcher Decl. at ¶¶ 173-181, and Figures at ¶¶ 174 and 176.)).

Depicted below in Figure 8 are the primary design features of the ’353 patent to which an ordinary observer’s eyes or attention would be drawn first. They are outlined in red.

Figure 8. Depiction of the Primary Features of the ’353 Patent

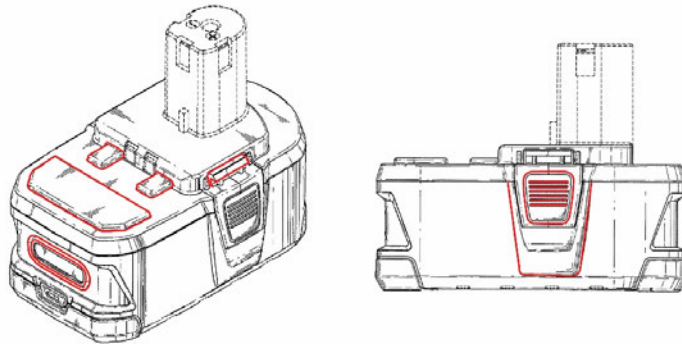


(Fletcher Decl. at ¶ 174.).

According to Mr. Fletcher, as restated in Complainants’ Memorandum, the secondary features of the ’353 battery pack to which an ordinary observer’s eyes or attention would not be drawn immediately are: “(a) two rectangular tabs at the base of the Foot Platform, (b) raised platform on the Bucket, (c) the rectangular Latch, (d) the pill shaped recess on the front face of the Bucket, (e) the raised trapezoidal shaped area around the Release Button, (f) the trapezoidal outline of the Release Button, (g) horizontal grooves of the Release Button.” (Memo. at 31-32;

SMF Nos. 121-128; Fletcher Decl. at ¶¶ 172, 174, 175, 177, 178 and Fletcher Decl. at Ex. 9; Jerabek Decl. at ¶ 13.). The secondary features of the '353 patent to which an observer's eyes or attention would be drawn only after multiple views, are shown in Figure 9 below and as outlined in red.

Figure 9. Depiction of the Secondary Characteristics of the '353 Patent



(Taken from Memo. at 31-33; SMF Nos. 126-128; Fletcher Decl. at ¶ 174.).

As Complainants describe in detail, Mr. Jerabek and his design team purposely designed the RYOBI battery pack DI Products to convey the RYOBI “Visual Design Language” both with respect to their primary and secondary characteristics. (Memo. at 33-35; SMF Nos. 122-128; Fletcher Decl. at ¶¶ 171-181.).

B. The RYOBI™ DI Products Practice the '353 Patent

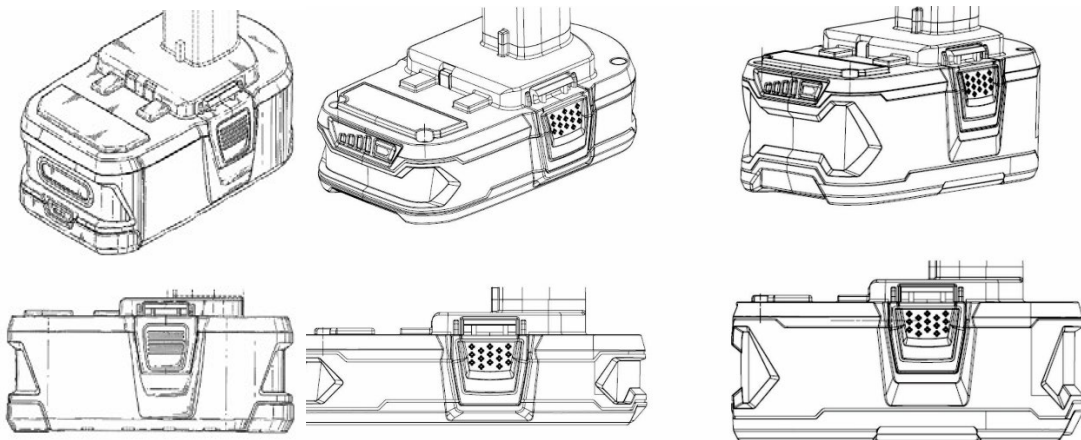
It is undisputed that the primary and secondary design features of the '353 patent are also practiced by the RYOBI™ ONE+SYSTEM and the RYOBI™ 18V One + battery pack, or the RYOBI™ DI Products. (Memo. at 31-32; *accord* Staff Resp. e.g. at 77-78; Fletcher Decl. at ¶¶ 182-187; Ex. 6 to Fletcher Decl.). It is a finding of this ID that the RYOBI DI Products satisfy the technical prong of the domestic industry product.

Mr. Fletcher examined the RYOBI battery packs by product number, and either reviewed physical samples, RYOBI supplied CAD (computer aided design) drawings, or photos from the

RYOBI website. (Fletcher Decl. at ¶ 182.).

Exhibit 6 to Mr. Fletcher's Declaration compares each design element of the '353 patent with each of the RYOBI™ ONE+ SYSTEM and 18V One + battery pack DI Products, i.e. P102, P105, P107, P108, P189, P190, P191 and P192 models. (Fletcher Decl. at ¶¶ 183-187.). Mr. Fletcher has provided additional comparisons between the '353 patent features and the identified models in some 20 pages of photographs or drawings that show different top down, side and bottom views of the RYOBI battery packs. (Ex. 6 to Fletcher Decl.). By way of example, Mr. Fletcher provided comparison pictures between the '353 patent and exemplary RYOBI™ battery packs. (Fletcher Decl. at ¶ 183.). One set of Mr. Fletcher's comparisons are provided below in Figure 10. (*Id.*). Not all of the RYOBI battery packs, i.e. the DI Products, are shown below.

Figure 11. Comparison of '353 Patent and Exemplary RYOBI™ Battery Packs



'353 Patent

RYOBI P107

RYOBI P108-P197

(*See* Fletcher Decl. at ¶ 183.).

C. The Accused Products Infringe the '353 Patent

There is no dispute of material fact that each of the Accused Products incorporates design features of the '353 patent. (Memo. at 33-35 (citing SMF Nos. 129-142); *accord* Staff Resp. e.g. 53-54; Ex. 9 to the Fletcher Decl.). Mr. Fletcher examined physical samples of each of the Accused Products. (Fletcher Decl. at ¶¶ 188-192 (jolege); ¶¶ 193-197 (Enegitech); ¶¶ 198-202 (Lasica); ¶¶ 203-207 (Biswaye); ¶¶ 208-212 (FUZADEL); ¶¶ 213-217 (Topbatt); ¶¶ 218-222 (SUN POWER); ¶¶ 223-227 (energup); and ¶¶ 228-232 (Powilling). Mr. Fletcher took pictures of each of the Accused Products and compared each of them to the design features shown in the '353 patent using the “ordinary observer” test. (*Id.*; Ex. 9 to Fletcher Decl.). He found that each of the Accused Products infringes the '353 patent. (Fletcher Decl. at ¶¶ 192, 197, 202, 207, 212, 217, 222, 227 and 232.).

Mr. Fletcher opined, that using the “ordinary observer” test, each of the Accused Products practices the primary design features of the '353 patent, i.e. the RYOBI™ Visual Design Language, and the design concepts of either Gestalt or Familiarity. Specifically, Mr. Fletcher found that there is “no discernable difference” between the Accused Products and the '353 patent. Mr. Fletcher also found that despite minor differences in certain secondary designs characteristics of the Accused Products and the '353 patent, which Mr. Fletcher detailed, they are each “substantially similar” to the '353 patent. (Fletcher Decl. at ¶¶ 189-190 (jolege); ¶¶ 194-195 (Enegitech); ¶¶ 199-201 (Lasica); ¶¶ 204-206 (Biswaye); ¶¶ 209-211 (FUZADEL); ¶¶ 214-216 (Topbatt); ¶¶ 219-221 (SUN POWER); ¶¶ 224-226 (energup); and ¶¶ 229-231 (Powilling). (*See also* SMF Nos. 129-132; 134-135; 140, 142.).

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Mr. Fletcher stated that he reviewed the references on the face of the '353 patent. (Fletcher Decl. at ¶ 236.). Mr. Fletcher's testimony is un rebutted that "[W]here the differences between the claimed and accused design are viewed in light of the prior art, the attention of the ordinary observer will be drawn to those aspects of the claimed design that differ from the prior art." (Fletcher Decl. at ¶ 233.). Also, according to Mr. Fletcher, in contrast to "traditional battery packs that were designed to appear smooth, sleek, and minimalist, the "353 battery pack *emphasizes* the primary and secondary design features of the battery pack in order to appear rugged, aggressive, and detailed. This combination of elements creates a unique overall shape, style and appearance for the battery pack." (Fletcher Decl. at ¶ 234 (emphasis in the original).) Finally, Mr. Fletcher offered his opinion that "an ordinary observer who is familiar with the prior art would still find [sic] the Accused Products' overall appearance to be substantially the same as that of the '353 patent." (Fletcher Decl. at ¶ 237; SMF Nos. 134, 135.). Any differences between the Accused Products are not "significant to the ordinary observer." (Fletcher Decl. at ¶ 240; SMF Nos. 141; *id.* Nos. 136, 138.).

Therefore, for the reasons explained, based upon the uncontested testimony provided by Mr. Fletcher, together with other un rebutted evidence and other testimonies upon which he relied, it is a finding of this ID that the Defaulted Respondents' Accused Products each infringe the '353 patent notwithstanding the problems with importation with respect to six (6) Defaulted Respondents.

X. U.S. Patent No. D953,944 ("the '944 Patent")

A. Overview of the '944 Patent

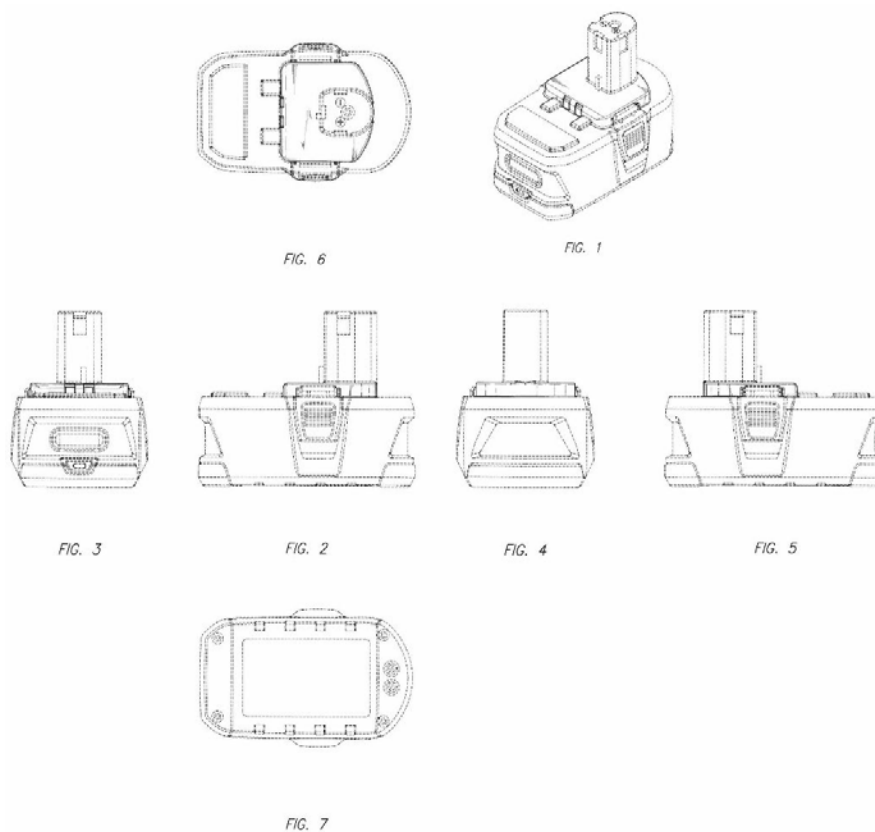
The '944 Patent, entitled "Battery," issued to David M. Smith on June 9, 2009. (Compl. at Ex. 35.). The '944 patent issued from U.S. Design Patent Application Serial No. 29/327,698,

filed on November 11, 2008. (*Id.*). The '944 patent expires on June 9, 2023. (Compl. at ¶ 70.).

The '944 Patent has one (1) claim, which claims “[t]he ornamental design for a battery, as shown and described” in the figures of the patent. (Compl. at Ex. 33; Fletcher Decl. at ¶ 241.).

Depicted below in Figure 12 are the seven (7) Figures of the 944 Patent. (Fletcher Decl. at ¶ 241.).

Figure 12. Figures 1-7 of the '944 Patent



(Fletcher Decl. at ¶ 241, Figures 1-7 of the '944 patent).

Like the '868 and '353 Patents, the figures of the '944 Patent depict a battery pack comprised of three general regions: “(1) a Stem that transfers power from the battery to the tool; (2) a Foot Platform that seats the battery pack to the tool and includes latches to lock the battery pack to the tool; and (3) a Bucket that houses the batteries.” (Compl. at Ex. 35; Fletcher Decl. at

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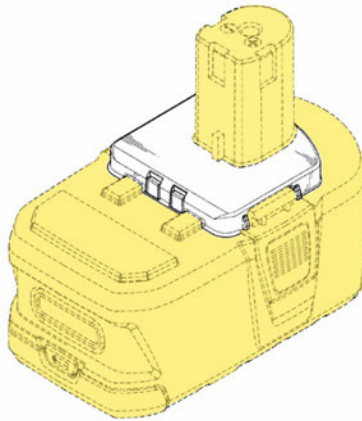
¶¶ 242.). The '944 Patent also states that “[t]he ornamental design which is claimed is shown in solid lines in the drawings,” adding that “[a]ny broken lines in the drawings are for illustrative purposes only and form no part of the claimed design.” (Compl. at Ex. 35.).

As with the '868 and '353 patents, Mr. Fletcher prepared claim charts that compare the design of the '944 patent to the RYOBI DI Battery Packs. (Ex. 7 to Fletcher Decl.).

Additionally, Mr. Fletcher compared the Accused Products to the '944 patent. (Ex. 10 to Fletcher Decl.).

According to Mr. Fletcher’s analysis and the claim and Figures of the '944 patent, “the Stem, two rectangular tabs at the base of the Foot Platform and Bucket are drawn in broken lines, while everything else is drawn in solid lines.” Thus, those areas drawn with broken lines are not claimed by the '944 patent and are for illustrative purposes, while those regions outlined in solid lines are the claimed features of the '944 patent. (Compl. at Ex. 35; SMF No. 50; Fletcher Decl. at ¶ 243; Memo. at 38-39.). Depicted below in Figure 13 are the features of the '353 patent, which include the regions that are claimed as framed by solid lines, that is the white area, and those that are ornamental or visible surface contours that are not part of the claimed design that are colored yellow. As Mr. Fletcher describes, other than “[T]he Stem, two rectangular tabs at the base of the Foot Platform and Bucket which has been highlighted in yellow,” describe the “environmental structures that form no part of the claimed design.” (Fletcher Decl. at ¶ 243.). They would be “excluded from the ordinary observer’s impression of the '944 Design.” (*Id.*).

Figure 13. Depiction of the Claimed and Unclaimed Regions of the Battery of the '944 Patent

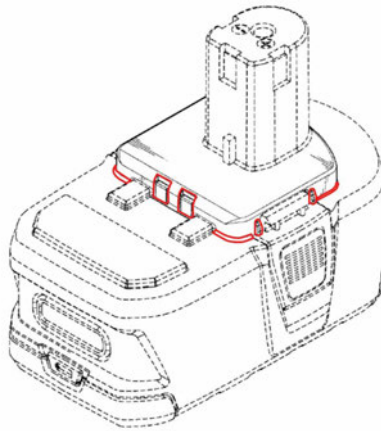


(See Fletcher Decl. at ¶ 243.).

As Mr. Fletcher describes, although the '944 patent has both primary and secondary design elements, it is his opinion that overall Gestalt of the design is primarily of the top surface of the Foot Platform, “which is a rectangle with one end rounded completely extruded to the Bucket is the primary design element as they break up the extruded surface.” (*Id.* at ¶ 245; *see also* SMF Nos. 151-156). The white region, which Mr. Fletcher describes and which is depicted in Figure 13, i.e. the “edge that defines the overall shape and separates the figure from the ground for the viewer—draws the ordinary consumer’s eyes to the contrast between the Foot Platform’s profile and the ground is the primary design elements as they break up the extended surface.” (*Id.*; *see also* Fletcher Decl. at ¶¶ 244, 246-248; *see also* Jerabek Decl. at ¶12.).

Depicted below in Figure 14, are the secondary design elements of the '944 patent which include: “(a) two rectangular insets at the front of the Foot Platform, (b) radius formed between the Foot Platform and Bucket, and (c) the two tabs located on each side of the Latch, shown below in red.” (Fletcher Decl. at ¶ 247.).

Figure 14. Depiction of the Secondary Elements of the '944 Patent



(Fletcher Decl. at ¶ 247.).

Mr. Fletcher’s unrebutted opinion is that applying the Gestalt and Familiarity principles, the ’944 patent “conveys the RYOBI Design Language.” (*Id.* at ¶ 252.). Moreover, it is also Mr. Fletcher’s opinion, applying the same principles, that the ordinary observer who knows the RYOBI™ battery pack, would “quickly process the familiar primary design element of the top surface of the Foot Platform...” while after “successive reads,” the ordinary observer’s attention [would] quickly process the secondary elements...” (Fletcher Decl. at ¶ 251.). However, the additional “reads” of the secondary elements by the ordinary observer would be required because the design elements are obstructed from view at the point of sale and during normal use or would be subtle. (*Id.* at ¶ 249.). Nonetheless, Mr. Fletcher has offered his uncontested opinion that the secondary features of the ’944 patent (as with the ’868 and ’353 patents) are consistent with the overall Gestalt of the design. (*Id.*).

B. The RYOBI™ DI Products Practice the ’944 Patent

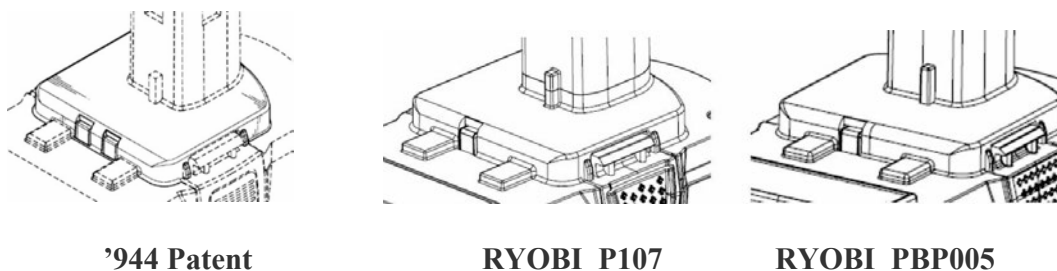
It is undisputed, and it is a finding of this ID, that the primary and secondary design features of the ’944 patent are also practiced by the RYOBI™ ONE+ SYSTEM and the RYOBI™ 18V One + battery pack DI Products. (Memo. at 44; *accord* Staff Resp. at 77, : Fletcher Decl. at ¶¶ 255-258.). Mr. Fletcher examined the RYOBI battery packs by product

number, and either reviewed physical samples, RYOBI supplied CAD (computer aided design) drawings, or photos from the RYOBI website. (Fletcher Decl. at ¶ 253.).

Exhibit 7 to Mr. Fletcher's Declaration, claim charts, compare each design element of the '944 patent with the RYOBI™ 18V One + battery pack DI Products, i.e. the P102, P105, P107, P108, P189, P190, P191, P192, P193, P194, P195, P197, PBP002, PBP003, PBP004, PBP005 models. (Fletcher Decl. at ¶¶ 253-258.). In Mr. Fletcher's un rebutted opinion, each of the identified RYOBI models practices the '944 patent, while each of the design elements of the identified RYOBI models visually conveys the RYOBI Design Language. (*Id.* at ¶¶ 258, 257 respectively.).

Mr. Fletcher has provided additional comparisons between the '944 patent design features and all RYOBI™ DI Models in more than 30 pages of drawings that show different top down, side and bottom views of the RYOBI™ battery packs. (Ex. 7 to Fletcher Decl.). By way of example, Mr. Fletcher provided comparison pictures between the '944 patent and exemplary RYOBI battery packs. (Fletcher Decl. at ¶ 254.). One set of Mr. Fletcher's comparisons is provided below in Figure 15. (*Id.*). Clearly, not all of the RYOBI battery packs, i.e. the DI Products are shown below.

Figure 15. Comparison of '944 Patent and Exemplary RYOBI Battery Packs



(Fletcher Decl. at ¶ 255.)

C. The Accused Products Practice the '944 Patent

There is no dispute of material fact that each of the Accused Products incorporates design features of the '944 patent. (Memo. at 42 (citing SMF No. 157); *accord* Staff Resp. at 66; Ex. 10 to Fletcher Decl.). Mr. Fletcher examined physical samples of each of the Accused Products. (Fletcher Decl. at ¶¶ 259-261 (jolege); ¶¶ 262-264 (Enegitech); ¶¶ 265-267 (Lasica); ¶¶ 268-270 (Biswaye); ¶¶ 271-273 (FUZADEL); ¶¶ 274-276 (Topbatt); ¶¶ 277-279 (SUN POWER); ¶¶ 280-282 (energup); and ¶¶ 283-285 (Powilling). Mr. Fletcher took pictures of each of the Accused Products and compared each of them to the design features of the '944 patent using the “ordinary observer” test. (*Id.*; Ex. 10 to Fletcher Decl.). He offered the opinion that each of the Accused Products, in the order described above and respectively, infringes the '944 patent. (Fletcher Decl. at ¶¶ 261, 264, 267, 270, 273, 276, 279, 282 and 285; *see also* SMF Nos. 157-163.).

Mr. Fletcher testified, that in using the “ordinary observer” test and by applying the Gestalt and Familiarity design principles, he concluded that each of the Accused Products practices the primary design features of the '944 patent, i.e. the RYOBI™ Visual Design Language. Specifically, Mr. Fletcher found that there is “no discernable difference” between the Accused Products and the '944 patent. Mr. Fletcher also found that despite minor differences in certain secondary designs characteristics of the Accused Products and the '944 patent, which Mr. Fletcher detailed, they are each “substantially similar” to the '944 patent. (Fletcher Decl. at ¶¶ 260-261 (jolege); ¶¶ 263-264 (Enegitech); ¶¶ 266-267 (Lasica); ¶¶ 269-270 (Biswaye); ¶¶ 272-273 (FUZADEL); ¶¶ 275-276 (Topbatt); ¶¶ 278-279 (SUN POWER); ¶¶ 281-282 (energup); and ¶¶ 284-285 (Powilling). (*See also* SMF Nos. 150-170.).

Mr. Fletcher noted that he reviewed prior battery pack art and the prior art identified on the face of the '944 patent. (Fletcher Decl. at ¶ 289; *see generally* ¶¶ 286-293.). Mr. Fletcher

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observed and offered his opinion that from looking at traditional battery pack designs, “it is clear that One World reinvented the battery pack design.” (*Id.* at ¶ 287.). Continuing in that vein, Mr. Fletcher testified that the ’944 patent is “esthetically distinct from the battery pack designs that preceded it.” (Fletcher Decl. at ¶ 288.). Mr. Fletcher added that “[O]n visual inspection, it is apparent that the primary and secondary design characteristics of the ’944 Patent and the Accused Products are not found in the cited prior art references.” (Fletcher Decl. at ¶ 291.).

Additionally, Mr. Fletcher distinguished the ’944 patent battery pack from previous designs: “[F]or example, unlike the ’944 patent, the traditional battery pack designs did not have a Foot Platform (see ’264 Design below) and those that did (‘012 Design below), the Foot Platform was not separate from the Bucket, but rather an extension of the Bucket to make the battery pack appear smooth, sleek and minimalist.” (*Id.* at ¶ 288 (pictures omitted.)).

Mr. Fletcher’s testimony, his analyses and his opinions with respect to the ’944 patent , as with the ’868 and ’353 patents, is uncontested and clear. With respect to the ’944 patent, he concluded that “[T]he design of the Accused Products is also much closer to that of the ’944 Patent than any of the cited prior art references.” (Fletcher Decl. at ¶ 291; *see also* SMF Nos. 165-170.).

Therefore, for the reasons explained, based upon the uncontested testimony that Mr. Fletcher provided, together with other unrebutted evidence and other testimonies upon which he relied, it is a finding of this ID that the Defaulted Respondents’ Accused Products each infringe the ’944 patent.

XI. VALIDITY

It is a finding of this ID that the Asserted Patents are valid and enforceable. “A patent shall be presumed valid.” 35 U.S.C. § 282. Patents can only be proven invalid by clear and

convincing evidence. (*See Microsoft Corp.. v. i4i Ltd. Partnership*, 564 U.S. 91 (2011)).

Without more, the Defaulted Respondents have waived their right to contest validity. 19 C.F.R.

¶¶ 210.16(b)(4), 210.17.). There is no challenge, including by Staff, to the validity of the

Asserted Patents, and therefore, the issue not even be reached or affirmatively decided. *Certain*

Devices for Connecting Computers Via Telephone Lines, Inv. No. 337-TA-360, Initial

Determination at 2 (May 24, 1994); *see also* Staff Resp. at 35.). Moreover, Mr. Fletcher

described his analysis of prior art on the face of each of the Asserted Patents. Mr. Fletcher's

unequivocal conclusion is that each of the Asserted Design Patents has characteristics that

clearly distinguish them from previous batteries described in prior art. (Fletcher Decl. at ¶¶ 105-

114 ('868 patent); ¶¶ 133-142 ('353 patent); ¶¶ 161-170).).

XII. ECONOMIC PRONG OF THE DOMESTIC INDUSTRY REQUIREMENTS

A. Overview Of Complainants' Investments In The United States and Legal Precedent

Complainants and Staff agree that Complainants have proven by a preponderance of evidence that is uncontested that each of the RYOBI™ 18V ONE+ System and RYOBI™ 18V ONE + battery platform ("DI Products") practice each of the three (3) design Asserted Patents thereby meeting the technical prong of the domestic industry requirement.

Complainants and Staff also agree that there is no dispute of material fact that Complainants have satisfied the requirements of Section 337(a)(3)(A) and (a)(3)(B). (Memo. at 45; Staff Resp. at 81.).

As a starting point, notwithstanding that Complainants did not: (1) discuss Complainants' investments in the United States in comparison with their foreign investments; or (2) provide a percentage "value added" analysis that would be applicable to the RYOBI™ brand products that are largely manufactured abroad, but designed and engineered largely in the United States,

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nonetheless, Ms. Campbell offered her opinion that Complainants' investments in the United States, and primarily in Anderson South Carolina, are quantitatively significant under *Lelo*, 786 F.3d at 883-84 and even qualitatively significant. (*Accord*, Staff Resp. at 84.).

Ms. Campbell offered her opinion that Complainants' investments in their U.S. domestic industry are also qualitatively significant because they contribute to the overall design and support of the world-renowned RYOBI™ brand products, even though “significant investments made by very large entities may appear relatively small.” (Campbell Decl. at ¶ 32, quoting *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. at 26 (May 16, 2008)). Moreover, the Complainants have described at some length the renown of the RYOBI™ brand and the importance of the work that goes on in the TTI Campus in South Carolina in support of RYOBI™ products sold world-wide. (Memo. at 72-73.). The Commission has found that a domestic industry exists where the complainants' investments in plant and equipment and the employment of labor and capital was used for research, development costs and engineering related to the domestic industry as is the case here. *See Certain Marine Sonar Imaging Devices, Including Downstream and Sidescan Devices, Products Containing the Same, and Components Thereof*, Inv. No. 337-TA-921, Comm’n Op. at 58-59, 64 (Jan. 6, 2016)(“*Marine Sonar Imaging*”); *see also Certain Ground Fault Circuit Interrupters*, Inv. No. 337-TA-739, Comm’n Op. at 80-81 (June 8, 2012).

In that same vein, the Commission has held “While there is no bright-line rule to determine whether a complainant’s domestic activities are distinguishable from those of a mere importer the Commission has often considered some types of activities, such as administrative overhead, inspections, and warehousing costs associated with importation of the domestic industry products as well as sales and marketing of the product, to be indistinguishable from

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those of a mere importer and has not typically credited them when determining whether a domestic industry exists.” *See Certain Bone Cements, Components Thereof & Prods. Containing the Same*, Inv. No. 337-TA-1153, Comm’n Op. at 22 (Jan. 12, 2021) (internal citations omitted) (“*Bone Cements*”); *see also Certain Carburetors and Products Containing Such Carburetors*, Inv. No. 337-TA-1123, Comm’n Op. at 26, 27 (Oct. 28, 2019)(declining to adopt statements in an ID suggesting that a “significant” or “substantial” domestic industry investment must amount to at least 5% of a domestic industry product’s sales or to adopt a minimum threshold.).

Here, Complainants, i.e. One World, is not a “mere importer.” As discussed below, virtually all of One World’s RYBOI™ brand-related engineering in the United States as does its customer support for all RYBOI™ brand-related products that are sold in the United States.

Although Ryobi™ battery packs are manufactured outside the United States, the Commission held in *Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Comm’n Op., 2011 WL 1303160, 1303161 (Feb. 17, 2011) (“*Printing Devices*”), that an economic prong analysis “does not mandate consideration of foreign manufacturing expenditures, even when the domestic industry products are manufactured abroad, as they are here.” *See also Certain Video Displays, Components Thereof, and Prods. Containing the Same*, Inv. No. 337-TA-687, Order No. 20 (ID), 2010 WL 2306671, at *5 (May 20, 2010) (noting that the analysis under 19 U.S.C. § 1337(a)(3)(B) need not be “strictly tied to monetary expenditures,” as “[d]omestic activities relating to customer support, quality control, and repairs for similar products/industries have supported a finding of economic domestic industry under . . . section (B)”); *see also Certain Movable Barrier Operator Systems and Components Thereof*,

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Inv. No. 337-TA-1118, Comm’n Op. at 24-25 (Dec. 3, 2020)(“*Certain Movable Barriers*”);¹¹ *see also Certain Solid State Storage Drives, Stacked Electronics Components, and Products Containing Same*, Inv. No. 337-TA-1097, Comm’n Op. at 21, 2018 WL 4300500 at *13 (June 29, 2018)(“*Certain Solid State Storage Drives*”) (“all that is required is the use of reasonable allocations for the purposes of establishing the economic prong of the domestic industry requirement.”).

In this case, the allocation method Ms. Campbell used was a square footage allocation based upon the per square foot cost of construction of the space in the Innovation Center (which was new and for which construction costs were available) which was multiplied by the percentage of square footage that was attributable in 2019 and 2020 to the activities that support the DI Products, as is explained in more detail below. The Commission has accepted such an allocation method. *See Certain Solid State Storage Drives* at 15, 16.

Here, the weight of the evidence, as supported by the Declaration of Complainants’ expert, Ms. Kelly Campbell, together with information provided from knowledgeable One World or TTI employees upon whom she relied and who included: Mr. Tennant, Mr. Robert Patrick,

¹¹ Complainants did not provide a “sales-based allocation” based upon world-wide sales, which is only one of the allocation methods the Commission has approved. *See Certain Movable Barriers*, Comm’n Op. at 26, n.11 (other citations omitted). The only information on sales is contained in Ex. 4 to the Davis Decl. According to that Exhibit, RYOBI™ has some \$2.3 billion dollars in what appears to be world-wide sales.

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Mr. Eric Frazier,¹² Mr. Wade Franks,¹³ Mr. Corey Little,¹⁴ Mr. Jhan Nixon,¹⁵ and Mr. Randy

¹² Mr. Eric Frazier's Declaration ("Frazier Decl.") and the exhibits to which he testified can be found at Doc. ID No. 1644760 through Doc. ID No. 1644786 (Exs. 1-5) as part of Doc. ID No. 745172 (June 21, 2021.). When he provided his Declaration, Mr. Davis was President of Sales of One World. (Frazier Decl. at ¶ 1.). In that role, he oversees the sales of the RYOBI-branded products. (*Id.* at ¶ 2.). He states that "[O]perating under the RYOBI brand, One World is one of the world's largest and most innovative manufacturers of indoor and outdoor power tools...." (*Id.* at ¶.). He provided in Exhibit 4 RYOBI's actual and projected sales from 2017 through 2024. Unfortunately, they are not disaggregated so as to isolate sales in the United States and the rest of the world. Exhibits shown as in "Native Format" were not provided (Exs. 2, 5.).

¹³ Mr. Wade Franks' Declaration ("Franks Decl.") and the exhibits to which he testified can be found starting at Doc. ID No. 1644365 through Doc. ID No. 1644669 (Exs. 1-34), as part of ID No. 745160 (June 21, 2021). When he provided his Declaration, Mr. Franks was One World's Senior VP Creative Services. (Franks Decl. at ¶ 1.). Mr. Franks testified about the investments One World has made in its "Technical Publications and the Print Group" that appears to include a number of areas from packaging, manuals, technical publication production, merchandising, video, web and social media. (*Id.* at ¶ 2.). These appear to include such specific items as Technical Data Sheets and Safety Sheets for all RYOBI-branded batteries that are shipped with the RRYOBI ONE+SYSTEM battery packs including battery chargers and the tools that work with the RYOBI ONE+SYSTEM, while Exhibits 1-26 are examples of the technical materials that ship with RYOBI products. (*Id.* at ¶¶ 6-7.). Mr. Franks' Declaration includes information on the dollar investments under Section 337(a)(3)(A) and (a)(3)(B) that One World spent in 2019 on facilities square footage and allocated costs for the Technical Publications and Print Group in the Innovation Center (Franks Decl. at ¶¶ 9-10, 16-17), together with labor costs associated with that same group (Franks Decl. at ¶¶ 11-13, 18.).

¹⁴ Mr. Corey Little's Declaration ("Little Decl.") and the exhibits to which he testified can be found at Doc. ID Nos. 1644531-164461 (Exs. 1-30), as part of Doc. ID No. 745144 (June 21, 2021). When he provided his Declaration, Mr. Little was the Senior Director of Customer Support for One World. (Little Decl. at ¶ 1.). Mr. Little testified about customer support, including after-sales service for the RYOBI-branded products which is provided from space located in the Innovation Center. (Little Decl. at ¶¶ 2-8.). Mr. little testified about the cost allocated space in the Innovation Center for Customer Support (Little Decl. at ¶¶ 9-14) together with allocated labor costs (¶¶ 15-16.).

¹⁵ Mr. Jhan Nixon's Declaration ("Nixon Decl.") and the exhibits to which he testified can be found starting at Doc. ID No. 1644725 through 1644746, as part of Doc. ID No. 745166 (June 21, 2021.). When he provided his Declaration, Mr. Nixon was employed by One World as Vice President of Facilities. (Nixon Decl. at ¶ 1.). Mr. Nixon's Declaration and the exhibits attached thereto contain information on the construction, per square footage allocation costs of the construction of the Innovation Center, the Product Compliance Test Center, the UL Lab, the Outdoor Products Test Lab, and Direct Tools Factory Outlet and of other various buildings and laboratories that comprise the "TTI Campus" in Anderson South Carolina. (Nixon Decl., e.g. at ¶¶ 5-9, 19-21.). Mr. Nixon also provides information on operating costs with respect to the pertinent "TTI Campus" buildings that Complainants' claim as part of the investments under Section 337(a)(3)(A). (Nixon Decl. e.g. at 14-18, 22-24.).

Davis,¹⁶ establish, that Complainants' investments in the United States are qualitatively and quantitatively substantial or significant and satisfy the economic prong of the domestic industry requirement. (Memo. at 46, 73; *accord* Staff Resp. at 80; Campbell Decl. at ¶¶ 14, 15, 34.).¹⁷

Staff has only disputed whether the Complainants' investments in technical publications and packaging group are qualifying domestic investments under Commission precedent. (Staff Resp. at 82.). That is accepted and a finding of this ID. Nonetheless, even with the subtraction of those investments, the conclusion that Complainants satisfy the economic prong of the domestic industry requirement is supported and are qualitatively and quantitatively significant.

B. The DI Product-Related Activities in South Carolina

Complainants have made significant investments in the United States related to articles protected by the three (3) design Asserted Patents, and on the following RYOBI™ ONE+

¹⁶ Mr. Randy Davis' Declaration ("Davis Decl.") and exhibits to which he testified can be found starting at Doc. ID No. 1644726 and as part of Doc. ID No. 745172 (June 21, 2021). According to his Declaration, Mr. Davis is the President of Sales of One World, and has been employed by One World or its predecessors since 2004. (Davis Decl. at ¶ 1.). Mr. Davis provides information on the scope of the more than 200 tools and outdoor products that are considered to be part of the RYOBI™ ONE+SYSTEM, "going back more than 20 years," with the RYOBI™ 18V ONE+ battery pack at the heart of that ONE+ SYSTEM. (*Id.* at ¶ 8.). Mr. Davis' Declaration confirms that the RYOBI™ brand and tools are sold through Home Depot, One World's Factory Outlet Store, Direct Tools Factory Outlet and through third party Gardner, Inc. and its authorized dealers. (*Id.* at 3.). Ex. 4 to Mr. Davis' Declaration is a comparison of actual sales to projected sales of the RYOBI™ ONE+SYSTEM Battery Packs from 2017 to 2024.

¹⁷ Complainants and Ms. Campbell state that Complainants' investments in the United States "are clearly significant, and are reflective of the high-value add and fundamental effort associated with the design, development, engineering, testing, customer service and support, technical publications, and packaging of the DI Battery Packs, that takes place in the United State." (Memo. at 69.). While giving a brief "nod" to One World's foreign investments and the fact that the RYOBI™ products are all manufactured abroad, Complainants provided an extensive analysis of the contributions that Complainants' activities in South Carolina contribute to the RYOBI™ brand of products. Given the widespread uses of RYOBI™ products, and its dominance in the world-wide tool market, it would be difficult to conclude that Complainants do not have a domestic industry. (*See* Memo. at 72-73.).

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SYSTEM, including the 18V battery packs that are exemplified by Models P102, P105, P107, P108, P189, P190, P191, P192, P193, P194, P195, P197, PBP002, PBP003, PBP004, PBP005, and PBP006.¹⁸ (Compl. at p. 35; Campbell Decl. at ¶ 21; *see also infra.*).

Complainants' activities in the United States related to the DI Products RYOBI™ DI Products' battery packs relate to the design, development, engineering,¹⁹ testing, after-market customer service and support, technical publications, and packaging. (Memo at 46; SMF No. 177; Campbell Decl., e.g. ¶¶ 35-41 (overview)).

As reported by Complainants' and supported by Ms. Campbell, One World's activities, which operate under the RYOBI™ brand are reportable for financial purposes under a specific segment of business, i.e. TTI's Power Equipment business segment. (Campbell. Decl. at ¶ 17.).

As Complainants explain, with the exception of the mass production, distribution, and warehousing, substantially all of One World's activities with respect to its DI Battery Packs, i.e. engineering, customer support, occur at One World's corporate headquarters, which is located at 100 Innovation Way, Anderson, South Carolina, known as the "Innovation Center." (Memo. at 46; SMF Nos. 179, 183-186; Campbell Decl. at ¶¶ 16, 34-37.).

¹⁸ Although the Model Nos. P100, P103 and PBP007 of the RYOBI™ ONE+ System battery packs were disclosed in Complaints' Disclosure of Domestic Industry Products (Doc. ID No. 737751 (March 23, 2021), and although they are included among the RYOBI™ brand DI Products that practice the Asserted Patents, their contribution to sales are largely negligible according to Ms. Campbell. (Campbell Decl. at ¶ 21 n.36.).

¹⁹ Complainants' "Battery Design Group" which is involved in engineering the RYOBI™ brand of tools is "supported" by engineers in Hong Kong and China. Their "primary focus is on execution and mass production, such as working with One World's manufacturing partners in Asia and identifying engineering issues that are revealed during mass production of the Domestic Industry Batteries." (Campbell Decl. at ¶ 41.). The money spends on engineers based in Hong Kong and the PRC do not appear to have been included in the U.S. labor costs.

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According to Complainants and their supported SMFs, the Innovation Center was completed in 2019 (at a cost of some [REDACTED]) and is comprised of more than [REDACTED] square feet of laboratory and office space. The Innovation Center is the “home” of the RYOBI™ brand and the focus of One World’s domestic activities and investments in its DI Battery Packs. (Memo. at 46-47; SMF No. 179; Campbell Decl. at ¶ 16.). Located near the Innovation Center is One World’s Product Compliance Test Center (the “UL Lab”), which according to One World was completed in 2020 (at a cost of [REDACTED]). The UL Lab provides some [REDACTED] square feet of space where One World conducts performance and safety tests for its power tools and battery packs. (Memo. at 47; SMF Nos. 181-184; *see generally*, Campbell Decl. at 35-37.). As noted in this ID at n.13, there are other domestic industry related laboratories that occupy space within the Innovation Center and some of the other buildings on the TTI Campus in South Carolina.

According to Complainants descriptions and undisputed evidence, all of the activities that relate to the domestic development of Complainants’ DI Battery Packs primarily occur in three (3) laboratories: the Power Tool Electrical Engineering Test Lab (“PT Battery Lab”) and the Battery QC Laboratory (“QC Lab”) and the testing laboratory, or the UL Laboratory (“UL Lab”). (Memo. at 49-50; SMF at 189-192.). The first two (2) laboratories are located in the Innovation Center (with other operations), while the UL Lab is in its own building near the Innovation Center. (*Id.*; SMF No. 192.). All three (3) laboratories are used to develop battery packs which are sold under several brand names, including the RYOBI™ brand, and include the DI Products. (Memo. at 49; SMF No. 193.). Complainants explain, as supported by Ms. Campbell’s testimony, that both the PT Battery Lab and the Battery QC Lab are “100% dedicated to the

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testing of battery packs, including the DI Battery Packs, while the UL Lab tests battery packs alongside other power tool equipment.” (Memo. at 49-52; SMF Nos. 191-197.).

Complainants report that their allocated investments in the United States in their DI Products related to the Asserted Patents total [REDACTED] in plant and equipment in 2019 and 2020, and some [REDACTED] in the employment of labor and capital, for a total during the two years of some [REDACTED] invested in qualifying domestic activities related to the DI RYOBI™ battery packs. (Memo. at 46-47; SMF No. 178; Campbell Decl. at ¶¶ 157, 159.). These figures are an aggregation of Complainants’ DI investments after appropriate allocations have been calculated. In their Memorandum, Complainants divided their investments into four (4) categories: (1) design, development, engineering, and testing; (2) customer service and support; (3) technical publication activities; and (4) packaging. (Memo. at 49, 57, 62, 65; SMF Nos. 179-188.).

Even if the latter two categories of Complainants’ expenditures in 2019 and 2020 are not included in the total given Staff’s dispute about the latter two (2) categories, Complainants’ total investments in the two (2) years of 2019 and 2020 would be reduced by [REDACTED], for total qualifying investments in 2019 and 2020 of [REDACTED].²⁰ The qualifying investments

²⁰ The Complainants’ expert, Ms. Campbell, used the same allocation method for the analyses of Complainants’ publications and packaging costs as she did for the qualifying investments related to engineering, development, and testing of the RYOBI™ brand DI Products. Ms. Campbell took the square footage of space allocated to the two activities, calculated the number of FTE employees and the percentage of their time devoted to those activities, or the percentage of construction costs that relate to overhead. For investments in plant and equipment, the allocated total for both activities was [REDACTED]. For investments in labor and capital, the allocated total was [REDACTED]. (See Memo. at 60-69 (citations omitted). The Complainants adopted her figures and included them in their total qualifying investments. (*Id.*).

described below are allocated to either plant and equipment, or to labor related costs for design, engineering, development and testing.

C. Complainants Have Satisfied the Economic Prong of the Domestic Industry Requirement Under Section 337(a)(3)(A) and 337 (a)(3)(B) For Investments Related to Design/Engineering, Development and Testing

1. Plant and Equipment

Complainants include in their investments in plant and equipment certain allocated construction costs for the construction of the Innovation Center, allocated operating costs related to the overhead, maintenance and utilities (“OHMU”) of the Innovation Center as of April 19, 2019 (its opening), allocated operating costs related to UL Lab and other battery related testing or engineering-related laboratories that occupy space in the Innovation Center, and equipment that has been purchased for the PT Battery Lab, the Battery Quality Control (“QC”) Lab, and the UL Lab during 2019 and 2020. (Memo. at 51-55; SMF Nos. 199-230). Complainants explain that One World does not allocate OHMU to specific spaces within the Innovation Center as a standard business practice. (Memo. at 54; SMF No. 227.). In order to arrive at properly attributed investments, Ms. Campbell performed a square footage-based allocation. According to Complainants, One World spent approximately [REDACTED] in 2019 and approximately [REDACTED] in 2020 on OHMU for their buildings on the TTI Campus. (Memo. at 54; SMF No. 228.).

Additionally, One World spent some [REDACTED] in equipment in the PT Battery Lab, some [REDACTED] on equipment in the Battery QC Lab, and some [REDACTED] on equipment for the UL Lab. (Memo. at 54-55; SMF Nos. 209-212.). Using the combined square footage of the Innovation Center, the UL Lab, Outdoor Products Test Lab, and Direct Tools Factory Outlet (SMF Nos. 200-234) Ms. Campbell calculated a [REDACTED] approximation of the percentage of

engineer time that is spent on DI Products, and then used that to arrive at a per square foot of usage for DI Products that could be allocated to DI investments related to plant and equipment. In addition, Ms. Campbell took the overall construction costs of the Innovation Center (which opened in 2019), and then allocated its overall square footage () to each of the laboratories or spaces, described above, that could be attributed to investments in the DI Products.

In order to calculate the dollar investments, Ms. Campbell derived a construction cost of to build the Innovation Center, and then used that cost based method to arrive at the actual amounts, using an overall approximate allocation to arrive at the investments made in each of the DI Product-related spaces. (Memo at 52-54; SMF Nos. 200-234.).

2. Employment of Labor or Capital

During 2019, One World employed engineers in the United States who were engaged in activities related solely to the DI Products at a cost of . (Memo. at 56; SMF No. 236.). In 2020, the number of engineers employed in the United States rose to at a cost of . (Memo. at 56; SMF No. 237.). Ms. Campbell then used as an allocation method the percentage of each engineer's time attributable solely to the design, engineering, development and testing of the DI Products. (Memo. at 56; SMF No. 238.). Approximately of the engineers' time in 2019 was attributable to work on the DI Products. (SMF No. 239.). Approximately, of the engineers' time in 2020 was attributable to qualifying work on the DI Products. (Memo. at 57; SMF No. 240.). Using those percentages, the costs of engineering time attributable to the various qualifying activities pertaining to the DI Products was in 2019 (Memo. at 57; SMF No. 241), and in 2020. (Memo. at 57; SMF No. 242.).

3. Summary: Design, Development, Engineering and Testing

Complainants provided a summary table of the qualifying investments in the design, development, engineering and testing of the DI Products in 2019 and 2020. As reflected below in Table 2. Complainants' investments in the design, development, engineering and testing of DI Products for plant and equipment was [REDACTED] and for employment of labor, [REDACTED].

Table 2. Summary of DI Investments 2019-2020

Type of DI Investment	Dollar Total
Construction	[REDACTED]
Maintenance, Overhead and Utilities	[REDACTED]
Equipment	[REDACTED]
Total Section 337 (a)(3)(A) Investment	[REDACTED]
Labor	[REDACTED]
Total Section 337 (a)(3)(B) Investment	[REDACTED]

(See Memo. at 57; SMF No. 243.).

D. Complainants Have Satisfied the Economic Prong of the Domestic Industry Requirement Under Section 337(a)(3)(A) and 337 (a)(3)(B) For Investments Related to Customer Support

1. Plant and Equipment

As Complainants describe, One World through its Support Group provides after-market customer service and support for all RYOBI™ brand products including the RYOBI ONE+ SYSTEM and 18V+One Battery Packs that are included in the DI Products in this investigation. (Memo. at 57; SMF No. 244.). Customer Support, in turn is divided into three (3) sub-groups: Customer Support, Field Service and Repair, and Warranty Administration whose activities

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include an in-house call center and a digital center. (Memo. at 57-58; SMF Nos. 245-247.). As Complainants describe and Ms. Campbell confirms, all customer support concerning the RYOBI™ brand products that are sold in the United States “are routed to and handled by, One World associates working in the Customer engagement Center located in the Innovation Center. (Memo. at 58; SMF No. 248.).

To calculate attributable DI investments to the Support Group, Ms. Campbell used a similar square footage-based allocation percentage and a cost-based allocation methodology as she did for design, engineering, testing and development investments. Because the Support Group is located in the Innovation Center, Ms. Campbell applied the [REDACTED] per square foot construction cost of the Innovation Center to the [REDACTED] square feet of the Innovation Center that the Support Group occupies and arrived at a figure of allocable costs to the Support Group activities related to the DI Products of [REDACTED]. (Memo. at 59; SMF No. 256).

For OHMU costs attributable to the Support Group’s DI Product related activities, the per square footage cost of overall OHMU costs was applied to the [REDACTED] square feet of the Innovation Center that the Support Group occupies to arrive at OHMU costs of [REDACTED] in 2019 and [REDACTED] in 2020 that were allocated to the Support Group. (Memo. at 59; SMF No. 257.).

Additionally, Complainants’ expert allocated hardware and software equipment costs using the percentage of the customer interactions for only the DI Products that the Support Group tracks. Ms. Campbell arrived at an [REDACTED] allocation figure which she applied to the Support Groups total hardware and software expenditures form 2019 and 2020. After deduction some [REDACTED] of such hardware and software expenditures that were unrelated to the Support Group, Complainants’ expert derived figures of [REDACTED] in 2019 and [REDACTED] in 2020 that were attributable to the Support Group’s customer service and related activities related to the DI

Products. (Memo. at 60; SMF 258.).

2. Employment of Labor or Capital

One World's expenditures on labor-related investments in the Support Group at the Innovation Center related to RYOBI™ branded product activities for [REDACTED] employees was [REDACTED] in 2019 (SMF No. 259) and some [REDACTED] for [REDACTED] employees in 2020 (SMF No. 260). (Memo. at 60.). To calculate those expenditures, Mr. Little estimated the approximate percentage of each Support Group employee's activities related solely to customer interactions related to the DI batteries. (Memo. at 60; SMF No. 261.). According to his calculations, Support Group employees variously spent between [REDACTED] of their time on customer service and support activities related to the DI Products in 2019 and 2020. (*Id* at 61; SMF at 262.). For 2019, the percentage he calculated was [REDACTED] of employee time (SMF No. 263) or an equivalence of [REDACTED] FTEs, and for 2020, the same [REDACTED] percent for an equivalence of [REDACTED] FTEs (SMF No. 264.). Using those allocations, Ms. Campbell calculated that labor costs for customer services related to the DI Products in 2019 was [REDACTED] and in 2020 was [REDACTED]. (Memo. at 61; SMF Nos. 265-266.). The total investments in labor or capital for the years 2019 and 2020 was [REDACTED] (Memo. at 61-62.).

3. Summary: Support Group Investments

Complainants provided a summary table of the One World qualifying investments in the Support Group's activities related to the DI Products. As reflected below in Table _____, Complainants' investments in the Support Group's activities related to the DI Products for plant and equipment in 2019 and 2020 was [REDACTED] and for employment of labor, [REDACTED].

Table 3. Summary of Support Group DI Investments 2019-2020

Type of DI Investment	Dollar Total
Construction	
Maintenance, Overhead and Utilities	
Equipment	
Total Section 337 (a)(3)(A) Investment	
Labor	
Total Section 337 (a)(3)(B) Investment	

(See Memo. at 62; SMF No. 267.).

XIII. REMEDY AND BOND

A. Overview

Pursuant to Commission Rule 210.42, an administrative law judge must issue a recommended determination on: (1) an appropriate remedy if the Commission finds a violation of Section 337; and (2) an amount, if any, of the bond to be posted. 19 C.F.R. § 210.42(a)(1)(ii).

When a Section 337 violation has been found, as here, “the Commission has the authority to enter an exclusion order, a cease-and-desist order, or both.” *Certain Flash Memory Circuits and Prods. Containing the Same*, Inv. No. 337-TA-382, Comm’n Opinion on the Issues under Review and on Remedy, the Public Interest and Bonding, at 26 (June 9, 1997). The Commission has broad discretion in selecting the form, scope, and extent of the remedy in a section 337 proceeding. *Viscofan, S.A. v. U.S. Int ’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

In this case, Complainants have sought a General Exclusion Order (“GEO”) pursuant to § 1337(g)(2), 19 U.S.C. § 1337(g)(2) and pursuant to § 1337(d)(2), 19 U.S.C. § 1337(d)(2), or in

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the alternative, a Limited Exclusion Order (“LEO”). (Memo. at 84-85.).

Complainants have not requested cease-and-desist orders (“CDO”) pursuant to 19 U.S.C. § 1337(f). (Motion at 1-2; Memo. at 74-85.). *See, e.g., Certain Table Saws Incorporating Active Injury Mitigation Technology & Components Thereof* (“Table Saws”), Inv. No. 337-TA-965, Comm’n Op. at 4-6 (Feb. 1, 2017); *Certain Protective Cases & Components Thereof*, Inv. No. 337-TA-780, USITC Pub. No. 4405, Comm’n Op. at 28 (Nov. 19, 2012) (citing *Certain Laser Bar Code Scanners & Scan Engines, Components Thereof & Prods. Containing Same*, Inv. No. 337-TA-551, Comm’n Op. at 22 (June 24, 2007)). There is no evidence that any of the Defaulted Respondents have inventory in the United States. (Memo. at 74-85.). Additionally, there is no evidence that any of the Defaulted Respondents have “operations” in the United States, even though certain of the Defaulted Respondents seemingly have used the U.S. Patent and Trademark Office to establish their marks. (*See infra.*).²¹ Therefore, CDOs are not warranted. (*Accord*, Staff. Resp. at 98.).

Complainants request the entry of a bond of 100% for all infringing products pursuant to 19 U.S.C. § 1337(j)(3). (Memo. at 84-85.). A 100% bond is appropriate and recommended in this case. (*Accord*, Rep. at 98.). For the reasons explained below, a GEO pursuant to 19 U.S.C. § 1337(g)(2) and (d)(2) is appropriate.

²¹ There is extensive discussion in a recent Commission with respect to when a CDO may be appropriate. *In Certain Electric Shavers and Components and Accessories Thereof*, Inv. No. 337-TA-1230, Comm’n Op. at 19, 20 n.6 (March 17, 2022) (“*Certain Electric Shavers*”), the Commission issued CDOs to two (2) of the Defaulted Respondents who were served with the Complaint and NOI but who chose not to participate in the investigation. (*Id.* at 20 n.6.). In this case, it is not clear that the counterfeit RYOBI™ “compatible” or “replacement” Accused Products that were imported into the United States came from Amazon Fulfillment Centers within the United States. Amazon apparently has fulfillment Centers around the world, including in China. Complainants did not submit evidence that the packaging on the imported Accused Products came through Amazon Fulfillment Centers in the United States. Unlike in *Certain Electric Shavers*, Complainants also did not ask for a CDO, which was their burden.

B. General Exclusion Order

1. Legal Standard

Generally, Section 19 U.S.C. § 1337(g)(2) gives the Commission authority to issue a GEO if a respondent appears to contest an investigation, together with the authority to issue a GEO with “regardless of the source or importer of the articles,” and “(A) no person appears to contest an investigation concerning a violation of the provisions of this section, (B) such a violation is established by substantial, reliable, and probative evidence, and (C) the requirements of subsection (d)(2) are met.” 19 U.S.C. § 1337(g)(2).

Section 337(d)(2) provides that a GEO may issue in cases in which: “(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named respondents; or (B) there is a widespread pattern of violation of Section 337 and it is difficult to identify the source of infringing products. 19 U.S.C. § 1337(d)(2). A GEO can issue when either provision is met. *Certain Cigarettes & Packaging Thereof* (“*Cigarette Wrappers*”), Inv. No. 337-TA-643 (Comm’n Op. (Oct. 1, 2009). “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 terminated from an investigation, but also to those of non-respondents.” *Certain Earpiece Devices & Components Thereof*, Inv. No. 337-TA-1121, Comm’n Op. at 33-34 (Nov. 8, 2019) (“*Certain Earpiece Devices*”); see also *Certain Vaporizer Cartridges and Components Thereof*, Inv. No. 337-TA-1211, Comm’n Op. at 8 (Feb. 14, 2022)(“*Certain Vaporizer Cartridges*”)

Under Subsection 337 (d)(2), the Commission has the authority to exclude infringing articles regardless of their source when specific conditions are met. Section 337(d)(1) requires that an order excluding the entry of articles into the United States must be limited to persons that

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the Commission determines violates Section 337, unless an exclusion order is “necessary to prevent circumvention” by the named persons, or “there is a pattern of violation...and it is difficult to identify the source of infringing products. 19 U.S.C. § 1337(d)(2); 19 C.F.R. § 210.50(c).

In other words, if relief is granted under Section 337(d)(2), it must be anchored in “substantial, reliable, and probative evidence.” *See Certain Digital Multimeteres, and Prods. with Multimeter Functionality*, Inv. No. 337-TA-588, Comm’n Op. at 4 (June 3, 2008)). Complainants have asked for a GEO pursuant to 19 U.S.C. § 1337(d)(2).

2. Widespread Copying

Complainants have provided “substantial, reliable, and probative evidence” that a GEO is warranted and it should extend to all products that would be imported into the United States that are likely to infringe Complainants’ three (3) design Asserted Patents. (Memo., generally at 70-82 (citing SMF Nos. 335-367); *accord* Staff Resp. at 1, 15, 89-98.). For example, Complainants note that infringing rechargeable battery packs are sold on numerous third-party e-commerce websites. (Memo. at 74; generally SMF Nos. 334-368; see also Doc. ID No. .). The examples provided in this ID of the Defaulted Respondents’ brazen advertising for sale of infringing products that are “replacements” for or “compatible with” the RYOBI™ ONE+SYSTEM, when Complainants have not licensed the sellers of the Accused Products to sell RYOBI™ products falls squarely within the Commission’s authority under both 19 U.S.C. §§ 1337 (g)(2) and (d)(2).

According to Complainants, since at least 2017, “One World, and/or parties on its behalf, has monitored various e-commerce websites in order to identify and deter unlicensed entities from offering for sale and or/selling counterfeit battery packs, including battery packs which

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infringe one or more of the Asserted Patents. (SMF No. 342.). Complainants note that they have looked for infringement of both One World’s trademarks, such as the ONE +® mark, “which necessarily implicated the entire battery pack, including the design features protected by the Asserted Patents.” (SMF No. 342.). They have identified “dozens of infringers across multiple e-commerce platforms, including the named Respondents.” (*Id.*). For example, according to Complainants’ evidence and testimony, when

For example, with their evidence, Complainants have proven that there is infringement of their three (3) design Asserted Patents by at least eight (8) identified products, i.e. Jolege, Enegitech, Lascica, Biswaye, FUZADEL, Topbatt) SUN POWER, Energup, Powilling, and Fhybat, some of which are sold by different entities on different websites. Through a search of just four (4) prominent internet websites for a “Ryobi 18v battery,” Complainants found “hundreds of offers for sale of unlicensed replacement battery packs, both branded and unbranded” that Complainants explain are intended for use with the RYOBI™ ONE + SYSTEM. (SMF No. 334 (citing Compl. at ¶ 334 and TTI__000001; TTI__000678; TTI__000680, TTI__698 and TTI__000710; *see* Appendix of Exhibits, Doc. ID No. 745230 (June 22, 2021); Documents at Doc. ID No. 745231 (June 22, 2021) and specifically TTI__000001-000091; *see* also Doc. ID No. 745233 (June 22, 2021), TTI__000092-TTI__000816 (that also incorporate exhibits to Complaint).

Based upon their searches, Complainants have documented that third parties who are advertising as “compatible with” or “replacement parts” for sale of allegedly infringing and/or unlicensed RYOBI™ battery packs and tools are located “almost exclusively overseas, primarily in China, and have no known presence in the United States except through third party Internet storefronts.” (SMF No. 335.). A random selection of the multitude of documents that reflect

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Complainants' internet searches, which Complainants produced, as identified above, show that many of the identified third party accused infringing products are displayed and advertised for sale on Amazon's website, generally in storefronts with the names of many other third parties in addition to the Defaulted Respondents, and often showing the location of the businesses as in "CN," for China.

As another example, Complainants' search of only one third-party commerce website using only the term "ONE+ battery pack" produced at least 52 separate entities that offer for sale unlicensed cordless, 18V battery packs that are intended for use in the RYOBI™ ONE + SYSTEM. (SMF No. 336.). Included in Complainants' extensive documentation and pictures are two (2) of the named Respondents, Darui Development, Energup and Sun Power. (*Id.* at TTI__000014-15 (Energup); TTI__000018-19; TTI__000038-39 (Darui Development.)). From the many exhibits and pictures Complainants provided, a random sampling of entities that Complainants have documented as selling infringing products include: Vanon Direct; VINIDA Direct, REoBen, Newbula, Yangdoc E-commerce, Ibanti, THISENERGYSYSTEM Direct, UPWAYER, LabTEC, FirstPowerDirect, Youngcell, Bonacell Direct, PowerBay, Miady, JIPPOWER, SURTOP-US, and Lumsing Direct. (SMF No. 336 (citations omitted).).

Based upon the evidence provided, correctly, Complainants have proven that they meet the following four factors recently discussed by the Commission in *Certain Earpiece Devices*:

First, the respondents conduct their business through the anonymity of the internet.
[...]

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.
[...]

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.

[...]

Fourth, it is common practice to use generic packaging and ambiguous labeling practices not revealing the manufacturer.

See Certain Earpiece Devices, Comm’n Op. at 35-36; *see also Certain Vaporizer Cartridges*, Comm’n Op. at 12.)

3. Difficulty in Identifying Sources of Infringing Products

Complainants have documented in detail the difficulty they have had in identifying the sources of infringing products on internet commerce websites. In addition to internet searches for RYOBI™ ONE + SYSTEM battery packs and tools described above, Mr. Fletcher ran a computer, internet search on April 26, 2021 of just “Ryobi 18V ONE+ battery” on a prominent internet website that as Complainants note, should have returned only RYOBI™ products. (Memo. at 75; *see also* Ex. 4 to Fletcher Decl.). Instead, Mr. Fletcher’s search results reflected that the “vast majority of populated search results were for non-RYOBI battery packs,” and that the genuine articles did not “appear until the second frame in the initial search results.” (*Id.* (citing SMF No. 338)). The same type of result occurred when Mr. Fletcher ran a search for a RYOBI™ battery pack by product number “such as Ryobi P102 battery;” the RYOBI™ products appeared in a second frame. (*Id.* (citing SMF No. 337)).

As Complainants argue, there are “hundreds if not thousands of third parties selling unlicensed “replacement,” cordless battery packs. (Memo. at 76.). With persuasive evidence from their internet searches, Complainants have argued that while the number of Defaulted Respondents left in the investigation are “significant,” they do “not reflect the full scope of the infringing industry.” (Memo. at 75 (citing *Certain Toner Cartridges, Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1174, Order No. 40, Initial Determination at 140 (July 23, 2020)(“*Certain Toner Cartridges*”); *see also Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm’n Op. at 14 (June 26, 2015)(numerous online sales of if

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infringing imported goods can constitute a pattern of violation)(“*Certain Loom Kits*”).).

In support of their argument that the “anonymity” of internet commerce often helps conceal the identity of the sellers and importers that poses a difficulty that the Commission has recognized contributes to findings that support a GEO, Complainants also cited to the difficulty they had from the outset of the investigation in identifying and serving the entities responsible for importing and selling the goods Complainants thought were infringing their products. (Memo. at 77.).

Complainants have noted that they were unable initially to identify and serve at least seven (7) of the 13 named Respondents. (*Id.* (citing Doc. ID No. 734006; see *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-918, Order No. 34 (Initial Determination) at 272 (June 8, 2015).). For example, Complainants later served two (2) of the Defaulted Respondents, i.e. Darui Development and Shenzhen Rich Hao, by using alternative address information. (Memo. at 77). Three (3) of the Respondents could not be served and were terminated from the investigation. (*Id.* (citations omitted).). Although the remaining Defaulted Respondents who either were served or rejected service of the Complaint and NOI are actively displaying their infringing products on internet websites, as Complainants have documented, because of those Defaulted Respondents’ failures to participate in the investigation, Complainants were unable to prove the source of and origins of the Accused Products. (*Id.*; SMF Nos. 340-341.).

Additionally, Complainants have documented that they have taken other steps since 2017 beyond the monitoring of e-commerce websites to identify infringing marks and products. According to record evidence, on April 19, 2017, through outside counsel, Complainants sent a cease and desist letter to Defaulted Respondent Shenzhen Runsensheng with respect to the sale

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of the Enegitech battery packs which were available for sale on several third party websites. (Memo. at 78 (citing SMF No. 343.)). Similarly, on January 29, 2018, again through legal counsel, Complainants sent a cease and desist letter to Defaulted Respondent Shenzhen MingYang and third party Ms. Juan Li with respect to the sale of allegedly infringing Biswaye battery packs. (Memo. at 78 (citing SMF No. 344.)). Complainants' enforcement efforts were futile; the allegedly infringing parties continued to sell their clearly, on their face, infringing products. In other words, Complainants attempted, but found that traditional enforcement mechanisms are ineffective when a third party knows they are seemingly beyond the jurisdiction of the United States even when they hide in plain sight on innumerable websites that broadcast infringing wares for sale to Americans. As Complainants observe, there are too many infringing sellers, products and websites to enforce intellectual property rights on an individual basis. (Memo. at 76-78; SMF Nos. 339-344.).

4. Likelihood of Circumvention

As Complainants have quoted: "A limited exclusion order restricts the activities of named respondents but not others." (See Memo. at 79 (citing *Certain Toner Cartridges*, Inv. No. 337-TA-1174, Order No. 40 at 136 (Jul. 23, 2020) (citing *Kyocera Wireless Corp. v. Int'l Trade Comm'n*, 545 F.3d 1340, 1356-57 (Fed. Cir. 2008)(rev'd and remanded on other grounds)("If the evidence shows that named respondents would circumvent a limited exclusion order, a general exclusion order is appropriate);" *Certain Ground Fault Cir. Interrupters and Products Containing Same*, Inv. No. 337-TA-739, Comm'n Op. at 88-89 (June 8, 2012) (finding a general exclusion order was appropriate based on evidence that named respondents would circumvent a limited exclusion order by changing their corporate identity); *Certain Cases for Portable Electronic Devices*, Inv. No. 337-TA-867/861, Comm'n Op. at 9 (July 10, 2014) ("[T]he

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respondents can easily circumvent a LEO by selling infringing goods online ... and foreign manufacturing operations can change their names and distribution patterns to avoid detection.”)).

Complainants have provided a substantial body of evidence that there are an inestimable number of infringing products that are sold with generic markings that do not reveal the named manufacturer, or that cannot be tied to the true owners and sellers of the infringing products. (Memo. at 79; *see infra*.). Additionally, Complainants have documented in some detail how their searches on the internet for certain infringing products that openly tout that they sell RYOBI™ “compatible” or “replacement” tools, or to track certain Defaulted Respondents’ and their advertisements and sales of infringing products, have led Complaints to additional third parties whose location or relationships simply cannot be traced, or alternatively appear to be “linked” but obscurely. (Memo. at 78-82; SMF Nos. 349-358.).

Only one such example in which Complainants describe confusing or obscured relationships on different websites that sell the same infringing products pertains to Respondent Shenzhen Rich Hao who is the registrant and/or owner of the Fhybat and Topbatt trademarks in the United States. (Memo. at 80-81; SMF No. 352-355.). However, Defaulted Respondent Darui Development also sells infringing battery packs bearing the Topbatt® trademark. (Memo. at 81; SMF No. 353.). As Complainants report, there is no information they found that associates Shenzhen Rich Hao with Darui Development or explains why they both sell infringing Topbatt® battery packs. Additionally, the Topbatt website, www.Topbatt.cn, specifically references Darui Development Limited under the heading “about us,” which would appear to indicate that Darui Development is the source of the Topbatt® battery. (SMF No. 354.). However, the Topbatt website identifies “Shenzhen Lianchengweiye Shiye Co., Ltd.” on a

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separate ‘about us’ webpage that uses the same language to describe the two entities. (Memo. at 81; SMF No. 355.).

Complainants acknowledge and point out, it is unclear whether Darui Development and Shenzhen Lianchenweiye, however it is described legally are related and, if so, how they are related and which one actually manufactures and sells the Topbatt battery. (Memo. at 81; SMF Nos. 355-358.). Complainants have offered other evidence of similar confusion among shareholders or mark owners of different entities and the Accused Products they appear to sell on the internet. (*Id.* at 80-83.).

When Complainants’ evidence is considered in its totality, a conclusion can be drawn that Complainants have proven with substantial and reliable evidence that there are a significant number of companies on the internet selling infringing products in the United States such that it is difficult or impossible to identify the manufacturers of the infringing products. Under similar circumstances, the Commission has found that subparagraph 337(d)(2)(A) is satisfied. (*See, e.g., Certain Personal Transporters, Components Thereof and Manuals Therefor*, Inv. No. 337-TA-1230935, Comm’n Op. at 7-9 (Apr. 20, 2016) (finding that 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).).

In addition, 19 U.S.C. § 1337(d)(2)(A) and (B) are satisfied here by much of the same evidence identified above that reveals how circumvention works among third parties. Additionally, 19 U.S.C. § 1337(g)(2) has been satisfied.

As quoted above, 19 U.S.C. § 1337(g)(2) is satisfied “when no person appears to contest

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an investigation concerning violation of the provisions of this section.” 19 U.S.C. § 1337(g)(2) (*See Certain Electric Shavers and Components and Accessories Thereof*, Inv. No.337-TA-1230, Comm’n Op. at 14, 15 (March 15, 2022)(where Commission found a pattern of widespread violation by sellers who advertise who advertise and sell their products under a variety of brand names, and which makes “identifying the source, sellers and manufacturers difficult,” and where evidence demonstrates “that a GEO is necessary to prevent circumvention by the named respondents.”); *see also Certain Loom Kits*, Comm’n Op. at 14).

For the foregoing reasons, this Initial Determination recommends that, in the event the Commission finds a violation of Section 337, the appropriate remedy is a GEO that encompasses the infringing Accused Products and that it extends to all other similar products that are imported into the United States, regardless of source.

C. In the Event the Commission Rejects A GEO, A LEO Is Warranted

Complainants request a LEO against the Defaulted Respondents if the Commission declines to issue a GEO. (Memo. at 41.). Section 337 permits the Commission to issue either a LEO, which is directed against infringing products manufactured or imported by or on behalf of persons found in violation, or a general exclusion order, directed against all infringing products. *See* 19 U.S.C. § 1337(d) and (g). If the Commission declines to issue a GEO, it is the recommendation of this Initial Determination that a LEO issue that would bar the entry into the United States of the Accused Products of the four (4) Defaulted Respondents against whom importation and violation of Section 337 have been proven.

D. A Bond in the Amount of 100% of the Entered Value of Infringing Goods Is Appropriate

During the Presidential Review Period, imported articles otherwise subject to a remedial order are entitled to conditional entry into the United States under bond. *See Certain Beverage*

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Dispensing Sys. & Components Thereof, Comm'n Opinion, Inv. No. 337-TA-1130 at 26 (Mar. 26, 2020) (citing 19 U.S.C. § 1337(j)(3)). The amount of bond is determined by the Commission and must be enough to protect complainants (such as these) from any injury. (*See id.*). “The Commission typically sets the bond based on the price differential between the imported infringing product and the domestic industry article or based on a reasonable royalty. However, where the available pricing or royalty information is inadequate, the bond may be set at one hundred (100) percent of the entered value of the infringing product.” *Certain Loom Kits*, Comm’n Op. at 11 (other citations omitted). Complainants have the burden of establishing the need for a bond, including the amount of bond.

It is a recommendation of this ID that a bond in the amount of 100% of the entered value of the covered products be entered during the Presidential review period. That conclusion is supported by record evidence and by Complainants’ expert’s, Ms. Campbell’s opinion.

A royalty rate is neither appropriate nor practical in this case. *See* 19 U.S.C. § 1337(j)(3). Because the Complainants have not licensed their products, there are no established royalty rates that are available for a comparison let alone a baseline. (*See* SMF No. 377; *see also* Campbell Decl. at ¶¶ 161 and 162.).

In this case, because of their defaulted status, the Defaulted Respondents have not provided information that would allow for a reasonable pricing calculation. Moreover, according to Ms. Campbell, Complainants’ economic expert, a pricing comparison between Complainants’ DI Battery Packs and the accused battery packs is difficult because they all use different sales channels, and therefore, often incomparable pricing. (*See* SMF No. 369.). There is a “pattern of prices for the products at issue sold by the Defaulting Respondents being generally lower than One World’s prices for the comparable products....” (Campbell Decl. at ¶ 162.).

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Complainants sell their battery packs solely to the Home Depot which sells to retail customers. (*See* SMF No. 370; Campbell Decl. at ¶ 162.). Complainants' battery packs can be sold as standalone battery packs or can be combined with other RYOBI ONE+SYSTEM tools or outdoor products (that can include chain saws, blowers, edgers, drills, and many other products.). (*See* Campbell Decl. at ¶¶ 165-167.). Complainants sell the battery packs to Home Depot for between [REDACTED] per pack to [REDACTED] for a two-pack. (*See* SMF No. 372.). Home Depot's markup ranges between [REDACTED] per SKU. (*See* SMF No. 373.). The end-user's price that Home Depot sells to consumers and range from \$49.97 per pack to \$149.00 per 2-pack. (Campbell Decl. at ¶ 162.). Defaulted Respondents sell their products directly to third-party internet e-commerce websites. (*See* SMF No. 374.). Respondents market their accused products at prices ranging from \$32.99 to \$59.99 per pack and \$32.99 to 62.99 per 2-pack. (*See* SMF No. 375; Campbell Decl. at ¶ 162, n. 349 (citing to Exs. 51, 59, 63, 67, 71, 74, 78, 80, 84, 87, 90 and 93 to Compl.)). Moreover, product prices can be affected by the battery amp hour (e.g. 1.5 AH, 2.0 AH, 3.0 AH, 4.0 AH, 6.0 AH.). (Campbell Decl. at ¶ 165.). More amperage can lead to higher prices. Additionally, as Ms. Campbell has cited, there are innumerable examples contained, for example in Exhibits to Complainants' Complaint (and in other exhibits cited in this ID) in which there is a proliferation of products and of third-party sellers with disparate pricing on an inestimable number of storefronts, primarily (it appears) on Amazon. (*Id.* at ¶ 167, n.359 (citing Exs. 51, 59, 63, 67, 71, 74, 78, 80, 84, 87, 90 and 93 to Compl.; *see also* SMF Nos. identified above.)).

Moreover, if Complainants' extensive Exhibits are read even cursorily, there is no consistent, reliable evidence on the average price of each of the Accused Products. Because there is little comparative evidence of the exact pricing or volume of sales of the battery packs, a

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bond of 100% of the entered value is recommended. (*Accord*, Staff Resp. at 99-100; *see, e.g., Video Game Sys. & Wireless Controllers & Components Thereof*, Inv. No. 337-TA-770, Comm'n Op. at 5 (Oct. 28, 2013).). A 100% bond should be sufficient to prevent any harm to Complainants during the Presidential Review Period.

XIV. CERTIFICATION TO COMMISSION

This Initial Determination on Violation of Section 337 of the Tariff Act of 1930 with Recommendation on Remedy and Bond is certified to the Commission. All orders and documents, filed with the Secretary, including the exhibit lists enumerating the exhibits received into evidence in this Investigation, that are part of the record, as defined in 19 C.F.R. § 210.38(a), are not certified, since they are already in the Commission's possession in accordance with Commission Rules. *See* 19 C.F.R. § 210.38(a). In accordance with 19 C.F.R. § 210.39(c), all material found to be confidential under 19 C.F.R. § 210.5 is to be given *in camera* treatment.

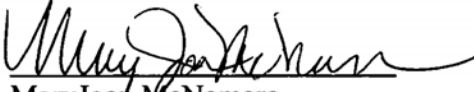
Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review pursuant to 19 C.F.R. § 210.43(a) or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination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

Within fourteen (14) business days of the date of this document, each party shall submit to the Office of the Administrative Law Judges through McNamara337@usitc.gov a statement whether or not it seeks to have any confidential portion of this document. That is the courtesy copy pursuant to Ground Rule 1.3.2. Any party seeking redactions to the public version must submit to this office through McNamara337@usitc.gov a copy of a proposed public version of this document pursuant to Ground Rule 1.10 with yellow highlighting clearly indicating

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any portion asserted to contain confidential business information.

SO ORDERED.



MaryJoan McNamara
Administrative Law Judge