

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

**In the Matter of**

**CERTAIN TABLE SAWS  
INCORPORATING ACTIVE INJURY  
MITIGATION TECHNOLOGY AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-965**

**COMMISSION OPINION**

**I. BACKGROUND**

**A. Procedural History**

The Commission instituted this investigation on September 1, 2015, based on a complaint filed by SawStop, LLC, and SD3, LLC (together, “SawStop”). 80 Fed. Reg. 52791-92 (Sept. 1, 2015). The amended complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain table saws incorporating active injury mitigation technology and components thereof by reason of infringement of certain claims of United States Patent Nos. 7,225,712 (“the ’712 patent”); 7,600,455 (“the ’455 patent”); 7,610,836 (“the ’836 patent”); 7,895,927 (“the ’927 patent”); 8,011,279 (“the ’279 patent”); and 8,191,450 (“the ’450 patent”). The notice of investigation named as respondents Robert Bosch Tool Corporation of Mount Prospect, Illinois, and Robert Bosch GmbH of Baden-Wuerttemberg, Germany (together, “Bosch”). *Id.* at 52792. The Office of Unfair Import Investigations is not a party to the investigation. *Id.*

The Commission terminated the investigation with respect to the ’836 and ’450 patents based on SawStop’s withdrawal of its allegations concerning those patents. Order No. 8 (Mar.

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10, 2016), *not reviewed*, Notice (Apr. 4, 2016); Order No. 13 (May 3, 2016), *not reviewed*, Notice (May 23, 2016).

On January 27, 2016, SawStop moved for a summary determination that it satisfied the economic prong of the domestic industry requirement. On February 8, 2016, Bosch indicated that it did not oppose the motion. On March 22, 2016, the ALJ granted the unopposed motion and determined that SawStop satisfied the economic prong of the domestic industry requirement. Order No. 10 (Mar. 22, 2016), *not reviewed*, Notice (Apr. 21, 2016).

On September 9, 2016, the ALJ issued his final initial determination (ID) finding a violation of section 337 with respect to the '927 and '279 patents, and no violation of section 337 with respect to the '712 and '455 patents. Specifically, he found that Bosch did not directly or contributorily infringe the '712 and '455 patents, but found that Bosch's REAXX table saw directly infringed the '927 and '279 patents and that Bosch's activation cartridges contributorily infringed the '927 and '279 patents. He also found that Bosch had failed to show that any of the patent claims were invalid, and that SawStop satisfied the domestic industry requirement with respect to all four patents.

On September 20, 2016, the ALJ issued a Recommended Determination on Remedy and Bond ("RD"). The ALJ recommended that the Commission issue a limited exclusion order ("LEO") against Bosch's infringing products, including the REAXX table saw and its activation cartridges, issue a cease and desist order ("CDO") against Robert Bosch Tool Corporation, and set the bond rate at zero (0) percent of entered value.

On September 26, 2016, SawStop and Bosch each petitioned for review of the ID, and on October 4, 2016, the parties opposed each other's petitions. On November 10, 2016, the Commission determined not to review the ID, and requested briefing from the parties and the

public on the issues of remedy, the public interest, and bonding. The Commission received responsive submissions from SawStop, Bosch, and the Power Tool Institute, Inc. (“PTI”) on November 22, 2016, and reply submissions from SawStop and Bosch on December 2, 2016.

**B. The Patents and Products**

The Commission found that Bosch violated section 337 with respect to the ’927 and ’279 patents. Both patents involve active injury mitigation technology (“AIMT”) for woodworking machines, which generally relates to equipping a woodworking machine with: (1) a detection system that can detect when the cutting tool contacts a human being; and (2) a reaction system that, upon detection of human contact, can disable the cutting tool by retracting and/or stopping the cutting tool. ID at 4-6. In other words, the technology is intended to prevent injury by quickly disabling a woodworking machine when a cutting tool, such as a saw blade, contacts a human.

The infringing product in this investigation is the Bosch REAXX table saw and components thereof. ID at 7. When the REAXX table saw detects contact between a human and the saw blade, the table saw triggers an explosive activation cartridge that retracts the saw blade beneath the surface of the table. Respondents’ Petition for Review of Initial Determination (Sept. 26, 2016) (“Bosch Pet.”) at 2. Once the activation cartridge has fired twice, the REAXX table saw is inoperable until the activation cartridge is replaced. Respondents’ Opening Br. on Remedy, the Public Interest, and Bonding (Nov. 22, 2016) (“Bosch Initial Sub.”) at 5-6.

The domestic industry products are SawStop’s four models of table saws: an Industrial Cabinet saw, a Professional Cabinet saw, a Contractor saw, and a Jobsite saw. ID at 6-7. The SawStop Jobsite saw competes with the Bosch REAXX table saw. Bosch Initial. Sub. at 3. When the SawStop Jobsite saw detects contact between a human and the saw blade, the table

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saw triggers an activation cartridge that jams a brake into the spinning saw blade, stopping the blade and causing it to retract beneath the surface of the table. *Id.* at 4. SawStop's Jobsite saw uses a different type of activation cartridge that can only fire a single time, after which the saw is inoperable until the activation cartridge is replaced. *Id.* at 5.

## II. DISCUSSION

### A. Remedy

#### 1. Limited Exclusion Order ("LEO")

When the Commission determines that there is a violation of Section 337 and that the public interest factors do not preclude the issuance of a remedy, the Commission "shall direct that the articles concerned, imported by any person violating the provisions of this section, be excluded from entry into the United States[.]" 19 U.S.C. § 1337(d)(1). The ALJ recommended that the Commission issue an LEO against Bosch's infringing products. RD at 2-3. The parties do not dispute that, if the Commission finds that the public interest factors do not preclude the issuance of a remedy, it has the authority to issue an LEO against Bosch's products. The Commission finds that an LEO prohibiting the entry of table saws incorporating active injury mitigation technology and components thereof that infringe claims 8 and 12 of the '927 patent and claims 1, 6, 16, and 17 of the '279 patent is an appropriate remedy in this investigation.

#### 2. Cease and Desist Order ("CDO")

Section 337(f)(1) provides that in addition to, or in lieu of, the issuance of an exclusion order, the Commission may issue a cease and desist order as a remedy for a violation of section 337. 19 U.S.C. § 1337(f)(1). Cease and desist orders are generally issued when, with respect to the imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order. *See, e.g., Certain Protective Cases and Components Thereof,*

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Inv. No. 337-TA-780, USITC Pub. No. 4405, Comm'n Op. at 28 (Nov. 19, 2012) (citing *Certain Laser Bar Code Scanners and Scan Engines, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-551, Comm'n Op. at 22 (June 14, 2007)); *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, And Components Thereof*, Inv. No. 337-TA-486, USITC Pub. No. 3625, Comm'n Op. at 17 (August 19, 2003)). A complainant seeking a cease and desist order must demonstrate, based on the record, that this remedy is necessary to address the violation found in the investigation so as to not undercut the relief provided by the exclusion order. *Certain Integrated Repeaters, Switches, Transceivers, and Products Containing Same*, Inv. No. 337-TA-435, USITC Pub. No. 3547, Comm'n Op. at 27 (Aug. 16, 2002) (“[C]omplainants bear the burden of proving that respondent has such an inventory. Because complainants failed to sustain their burden, we have determined not to issue a cease and desist order.”); *see also* H.R. REP. NO. 100-40, at 160 (1987) (“When the Commission determines that both remedies [i.e., an exclusion order and cease and desist order] are necessary, it should be without legal question that the Commission has authority to order such relief.”). While the Commissioners have adopted different approaches to analyzing when it is appropriate to issue cease and desist orders, the Commission has issued numerous cease and desist orders in recent investigations in which a violation has occurred and the relief was requested and supported by the record.<sup>1</sup>

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<sup>1</sup> For example, based on the record in each investigation, the Commission found that the issuance of cease and desist orders was appropriate in the following recent cases: *Certain Toner Cartridges, and Components Thereof*, Inv. No. 337-TA-918, Comm'n Op. at 12-13 (Oct. 1, 2015); *Certain Beverage Brewing Capsules, Components Thereof, and Products Containing the Same*, Inv. No. 337-TA-929, Comm'n Op. at 83 (April 6, 2016); *Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating to Same, and Certain Products Containing Same*, Inv. No. 337-TA-933, Comm'n Op. at 40-44 & nn. 26, 27 (June 9, 2016); *Certain Three-Dimensional Cinema Systems and Components Thereof*, Inv. No. 337-TA-939,

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SawStop requested, and the ALJ recommended, that the Commission issue a CDO directed against Robert Bosch Tool Corporation. SawStop Post-Hr'g Br. at 99; RD at 3-4. The ALJ found that the parties had stipulated that Robert Bosch Tool Corporation possessed between [ ] REAXX saws and over [ ] activation cartridges in the United States as of January 20, 2016, and he concluded that this inventory was commercially significant. RD at 4. Before the Commission, the parties do not dispute that, if the Commission finds that the public interest factors do not preclude the issuance of a remedy, the Commission may issue a CDO against Robert Bosch Tool Corp based on the record evidence relied upon by the ALJ. Accordingly, the Commission finds, based on the record, that an appropriate remedy is the issuance of a CDO directing Robert Bosch Tool Corp. to cease and desist from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting U.S. agents or distributors of imported table saws incorporating active injury mitigation technology and components thereof that infringe claims 8 and 12 of the '927 patent and claims 1, 6, 16, and 17 of the '279 patent.<sup>2,3</sup>

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Comm'n Op. at 61-64 & nn. 33, 34 (August 23, 2016); *Certain Network Devices, Related Software and Components Thereof (I)*, Inv. No. 337-TA-944, Comm'n Op. at 54-56 (July 26, 2016); *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-946, Comm'n Op. at 13-14 (June 29, 2016). In only one recent investigation, the Commission did not issue the requested cease and desist order. See *Certain Dental Implants*, Inv. No. 337-TA-934, Comm'n Op. at 49, nn. 29-33 (May 11, 2016) ("The Commission is not issuing a cease and desist order in this investigation because the Commissioners are divided 3-3 on whether a cease and desist order is appropriate.").

<sup>2</sup> As noted above, the Commissioners have adopted different approaches to analyzing when it is appropriate to issue cease and desist orders. Starting in *Dental Implants*, Chairman Schmidlein explained her view that the existence of a commercially significant infringing inventory in the United States is not a prerequisite to issuing a cease and desist order. Comm'n Op. at 50-51, n.31-32 (May 11, 2016). She has expressed this view in subsequent investigations. See, e.g., *Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating to Same, and Certain Products Containing Same*, Inv. No. 337-TA-933, Comm'n Op. at 43-44, n.26 (June 9, 2016); *Certain Three-Dimensional Cinema Systems and Components*

**B. The Public Interest**

Section 337(d) and (f) provide that if the Commission determines that a respondent has violated the statute, the Commission will issue the appropriate relief “unless, after considering the effect of [the order] upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that [the order should not issue].” 19 U.S.C. §§ 1337(d)(1) and (f)(1). The parties’ arguments principally focus on three of these factors: public health and welfare, competitive conditions in the U.S. economy, and U.S. consumers. The Commission has historically examined the public health and welfare factor by looking to whether “an exclusion order would deprive the public of products necessary for some important health or welfare need[.]” *Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1360 (Fed. Cir. 2010). In

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*Thereof*, Inv. No. 337-TA-939, Comm’n Op. at 63-64, n.33 (August 23, 2016). As she has explained, the statutory language leaves it to the discretion of the Commission and does not establish any particular test or standard for issuing a cease and desist order against a party in violation aside from consideration of the public interest factors. *See id.* Recognizing the broad discretion granted to the Commission under section 337(f), and that the existence of a commercially significant inventory is not required, Chairman Schmidlein fails to see benefit to requiring the parties and the Commission to expend time and resources addressing the extent of domestic inventory levels as a predicate to issuing a cease and desist order. In her view, such a requirement unnecessarily carries risk for the complainant since even the presence of one infringing product in domestic inventory can undercut the exclusion order and prevent complete relief to the complainant. Thus, Chairman Schmidlein has stated that the presence of some infringing domestic inventory, regardless of the commercial significance, provides a basis to issue a cease and desist order. *See id.* Consistent with her view expressed in previous investigations, Chairman Schmidlein agrees that a cease and desist order is appropriate for respondent Robert Bosch Tool Corporation in the current investigation due to its maintenance of infringing domestic inventory, regardless of the commercial significance.

<sup>3</sup> Commissioner Kieff joins the Commission’s determination to issue a cease and desist order (“CDO”) directed to respondent Robert Bosch Tool Corporation in this case, but does not join the reasoning offered by the Commission Majority to the extent it suggests presumptions, practice, burdens and the like. *See Separate Views of Commissioner F. Scott Kieff Concurring as to CDO Remedy and Dissenting as to Bond Determination.*

assessing whether the public interest factors of competitive conditions in the U.S. economy and harm to consumers weigh against issuing a remedy,

the appropriate standard is not that no remedy should issue if every consumer cannot obtain the exact device desired that was found to infringe the patents at issue. Rather, the impact is assessed in the aggregate and consideration is given to whether there are reasonable substitutes for the devices subject to the exclusion order in terms of features, price points, and other pertinent factors.

*Certain Electronic Digital Media Devices and Components Thereof*, Inv. No. 337-TA-796, Comm'n Op. at 120 (Aug. 9, 2013).

### **1. Public Health and Welfare**

SawStop contends that issuing a remedy against the REAXX table saw will not impact the public health and welfare, because the public will continue to be able to purchase the similar AIMT SawStop Jobsite saw, which is a reasonable substitute for the REAXX saw and can be manufactured in quantities sufficient to satisfy the entire AIMT table saw market.

Complainants' Reply Submission on Remedy, the Public Interest and Bonding ("SawStop Reply Sub.") at 3-6. Bosch argues that issuing a remedy would harm the public health and welfare because the SawStop Jobsite saw is not a reasonable substitute for the REAXX saw. Bosch Initial Sub. at 12-14; Respondents' Reply Brief on Remedy, the Public Interest, and Bonding ("Bosch Reply Sub.") at 1-3. According to Bosch, the saws are not interchangeable because they have different features. *Id.*

Here, there is no dispute that the AIMT functionality can save table saw users from substantial injury, therefore the public has an interest in the availability of AIMT table saws. But the Commission also finds that the issuance of a remedy against Bosch's infringing products would not deprive the public of access to AIMT table saws, because the public will still be able to purchase SawStop's Jobsite AIMT table saw.

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The SawStop Jobsite saw is a reasonable substitute for the Bosch REAXX saw because both saws provide comparable AIMT functionality. Although Bosch argues that the REAXX and Jobsite saws have different features, products need not be identical to serve as reasonable substitutes for each other. Moreover, Bosch has not shown that any of the different features present in its saws bear any relationship to the effectiveness of the products' AIMT functionality. The protected interest here is the public's ability to purchase table saws with AIMT functionality, not the ability to purchase AIMT table saws with a specific feature set that is unrelated to the efficacy of the AIMT functionality.

Bosch also argues that, if the REAXX saw is excluded, SawStop will not be able to supply a sufficient number of Jobsite saws to meet the demand for AIMT table saws. Bosch Initial Sub. at 13. Bosch, however, has not presented any evidence to support that assertion. SawStop, on the other hand, stated that in 2015, it produced [ ] AIMT table saws including [ ] Jobsite saws, whereas Bosch sold [ ] REAXX saws in the final seven months of 2016. SawStop Reply Sub at 3; SawStop Initial Sub at Ex. A. Additionally, SawStop provided a declaration stating that its vendor is currently producing [ ] Jobsite saws a month, could double that production within two weeks, and could increase its monthly production to [ ] Jobsite saws within two months. SawStop Initial Submission at Ex. A. For these reasons, the Commission finds that the evidence shows that SawStop could satisfy the demand for AIMT table saws if the Commission excluded the REAXX saw.

Bosch additionally argues that because the REAXX saw is sold in a wider array of distribution channels than the SawStop Jobsite saw, exclusion of the REAXX would result in fewer customers purchasing AIMT table saws. Bosch Initial Sub. at 13. The public interest, however, is in the public's ability to purchase AIMT table saws, not in the number of

distribution channels through which the public can purchase AIMT table saws. There is no evidence that the public would be unable to purchase substitute SawStop Jobsite saws in lieu of excluded REAXX saws.

## **2. Competitive Conditions in the United States Economy**

SawStop argues that this factor does not weigh against issuing a remedy because AIMT table saws constitute only a small fraction of the overall table saw market, and that many large tool companies will continue to manufacture non-AIMT table saws after a remedy is issued. SawStop Initial Sub. at 10. Bosch argues that this factor weighs against issuing a remedy, because SawStop and Bosch are the only manufacturers of AIMT table saws, and therefore removing Bosch from the market would reduce competition. Bosch Initial. Sub. at 14.

The Commission does not deny a remedy solely because the relief would remove a second supplier from the market. *Certain Chemiluminescent Compositions*, Inv. No. 337-TA-285, USITC Pub. No. 2370, Comm'n Op. at 13-14, (Mar. 1991) ("the Commission has rejected arguments for denial of relief that are based solely on the fact that a second supplier would be shut out of the market by an exclusion order"). Additionally, the parties' briefing suggests that the AIMT table saw market comprises less than one percent of the overall table saw market. SawStop Reply Sub. at 3; Bosch Initial Sub. at 4. Because the vast majority of the table saw market would be unaffected by a remedy, the issuance of a remedy is unlikely to substantially impact competitive conditions in the overall table saw market. Accordingly, the Commission finds that this factor does not weigh against issuing a remedy.

PTI argues that, if the Consumer Product Safety Commission ("CPSC") were to mandate that all table saws have AIMT at a future date, the issuance of an exclusion order could harm competition in the overall table saw market. PTI Submission (Nov. 21, 2016). The

Commission, however, declines to speculate on future CPSC requirements in its assessment of competitive conditions in the United States.

### 3. Production of Like or Directly Competitive Articles in the United States

SawStop argues that the issuance of a remedy will not affect this factor because nearly all table saw production occurs in Taiwan. SawStop Initial Sub. at 10. Bosch argues that it previously employed people in the United States to design the REAXX saw and continues to improve the saw at its facility in Mount Prospect, Illinois, but does not dispute that none of the saws at issue are currently produced in the United States. Bosch Initial Sub. at 15 and Ex. A, ¶ 10.

The Commission typically finds that this factor does not weigh against granting a remedy when the relevant articles are all produced abroad. *Certain Personal Data and Mobile Communication Devices and Related Software*, Inv. No. 337-TA-710, USITC Pub. No. 4331, Comm'n Op. at 77 (Dec. 29, 2011) (“*Personal Data*”) (finding that the issuance of an LEO would not affect domestic production of smartphones because “[t]here is no evidence of domestic production of smartphones”). Because there is no dispute that the saws at issue are not produced in the United States, the Commission finds that this factor does not weigh against the issuance of a remedy.

Bosch also argues that it will soon manufacture activation cartridges in the United States. Bosch Initial Sub. at 15-16. Bosch, however, does not explain why the issuance of a remedy would impact this plan. The planned production of activation cartridges in the United States would alleviate Bosch’s concern that replacement cartridges would not be available to U.S. consumers who already own REAXX saws. *Id.* at 16.

#### 4. United States Consumers

SawStop argues that this factor does not weigh against the issuance of a remedy because the small market segment that desires AIMT table saws will still be able to purchase the SawStop Jobsite saw, and consumers also have an interest in the issuance of remedies that encourage innovation such as SawStop's AIMT. SawStop Initial Sub. at 11. Bosch acknowledges that consumers have an interest in the enforcement of valid patent rights, but argues that they also have an interest in the availability of AIMT table saws in as many sales channels and in the largest quantity possible. Bosch Initial Sub. at 16. Because there is substantial evidence that United States consumers will be able to purchase substitute AIMT table saws if Bosch REAXX saws are excluded,<sup>4</sup> the Commission finds that this factor does not weigh against the issuance of a remedy. SawStop Initial Sub. at 12-14; SawStop Reply Sub. at 3-6. Moreover, the Commission finds that the likely impact of exclusion on the range of choices available to U.S. consumers in the table saw marketplace would not be significantly detrimental to economic welfare. Here, those consumers who wish to purchase a portable table saw with AIMT will not be injured due to the exclusion of REAXX saws, even if they have an individual preference for Bosch's REAXX saw, as SawStop's Jobsite saw is a qualitatively similar and reasonable substitute for the excluded product.

Bosch also argues that any Commission remedy should contain an exemption that allows Bosch to import activation cartridges for the benefit of U.S. consumers who innocently purchased REAXX saws prior to the issuance of a remedy. Bosch Initial Sub. at 17. As noted above, Bosch is already moving the manufacturing of its activation cartridges to the United

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<sup>4</sup> The Bosch REAXX saw and SawStop Jobsite saw are priced at \$1,499 and \$1,299, respectively. RD at 5.

States. *See* Bosch Initial Sub. at 15 (“very shortly, the REAXX™ activation cartridges will be manufactured in the United States”); Bosch Reply Sub. at 6 (“Bosch is or will soon be manufacturing at least its activation cartridges . . . in the United States”). Because Commission remedies cover only imported goods, there is no need to provide an exemption for the activation cartridges that will be manufactured in the United States.

## 5. Conclusion

For the reasons discussed above, the Commission finds that the issuance of a limited exclusion order and a cease and desist order is appropriate and that the public interest factors do not preclude the issuance of these remedial orders.

### C. Bonding<sup>5</sup>

During the 60-day period of Presidential review, imported articles otherwise subject to remedial orders are entitled to conditional entry under bond. 19 U.S.C. § 1337(j)(3). The amount of the bond is specified by the Commission and must be an amount sufficient to protect the complainant from any injury. *Id.*; 19 C.F.R. § 210.50(a)(3). The Commission frequently sets the bond by calculating the difference in sales prices between the patented domestic product and the infringing product or based upon a reasonable royalty. *Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm’n Op. at 24, USITC Pub. No. 2949 (Jan. 1996). In cases where the record does not contain sufficient evidence upon which to base a determination of the appropriate amount of the bond despite a complainant’s effort to adduce such evidence, the

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<sup>5</sup> Commissioner Kieff respectfully dissents from the Commission’s determination to set a bond rate of zero percent in this case, and does not join section II.C. of the Commission’s Opinion. *See* Separate Views of Commissioner F. Scott Kieff Concurring as to CDO Remedy and Dissenting as to Bond Determination.

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Commission has set a 100 percent bond. *See Certain Sortation Systems, Parts Thereof, and Products Containing Same*, Inv. No. 337-TA-460, USITC Pub. No. 3588, Comm'n Op. at 21 (Feb. 19, 2003). Complainants bear the burden of establishing the need for a bond amount in the first place. *Certain Rubber Antidegradants, Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-533, Comm'n Op. at 39-40 (July 21, 2006) ("*Rubber Antidegradants*").<sup>6</sup>

Before the ALJ, SawStop argued that, based on the evidence in the record, "[u]sing the price differential method, a bond rate would be between zero and 8 percent" and that "[t]here is no established royalty rate for the asserted patent" because the patents had not been licensed despite attempts to license the patents to the power tool industry. Compl. Post-Hrg Br. at 101. SawStop submitted that "neither the pricing nor the royalty information of record is adequate" and therefore a 100 percent bond rate was appropriate; but should the ALJ disagree, "bond should be set at a minimum of 8 percent." *Id.* The ALJ recommended that the bond rate be set at zero (0) percent of the value of the imported infringing articles. RD at 5. He found that, under the price differential method, no bond is warranted because the infringing REAXX saw is more expensive than the domestic industry SawStop Jobsite saw. *Id.* The ALJ considered SawStop's argument that a bond is required to protect SawStop from difficulties in gaining access to big box

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<sup>6</sup> We note that, in the large majority of investigations in which the Commission issued remedial orders, it has set a non-zero bond rate for the period of Presidential review, based on the record evidence of each investigation. *See, e.g., Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-946, Comm'n Op. at 17-18 (June 29, 2016); *Certain Three-Dimensional Cinema Systems and Components Thereof*, Inv. No. 337-TA-939, Comm'n Op. at 66-69 (Aug. 23, 2016); *Certain Personal Transporters, Components Thereof, and Manuals Therefor*, Inv. No. 337-TA-935, Comm'n Op. at 17-18 (Apr. 20, 2016); *Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same*, Inv. No. 337-TA-933, Comm'n Op. at 51-55 (June 9, 2016); *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm'n Op. at 17-19 (June 26, 2015); *Certain Marine Sonar Imaging Devices, Including Downscan and Sidescan Devices, Products Containing the Same, and Components Thereof*, Inv. No. 337-TA-921, Comm'n Op. at 83-89 (January 6, 2016).

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stores, which comes from Bosch's announcement of the REAXX saw and its existing relationship with big box stores, but concluded that such harm could not be remedied or mitigated by the imposition of a bond. *Id.*

Before the Commission, SawStop's arguments regarding bond amount continue to evolve. First, SawStop argues that the bond rate should be set at 100 percent because Bosch's pre-release announcement of the REAXX saw caused SawStop to lose distributors, and a 100 percent bond is necessary to protect SawStop from that injury. SawStop Initial Sub. at 6. SawStop then argues in its reply submission that the bond should be at least 18.5 percent. SawStop Reply Sub. at 9.

Bosch argues that the bond rate should be set at zero (0) percent because the ALJ properly applied the price differential method, and SawStop did not carry its burden of showing that a 100 percent bond rate is appropriate. Bosch Initial Sub. at 19.

The Commission finds that a bond rate of zero (0) percent is appropriate in this investigation. The ALJ properly determined that the appropriate bond rate under the price differential method is zero percent. SawStop does not dispute that the evidence regarding Bosch and SawStop pricing, presented by the parties and considered by the ALJ, supports the ALJ's bond recommendation inasmuch as Bosch's REAXX is more expensive than SawStop's comparable table saw. *See* SawStop Initial Sub. at 6. The record also reflects, as the ALJ found, that SawStop's harm "comes from the fact that SawStop has been denied access to new marketing channels (*e.g.*, big box stores) for the sale of its Domestic Products as a result of Bosch's announcement of its competing REAXX saw and Bosch's existing relationship with these outlets. This harm cannot be remedied, or even mitigated, by the imposition of a bond." RD at 5. SawStop does not dispute these findings in the RD. *See* SawStop Initial Sub. at 6.

SawStop has not provided evidentiary support based on any alternative factors to support any other bond rate. *See Personal Data*, Comm'n Op. at 85 (“Complainants are, or should be aware, that such failure to satisfy their burden to support bonding may result in no bonding at all.”) (citing *Rubber Antidegradants*, Comm'n Op. at 39-40). We note that SawStop argued in its reply submission that the bond should be at least 18.5 percent, SawStop Reply Sub. at 9, but because SawStop failed to include this argument in its initial submission, thereby denying Bosch opportunity to respond, the Commission has not considered this bond rate.

**D. Phase-In Period**

Bosch argues that, because of the unsettled nature of the legal issues in this investigation, the Commission remedies should have a “phase-in period . . . until all appeals have been resolved,” citing *Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Adjustment Appliances, the Appliances Made Therefrom, and Methods of Making the Same*, Inv. No. 337-TA-833, Comm'n Op. at 10-11 (Jun. 11, 2014) (“*Digital Models*”). Bosch Initial Sub. at 17-18. The remedy in that investigation, however, had no “phase-in period,” but rather had immediate effect. *See Digital Models*, Notice (Apr. 3, 2014). The Commission later granted a motion to stay its remedy pending judicial review based on the four factor test for a stay of administrative agency action, *Digital Models*, Comm'n Op. (Jun. 11, 2014),<sup>7</sup> but Bosch has failed to argue that the four factors warrant a stay. Additionally, in *Digital Models*, the Commission clarified that stays are rarely appropriate because “the circumstances of most investigations do not justify a delay in effectuating statutory remedies

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<sup>7</sup> Commissioner Johanson concurred with the outcome to stay the remedy pending appeal, but did not join the Commission opinion. *Digital Models*, Comm'n Op. at 2 n.1 (Jun. 11, 2014).

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against adjudged infringers.” *Id.* at 10-11. For these reasons, the Commission denies Bosch’s request for a “phase-in period.”

**III. CONCLUSION**

For the reasons set forth in this opinion, the Commission has determined that the appropriate remedy in this investigation is a limited exclusion order and a cease and desist order, and that the bond amount during the period of Presidential review is zero (0) percent of entered value. The Commission also denies Bosch’s request for oral argument.

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: February 1, 2017

**CERTAIN TABLE SAWS INCORPORATING ACTIVE  
INJURY MITIGATION TECHNOLOGY AND  
COMPONENTS THEREOF**

**Inv. No. 337-TA-965**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION (PUBLIC VERSION)** has been served upon the following parties as indicated, on **February 1, 2017**.



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

**On Behalf of Complainants SawStop LLC and SD3, LLC:**

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- Via Hand Delivery  
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**On Behalf of Respondents Robert Bosch Tool Corporation  
and Robert Bosch GmbH:**

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