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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

In the Matter of **CERTAIN SHAKER SCREENS FOR DRILLING FLUIDS, COMPONENTS THEREOF, AND RELATED MARKETING MATERIALS**	**Investigation No. 337-TA-1184**

COMMISSION OPINION

On review of the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 20), the Commission has determined that there has been a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to claims 1 and 12 of U.S. Patent No. 7,210,582 ("the '582 patent"); claim 1 of U.S. Patent No. 7,810,649 ("the '649 patent"); and claims 1, 12, and 17 of U.S. Patent No. 8,925,735 ("the '735 patent"). The Commission has also determined that the appropriate remedy is a general exclusion order ("GEO"), that the public interest considerations do not weigh against this remedy, and has set the bond in the amount of 100 percent of the entered value of the infringing articles during the period of Presidential review. This opinion sets forth the Commission's reasoning in support of its determination. The Commission further adopts the findings in the ID that are not inconsistent with this opinion.

I. BACKGROUND

The Commission instituted this investigation on November 21, 2019, based on a complaint, as amended, filed by M-I L.L.C. of Houston, Texas ("M-I"). 84 Fed. Reg. 64339 (Nov. 21, 2019). The amended complaint alleged violations of section 337 in the importation

into the United States, the sale for importation, and the sale within the United States after importation of certain shaker screens for drilling fluids, components thereof, and related marketing materials by reason of infringement of certain claims of the ’582 patent, the ’649 patent, and the ’735 patent, and of U.S. Trademark Registration Nos. 2,151,736 and 2,744,891. *Id.* The Commission’s notice of investigation named six respondents, including Anping Shengjia Hardware Mesh Co., Ltd. and Hebei Hengying Wire Cloth Co. Ltd. (together, the “Defaulting Respondents”). *Id.* at 64339-40. The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.* at 64340.

On February 5, 2020, the Commission found the Defaulting Respondents in default. Order No. 10, *unreviewed*, Notice (Mar. 5, 2020). The Commission subsequently terminated all other respondents by consent orders. *See* Order No. 8, *unreviewed*, Notice (Feb. 6, 2020); Order No. 14, *unreviewed*, Notice (Apr. 23, 2020). Thereafter, M-I withdrew its trademark infringement allegations, as well several claims of the asserted patents from the investigation. *See* Order No. 19, *unreviewed*, Notice (Sept. 24, 2020). The patent claims remaining in the investigation are claims 1 and 12 of the ’582 patent; claim 1 of the ’649 patent; and claims 1, 12, and 17 of the ’735 patent.

On August 27, 2020, M-I filed a motion for summary determination that the Defaulting Respondents violated section 337 and that M-I satisfies the domestic industry requirement of section 337.[1] The motion requested a finding of violation, the issuance of a GEO, and the imposition of a bond in the amount of one hundred percent (100%) of the entered value of

[1] Complainant M-I L.L.C.’s Motion for Summary Determination of Violation and for Recommended Determination on Remedy and Bonding (Aug. 7, 2020) (“MSD”).

infringing products imported during the Presidential review period. On September 16, 2020, OUII filed a response supporting M-I's motion, including the requested relief.

On November 19, 2020, the ALJ issued the subject ID granting M-I's motion and a Recommended Determination on Remedy and Bond ("RD") recommending the issuance of a GEO and the imposition of a bond in the amount of one hundred percent (100%) of the entered value of infringing products subject to the GEO. Specifically, the ID found that (1) the Commission has jurisdiction over the products, the parties, and the investigation; (2) the importation requirement is satisfied; (3) M-I has standing to bring this investigation; (4) all of the remaining asserted claims are infringed by one or more of the Defaulting Respondents' products; and (5) M-I has satisfied the domestic industry requirement of section 337.

On January 4, 2021, the Commission determined to review the ID's finding that M-I's investments in plant and equipment and M-I's employment of labor and capital are significant under section 337(a)(3)(A) and (B). Notice, 86 Fed. Reg. 1523 (Jan. 8, 2021). The Commission also sought briefing on remedy, bonding, and the public interest. M-I filed a submission in response on January 19, 2021, and filed a corrected version of that response on January 22, 2021.[2] OUII filed a submission in response on January 19, 2021,[3] and filed a reply submission on January 26, 2021.[4] No submissions were received from the public.

[2] Complainant's Submission on Remedy, the Public Interest, and Bonding (Jan. 19, 2021) ("M-I Sub.").

[3] Response of the Office of Unfair Import Investigations to the Commission's Request for Written Submissions on Remedy, the Public Interest, and Bonding (Jan. 19, 2021) ("OUII Sub.").

[4] Reply Submission of the Office of Unfair Import Investigations to Complainant M-I L.L.C.'s Written Submission on Remedy, The Public Interest, and Bonding (Jan. 26, 2021) ("OUII Reply Sub.").

II. REVIEW

With respect to the issues under review, "the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge." 19 C.F.R. § 210.45(c). The Commission also "may take no position on specific issues or portions of the initial determination," and "may make any finding or conclusions that in its judgment are proper based on the record in the proceeding." *Id.*

III. ANALYSIS

The Commission has determined to affirm the ID's finding that M-I satisfied the economic prong of the domestic industry requirement under section 337(a)(3). Specifically, the Commission finds that M-I made significant investments in plant and equipment and significant employment of labor under section 337(a)(3)(A) and (B), 19 U.S.C. § 1337(a)(3)(A) & (B). The Commission affirms the ID's findings that M-I's plant and equipment investments and employment of labor are significant based on: (1) the quantity of the investments and employment; (2) the quality of the investments and employment because they are directly related to the production of the articles in the United States; and (3) a comparison of M-I's domestic and foreign activities. ID at 61-66; *see also* MSD Ex. 1 (Conf. Supp. Decl. of David Wilson); MSD Ex. 4 (Decl. of Alan Ratliff); Complaint Ex. 35 (Conf. Decl. of David Wilson). The Commission, however, finds the manner in which the ID analyzed value-added was flawed and therefore vacates that portion of the ID. *See* ID at 65-66. Accordingly, the Commission affirms the ID's finding that M-I showed that a domestic industry exists related to articles protected by the asserted patents.

A. Remedy

If the Commission finds a violation of section 337, the Commission shall "direct that the articles concerned, imported by any person violating the provision, be excluded from entry into

the United States." 19 U.S.C. § 1337(d)(1). Such a remedy is "limited to persons determined to be violating this section," (*i.e.*, a limited exclusion order, or "LEO") unless the Commission determines that:

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

19 U.S.C. § 1337(d)(2). If the Commission finds that at least one of these provisions is satisfied, the Commission may issue a GEO against all infringing products regardless of the source.

The Commission finds that the appropriate remedy in this investigation is to issue a GEO with respect to the '649, '735, and '582 patents. The Commission finds that the RD reasonably concluded that an LEO with respect to those patents would likely be circumvented based on evidence that: (1) there is a strong demand for the infringing products; (2) the importation and sale of the infringing products is profitable; (3) there are existing domestic marketing and distribution networks for the infringing products; (4) infringing goods are sold on large, online marketplaces; (5) it is difficult to identify the source of the goods because they are shipped in generic packaging; and (6) manufacturers often use resellers and intermediaries with unclear ties to the original manufacturer to distribute infringing product and many sellers appear to conceal the identifying information of the manufacturers of their goods, making it possible for manfacturers to evade an LEO. RD, Order 20 at 69-75. The Commission also finds that the RD reasonably found that: (1) there was a widespread pattern of violation based on infringement of the '649 and '735 patents by the Defaulting Respondents and the four other respondents previously terminated by consent order; (2) the evidence shows that thirteen nonparties are selling in the United States shaker screens that appear to infringe the '649 and/or the '735

patents; and (3) the use of generic packaging and intermediary importers made it difficult to identify the source of the infringing products. *Id.* at 75-79. Accordingly, the Commission has determined that a GEO is warranted with respect to the '649, '735, and '582 patents.[5]

B. The Public Interest

Section 337 requires the Commission, upon finding a violation of section 337, to issue a remedy "unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry." 19 U.S.C. § 1337(d)(l). The statute requires the Commission to consider and make findings on the public interest in every case in which a violation is found regardless of the quality or quantity of public interest information supplied by the parties. 19 U.S.C. § 1337(d)(l). Thus, the Commission publishes a notice inviting the parties as well as interested members of the public and interested government agencies to gather and present evidence on the public interest at multiple junctures in the proceeding. 19 U.S.C. § 1337(d)(l).

The Commission finds no evidence in the record indicating that a GEO would have an adverse impact on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. The record in this investigation contains no evidence that the products at issue, shaker screens, raise particular public health and welfare concerns. The presence of non-

[5] The RD declined to reach the issue of whether there was a widespread violation with respect to the '582 patent pursuant to 19 U.S.C. § 1337(d)(2)(B) because it already found that the issuance of a GEO with respect to the '582 patent was appropriate pursuant to 19 U.S.C. § 1337(d)(2)(A). RD, Order No. 20 at 79.

infringing products made by domestic competitors demonstrates that exclusion is unlikely to negatively impact competitive conditions in the economy. The record in this investigation also contains no evidence that exclusion would negatively impact the production of like and directly competitive articles by M-I or its domestic competitors. Finally, continued shaker screen production by M-I and its domestic competitors makes it unlikely that exclusion will negatively impact United States consumers of shaker screens, as those consumers will continue to have the ability to purchase the products. Thus, based on the record of this investigation, and after considering the public interest factors, the Commission has determined to issue a GEO.

C. Bonding

When the Commission enters an exclusion order, a respondent may continue to import and sell its products during the 60-day period of Presidential review under a bond in an amount determined by the Commission to be "sufficient to protect the complainant from any injury." 19 U.S.C. § 1337(j)(3); *see also* 19 C.F.R. § 210.50(a)(3). When reliable price information is available in the record, the Commission has often set the bond in an amount that would eliminate the price differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, & Prods. Containing Same, Including Self-stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. No. 2949, Comm'n Op. at 24 (Jan. 16, 1996). The Commission also has used a reasonable royalty rate to set the bond amount where a reasonable royalty rate could be ascertained from the evidence in the record. *See, e.g.*, *Certain Audio Digital-to-Analog Converters & Prods. Containing Same*, Inv. No. 337-TA-499, Comm'n Op. at 25 (Mar. 3, 2005). Where the record establishes that the calculation of a price differential is impractical or there is insufficient evidence in the record to determine a reasonable royalty, the Commission has imposed a one hundred percent bond. *See, e.g.*, *Certain Liquid Crystal Display Modules, Prods. Containing Same, & Methods Using the*

Same, Inv. No. 337-TA-634, Comm'n Op. at 6-7 (Nov. 24, 2009). The complainant, however, bears the burden of establishing the need for a bond. *Certain Rubber Antidegradants, Components Thereof & Prods. Containing Same*, Inv. No. 337-TA-533, USITC Pub. No. 3975, Comm'n Op. at 40 (July 21, 2006).

The RD recommends that the Commission set the bond rate at one hundred percent (100%) of the entered value of the articles subject to the GEO. RD at 81. The RD found that a bond could not be based on pricing differentials because the Defaulting Respondents failed to participate in discovery. *Id.* at 80-81. M-I and OUII agree with the RD and contend that the bond rate should be set at one hundred percent of the entered value for all covered products due to the Defaulting Respondents' failure to participate in discovery. M-I Sub. at 15; OUII Init. Sub. at 22. OUII further argues that a price differential is not practical because infringing shakers are sold for a wide range of prices. OUII Init. Sub. at 22-23.

The Commission finds that the appropriate bond rate is one hundred percent (100%) of the entered value of the articles subject to the GEO. When pricing information or royalty information is insufficient, the Commission has set a bond rate of one hundred percent of entered value. *Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-946, Comm'n Op. at 18 (June 29, 2016). Here, the parties demonstrated that they could not obtain sufficient pricing information or royalty information due to the Defaulting Respondents' failure to participate in discovery. Accordingly, the Commission has determined to set the bond during the period of Presidential review at one hundred percent (100%) of the entered value of the infringing products subject to the GEO.

IV. CONCLUSION

For the reasons set forth herein, the Commission determines that M-I has established a violation of section 337 by the Defaulting Respondents with respect to claims 1 and 12 of the '582 patent, claim 1 of the '649 patent, and claims 1, 12, and 17 of the '735 patent. Accordingly, the investigation is terminated with a finding of a violation of section 337. After considering the public interest, the Commission determines that the appropriate remedy is to issue a GEO with respect to those patent claims, and that the bond during the period of Presidential review is set in the amount of one hundred percent (100%) of the entered value of the infringing products subject to the GEO.

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: March 31, 2021

CERTAIN SHAKER SCREENS FOR DRILLING FLUIDS, COMPONENTS THEREOF, AND RELATED MARKETING MATERIALS **Inv. No. 337-TA-1184**

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served via EDIS upon the Commission Investigative Attorney, **Peter Guarnieri, Esq.**, and the following parties as indicated, on **March 31, 2021.**

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