

PUBLIC VERSION

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

In the Matter of

**CERTAIN BALANCED ARMATURE
DEVICES, PRODUCTS CONTAINING
SAME, AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1186

COMMISSION OPINION

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I. INTRODUCTION

On August 2, 2021, the Commission determined to review in part an initial determination (“ID”) granting complainants’ motion for summary determination (“SD”) of a violation of Section 337 issued by the presiding administrative law judge (“ALJ”) on June 1, 2021. 86 Fed. Reg. 43270-72 (Aug. 6, 2021). On review, the Commission has determined to affirm, with modifications, the ID’s finding that there has been a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. This opinion sets forth the Commission’s reasoning in support of its determination. The Commission affirms all findings in the SD that are not inconsistent with this opinion.

II. BACKGROUND

A. Procedural History

On November 29, 2019, the Commission instituted this investigation based on a complaint filed by Knowles Corporation and Knowles Electronics, LLC of Itasca, Illinois, and Knowles Electronics (Suzhou) Co., Ltd. of Suzhou, China (collectively, “Knowles”). 84 Fed. Reg. 65840-41 (Nov. 29, 2019). The complaint, as supplemented, alleged violations of section 337 due to the importation and sale in the United States of certain balanced armature devices, products containing same, and components thereof by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry. *Id.* The notice of investigation named twelve (12) respondents, including Shenzhen Bellsing Acoustic Technology Co. Ltd. of Shenzhen, China (“Shenzhen Bellsing”), Suzhou Bellsing Acoustic Technology Co. Ltd. of Suzhou, China (“Suzhou Bellsing”), Dongguan Bellsing Precision Device Co., Ltd. of Dongguan, China (“Dongguan Bellsing”), and Bellsing Corporation of Lisle, Illinois (“Bellsing Corp.”) (collectively, “Bellsing”); Liang Li (a/k/a Ryan Li) of Suzhou City, China (“Mr. Li”); Dongguan Xinyao Electronics Industrial Co., Ltd. of

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Dongguan, China (“Xinyao”); Soundlink Co., Ltd. of Suzhou, China (“Soundlink”); Magnatone Hearing Aid Corporation d/b/a Persona Medical and InEarz Audio of Casselberry, Florida (“Persona”); Jerry Harvey Audio LLC of Orlando, Florida (“Harvey”); Magic Dynamics, LLC d/b/a MagicEar of Clearwater, Florida (“MagicEar”); Campfire Audio, LLC of Portland, Oregon (“Campfire”); and Clear Tune Monitors, Inc. of Orlando, Florida (“Clear Tune”).¹ *Id.* The Office of Unfair Import Investigations (“OUII”) is also a party in this investigation. *Id.*

Xinyao, Soundlink, MagicEar, CampFire, Persona, Clear Tune, and Harvey were terminated from the investigation based on the issuance of consent orders. *See* Order Nos. 37-40, *unreviewed by* Comm’n Notice (Nov. 23, 2020); Order Nos. 34-35, *unreviewed by* Comm’n Notice (Nov. 19, 2020); Order No. 28, *unreviewed by* Comm’n Notice (Sept. 20, 2020). Accordingly, only respondents Bellsing and Mr. Li remain in the investigation.

Respondent Mr. Li is the founder, legal representative, CEO, and majority shareholder of Shenzhen Bellsing. SD at 8-9. He is also a former Knowles employee having worked at both its U.S. and Chinese facilities in various capacities for approximately seven years. *Id.* After departing Knowles, Mr. Li became a director and the general manager at Suzhou Hearonic Electronics Co., Ltd. *Id.* at 9. In 2013, Mr. Li and another Knowles employee, HongKun (Ken) Chai, started a new company called Wanzun Electronics Technology Co., Ltd. aka Suzhou Wanmaizun Trading Co., Ltd. aka Vantron (“Vantron”). *Id.* at 10-11. After the police raided Vantron’s production facilities for theft from Knowles, Mr. Li entered into talks with Shenzhen Bellsing, which distributed Vantron’s balanced armature devices. *Id.* at 12. Sometime after July 2015, Vantron’s production equipment was transferred to Suzhou Bellsing’s facility. *Id.* at 13. Suzhou Bellsing is a wholly-owned subsidiary of Shenzhen Bellsing. In 2016, Mr. Li obtained

¹ Bellsing and Mr. Li are collectively referred to as “Respondents.”

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an 85% ownership in Shenzhen Bellsing. Suzhou Bellsing officially opened in June 2017, despite being incorporated in 2014. *Id.* at 14.

On April 30, 2020, Knowles moved to compel Bellsing and Mr. Li to provide supplemental responses to interrogatories and requests for production in this investigation. On May 15, 2020, Bellsing filed an opposition. On July 13, 2020, Knowles' motion to compel was granted-in-part and denied-in-part. *See generally* Order No. 15. The ALJ directed Bellsing and Mr. Li to supplement their responses to six interrogatories and nine requests for production. Order No. 15 at 35. Bellsing and Mr. Li supplemented their responses.

On September 24, 2020, Knowles filed a motion for sanctions under Commission Rule 210.33(b)(6), 19 C.F.R. § 210.33(b)(6), against Bellsing and Mr. Li for discovery misconduct. At that time, Respondents were no longer represented by outside counsel and were proceeding *pro se*.

On October 16, 2020, Knowles moved for summary determination of a violation of section 337 by Respondents Bellsing and Mr. Li. On November 5, 2020, OUII and Respondents filed responses opposing the motion.² The response for Bellsing and Mr. Li was filed by Daniel Warren, an employee of Bellsing Corporation. On November 12, 2020, Knowles filed a reply in support of its motion.

On January 14, 2021, the presiding ALJ issued an ID (Order No. 46), granting-in-part and denying-in-part Knowles' motion for sanctions ("Sanctions ID"). As to Bellsing, the Sanctions ID found that Bellsing failed to disclose spoliation of evidence, that its failure to do so was in bad faith, and that the appropriate sanction was default. Sanctions ID at 18-46. The Sanctions

² In view of an intervening Commission Opinion in Inv. No. 337-TA-1166, OUII later withdrew its response opposing Knowles' motion for summary determination. Notice from Staff (Jan. 26, 2021).

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ID denied Knowles' motion as to Mr. Li, and denied Knowles' request for monetary sanctions. *Id.* at 17-18, 46-47.

No one petitioned for review of the Sanctions ID. Nevertheless, on February 16, 2021, the Commission determined to review the Sanctions ID in its entirety. Comm'n Notice (Feb. 16, 2021). On March 17, 2021, the Commission issued its final determination on the Sanctions ID, affirming the Sanctions ID, with modification, finding Bellsing in default.³ Sanctions ID at 47 (Jan. 14, 2021), *aff'd with modification*, Comm'n Notice (Mar. 17, 2020).

On March 18, 2021, Knowles was given leave to file a brief to address the effect of the Sanctions ID on its pending motion for summary determination. Order No. 47 (Mar. 18, 2021). On March 25, 2021, the ALJ issued Order No. 48, setting a procedural schedule for the submission of briefs on remedy and bonding before the ALJ. Order No. 48 (Mar. 25, 2021). On April 6, 2021, Knowles filed its initial brief on remedy and bonding.

On April 13, 2021—one week after Knowles filed its initial remedy brief and three days before the deadline for responsive briefs—attorneys from the law firm of Rimon, P.C., made a “limited appearance” on behalf of Mr. Li and Bellsing for the purpose of “responding to Complainant’s Brief on Remedy and Bonding.” Notice of Appearance of J. Xu at 1. The ALJ granted Mr. Li’s unopposed motion to extend the deadlines for Mr. Li’s and OUII’s responsive briefs and for Knowles’ reply brief. Order No. 49 at 2 (Apr. 14, 2021). Mr. Li’s motion did not request an extension for Bellsing to file a response. On April 23, 2021, OUII filed its responsive brief, and outside counsel submitted a responsive brief on behalf of both Mr. Li and Bellsing.

³ The denial of Knowles' motion as to Mr. Li and its request for monetary sanctions were not reviewable.

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On June 1, 2021, the ALJ granted Knowles' motion for summary determination of a violation of section 337 by Bellsing and Mr. Li and issued his recommended determination on remedy and bonding ("RD"). The RD recommended that the Commission issue a GEO and CDOs to each of the Bellsing respondents and Mr. Li. On June 11, 2021, Bellsing and Mr. Li filed a joint petition for review.⁴ On June 21, 2021, both Knowles and OUII filed oppositions to Respondents' petition.⁵

On August 2, 2021, the Commission determined to review the SD in part. 86 Fed. Reg. at 43270. The Commission determined to review: (1) whether Bellsing could participate in briefing on remedy and bonding before the ALJ and in briefing on remedy, the public interest, and bonding before the Commission; (2) importation; (3) use by Mr. Li of Representative Trade Secret Nos. ("RTS") 1-10; (4) all findings related to RTS No. 6; and (5) domestic industry. *Id.* at 43270-71. The Commission also determined to review the issues raised in Respondents' petition relating to due process, comity, and collateral estoppel. *Id.* The Commission requested briefing on the issues under review, remedy, bonding, and the public interest.

⁴ Petition Of Shenzhen Bellsing Acoustic Technology Co., Ltd., Suzhou Bellsing Acoustic Technology Co., Ltd., Dongguan Bellsing Precision Device Co., Ltd., Bellsing Corporation And Liang Li, a/k/a Ryan Li For Review Of Initial Determination Granting Summary Determination On Violation Of Section 337 (Order No. 50) ("RPet.").

⁵ Complainants' Opposition To Respondents' Petition For Review of Initial Determination ("CResp."); OUII's Response To The Petition Of Shenzhen Bellsing Acoustic Technology Co., Ltd., Suzhou Bellsing Acoustic Technology Co., Ltd., Dongguan Bellsing Precision Device Co., Ltd., Bellsing Corporation And Liang Li, A/K/A Ryan Li For Review Of Initial Determination Granting Summary Determination On Violation Of Section 337 ("OResp.").

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On August 16, 2021, Respondents, Knowles, and OUII each filed their initial responses to the Commission's notice of review.⁶ On August 23, 2021, Respondents, Knowles, and OUII each filed their reply submissions.⁷

B. Products at Issue

The products at issue in this investigation are balanced armature ("BA") devices that are used in a variety of products, including for example, earphones, ear buds, headsets, headphones, in-ear monitors, hearing aids, hearing aid replaced receiver tubes, receivers in canal replacement modules, and personal sound amplifiers. The accused products are manufactured either on a manual product line or an automated/semi-automated production line by Bellsing. *See* SD at 28-29.

C. Trade Secrets at Issue

Knowles alleges that the Respondents misappropriated ten (10) trade secrets, referred to as Representative Trade Secret ("RTS") Nos. 1-10. A summary of the RTS is as follows:

| Representative Trade Secret | Description |
|------------------------------------|---|
| RTS No. 1 | Knowles' Coil Design Spreadsheet ("CDS"). SD at 57. |
| RTS No. 2 | Knowles' Flow and Leak Tester ("F&L") software. SD at 67. |
| RTS No. 3 | Knowles' manual drive rod welding machine. SD at 43. |

⁶ Written Submission of Bellsing Respondents and Respondent Li on Certain Issues Under Review and Remedy, Public Interest, and Bonding ("RRemBr."); Complainants' Opening Submission in Response to Commission Determination To Review In Part a Summary Determination Finding a Violation of Section 337 ("CRemBr."); OUII's Submission In Response to the Commission's Notice ("ORemBr.").

⁷ Reply Submission of Bellsing Respondents and Respondent Li on Certain Issues Under Review and Remedy, Public Interest, and Bonding ("RRemReplyBr."); Complainants' Reply to Respondents' and Staff's Submissions in Response to Commission Determination To Review In Part a Summary Determination Finding a Violation of Section 337 ("CRemReplyBr."); OUII's Reply to the Private Parties' Submissions In Response to the Commission's Notice ("ORemReplyBr.").

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| Representative Trade Secret | Description |
|------------------------------------|---|
| RTS No. 4 | Knowles' automated welding machine. SD at 30. |
| RTS No. 5 | Software for Knowles' automated welding machine. SD at 30. |
| RTS No. 6 | Knowles' drive-rod welding workmanship standards. SD at 73. |
| RTS No. 7 | Knowles's manual magnetic adjust machine. SD at 50. |
| RTS No. 8 | Electrical schematics for the machine of RTS No. 7. SD at 50. |
| RTS No. 9 | Electrical schematics for Knowles's Final Computer Aided Adjust and Test ("FCAAT") machine. SD at 36. |
| RTS No. 10 | Software for the FCAAT machine of RTS No. 9. SD at 36. |

II. LEGAL STANDARDS

A. Summary Determination

Under Commission Rule 210.18(a), a “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 determination sought by the moving party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. § 210.18(b). “[I]n deciding a motion for summary judgment, ‘the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor.’” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 481 F.3d 1371, 1377 (Fed. Cir. 2007) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). “The summary judgment movant has the initial responsibility of identifying the legal basis of its motion, and of pointing to those portions of the record that it believes demonstrate the absence of a genuine issue of material fact.” *Novartis Corp. v. Ben Venue Labs., Inc.*, 271 F.3d 1043, 1046 (Fed. Cir. 2001) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)).

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B. Misappropriation of Trade Secrets

The Federal Circuit in *TianRui* held that “a single federal standard, rather than the law of a particular state, should determine what constitutes a misappropriation of trade secrets sufficient to establish an ‘unfair method of competition’ under section 337.” *TianRui v. Int’l Trade Comm’n*, 661 F.3d 1322, 1327 (Fed. Cir. 2011). Sources of applicable law include the Uniform Trade Secret Act (“UTSA”), the Restatement (Third) of Unfair Competition, the Restatement of Torts, the Defend Trade Secrets Act of 2016 (18 U.S.C. §§ 1831-39), and federal common law. Complainants bear the burden to establish a *prima facie* case of misappropriation but once they make that showing, the burden shifts to Respondents to show independent development. *See Certain Processes for the Manufacture of Skinless Sausage Casings & Resulting Prod.*, Inv. No. 337-TA-148/169, Initial Determination, 1984 WL 273789, *95 (July 31, 1984), *unreviewed*, *Comm’n Op.*, 1984 WL 273970 (Jan. 1, 1984); *see also Pioneer Hi-Bred Int’l v. Holden Found. Seeds, Inc.*, 35 F.3d 1226, 1241 (8th Cir. 1994) (“[O]nce [plaintiff] produced convincing evidence of misappropriation, [defendant] was obligated to provide persuasive evidence of lawful derivation.”). The Commission noted that “the UTSA defines misappropriation as:

(i) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(ii) disclosure or use of a trade secret of another without express or implied consent by a person who

(A) used improper means to acquire knowledge of the trade secret; or

(B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) before a material change of his [or her] position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.”

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See Certain Crawler Cranes & Components Thereof, Inv. No. 337-TA-887, Comm'n Op. at 52 (May 6, 2015) (citing UTSA § 1(2)). The Commission has held that the elements of the unfair act of misappropriation of trade secrets are:

- (1) a protectable trade secret exists;
- (2) the complainant is the owner of the trade secret;
- (3) the complainant disclosed the trade secret to respondent while in a confidential relationship or the respondent wrongfully took the trade secret by unfair means;
and
- (4) the respondent has used or disclosed the trade secret causing injury to the complainant.

See id. at 34 (citing UTSA, § 1(4)). The Commission noted that the Restatement provides that “use” includes “the marketing of goods that embody a trade secret, [where] the trade secret is employed in manufacturing or production, or is relied on to assist or accelerate research or development.” *See id.* at 52-53 (citing Restatement (Third) of Unfair Competition § 40, Comment c).

III. DISCUSSION

For the reasons set forth below, the Commission has determined to affirm the SD. Specifically, the Commission has determined to affirm, with modifications, the SD's findings with respect to importation as to Mr. Li and disclosure/use of RTS Nos. 1-10 by Mr. Li. The Commission also has determined to affirm the SD's finding that the domestic industry requirement has been met, for the reasons stated in the SD.⁸ SD at 85-94. The Commission has

⁸ Chair Kearns notes that the ID's finding of an existence of a domestic industry was based mainly on Knowles' U.S. investments in R&D, engineering and small-scale manufacturing relating to its BA products. SD at 85-86. It remains an open question to him whether the sufficiency of U.S. investments under Section 337(a)(1)(A) should be evaluated without consideration of such important activities as large-scale manufacturing (both foreign and domestic). *See Certain Movable Barrier Operator Systems and Components Thereof*, Inv. No.

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also determined to correct minor errors with respect to RTS No. 6 and adopt the remaining findings of the SD with respect to RTS No. 6 (with the exception of Mr. Li's use/disclosure of RTS No. 6 discussed separately, and which the Commission affirms on modified grounds herein). Bellsing was previously found to be in default and the Commission did not review the SD's misappropriation findings as to Bellsing. Accordingly, the Commission finds a violation of section 337 with respect to Respondents' importation and sale in the United States of Respondents' BAs.

A. Allowability of Respondents' Briefing on Remedy and Bonding

Once a party has been found in default, it may no longer contest the allegations at issue in the investigation. 19 C.F.R. § 210.16(c). Commission Rule 210.16(b)(4) provides that "[a] party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation." 19 C.F.R. § 210.16(b)(4). Therefore, the Commission affirms the SD's finding that Bellsing could not contest any issues related to violation after it was found in default.

Turning to the issue of briefing on remedy and bonding before the ALJ, the Commission finds that Bellsing's remedy briefing before the ALJ was improper because it was not timely submitted. Outside counsel moved to extend the time for *Mr. Li* to file his responsive brief, but did not request additional time for Bellsing to file a brief on remedy and bonding. Counsel filed a "joint" remedy brief on behalf of Mr. Li and Bellsing, but did not ask the ALJ to consider

337-TA-1118, Separate Views of Chair Kearns Regarding Economic Prong Issues (Jan. 12, 2021). In affirming the ALJ's grant of summary determination here, he finds that given the apparent importance of R&D and engineering to the industry producing BAs, the large share of these activities occurring in the United States, and in the absence of any meaningful argument to the contrary, it is unlikely that information on large-scale manufacturing would cause him to question the existence of a domestic industry.

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Bellsing's submission out of time. This joint brief was therefore not proper as to Bellsing. Accordingly, the ALJ was correct in not considering the Bellsing remedy briefing.

Turning to the remedy briefing before the Commission, the Commission notes that there may be situations where it is prudent for the Commission and/or the ALJ to accept remedy and bonding briefing from parties who have defaulted, and the Commission retains discretion to do so. The Commission also retains the discretion to determine what weight, if any, to give the briefing. Here, Bellsing and Mr. Li also submitted joint submissions, and Bellsing's arguments as to remedy and bonding are duplicative of Mr. Li's arguments. In exercising our discretion, we decline to accept remedy briefing from Bellsing because it is duplicative and because it was not timely filed before the ALJ. The same information and argument that Bellsing would put before the Commission on those issues is contained in the submission filed on behalf of Mr. Li and therefore the Commission's finding on remedy would not benefit from Bellsing's briefing.

B. Due Process

In their petition for review, Respondents argue that the imposition of sanctions preventing Bellsing from contesting arguments on violation deprived Bellsing of due process.⁹ RPet. at 3-15. Respondents explain that due process requires that the sanctions for discovery abuses be "just" and that the sanctions relate to the claims which were "at issue" in the relevant discovery order. *Id.* at 3-5. Respondents further argue that the Commission improperly imposed sanctions and that Respondents were prejudiced because: (1) Bellsing was not permitted to

⁹ The Commission's determinations are reviewed under the Administrative Procedure Act ("APA") which provides that an "agency shall give all interested parties opportunity for . . . the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554(c). Here, the Commission complied with the APA and Respondents have not established that their rights were violated by the Commission.

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respond to the motion for summary determination when it was based on discovery materials produced by Bellsing during the investigation (*id.* at 5); (2) Respondents' prior counsel was allowed to withdraw at a critical time during the investigation (*id.* at 6-8, 9-11); (3) neither the Commission nor the ALJ weighed the necessary factors to determine whether sanctions were appropriate (*id.* at 11-13); (4) Respondents did not have access to the description of the asserted trade secrets (*id.* at 6-7); and (5) the ALJ and the Commission did not consider whether to impose lesser sanctions (*id.* at 13). Respondents request that the Commission vacate the finding of default against Bellsing, reverse the summary determination, and remand the investigation for a hearing. *Id.*

Most of Respondents' purported due process challenges relate to their request that the Commission vacate the finding of default against Bellsing. Any challenge to the default finding needed to have been filed by way of a petition to review the Sanctions ID, which issued in January 2021. By the time the SD issued five months later, the Commission had already reviewed the Sanctions ID and issued its determination and opinion on those issues. Accordingly, Respondents' challenge to the Sanctions ID findings is untimely.

Even if they were timely, Respondents' arguments are without merit. Before withdrawing, Respondents' counsel was aware that Knowles was planning to file a motion for sanctions because the ALJ held a teleconference on the issue and a public transcript of that teleconference was posted on EDIS. Therefore, Respondents had actual, or at least constructive, notice that the sanctions motion was going to be filed. Bellsing did not oppose its counsel's motion to withdraw from representation. Bellsing chose to *actively* participate in responding to the motion *pro se* rather than hire new counsel or request that the ALJ stay or delay the due date for responding to the motion while it hired new counsel. Respondents cite no authority, and we

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are aware of none, that proceeding to rule on Knowles' motion for sanctions in this context constituted a denial of due process.

To the extent that Respondents are challenging the Commission's finding of default as a due process violation as to Bellsing, the Commission's determination was proper. There is no question that the finding of default was related to the claim of trade secret misappropriation: Order No. 15 required Bellsing to describe the destruction of any document relating to the asserted trade secrets. Order No. 15 at 32-34. Bellsing failed to comply with the ALJ's discovery order when it did not disclose its spoliation of evidence, and this failure was done in bad faith. Comm'n Op. at 6-7. In addition, Bellsing repeatedly engaged in conduct that threatened the integrity of the investigation. *Id.* Finally, both the ALJ and the Commission considered whether lesser sanctions were appropriate and found that they were not. *See* Sanctions ID at 43-46; Comm'n Op. at 9-10. As such, and for the reasons articulated at length in the Sanctions ID and Commission Opinion, the finding of default was just and comported with the due process requirements. *See Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 102 S. Ct. 2099, 2107 (1982) (finding that Fed. R. Civ. P. Rule 37(b)(2) includes two standards that limit a court's discretion with respect to sanctions—the sanctions must be “just” and specifically related to the claim at issue in the discovery order).

C. Importation

The Commission has determined that Mr. Li met the importation requirement of section 337(a)(1)(A). First, Mr. Li waived his objection to the SD's finding that the importation requirement has been met as to him (SD at 22-23). Knowles laid out its affirmative case in its motion for summary determination. MSD at 11-13. Respondents (including Mr. Li) made no arguments relating to importation, and more specifically, Respondents made no argument that the evidence and theory on which Knowles relied to establish importation was insufficient or

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improper. Accordingly, Mr. Li has waived any argument that the importation requirement has not been met as to him.

Second, even if his arguments were not waived, the Commission would find that the importation requirement was met as to Mr. Li. The record reflects that Mr. Li has been deeply involved in the production, importation, and sale of the subject BAs in the United States. Mr. Li misappropriated Knowles' trade secrets as discussed below. He was personally involved in the theft of some of these trade secrets prior to his purchase of a majority share of Bellsing, and he was involved with using the asserted trade secrets and selling articles using those secrets when he went to Bellsing, as discussed more below. His actions in stealing and using Knowles' trade secrets started well before he joined Bellsing and continued after he obtained an 85% ownership interest in Bellsing. Those actions began in his personal capacity, continued at Vantron, and then Mr. Li used Bellsing to make, sell, and import into the United States products that encompassed the fruit of his theft.

As the SD explained, Mr. Li led the founding of Bellsing's U.S. based entities and served as the head of Bellsing's Sales Center overseeing U.S. Sales. SD at 22-23. Mr. Li has been personally involved in meetings with customers and potential customers that are located in the United States or that sell to the U.S. market. *Id.* at 23. In addition, Mr. Li attended trade shows in the United States in 2019 and had planned to attend again in 2020 before the COVID outbreak. *Id.* at 23. Prior to the pandemic, Mr. Li traveled to the United States every month or two for meetings with U.S. based employees and to meet with U.S. customers, including SURE, Etymotic, and Amazon. *Id.*

Thus, Mr. Li's active and personal involvement in the theft and use of the trade secrets, first at Vantron and then at Bellsing, his significant interactions with customers in the United

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States or those who sell into the United States, his majority ownership of Shenzhen Bellsing, his high-level role there, his role in developing the strategy for the sale of BAs in the United States, and his meetings with customers and others show his key role in the sale and importation of Bellsing's BAs. Under these circumstances, the Commission finds that Mr. Li was sufficiently involved in the sale and importation of the accused BAs to U.S. customers such that he has met the importation requirement.¹⁰ *See Comcast Corp. v. Int'l Trade Comm'n*, 951 F.3d 1301, 1309-10 (Fed. Cir. 2020) (finding that Comcast satisfied the importation requirement even though it was not the importer of record where Comcast was "sufficiently involved" in the importation of the accused products). The Commission adopts the remaining findings in the SD on the importation of the accused BAs. SD at 19-21, 22-23.

D. Whether Mr. Li Used or Disclosed Each RTS

1. RTS Nos. 4-5

RTS No. 4 is Knowles' automated welding machine and RTS No. 5 is software for that machine. The SD found that there was no genuine dispute of material fact that RTS Nos. 4-5 are trade secrets and that Respondents misappropriated those trade secrets. SD at 30-36. The Commission reviewed the SD's determination that Mr. Li had used or disclosed RTS Nos. 4-5. On review, the Commission finds that Mr. Li has used or disclosed RTS Nos. 4-5. First, Mr. Li waived any challenge to the SD's finding that Mr. Li used or disclosed RTS Nos. 4-5 by failing

¹⁰ Given these facts, the Commission finds that it is not necessary to consider whether the record also supports piercing the corporate veil as to Mr. Li for importation purposes. Likewise, given the record evidence of Mr. Li's use and disclosure of RTS Nos. 1-10, the Commission affirms (with modifications) the finding of misappropriation as to Mr. Li, and does not reach the issue of veil-piercing. *Cf., Lubby Holdings LLC v. Chung*, 2021 WL 3889816, *2 (Fed. Cir. Sept. 1, 2021) ("Corporate officers can be personally liable for their own acts of infringement, even if those acts were committed in their corporate capacity.").

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to petition for review of that finding. Second, even if not waived, the undisputed evidence establishes that Mr. Li used/disclosed RTS Nos. 4-5.

While employed at Knowles, Mr. Li worked on developing Knowles' automated welding machine and its software for several years. *See e.g.*, MSD Ex. 4 (Li) at 157:7-17; 162:13-163:2; 169:10-11; MSD Ex. 23 (Spangler) ¶¶ 974-76. Dr. Spangler, Knowles' expert, testified, after reviewing videos and photographs from an inspection of Bellsing's facility, that Bellsing's automated welding machine appears to be virtually identical to Knowles' design file for the machine. MSD Ex. 23 ¶¶ 1025-26. Mr. Jack Zhao, a Bellsing employee, admitted to taking the assembly file for the machine, containing three-dimensional blueprints, from Knowles while he was working there and emailing it to a co-worker at Bellsing. MSD Ex. 96 at 14 (interrogatory responses); MSD Ex. 129 (email). Mr. Li testified that he [REDACTED] [REDACTED]. MSD Ex. 20 (Li) at 1470:7-14; 1465:21-24; 1310:13-22.

With respect to the software, Mr. Li admitted that some of the software contains Knowles' information. MSD Ex. 97 (Li) at 828:2-10. Mr. Li also recounted a conversation with Mr. Zhao that [REDACTED]. *Id.* at 828:14-20; 830:15-20. Mr. Zhao admitted that he took Knowles' software for the automated welding equipment when he left Knowles. MSD Ex. 106 (Zhao) at 83:15-24. Mr. Jestice, Knowles' expert, examined the software files produced by Knowles and compared the software produced by Bellsing. Mr. Jestice determined that 82% of the files were identical, concluding that the Bellsing software had been copied or derived from Knowles' software. MSD Ex. 29 (Jestice) ¶¶ 50, 106. Mr. Li testified that the software, which he admits includes some Knowles information, is still utilized in production of Bellsing's BAs. MSD Ex. 97 at 828:2-10; 832:22-

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833:6. Based on this evidence, the Commission finds that Knowles met its burden to show Mr. Li used/disclosed RTS Nos. 4-5. *See Crawler Cranes*, Comm'n Op. at 56 (noting circumstantial evidence is sufficient to support determinations of use of a trade secret).

2. RTS Nos. 9-10

RTS No. 9 is the electrical schematic for Knowles' Final Computer Aided Adjust and Test ("FCAAT") machine and RTS No. 10 is the software for the FCAAT machine. The SD found that RTS Nos. 9-10 are trade secrets and that Respondents misappropriated them. SD at 36-43. The Commission reviewed the SD's determination that Mr. Li had used or disclosed RTS Nos. 9-10. On review, the Commission finds that Mr. Li has used or disclosed RTS Nos. 9-10. First, Mr. Li waived any challenge to the SD's finding that Mr. Li used or disclosed RTS Nos. 9-10 by failing to petition for review of that finding. Second, even if not waived, the evidence establishes that Mr. Li used/disclosed RTS Nos. 9-10.

Dr. Spangler explained that Bellsing produced in discovery a Knowles schematic that included the Knowles indicia blocked out by white boxes. MSD Ex. 24 (Spangler) ¶¶ 1555-57. Mr. Li testified that this schematic was for the Bellsing FCAAT machine. MSD Ex. 97 at 756:4-757:8; *see also id.* at 754:23-755:15 (identifying document); MSD Ex. 162 (schematic discussed by Dr. Spangler and Mr. Li). Dr. Spangler also testified that Bellsing used the FCAAT schematic to design its machine based on the similarities between the Bellsing machine and the Knowles machine. *Id.*; MSD Ex. 24 ¶¶ 1555-57.

As to the software, Mr. Li admitted that he has Knowles █████ files," and that █████ files are necessary to use the FCAAT system.¹¹ MSD Ex. 4 at 71:1-19; MSD Ex. 97 at 953:9-17. In addition, Dr. Spangler examined the software for the Knowles FCAAT system that uses the █████

¹¹ █████ files are a type of █████ files.

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4. RTS Nos. 7-8

RTS No. 7 is Knowles' manual magnetic adjust machine and RTS No. 8 is the electrical schematics for the machine. SD at 50. The SD found that there is no genuine dispute of material fact that RTS Nos. 7-8 are trade secrets and that Respondents misappropriated them. *Id.* at 50-57. The Commission reviewed the determination that Mr. Li had used or disclosed RTS Nos. 7-8. On review, the Commission finds that Mr. Li has used or disclosed RTS Nos. 7-8. First, Mr. Li waived any challenge to the SD's finding that Mr. Li used or disclosed RTS Nos. 7-8 by failing to petition for review of that finding. Second, even if not waived, the circumstantial evidence establishes that Mr. Li used/disclosed RTS Nos. 7-8.

[REDACTED], Mr. Li admitted that [REDACTED] [REDACTED]. MSD Ex. 4 at 230:23–231:16. The machines at Vantron [REDACTED] were sold to Bellsing and Mr. Li was the guarantor for that agreement. *Id.* at 27:6–9; 192:14–25; 244:22–245:11; 245:21–246:5; 246:22–247:11. That production equipment was acquired by Bellsing and Mr. Li acquired an 85% share of Bellsing. *Id.* at 244:11–18; 248:4–249:4; MSD Ex. 238 (interrogatory responses) at 56; *see also* MSD Ex. 24 ¶¶ 1445–48. Dr. Spangler examined videos from inspections of Bellsing manufacturing facilities, and based on this and other information, he testified that Bellsing was adjusting BAs “with manual magnetic adjust machines with the same design and functionality as Knowles’ manual magnetic adjust machine.” MSD Ex. 24 ¶¶ 1421–32. Given Mr. Li’s role as an employee at Knowles, Vantron, and Bellsing, it is inconceivable that Mr. Li did not appreciate that the machine he guaranteed, used Knowles’ trade secret.

With respect to the schematics, Mr. Li admitted that [REDACTED] [REDACTED] MSD Ex. 4 at 40:4–9. Dr. Spangler also testified that documents collected from a Bellsing employee included Knowles’ electrical schematics for

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the manual magnetic adjust machine. MSD Ex. 24 ¶¶ 1396–98. Furthermore, in response to a question about Knowles’ schematics being used with respect to Bellsing’s production equipment, Mr. Li admitted that “through this ITC case, [REDACTED] [REDACTED] *Id.* at 43:7–15. When asked, “why do you have schematics for the manual adjust machine,” he said in part, [REDACTED] [REDACTED] *Id.* at 48:5–10. Such circumstantial evidence is sufficient to establish that Mr. Li used/disclosed RTS Nos. 7-8. *Crawler Cranes, Comm’n Op.* at 56.

5. RTS No. 1

RTS No. 1 relates to Knowles’ Coil Design Spreadsheet (“CDS”), an interactive excel spreadsheet that is used to create a wire-wound coil with certain performance expectations. SD at 57. The SD found that there is no genuine issue of material fact that RTS No. 1 is a trade secret and that Respondents misappropriated it. *Id.* at 57-67. The Commission reviewed the SD’s determination that Mr. Li had used or disclosed RTS No. 1. On review, the Commission finds that Mr. Li has used and/or disclosed RTS No. 1. First, Mr. Li waived any challenge to the SD’s finding that he used or disclosed RTS No. 1 by failing to petition for review of that finding. Second, even if not waived, the evidence establishes that Mr. Li used/disclosed RTS No. 1.

Mr. Li worked on a version of the CDS while at Knowles. Ex. 20 at 1055:4–17; 1056:10–17. Mr. Li testified that Mr. Wei Zhou provided him with the CDS after Mr. Li joined Bellsing to make it “more convenient” in designing coils. MSD Ex. 20 at 1064:12-22. Mr. Li obtained a working version from Mr. Zhou and copied the document and replaced the existing logo with the Bellsing logo. MSD Ex. 57 (interrogatory responses) at 19–20. Mr. Li also admitted to using the CDS at Bellsing and emailing it to one of his employees to teach him how to do a coil design. MSD Ex. 20 at 1087:7–12; MSD Ex. 55 (email); MSD Ex. 56 (CDS attached

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to email); MSD Ex. 20 at 1079:19–1080:25. Such evidence is sufficient to establish that Mr. Li used/disclosed RTS No. 1. *Crawler Cranes*, Comm’n Op. at 56.

6. RTS No. 2

RTS No. 2 relates to Knowles’ Flow and Leak Tester (“F&L”) software. SD at 67. The SD found that there is no genuine dispute of material fact that RTS No. 2 is a trade secret and Respondents misappropriated it. *Id.* at 67-73. The Commission reviewed the SD’s determination that Mr. Li had used or disclosed RTS No. 2. On review, the Commission finds that Mr. Li has used or disclosed RTS No. 2. First, Mr. Li waived any challenge to the SD’s finding that Mr. Li used or disclosed RTS No. 2 by failing to petition for review of that finding. Second, even if not waived, the evidence establishes that Mr. Li used/disclosed RTS No. 2.

Mr. Li testified, [REDACTED], [REDACTED]. [REDACTED]. MSD Ex. 4 at 230:23–231:16. The Chinese Court directed Mr. Li not to use the F&L software, and he certified that he was not using it. *Id.* at 76:16–77:11. Despite his certification in court, Mr. Li admitted during his deposition in this case that “the Knowles version leak and flow test” was being used on approximately 15 or more Bellsing production machines at the time of a facility inspection during this investigation. MSD Ex. 4 at 82:7–21. Mr. Li even acknowledged that [REDACTED]. *Id.* at 151:25–152:3. Mr. Li also testified that he observed an operator at Bellsing using the software and conceded that he “used” it. *Id.* at 1370:2–12. Such evidence is sufficient to establish that Mr. Li used/disclosed RTS No. 2. *Crawler Cranes*, Comm’n Op. at 56.

7. RTS No. 6

RTS No. 6 is Knowles’ drive-rod welding workmanship standards. SD at 73-76 (describing the standard). The SD found that there was no genuine dispute of material fact that RTS No. 6 is a trade secret and Respondents misappropriated it. *Id.* at 73-85. The Commission

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determined to review all of the SD's findings on RTS No. 6. We address only the use and/or disclosure by Mr. Li in this section.¹³ On review, the Commission finds that Mr. Li has used or disclosed RTS No. 6. First, Mr. Li waived any challenge to the SD's finding that Mr. Li used or disclosed RTS No. 6 by failing to petition for review of that finding. Second, even if not waived, the evidence establishes that Mr. Li used and/or disclosed RTS No. 6.

Mr. Zhou testified that he and Mr. Li acquired a hard drive of Knowles' materials from a Knowles employee. MSD Ex. 58 at 93:7-94:20. Both he and Mr. Zhou then held onto the acquired hard drive for various periods of time. *Id.* at 94:14-20; 253:19-254:20. Counsel for Respondents produced a document from the hard drive that contained Knowles' drive rod welding workmanship standards. *Id.* at 178:16-179:22; MSD Ex. 21 (Scarazzo) ¶ 286; MSD Ex. 23 ¶¶ 1208-09. This document was identical to a document produced by Knowles. *Compare* MSD Ex. 124 (document produced by Knowles) *with* MSD Ex. 123 (document produced by Respondents). Mr. Li testified that the document produced by Bellsing were used for the production of all BAs at Bellsing. MSD Ex. 97 at 902:20-903:22. Dr. Spangler testified that the document produced by Bellsing contains the same [REDACTED] inspection standards as the Knowles document. MSD Ex. 23 ¶¶ 1216-17. Such evidence is sufficient to establish that Mr. Li used/disclosed RTS No. 6. *Crawler Cranes*, Comm'n Op. at 56.

E. RTS No. 6: Correction of Typographical Errors

The first paragraph on page 77 of the SD's analysis of whether RTS No. 6 is a trade secret (SD at 77) incorrectly refers to "CDS" which is a reference to RTS No. 1, rather than RTS No. 6. The Commission does not adopt that paragraph and instead finds that:

¹³ As discussed *infra*, the Commission affirms the remaining findings in the SD regarding RTS No. 6, correcting certain typographical errors on page 77 of the SD.

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Mr. Li does not contest that the *Botulinum Toxin* factors 2, 3, 4, and 5 weigh in favor of finding that drive-rod welding workmanship standards is a trade secret but argues that factors 1 and 6 weigh against finding workmanship standards to be a trade secret. As the ALJ found, the Commission finds that Mr. Li has not shown that there is a genuine dispute of material fact that factors 1 and 6 favor finding the workmanship standards are a trade secret.

The Commission adopts the remaining findings with respect to RTS No. 6, as modified by the discussion of use/disclosure by Mr. Li (*supra*).

F. Comity/Collateral Estoppel (RTS Nos. 3, 6-8)

Both comity and collateral estoppel are discretionary doctrines. *New York and Presbyterian Hospital v. U.S.*, 152 Fed. Cl. 507, 519 (Fed. Cir. 2021); *Int'l Nutrition Co. v. Horphag Research Ltd.*, 257 F.3d 1324, 1329 (Fed. Cir. 2001). With respect to comity, courts normally consider whether (1) the foreign court abides by fundamental procedural fairness, (2) an extension of comity will violate U.S. laws, policies, or the rights of U.S. citizens, (3) the foreign court addressed the same claims, and (4) the foreign court involved the same parties. *Int'l Nutrition*, 257 F.3d at 1329. With respect to collateral estoppel, the Supreme Court has stated that: “Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.” *Montana v. United States*, 440 U.S. 147, 153 (1979). The Federal Circuit has stated that the following four requirements must be satisfied for collateral estoppel to bar an issue that was previously litigated “(1) the issue at stake is identical to the one involved in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in the first action; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding.” *New York and Presbyterian Hospital*, 152 Fed. Cl. at 519.

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Respondents assert that the Commission should find that asserted RTS No. 3 and 6-8 are not valid trade secrets based on prior litigation in China. Specifically, Knowles sued Vantron for the theft of trade secrets in the Court in Suzhou, China. RPet. at 32. In that case, Respondents assert that [REDACTED]

[REDACTED]. *Id.* Respondents argue that [REDACTED]. *Id.* at 32-33. Therefore, Respondents contend that RTS Nos. 3 and 6-8 cannot be considered protectable trade secrets. *Id.* at 32-35. Respondents assert that comity should be given to the Suzhou Court's decision. *Id.*

Respondents assert that collateral estoppel or issue preclusion applies when: (1) the identical issue was raised in a previous proceeding; (2) the issue was litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) resolution of the issue was necessary to support a valid and final judgement. *Id.* at 33. Respondents explain that under the principle of international comity, a domestic court will normally give effect to judicial acts of a foreign nation. *Id.*

Respondents contend that the Suzhou Court's opinion demonstrates that the Court applied the same standard that the Commission applies to determine whether the alleged trade secrets are in fact trade secrets, whether the trade secrets were known to the public, and whether Knowles took measures to preserve confidentiality. *Id.* at 33-34.

Respondents further explain that Knowles' own theory is that Bellsing is using the same equipment that Vantron formerly used. *Id.* at 34. This is the same equipment that, according to Respondents, [REDACTED]. *Id.*

Respondents assert that, under similar circumstances, courts have collaterally estopped litigants from re-litigating claims that they lost in a foreign forum. *Id.*

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Respondents' arguments on comity and collateral estoppel were raised for the first time in Respondents' remedy and bonding briefing before the ALJ. The ALJ did not consider these arguments because they relate to whether there is a violation and should have been raised when violation issues were presented for adjudication before the ALJ. *See generally* SD at 3-4. The Commission agrees with the SD's determination not to consider these arguments and affirms that determination. *See id.*; OResp. at 22; CResp. at 60. The Commission further finds that because Respondents failed to timely raise this argument before the ALJ, they cannot now raise it before the Commission.

Even if Respondents' arguments before the Commission were not waived, they have not been developed with the level of detail required to adequately present the arguments for adjudication. In order to establish their comity and collateral estoppel defenses, Respondents would have needed to establish *inter alia* that a particular issue in this investigation was also litigated on the merits in China and that the parties had a full and fair opportunity to litigate the issue. While Respondents assert that the Suzhou Court applied the same standards and met some of the other requirements for comity and/or collateral estoppel, Respondents did not sufficiently flesh out their arguments or provide citations to the legal authority and record in the Chinese proceeding to meet their burden with respect to either comity or collateral estoppel.

Accordingly, the Commission finds that the present record is insufficient to show that comity and/or collateral estoppel preclude the Commission from finding that the Respondents misappropriated RTS Nos. 3 and 6-8. *See generally Certain Rubber Resins & Processes for Mfg. Same*, Inv. No. 337-TA-849, Comm'n Op. at 5 fn. 1, 85-86 (Feb. 26, 2014), *aff'd by Sino Legend v. U.S. Int'l Trade Comm'n*, 623 F.App'x 1016 (Fed. Cir. 2015) ("*Rubber Resins*").

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IV. REMEDY, THE PUBLIC INTEREST AND BONDING

The RD recommended that the Commission issue (1) a GEO barring entry of balanced armature devices, products containing such devices, and components of such devices containing BAs, and (2) CDOs to each of the Bellsing respondents and Mr. Li. The RD also recommended that the Commission set a bond of one hundred percent (100%) of the entered value of the balanced armature devices subject to the GEO but that there should be a zero percent bond (0%) for the products containing the same.

As discussed below, the Commission has determined to adopt the RD with respect to remedy and bonding. The Commission further finds that the public interest will not be adversely affected by the issuance of the remedial orders.

A. Remedy

The Commission has “broad discretion in selecting the form, scope, and extent of the remedy.” *Viscofan, S.A. v. U.S. Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

1. General Exclusion Order

Section 337(d)(2) provides that “[t]he authority of the Commission to order an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that— (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.” 19 U.S.C. § 1337(d)(2); *see also* 19 C.F.R. § 210.50(c).

a. Section 337(d)(2)(A): Prevent Circumvention of an Exclusion Order Limited to Products of Named Persons

The RD recommended the issuance of a GEO, finding that a GEO is necessary to prevent circumvention of a limited exclusion order (“LEO”) under section 337(d)(2)(A). RD at 98-102.

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The RD noted that the scope of the GEO was in dispute and recommended that the exclusion order (i) bar BA devices that are “made with, use, or benefit from” the asserted trade secrets, (ii) cover downstream products that incorporate the accused BA devices, and (iii) “require that a party seeking to import a BA device or a downstream product containing same certify that the party has conducted a reasonable investigation and has determined that either (1) the BA device was not manufactured by or for Bellsing or a company owned, controlled, or affiliated with Respondent Li or (2) the Commission has determined that the BA device was not made using and does not use or benefit from the asserted trade secrets.” *Id.* at 104-111, 112-113. The RD recommended that any exclusion order not include a warranty and repair provision. *Id.* at 111-112.

The Commission has reviewed the remedy submissions submitted on behalf of Knowles and Mr. Li and finds that the appropriate remedy in this investigation is a GEO. Specifically, the Commission agrees with the RD that Knowles has established that a GEO is necessary to prevent circumvention of a limited exclusion order under section 337(d)(2)(A) directed to just the Respondents’ BA devices.

Bellsing offers a custom laser marking service which marks its BAs with a downstream customer’s logo instead of Bellsing’s logo. When a customer’s logo is imprinted on a BA, there is no other information identifying Bellsing as the manufacturer. Complainants’ Brief on Remedy and Bonding (April 6, 2021) (filed before the ALJ) (“CIRB”) Ex. 5 (Spangler) at ¶ 1784.

Bellsing intends to mark its BAs with customer logos to evade possible exclusion orders from the Commission. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED] CIRB Ex. 39 (Weekly Work Summary (11/25/2019 to 11/29/2019)) at 1. Similarly, Frank Huang, a Bellsing Product Manager for Marketing, wrote to Feng (Frank) Li about the Knowles “Section 337 lawsuit” and asked him to explain to clients about section 337 and reassure them that if they are worried “we can apply the client logos.” CIRB Ex. 92 (Email from R. Huang to F. Li (Sept. 9, 2019)). Mr. Huang further explained that [REDACTED]

[REDACTED]. *Id.* Mr. Hazlett, a Bellsing U.S. sales manager, stated to a potential customer that [REDACTED]

[REDACTED]. CIRB Ex. 25 (Email from T. Hazlett to W. Philips (Sept. 4, 2019)). The Commission notes that rarely, if ever, has the record of an investigation contained such direct evidence that Respondents intend to circumvent any order directed to just them and they possess the means to do so.

In addition to this clear evidence, Mr. Li has shown a willingness to create new entities to continue to utilize Knowles’ trade secrets, even after he was held liable for his actions by the Court in China. As noted above, Mr. Li founded Vantron, which produced BAs using Knowles’ trade secrets. MSD Ex. 4 at 192:17–193:19; 260:14–18; MSD Ex. 13 (transfer agreement) at 3. After Vantron was enjoined in China from using Knowles’ trade secrets, Mr. Li purchased a controlling interest in Shenzhen Bellsing, which was Vantron’s distributor, and facilitated the transfer of the production equipment, which utilizes Knowles’ trade secrets, from Vantron to Bellsing. *See id.*; *see also* CIRB Ex. 10 (Li) at 241:14-244:23; 247:12-249:11; 260:14-18.

Another way that Bellsing has shown that it will attempt to evade the Commission’s orders is by listing its shipping company as the importer of record, which further masks the

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source of its products. CIRB Ex. 60 (Tom Hazlett Dep. (May 27, 2020)) at 260:2-21. Also, as previously found, Bellsing has engaged in a pattern of deception throughout this investigation, and this conduct was so egregious that Bellsing was found in default as a sanction for its conduct.

Based on this extensive evidence and Bellsing's conduct throughout this investigation, the Commission finds that Knowles has established that a GEO is necessary to prevent circumvention of a limited exclusion order.

b. Section 337(d)(2)(B): Pattern of Violation

The Commission notes that Knowles also argues that a general exclusion order is warranted under section 337(d)(2)(B), but the Commission does not reach that issue. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984).

c. Scope of the Order

As to the scope of the order, the Commission finds that the GEO should cover certain BA devices as well as downstream products regardless of the source that contain such BA devices as detailed below.

Knowles requests that the GEO cover BA devices *made with, using, or benefiting from* Knowles RTS Nos. 1-10. In contrast, OUII's proposed order is limited to BA devices *made using* Knowles RTS Nos. 1-10. The Commission has determined that the GEO should apply to BA devices "made with" and "using" any of the asserted trade secrets. The Commission has traditionally used the following definition for trade secret misappropriation:

The elements of misappropriation of trade secrets are as follows: (1) the existence of a process that is protectable as a trade secret (*e.g.*, that is (a) of economic value, (b) not generally known or readily ascertainable, and (c) that the complainant has taken reasonable precautions to maintain its secrecy); (2) that the complainant is the owner of the trade secret; (3) that the complainant disclosed the trade secret to respondent while in a confidential relationship or that the respondent wrongfully

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took the trade secret by unfair means; and (4) that the respondent has **used or disclosed** the trade secret causing injury to the complainant.

Rubber Resins Comm'n Op. at 10 (emphasis added). This standard recites, “used or disclosed,” which logically covers products “made with” or “using” a trade secret. In the present investigation, Knowles did not specifically explain why it is necessary to depart from the Commission’s standard practice and include the “benefitting” language. Nor did Knowles explain why the language “made with” and “using” are not sufficiently broad to cover products that are benefitting from the asserted trade secrets. Thus, the Commission sees no reason to depart from this standard and therefore does not include the “benefitting” language in the GEO.¹⁴

As to BA devices, Knowles requests a GEO that is limited to BAs that are “made by, for, or on behalf of: (1) Shenzhen Bellsing Acoustic Technology Co. Ltd., Suzhou Bellsing Acoustic Technology Co., Ltd., Dongguan Bellsing Precision Device Co., Ltd., and Bellsing Corporation (collectively, the “Bellsing Respondents”) or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns, or (2) Respondent Liang (a/k/a “Ryan”) Li or any business entity owned by, controlled by, or affiliated with Respondent Li, or their successors or assigns.” CRemBr. Appx. A at 1 (emphasis added). This language is more tailored than typical GEOs, as it limits the BA devices to those made by or on behalf of the Respondents and their related or future entities. The Commission rarely, if ever, grants broader scope than requested by a complainant and sees no reason to do so here. Nevertheless, the order is still general inasmuch as it also covers downstream products as discussed below, regardless of source, that contain such BAs.

¹⁴ The Commission does not reach the question of whether “benefitting from” may be necessary or appropriate to include in a GEO in other contexts.

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With respect to downstream products, Knowles requests that the GEO cover downstream products, regardless of source, containing one or more BA devices as described above. Section 337(d)(1) is directed to providing relief for the “‘articles concerned,’ which are the articles that are the subject of” the Commission’s investigation. *See Certain Semiconductor Chips with Minimized Chip Package Size and Prods. Containing Same*, Inv. No. 337-TA-605, Comm’n Op., at 65-66 (June 3, 2009). Section 337(d)(2) states that an exclusion order shall be directed to a person determined by the Commission to be in violation of the section but provides two exceptions to this limitation. Specifically, the Commission may issue an exclusion order against persons not determined to be in violation of section 337 when “a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons.” *Id.*; 19 U.S.C. §1337(d)(2)(A). In addition, the Commission can issue an exclusion order against persons not found to be in violation of section 337 when “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)(B). Under these provisions, the statutory text explains that any relief is not limited to those respondents named in the investigation.

In *Kyocera*, the Federal Circuit stated that a complainant that “wishes to obtain an exclusion order operative against articles of non-respondents, [] must seek a GEO by satisfying the heightened burdens of §§ 1337(d)(2)(A) and (B).” *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340, 1356 (Fed. Cir. 2008). Here, Knowles has satisfied the requirements of section 337(d)(2)(A), which provides that relief is not limited to the respondents in the litigation. In addition, Knowles has shown that Respondents are colluding with the downstream product manufacturers to conceal the origin of the accused BAs and circumvent the Commission’s orders. This informs the Commission’s decision to include in the GEO downstream products

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that contain Respondents' BAs. The Commission finds that it need not make additional findings under section 337(d)(2) that downstream manufacturers are likely to engage in circumvention but instead considers that, *inter alia*, Bellsing's actual and intended coordination with downstream manufacturers is sufficient in this investigation to warrant relief that extends to downstream products containing Respondents' BAs.¹⁵

OUII further recommends that the Commission include two additional provisions in the GEO. The first provision requires that any party seeking to import BAs made using the misappropriated trade secrets, products incorporating such BAs, and/or components of those products incorporating the BAs, must, before importation, seek a ruling from the Commission to determine whether the products to be imported are covered by the GEO. The Commission has included provisions such as this in various contexts. Recently, the Commission included such a provision in *Certain Botulinum Toxin Prods., Processes for Mfg. or Relating to Same and Certain Prods. Containing Same*, Inv. No. 337-TA- 1145, Comm'n Op. at 62 (Jan. 13, 2021) ("*Botulinum Toxin*"), and also in *Certain Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Therefor* ("*Lithium Ion Batteries*"), Inv. No. 337-TA-1159, Comm'n Op. at 82-83 (Feb. 10, 2021). In *Botulinum Toxin*, the Commission found that, under the specific facts of the case and where it is not readily apparent by inspection at the port whether an imported product is manufactured, or contains a component manufactured using the misappropriated trade secrets, importers were required to obtain a ruling from the Commission prior to the importation of the subject products. *Botulinum Toxin*, Comm'n Op. at 62; see also *Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating*

¹⁵ The Commission notes that the GEO includes downstream products and any components of the downstream products that contain Respondents' BAs.

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to Same, and Certain Products Containing Same, Inv. No. 337-TA-933, Comm'n Op. 31-32 (June 6, 2016).

Given the facts of this investigation and the fact that U.S. Customs and Boarder Protection ("CBP") may not be able to determine whether the imported products are made with or use Knowles RTS Nos. 1-10 upon inspection at the port, the Commission has determined to include a provision requiring any importer seeking to import BAs (or products containing them or the components thereof) manufactured by or for the Respondents or their affiliates or successors, to obtain a ruling from the Commission prior to the importation of the articles, finding that they are not subject to the GEO. The Commission finds that this provision is warranted because it: (1) reduces the burden on CBP; (2) places the burden on the importer to establish that the goods were not manufactured using the misappropriated trade secrets or by or on behalf of Bellsing, Mr. Li or their affiliates or successors;¹⁶ and (3) gives Knowles the opportunity to respond and contest any issues or evidence raised by the importer.

The Commission has also determined to include a certification provision that states that, after a Commission determination as to whether the articles are subject to the exclusion order, the party seeking to import shall certify to CBP that it is familiar with the terms of the GEO and to the best of its knowledge and belief the products being imported are subject to the Commission's determination of admissibility and therefore are not excluded from entry under the GEO.

Finally, the Commission declines to include a warranty and repair exception. As an initial matter, Respondents waived this argument. In response to Knowles' Interrogatory No. 85,

¹⁶ The Commission notes that there may be circumstances that, despite the notice provided by the investigation, a bona fide purchaser exists. The Commission will address such situations if they arise.

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which sought Respondents' contentions concerning the appropriate remedy and bonding, including the scope of any remedial order, Respondents failed to disclose its request for the warranty and repair exception. CIRB Ex. 90 (interrogatory responses). Even if not waived, Respondents have not provided any evidence that they offer their customers a service or repair warranty. Respondents rely on two customer letters that the downstream products of Spear Labs and 64 Audio come with a warranty and that without access to replacement parts, they would have no choice but to replace the products. These letters indicate that outside of the warranty period, their customers would not be able to take advantage of the repair service. Brief of Bellsing Respondents and Respondent Li on Remedy and Bonding (April 23, 2021) (before the ALJ) ("RIRB") at Ex. 4, 5 (third party letters). However, these letters do not establish that Bellsing itself offers a warranty or replacement program to its customers. *See Certain High-Density Fiber Optic Equipment and Components Thereof*, Inv. No. 337-TA-1194, Comm'n Op. at 78-9 (Aug. 23, 2021). Respondents' conclusory statements do not warrant the inclusion of such a provision in the GEO. Moreover, given Respondents' misconduct in this investigation, there is a reasonable risk that Respondents would use such a provision to circumvent the GEO. *Id.*

2. Cease and Desist Orders

a. Bellsing Respondents

The Commission has determined to issue CDOs directed to each of the Bellsing entities. Knowles has established that Bellsing Corp. has a commercially significant inventory in the United States. Bellsing's discovery responses indicate that Bellsing has approximately 800 BAs in inventory in the United States. CIRB Ex. 78 (interrogatory responses) at ROG 36. This inventory can be used for demonstration purposes or as customer samples. CIRB Ex. 1 (Lynde Report) ¶ 312. While Respondents argue that Bellsing Corp.'s inventory is largely inoperable,

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Bellsing admits that the inventory could be repurposed. *Id.* Moreover, Bellsing has been found in default for egregious discovery misconduct such that the Commission cannot determine whether the actual inventory quantity is in fact larger. Given that the evidence establishes a significant inventory and Bellsing's egregious misconduct in this investigation hampered discovery into the subject matter of this investigation, the Commission has determined to issue a CDO to Bellsing Corp.

The Commission finds that CDOs are also warranted for the foreign Bellsing respondents. Where, as here, a foreign respondent directs and controls U.S. business operations concerning importation or sales of imports that use misappropriated trade secrets in the United States, a CDO directed to that respondent is appropriate. *See Certain Cast Steel Railway Wheels*, Inv. No. 337-TA-655, Comm'n Op. at 9 n.3 (Mar. 19, 2010) (citations omitted) (issuing cease and desist orders against foreign Tianrui respondents, which set up a joint venture in the United States with a domestic respondent "for the purpose of selling the accused cast steel railway wheels."), *aff'd*, *TianRui Grp. Co. Ltd. v. Int'l Trade Comm'n*, 661 F.3d 1322 (Fed. Cir. 2011). The record shows that the various Bellsing entities are intertwined, and the foreign entities transfer BAs to the domestic entity. Shenzhen Bellsing is the parent company of the other Bellsing respondents. Complainants' Reply Brief on Remedy and Bonding (Apr. 30, 2021) (filed before the ALJ) ("CRRB") Ex 104 (interrogatory responses). Mr. Li is the Chief Executive Officer of the parent company Shenzhen Bellsing; the Chief Executive Officer, General Manager, and Legal Representative of Dongguan Bellsing; and the General Manager and Legal Representative of Suzhou Bellsing. CRRB Ex. 105 (interrogatory responses). Bellsing admitted in interrogatory responses that it has "transferred" various models from "Bellsing in China" to "Bellsing Corporation," its U.S. entity. MSD Ex. 38 (interrogatory

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responses); *see generally* MSD Ex. 163 (Warren) at 9:1-4, 30:9-19, 101:21-104:11, 114:2-11 (noting the importation of 210 units); CIRB Ex. 78 (interrogatory responses) at 89-90. This evidence establishes that inventory is transferred among the entities. In addition, an internal document notes that Bellsing Corp. was established to circumvent any barriers Bellsing had due to section 337 investigations. CIRB Ex. 46 (internal talking points). Accordingly, CDOs directed to all of the Bellsing entities are appropriate.

b. Mr. Li

The Commission has wide discretion in determining its remedy and has determined to issue a CDO directed to Mr. Li. Mr. Li's actions go beyond those of a corporate officer acting within the scope of his employment. Mr. Li was a former Knowles employee and he began misappropriating the Knowles trade secrets in his personal capacity even before he obtained a majority ownership of Bellsing. He has continued to misappropriate Knowles trade secrets since he left Knowles and joined Bellsing. Bellsing was created with the purpose of using the Knowles RTS and Mr. Li was involved in the transfer of Vantron's production equipment (which includes Knowles' trade secrets) to Suzhou Bellsing.

Presently, Mr. Li serves in key leadership roles of each of the Bellsing entities. Mr. Li serves as the CEO, Vice President of Sales, Manager of Product Support, Vice President of Supply Chain & Quality Control, Vice President of Production & Engineering, Manager of Production Management, and other titles within Shenzhen Bellsing. MSD Ex. 214 (organizational structure). In addition, Mr. Li serves as the General Manager of Suzhou Bellsing, and as the General Manager, Director of Engineering, and Manager of Production of Dongguan Bellsing. *Id.* Mr. Li's majority ownership of Bellsing (85%) and his role in each gives Mr. Li control over significant inventory held by Bellsing Corp. and the U.S. business

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operations of the Bellsing entities. In addition, Mr. Li's role includes frequent travel to the United States to visit customers and potential customers and to attend major trade shows here.

The Commission thus finds that Mr. Li controls "commercially significant inventories" of BAs and has "significant domestic operations that could undercut the remedy provided by an exclusion order." *Certain Mobile Device Holders and Components Thereof*, Inv. No. 337-TA-1028, Comm'n Op. at 23 (Mar. 22, 2018). The Commission also finds that CDOs against both Bellsing and Mr. Li are necessary to prevent the transfer by Bellsing or by Mr. Li of the domestic inventory to yet another entity that is not subject to the CDOs. Accordingly, the Commission finds that a CDO directed to Mr. Li is also warranted.

3. Duration of the Remedy

"The duration of an order in a trade secret misappropriation case is set as the time it would have taken to independently develop the trade secrets." *Rubber Resins*, Comm'n Op. at 82. In addition, "[t]he Commission has the discretion to begin that countdown at the effective date of the exclusion order rather than from the date of misappropriation, [and] the Commission ordinarily does so in trade secret misappropriation cases" *Lithium Ion Batteries*, Comm'n Op. at 44-45. To determine the time it would have taken a respondent to independently develop the misappropriated trade secrets, the Commission may consider the length of time it took the complainant to develop the trade secrets and the resources of the respondent. *See id.* at 46-47.

The RD recommended that any remedial order have a length of twenty-six years, and the Commission agrees. SD at 119-124. The RD's recommendation was based on the credible testimony from Dr. Spangler. CIRB Ex. 5 ¶¶ 1810-48; 1849-52. Dr. Spangler calculated the time it would take Bellsing to develop each trade secret. *Id.* at ¶¶ 1884-85, 1888. This analysis was based on the time it took for Knowles to develop each of the trade secrets and in conjunction with consideration of Bellsing's resources and expertise in the field. Dr. Spangler further

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determined that some, but not all, of the trade secrets could be developed in parallel. *Id.* at ¶¶ 1888-99. Dr. Spangler relied on testimony from Knowles' employees and the expert report of Knowles' software expert, Mr. Jestice, to reach his conclusion.

Respondents, in their briefing before the Commission, rely on a declaration presented by Dr. Warren, a former Knowles employee and current Bellsing employee. However, Dr. Warren has not signed on to the protective order, and thus, did not have access to Dr. Spangler's report to directly address his opinion. In addition, Dr. Warren is not as qualified to offer testimony concerning the development times for the production equipment and software. For example, during his deposition, Dr. Warren testified that he didn't have any detailed knowledge concerning the operation and design of the Knowles and Bellsing production machines. MSD Ex. 163 at 147:21–149:10. Instead, Dr. Warren is “more of a theoretician” and admitted that he “was involved in the physics and the math of how and why receivers work, not how to build them.” *Id.* Dr. Warren further admitted that while he knows what each machine does to perform its function he is not “concerned with exactly how the machine does it.” RIRB Ex. 1 (Warren Decl.) at ¶ 8. Accordingly, the Commission credits the testimony of Dr. Spangler and sets the period of the remedial orders to twenty-six years.

B. Public Interest

Before issuing any remedial order, the Commission must “consider[] the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.” *See, e.g.*, 19 U.S.C. § 1337(d)(1). “[T]he statute does not require the Commission to determine that a remedial order would advance the public interest factors but rather requires the Commission to consider whether issuance of such an order will adversely

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affect the public interest factors.” *Certain Loom Kits For Creating Linked Articles*, Inv. No. 337-TA-923, Comm’n Op. at 15 (June 26, 2015) (citation omitted).

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)(1), (f)(1). 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 points in the proceeding.

The record in this investigation contains no evidence that a remedial order would adversely affect the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. *See id.* OUII and Knowles agree that the public interest will not be adversely affected by the issuance of a remedy in this investigation. *See e.g.*, CRemBr. at 48-50. The Accused Products in this case—balanced armature devices—do not raise public health and welfare concerns, despite having some medical application in hearing aids. *Id.* At 49. Moreover, Knowles asserts that it and the other market participants could easily replace the market for the Accused Products should they be excluded and that it, in conjunction with other companies in the market, have the capacity to do so. *Id.* at 49-50. Knowles and various other companies, like Sonion, manufacture and sell BAs that compete with Bellsing. *Id.* Thus, there would be no meaningful impact on the competitive conditions, and the production of like or directly competitive articles in the United States or on U.S. consumers.

The Commission received two public interest submissions from members of the public. The first submission is from 64 Audio and explains that it uses BAs from Knowles, Sonion, and

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Bellsing. 64 Audio Ltr. at 1. They explain that they depend on having access to devices from multiple manufactures and believe it is important to continue to receive products from all of these manufactures. *Id.* 64 Audio explains that the Bellsing BAs do not have identical performance to the Knowles products. *Id.* 64 Audio explains that their products come with a one or two year warranty and with no access to replacement components, they would have no choice to replace the returned unit with a higher cost model or an acoustically altered device. *Id.* In addition, instead of repairing a broken device outside of the warranty period, customers would only be left with the option of purchasing a new device. *Id.* at 2.

The second letter is a submission from Spear Labs explaining that in 2019 it began using Bellsing BAs due to their customer service, engineering capability, quality, and willingness to develop a custom product. Spear Ltr. at 1. Spear Labs had previously used Knowles' BAs but stopped to due to their unwillingness to support the design and development efforts. *Id.* If the Bellsing BAs are not available, Spear Labs asserts that it would be prevented from offering the unique and differentiated product that Spear Labs delivers which would lead to increased development time and deprive and limit U.S. customer's choices unfairly. *Id.* at 1-2. Finally, Spear Labs argues that without access to replacement parts, they would have no choice but to replace a device during the warranty period and would be unable to offer repair services to their customers. *Id.* at 2.

As explained above, Knowles and other suppliers have the ability to replace Bellsing's accused BAs if these become subject to an exclusion order. Nothing in the submissions from the public or from Respondents establish a significant public interest concern that would warrant finding that the public interest justifies not issuing remedial orders. Accordingly, based on the

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record of this investigation, the Commission determines that the public interest does not preclude the issuance of the remedial orders.

C. Bonding

The RD recommended a bond of one hundred percent (100%) of the entered value of BA devices covered by the GEO but recommended no bond be imposed on downstream products containing the BAs. SD at 125. The Commission adopts the RD's recommendation and sets the bond at one hundred percent (100%) of the entered value of the BAs covered by the GEO but no bond is required for the downstream products (including components of downstream products) that include the covered BAs.

As the RD explained, it is impractical to calculate the price differential between Knowles' products and the equivalent Bellsing products. For instance, Bellsing's sales staff has discretion, within some guidelines from the corporate office, to set the price. CIRB Ex. 85 (Hazlett) at 468:7-12. In addition, the price of each model can vary greatly between customers, and there are hundreds of different Knowles and Bellsing models, each with different features and price. CIRB Ex. 1 (M. Lynde Expert Rpt.) at ¶¶ 318-320. Bellsing is also not consistent with its naming convention for its products, such that the same product can have different model numbers. *Id.* at ¶323. Because it is difficult to determine a price differential, the Commission imposes a one hundred percent (100%) bond on the BAs made by or for Bellsing or Mr. Li.

With regard to the downstream products, neither Knowles nor OUII provided any separate arguments or price data for those products. Therefore, the Commission finds that Knowles has not met its burden and sets no bond for the downstream products.

V. CONCLUSION

For the foregoing reasons, the Commission determines that Knowles has established a violation of section 337 by Respondents Bellsing and Mr. Li based on the misappropriation of

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trade secrets relating to Knowles' RTS Nos. 1-10. The Commission also determines that: (1) the appropriate remedy is a GEO directed against certain BA devices as detailed above and downstream products containing the same and CDOs directed against the Bellsing respondents and Mr. Li for a duration of twenty-six years; (2) the public interest does not preclude this remedy; and (3) the bond during the period of Presidential review is set in an amount of one hundred percent (100%) of the entered value of the balanced armature devices imported by or on behalf of the Respondents and no bond is set for the downstream products.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

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