

**PUBLIC VERSION**

**In the Matter of**

**CERTAIN CLOUD-CONNECTED  
WOOD-PELLET GRILLS AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-1237**

**COMMISSION OPINION**

The Commission has determined to review an initial determination (“ID”) (Order No. 28) granting in part respondent’s motion for summary determination of non-infringement and terminating the investigation as to U.S. Patent No. 10,218,833 (“the ’833 patent”). Comm’n Notice (Oct. 6, 2021). On review, the Commission has determined to affirm, with supplemental reasoning, the ID’s finding of non-infringement. This opinion sets forth the Commission’s reasoning in support of that determination. The Commission terminates the investigation as to the ’833 patent with a finding of no violation.

**I. BACKGROUND**

The Commission instituted this investigation on January 4, 2021, based on a complaint filed on behalf of Traeger Pellet Grills LLC (“Traeger”) of Salt Lake City, Utah. 86 Fed. Reg. 129-30 (Jan. 4, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cloud-connected wood-pellet grills and components thereof by reason of infringement of certain claims of the ’833 patent and U.S. Patent No. 10,158,720 (“the ’720 patent”). The Commission’s notice of investigation named GMG Products LLC (“GMG”) of Lakeside, Oregon

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as the sole respondent. The Office of Unfair Import Investigations is not participating in the investigation.

The Commission previously found that Traeger has satisfied the economic prong of the domestic industry requirement with respect to the '833 and '720 patents. *See* Order No. 26 (Aug. 10, 2021), *unreviewed by* Comm'n Notice (Sept. 9, 2021).

On July 21, 2021, GMG filed a motion for summary determination of non-infringement of the '833 and '720 patents. On August 2, 2021, GMG filed a supplemental memorandum in support of its motion ("GMG Supplemental Memo"). On August 9, 2021, Traeger filed a response opposing the motion ("Traeger's Opp."). On September 3, 2021, the presiding chief administrative law judge ("CALJ") issued the subject ID (Order No. 28) granting in part GMG's motion for summary determination of non-infringement as to the '833 patent and terminating that patent from the investigation. The CALJ denied GMG's motion with respect to the '720 patent. The denial of summary determination as to that patent is not part of the subject ID and is not subject to Commission review.

On September 9, 2021, Traeger filed a petition for review<sup>1</sup> of the subject ID. On September 16, 2021, GMG filed a response in opposition<sup>2</sup> to Traeger's petition for review. As noted *supra*, the Commission determined to review the subject ID. Comm'n Notice (Oct. 6, 2021).

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<sup>1</sup>*See* Complainant Traeger's Petition for Review of Initial Determination of Non-Infringement (Order No. 28) (Sept. 9, 2021) ("Traeger's Pet.").

<sup>2</sup>*See* Respondent GMG's Opposition to Petition for Review of Initial Determination of Non-Infringement (Order No. 28) (Sept. 16, 2021) ("GMG's Resp.").

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### II. COMMISSION REVIEW OF THE SUMMARY DETERMINATION ID

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

For the reasons set forth below, the Commission has determined to affirm, with supplemental reasoning, the ID’s finding of non-infringement with respect to the “generating one or more instructions” limitation recited in the asserted claims of the ’833 patent. The Commission also has determined to affirm the remainder of the ID.

#### A. Applicable Legal Standards

##### 1. Summary Determination

Commission Rule 210.18 governing summary determination states, in pertinent part:

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).

##### 2. Claim Construction

Claim construction “begin[s] with and remain[s] centered on the language of the claims themselves.” *Storage Tech. Corp. v. Cisco Sys., Inc.*, 329 F.3d 823, 830 (Fed. Cir. 2003); *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (*en banc*). The language used in a

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claim bears a “heavy presumption” that it has the ordinary and customary meaning that would be attributed to the words used by persons skilled in the relevant art. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002); *Phillips*, 415 F.3d at 1312-13. Moreover, the language is read in the context of the entire patent, including the specification. *Phillips*, 415 F.3d at 1313-14; *see also Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996) (“[T]he specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.”). To help inform the court of the ordinary meaning of the words, a court may consult the intrinsic evidence, including the claims themselves, the specification, and the prosecution history, as well as extrinsic evidence, such as dictionaries and treatises and inventor and expert testimony. *Phillips*, 415 F.3d at 1314.

### 3. Infringement

“An infringement analysis entails two steps. The first step is determining the meaning and scope of the patent claims asserted to be infringed. The second step is comparing the properly construed claims to the device accused of infringing.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (*en banc*), *aff’d*, 517 U.S. 370 (1996) (citation omitted). Direct infringement requires the patentee to prove that the accused device meets each and every limitation of the asserted claim(s). *Frank’s Casing Crew & Rental Tools, Inc. v. Weatherford Int’l, Inc.*, 389 F.3d 1370, 1378 (Fed. Cir. 2004).

#### B. The ’833 Patent

The ’833 patent,<sup>3</sup> entitled “Mobile Application for Controlling Outdoor Grill,” was

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<sup>3</sup> Exh. 1 to GMG’s Memorandum in Support of its Motion (“GMG Memo”).

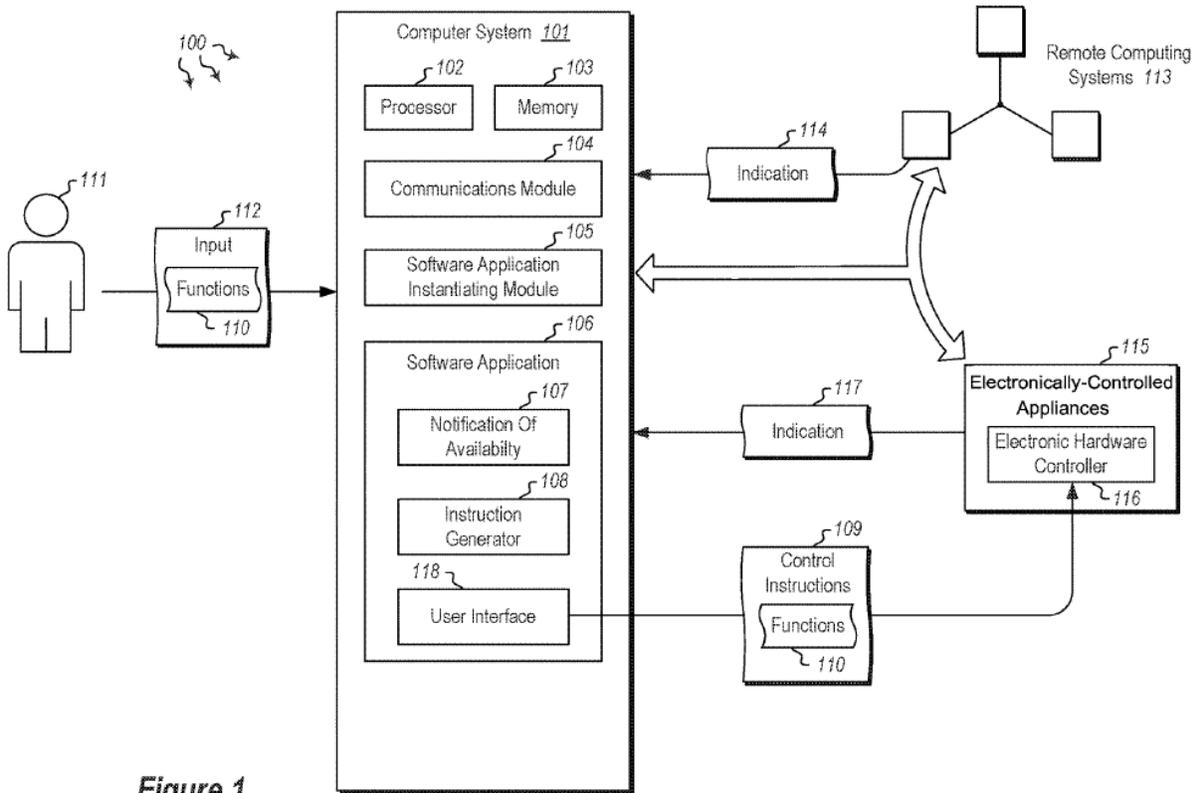
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issued on February 26, 2019, and has twenty-five (25) claims, of which claims 1-3, 6-9, 11-14, 18, and 22-24 are asserted against GMG's accused products. *See* '833 patent at cover, 13:34-14:6, 23-40; 14:45-15:24; 15:45-16:20. Claims 1, 11, and 18 are independent claims.

The '833 patent is directed to a method for controlling an outdoor grill using a software application including a user interface. *Id.*, Abstract. As illustrated in the embodiments of Figures 1 and 5-6 (below), the inventive method **500** includes: (1) operating in an environment **100** that includes a computer system **101**, where the computer system **101** may be any type of local or distributed computer system, including a cloud computer system or a mobile computer system; (2) using the computer system **101** that may be configured to communicate with remote computing systems **113** (*e.g.*, cloud computing systems) and/or with an electronically-controlled appliance **115** (*e.g.*, a grill) using a software application **106** on the computer system; (3) using the remote computing systems **113** that may also be able to communicate with the electronically-controlled appliance **115**, either directly or through the (mobile) computer system **101**; (4) operating the grill/smoker using an electronic hardware controller **116**, where the controller **116** may be configured to control temperature, control cooking cycles, control fuel burn rate, monitor ambient temperature, or perform other functions; and (5) providing a notification **107**, or notification field **607** (and connection status **608**), indicating that the electronically-controlled appliance is communicably connected to the remote computing systems; (6) providing a notification **107**, or notification field **607** (and input status **609**), indicating that the electronically-controlled appliance is available to receive instructions **560**; and (7) receiving user input **112** or instructions **560** at the software application, via a user interface **118** or **603**, indicating that one or more specified functions (*e.g.*, **611A**, **611B**, custom

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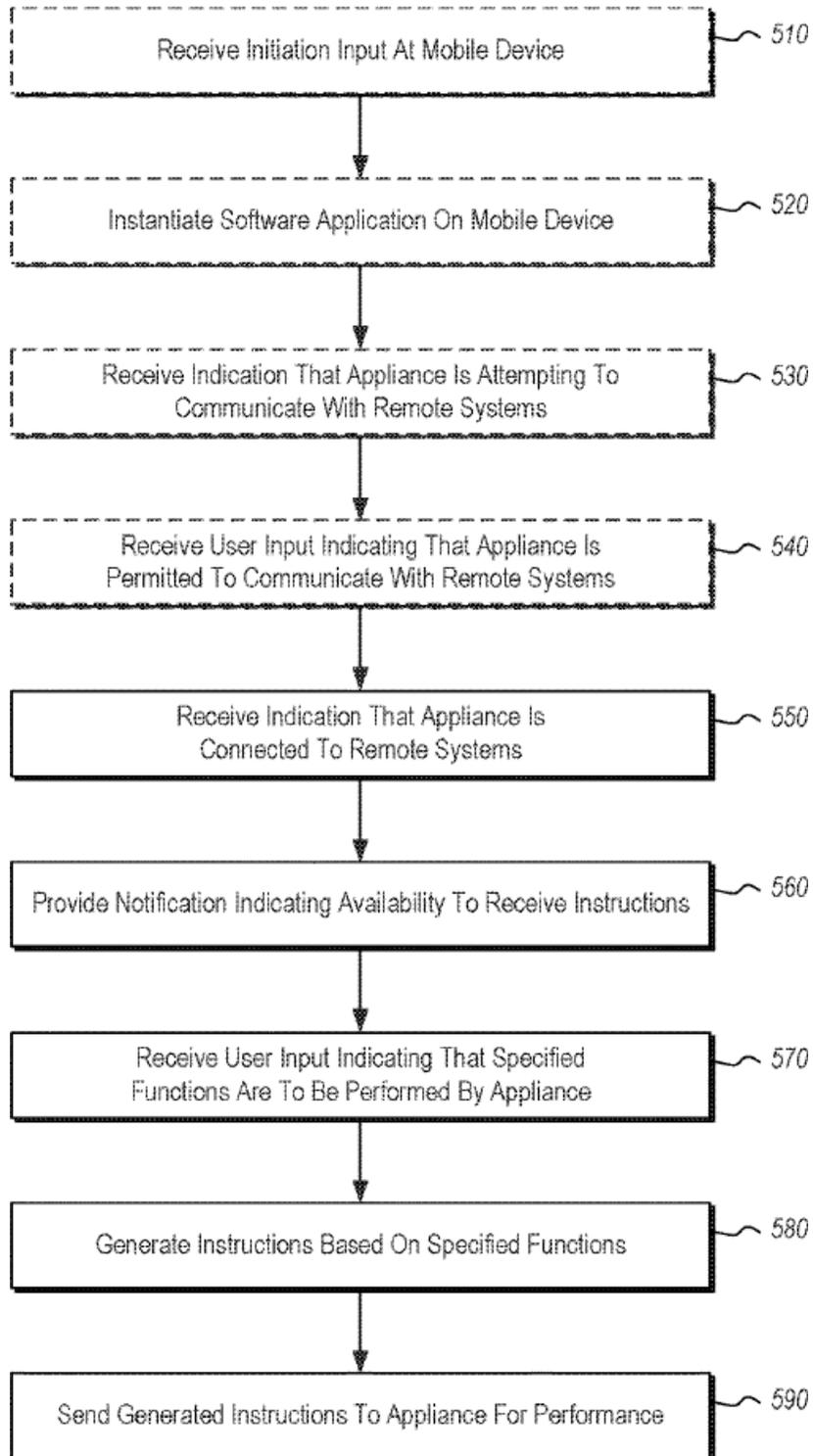
function 611C) are to be performed by the electronically-controlled appliance. *Id.* at 5:36-6:11; 6:20-30, 43-47; 9:63-10:64; 12:42-49; 12:53-60. Examples of these specified functions include temperature monitoring and control, gas burn rate, hopper control for feeding pellets into the combustion area, timer control, or other functions. *Id.* at 12:57-60.



**Figure 1**

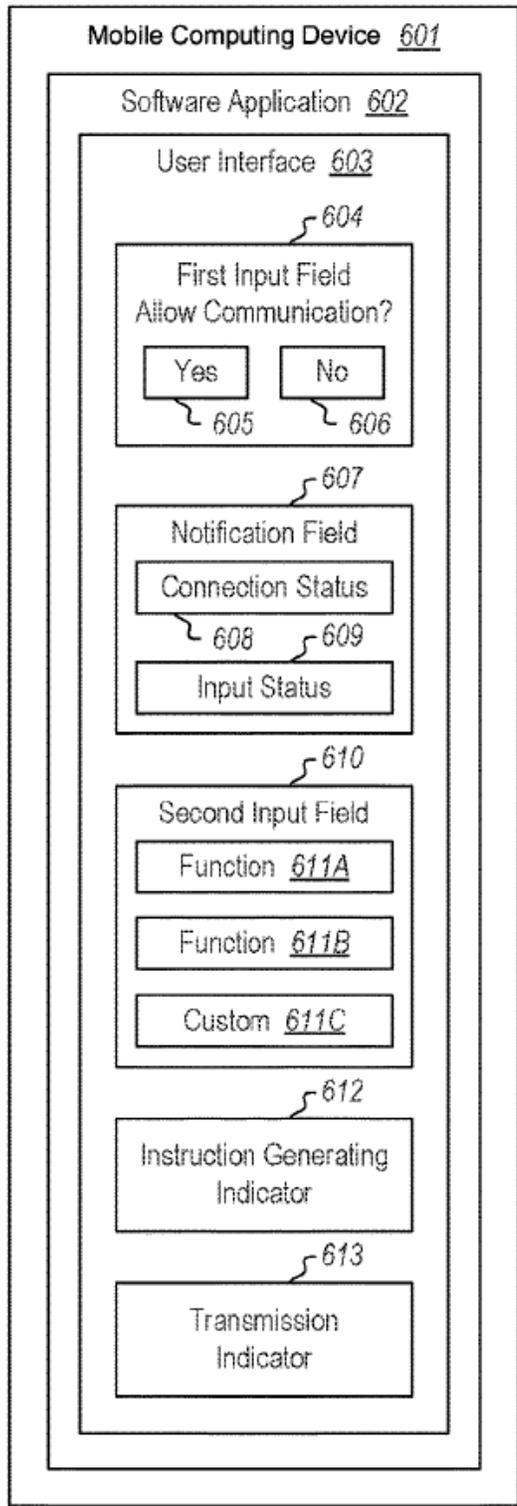
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500



**Figure 5**

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**Figure 6**

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*Id.* at FIGs. 1, 5-6.

Independent Claims 1, 11, and 18 of '833 patent recite (with limitations relevant to this opinion in *italics*):

1. A method for controlling an electronically-controlled wood-pellet grill using a software application on a mobile device, the electronically-controlled wood-pellet grill having at least one hardware controller, the method comprising:

receiving an indication from one or more remote computing systems indicating that the electronically-controlled wood-pellet grill is communicably connected to the one or more remote computing systems, wherein the one or more remote computing systems comprise a cloud service;

providing a notification in the software application indicating that the electronically-controlled wood-pellet grill is available to receive instructions;

receiving a user input at the software application indicating that a particular temperature is to be maintained by the electronically-controlled wood-pellet grill;

*generating one or more instructions* configured to cause a hopper to feed wood pellets into the electronically-controlled wood-pellet grill at a particular rate in order to maintain the particular temperature; and

sending the generated instructions to the electronically-controlled wood-pellet grill to activate the hopper, the generated instructions being interpreted and carried out on the electronically-controlled wood-pellet grill via the hardware controller.

11. One or more non-transitory computer-readable media that store computer-executable instructions that, when executed, implement a method for controlling an electronically-controlled wood-pellet grill using a software application on a mobile device, the method comprising:

receiving an indication at the software application indicating that the electronically-controlled wood-pellet grill is attempting to communicate with one or more remote computing systems, wherein the one or more remote computing systems comprise a cloud service;

receiving a first user input at the software application indicating that the electronically-controlled wood-pellet grill is permitted to communicate with the one or more remote computing systems;

receiving an indication from at least one of the one or more remote computing systems indicating that the electronically-controlled wood-pellet grill is communicably connected to the one or more remote computing systems;

providing a notification in the software application indicating that the electronically-controlled wood-pellet grill is available to receive instructions;

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receiving a second user input at the software application indicating that a particular temperature is to be maintained by the electronically-controlled wood-pellet grill;

*generating one or more instructions* configured to cause a hopper to feed wood pellets into the electronically-controlled wood-pellet grill at a particular rate in order to maintain the particular temperature; and

sending one or more instructions to the electronically-controlled wood-pellet grill to activate the hopper, the one or more instructions being interpreted and carried out by a hardware controller on the electronically-controlled wood-pellet grill.

18. A computer program product comprising one or more non-transitory computer storage media having thereon computer-executable instructions that, when executed by one or more processors of the computing system, cause the computing system to instantiate a user interface comprising the following:

a first input field configured to receive input indicating whether an electronically-controlled wood-pellet grill is permitted to communicate with one or more remote computing systems, wherein the one or more remote computing systems comprise a cloud service;

a notification field configured to indicate whether the electronically-controlled wood-pellet grill is communicably connected to the one or more remote computing systems, and to further provide notifications indicating that the electronically-controlled wood-pellet grill is available to receive instructions;

a second input field configured to receive input indicating that a particular temperature is to be maintained by the wood-pellet grill;

*an instruction generating indicator configured to indicate that one or more instructions configured to cause a hopper to feed wood pellets into the wood-pellet grill at a particular rate in order to maintain the particular temperature are being generated based on the received user input; and*

a transmission indicator configured to indicate that the one or more instructions are being sent to the electronically-controlled wood-pellet grill to activate the hopper, the one or more instructions being interpreted and carried out by a hardware controller on the electronically-controlled wood-pellet grill.

*Id.* at 13:34-58; 14:45-15:13; 15:45-16:20 (emphasis added).

### C. The Accused Products

The accused GMG wireless pellet grills (“the accused products”) are part of a system (the “GMG System”) that includes: (1) a mobile application (“mobile app”) (Android or iOS); (2) an API server (sometimes also referred to as the “Parse server”); (3) a database; (4) a grill server;

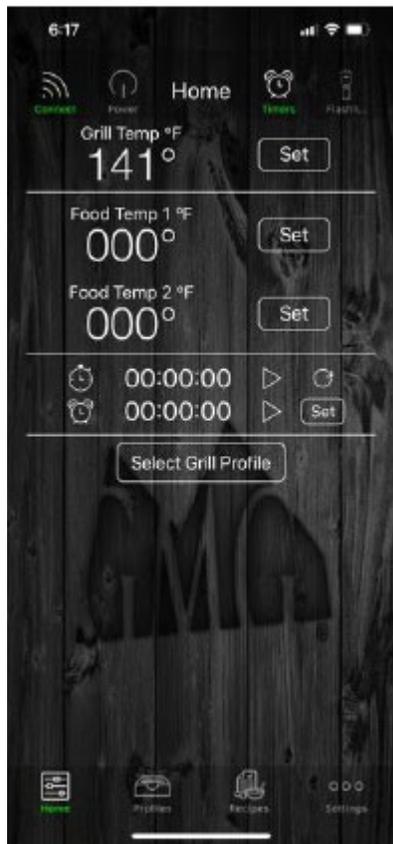
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and (5) a grill having a grill hardware controller. ID at 5 (citing GMG Memo at 15-18). A representative GMG wireless pellet grill is the GMG Daniel Boone Prime Grill:



GMG Exh. 16 at ¶ 3. A GMG mobile app (below) is used to control the operation of GMG wireless pellet grills:

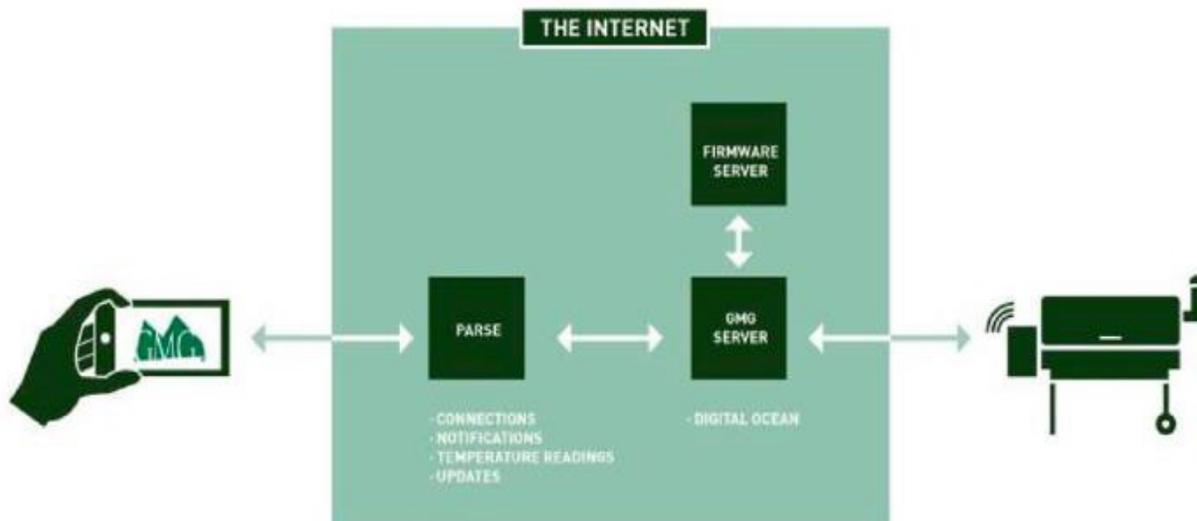
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GMG Exh. 16 at ¶ 24. The GMG wireless pellet grills can be operated in a “Server mode” (below) where communications between the grill and the mobile app are conducted via a GMG server:

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### SERVER MODE



GMG Server mode takes a grill that is connected to an internet connection and relay's commands and actions to a connected smart phone. Local Wi-Fi uses the router to relay commands to the phone. Server mode connects the grill to the GMG Server to relay commands via 4G or Wi-Fi with the internet.

GMG Exh. 16 at ¶ 42.

#### D. The ID's Finding For "Generating One or More Instructions" (claims 1, 11, and 18 of the '833 patent)

##### 1. GMG's Motion

In its motion for summary determination of non-infringement, GMG contended that the GMG System does not infringe three limitations recited in claims 1 of the '833 patent,<sup>4</sup> four

<sup>4</sup> GMG's motion argues that the following limitations of claim 1 are not met in its accused products: (1) an indication that the grill is "communicably connected;" (2) a notification that

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limitations recited in claim 11 of the '833 patent,<sup>5</sup> and three limitations recited in claim 18 of the '833 patent.<sup>6</sup> The Commission's opinion provides supplemental reasoning to support the ID's findings only as to the "generating one or more instructions" limitation.<sup>7</sup>

### 2. Claim Construction

During *Markman* proceedings, the parties disputed the proper claim construction of the limitation "generating one or more instructions." GMG proposed construing the claim term to mean "converting a user input into an instruction specific to a particular device." *See Markman* Order (Order No. 22) at 19 (Jul. 28, 2021). GMG relied on a portion of the specification

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the grill is "available to receive instructions;" and (3) "generating one or more instructions." ID at 9. The ID found genuine disputes of material fact that precluded summary determination as to (1) and (2). *Id.* Those findings are not part of the subject ID, and therefore are not reviewable.

<sup>5</sup> GMG's motion argues that the following limitations of claim 11 are not met: (1) an indication that the grill is "attempting to communicate;" (2) an indication that the grill is "communicably connected;" (3) a notification that the grill is "available to receive instructions;" and (4) "generating one or more instructions." ID at 13. The ID found genuine disputes of material fact that precluded summary determination as to (2) and (3). *Id.* Those findings as to limitations (2) and (3) are not part of the subject ID, and therefore are not reviewable. The Commission affirms the ID's finding that the accused products do not infringe the "attempting to communicate" limitation of claim 11.

<sup>6</sup> GMG's motion argues that the following limitations of claim 18 are not met: (1) a notification field indicating whether the grill is "communicably connected" and that the grill is "available to receive instructions;" (2) an "instruction generating indicator;" and (3) a "transmission indicator." ID at 16. The ID found genuine disputes of material fact that precluded summary determinations as to (3). That finding is not part of the subject ID, and therefore is not reviewable. *Id.* The Commission affirms the ID's finding that the accused products do not infringe the "notification field" limitation of claim 18.

<sup>7</sup> Traeger did not petition for review of the ID's findings regarding the limitation "attempting to communicate" recited in claim 11 of the '833 patent, and therefore did not challenge the ID's finding of non-infringement with respect to this claim irrespective of the "generating one or more instructions" limitation. For completeness, this opinion applies to all asserted claims addressed in the ID that recite the "generating one or more instructions" limitation, including claim 11.

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describing the “instruction generator **108**,” arguing that the patent teaches that the instruction generator “converts user input into instructions that are specific to a particular device.” *Id.* at 20 (citing ’833 patent at 6:65-7:4).

Traeger argued that “neither the claim language nor the specification requires a conversion.” Order No. 22, at 20. Rather, Traeger asserted, the claim language describes “instructions configured to cause a hopper to feed wood pellets into the electronically-controlled wood pellet grill at a particular rate in order to maintain the particular temperature.” *Id.* (citing ’833 patent at 13:50-54 (claim 1); 15:5-8 (claim 14); 16:8-13 (claim 18)). Traeger asserted that the limitation should be given its plain and ordinary meaning.

The CALJ agreed with Traeger, and construed “generating one or more instructions” in accordance with its plain and ordinary meaning, finding that “limitations requiring ‘converting a user input’ and ‘instruction specific to a particular device’ limitations should not be imported from the specification.”<sup>8</sup> *Id.*

### 3. Infringement

Each of the asserted claims recite “generating one or more instructions configured to cause a hopper to feed wood pellets into the electronically-controlled wood-pellet grill at a particular rate in order to maintain the particular temperature.” *ID* at 10; *see* ’833 patent, claim 1. Related to this limitation, the final step recited in, for example, claim 1 requires “sending the generated instructions to the electronically-controlled wood-pellet grill.” ’833 patent, claim 1.

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<sup>8</sup> The *Markman* Order, adopting Traeger’s proposal, finds that the level of ordinary skill in the art for the asserted patents would have had a Bachelor of Science Degree in Computer Science or an equivalent field, as well as two years of academic or industry experience related to Internet connectivity, Internet content delivery, network applications, as well as familiarity with smart home appliances. Order No. 22, at 4.

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Traeger’s infringement contentions regarding the “generating one or more instructions” limitation identified functionality in the GMG mobile app that allows the user to set the internal temperature of the grill:



ID at 10; GMG’s Exh. 16 (Shoemaker Expert Report) at ¶ 27. Traeger’s infringement contention is that the transmission of the temperature setting from the GMG mobile app to the grill infringes the “generating one or more instructions” limitation because it causes a hopper to feed wood pellets into the grill at a particular rate. ID at 11 (citing Traeger Opp. at 13-15).<sup>9</sup> When the

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<sup>9</sup> The ID notes that Traeger did not make any argument for infringement under the doctrine of

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user sets a temperature, source code in the GMG mobile app sends a temperature command to the GMG grill via the GMG server. GMG’s Exh. 16 (Shoemake Expert Report) at ¶¶ 92, 192.

[REDACTED]

[REDACTED]. *Id.* at ¶¶ 108-109, 193. Mr. Williams, GMG’s expert, explained that [REDACTED]

[REDACTED]. GMG’s Exh. 14 (Williams Expert Report) at ¶ 117.

GMG argued in its summary determination motion that the accused products do not practice this limitation because the temperature command sent by the GMG mobile app to the GMG grill via the GMG server is not an “instruction [] configured to cause a hopper to feed wood pellets into the electronically-controlled wood-pellet grill at a particular rate.” GMG Memo at 28-29; GMG Supplemental Memo at 9-10. Rather, GMG submitted, the set temperature command sent by the GMG mobile app [REDACTED]

[REDACTED]

[REDACTED], not the mobile app as required by the plain language of the claims.<sup>10</sup> *Id.*

The ID found that there is no factual dispute regarding the operation of the GMG System: the temperature command from the mobile app specifies only a temperature, and does not

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equivalents. *Id.* at 11.

<sup>10</sup> The ID notes that the parties also dispute whether the temperature command from the GMG mobile app is an “instruction,” but the ID determines that this issue does not need to be resolved on the current motion for summary determination. ID at 11 n.2 (citing Traeger Opp. at 14-15; GMG’s Exh. 14 (Williams Expert Report) at ¶ 116; GMG’s Exh. 16 (Shoemake Expert Report) at ¶¶ 91, 192. The ID, for the purposes of this order, considers the temperature command to be an “instruction.” *Id.* The Commission likewise does not reach this issue, and assumes for purposes of its review that the temperature command is an “instruction.”

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specify any “particular rate” for feeding pellets. ID at 12. Further, Traeger did not dispute the un rebutted testimony of Mr. Williams that [REDACTED]

[REDACTED]. *Id.* (citing GMG’s Exh. 14 (Williams Expert Report) at ¶ 117).

The ID notes that the parties disagreed on the requirements of the claim language. The ID notes that the specification of the ’833 patent treats “temperature monitoring and control” and “hopper control for feeding pellets into the combustion area” as distinct functions that can be controlled by the user. *Id.* at 12-13 (citing ’833 patent at 12:53-60 (“The user interface **603** may also include a second input field **610** configured to receive input indicating that one or more specified functions (e.g.,[.] **611A**, **611B**, custom function **611C**, etc.) are to be performed by the electronically-controlled appliance **115**. The functions may include temperature monitoring and control, gas burn rate, hopper control for feeding pellets into the combustion area . . .”). The ID finds that a plain reading of the claim language in the context of the specification requires that the generated instruction be “configured” to cause “a particular rate” of wood pellet feeding. *Id.* (citing GMG Memo. at 29).

The ID found the undisputed evidence showed that the GMG mobile app sends an instruction to the grill for temperature control, [REDACTED]

[REDACTED]. *Id.* at 13.

The ID therefore found that: (1) in the GMG System, a set temperature that is sent from the

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mobile app [REDACTED]

[REDACTED]; and (2) this temperature-only “instruction” that is sent to the GMG grill is not “configured to cause a hopper to feed wood pellets into the . . . grill at a particular rate.” *Id.*

Based on the foregoing, the ID found that the accused GMG System does not infringe the “generating one or more instructions” limitation of claims 1 and 11; and therefore GMG is entitled to summary determination with respect to these claims and the claims that depend therefrom. *Id.* at 13. The ID also finds that summary determination of non-infringement is appropriate with respect to the “instruction generating indicator” recited in claim 18, and its dependent claims, for the same reasons discussed above with respect to the “generating one or more instructions” limitation of claim 1. *Id.* at 16.

**E. The Parties’ Arguments**

Traeger submits that the ID’s finding that GMG’s accused products do not practice the “generating one or more instructions” limitation recited in claims 1 and 11, and the “instruction generating indicator” recited in claim 18, is based on a legally erroneous claim construction. Traeger’s Pet. at 8-9, 17. Traeger contends that, from a plain reading of the claim language, the cause-and-effect nature of the claimed “instructions” may be illustrated this way:

*Cause:* generating one or more instructions *configured to cause*

*Effect:* a hopper to feed wood pellets into the electronically-controlled wood-pellet grill at a particular rate in order to maintain the particular temperature

*Id.* at 9 (emphasis in original). Traeger submits that, because of this cause-and-effect relationship, *any* instruction that causes the claimed effect will satisfy the claim limitation. *Id.* (emphasis in original). Accordingly, Traeger contends that the instruction need not set the feed

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rate that is necessary to maintain the temperature, so long as the resulting, final *effect* of the instructions is that the grill feeds pellets at whatever rate is necessary to maintain the user-specified temperature. *Id.* at 19 (emphasis in original).

Traeger argues that, contrary to this plain reading, the ID erroneously limits the claims to require two specific types of instructions from the computing device to the grill, namely requiring express instructions for *both* temperature control *and* hopper control. Traeger’s Pet. at 19 (emphasis in original) (citing ID at 13). Traeger submits that this improper limitation on claim scope excludes instructions that identify only the user-specified temperature, even if those instructions *cause* the hopper in the grill to feed wood pellets at a particular rate to maintain the particular temperature. *Id.* Traeger contends that, in other words, the “generating” limitation does not require that the “one or more instructions” set the feed rate, but rather, it is broad enough to cover an instruction that *causes* the hopper to feed pellets at a rate necessary to maintain “the particular temperature” as recited. *Id.* (emphasis in original).

GMG submits that Traeger’s broad “cause and effect” argument for interpretation of the “generating one or more instructions” limitation should be rejected as inconsistent with the claim language. GMG’s Resp. at 22. GMG submits that claims 1 and 18 both require a specific instruction to be generated at the mobile device (or computer) and thereafter the instruction must be sent to the grill. *Id.* GMG notes, for example, the last two limitations of claim 1:

- Claim 1:** generating one or more instructions configured to cause a hopper to feed wood pellets into the electronically-controlled wood-pellet grill at a particular rate in order to maintain the particular temperature; and
- sending the generated instructions to the electronically-controlled wood-pellet grill to activate the hopper, the generated instructions being interpreted and carried out on the electronically-controlled wood-pellet grill via the hardware controller.

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*Id.* (citing '833 patent at claim 1).

GMG thus contends that a specific instruction must first be generated and then that generated instruction must be sent. GMG's Resp. at 23. GMG argues that, on the other hand, if Traeger wanted to draft the claims so that they instead allowed only a temperature to be passed along to the grill, and then requiring the grill to generate a hopper instruction from that temperature, it could have done so. *Id.* GMG submits that, in that case, the claims would delete the references to feeding pellets (indicated by the brackets below) and the particular rate from the "generating" limitations, so that, for example, claim 1 would read as follows:

**Claim 1:** *generating one or more instructions configured to cause [a hopper to feed wood pellets into] the electronically-controlled wood-pellet grill [at a particular rate in order] to maintain the particular temperature; and*

*sending the generated instructions to the electronically-controlled wood-pellet grill to activate the hopper, the generated instructions being interpreted and carried out on the electronically-controlled wood-pellet grill via the hardware controller.*

*Id.* at 23. GMG contends that Traeger's proposal renders much of the claim language superfluous, as well as deleting portions of the claim and shifting them to other portions of the claim, and therefore should be rejected. *Id.*

GMG further submits that Traeger's "cause and effect" argument ignores the "configured to cause" limitation of the asserted claims. GMG's Resp. at 23. GMG contends that the "generating" limitation expressly refers to the way the instruction itself must be "configured," and on its face, the instruction in each case must be "configured" to cause the wood-pellet grill to feed wood pellets "at a particular rate." GMG's Resp. at 23. GMG submits that the instruction must not be directed only to feeding wood pellets, but it must even more particularly be directed to feeding them at a particular rate. *Id.* GMG thus argues that Traeger's "cause and effect"

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argument, which allows the “generating” limitation to cover any instruction so long as the language after the word “cause” is achieved later by the grill, ignores the “configured to cause” phrasing which is specifically directed to the *configuration* of the generated instruction. *Id.* at 23-24 (emphasis in original).

Finally, GMG argues, once the instruction configured to cause a “particular rate” of feeding pellets has been generated, the claim requires that it must be transmitted. GMG’s Resp. at 24. GMG contends that, as the claims provide, that instruction is then interpreted and carried out by the hardware controller. *Id.* GMG submits that, importantly, the claims do not state that the hardware controller of the grill generates a pellet-feeding instruction, though it would have been simple for Traeger to have crafted it that way. *Id.* GMG contends that, instead, each claim provides a clear and unmistakable line in which the instruction is generated at the mobile device and then sent to the grill to be interpreted and carried out. *Id.* at 24-25.

### F. Analysis

Upon review, the Commission finds no legal error in the ID’s finding of non-infringement with respect to the “generating one or more instructions” limitation.

The plain language of the claims recites a very specific method for controlling an electronically-controlled wood-pellet grill, where certain steps are to be performed by certain elements of the system in a specific way, and in a specific sequence. In particular, claim 1 states:

1. A method for controlling an electronically-controlled wood-pellet grill *using a software application on a mobile device*, the electronically-controlled wood-pellet grill *having at least one hardware controller*, the method comprising:

*receiving an indication* from one or more remote computing systems indicating that the electronically-controlled wood-pellet grill is communicably connected to the one

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or more remote computing systems, wherein the one or more remote computing systems comprise a cloud service;

*providing a notification* in the software application indicating that the electronically-controlled wood-pellet grill is available to receive instructions;

*receiving a user input* at the software application indicating that a particular temperature is to be maintained by the electronically-controlled wood-pellet grill;

*generating one or more instructions* configured to cause a hopper to feed wood pellets into the electronically-controlled wood-pellet grill at a particular rate in order to maintain the particular temperature; and

*sending the generated instructions* to the electronically-controlled wood-pellet grill to activate the hopper, the generated instructions being interpreted and carried out on the electronically-controlled wood-pellet grill via the hardware controller.

See '833 patent at 13:34-58. In other words, the claim recites five specific steps to be performed by the mobile device software application: (1) receiving an indication; (2) providing a notification; (3) receiving a user input that a particular temperature is to be maintained; (4) generating one or more instructions configured to cause a hopper to feed wood pellets into the electronically-controlled wood-pellet grill at a particular rate in order to maintain the particular temperature; and (5) sending the generated instruction. Claim 1 also requires that the wood-pellet grill includes a hardware controller, and the controller interprets and carries out the instructions sent from the mobile device software. Accordingly, if one of these five recited steps is not performed by the mobile software application but by another element of the system, *e.g.*, the grill hardware controller, then that limitation is not met.

Turning to the specification, the recited inventive method is disclosed as the following:

Embodiments described herein are directed to *controlling* an electronically-controlled appliance *using a software application* and to providing a user interface for controlling an electronically-controlled appliance . . . [A] computer system provides a notification in the software application indicating that the electronically-controlled appliance is available to receive instructions, and receives a user input at *the software application*

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indicating that *certain functions* are to be performed by the electronically-controlled appliance.

The computer system *further generates instructions configured to control* the electronically-controlled appliance *based on the functions specified* in the received user input, and *sends the generated instructions* to the electronically-controlled appliance to *perform the specified functions*. These functions are then interpreted and carried out on the electronically-controlled appliance via the hardware controller.

'833 patent at 1:55-2:8. Throughout the specification, this recited method for controlling an electronically-controlled wood-pellet grill **500** is consistently described in terms of receiving a user input at the mobile device “indicating that *one or more specified functions* are to be performed by the electronically-controlled appliance (**570**).” *Id.* at 10:56-59 (emphasis added).

The specification further states:

The user's input **112** may cause the instruction generator **108** of the software application **106** to *generate one or more control instructions 109 configured to control* the electronically-controlled appliance based on the *functions 110 specified* in the received user input (**580**). These *control instructions 109* are then sent to the electronically-controlled appliance **115** to *perform the functions*. The electronic hardware controller **116** of the electronically-controlled appliance **115** then interprets and carries out the *specified functions (590)*.

*Id.* at 10:65-11:7 (emphasis added). The specification also discloses that “[t]hese control instructions **109** may include, for example, an indication that a certain amount of fuel pellets are to be added to a smoker's combustion area, or that a specified amount of fuel (such as propane) is to be burned by a grill, or that a specified internal temperature is to be reached and maintained.” '833 patent at 6:35-40. The specification also discloses that the functions the user, via the mobile software, may control include “substantially any function that the electronically-controlled appliance **115** is capable of (or is modified to be capable of) performing

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. . . [f]or grill and smokers, this may include controlling burn rate, temperature, cooking cycle, fuel dispensing, controlling timers, accessing recipes, displaying probe temperatures or alerts, turning the device on or off, or other functions.” *Id.* at 6:50-56.

The Commission finds that the intrinsic record contemplates that the instructions specifying the function to be performed by the grill must be generated by the software application on the mobile device. In other words, the instructions generated by the mobile device app need not be further configured in the grill’s controller in order to specify and direct the function to be performed by the wood-pellet grill – *e.g.*, feed wood pellets at a particular rate – namely, the instructions must communicate to the grill’s hardware controller what to do. *See iRobot Corp. v. Int’l Trade Comm’n*, 767 F. App’x 944, 946 (Fed. Cir. 2019) (affirming that the claim limitation “*instructions configured to cause a processor of the cleaning robot to perform operations including executing a cleaning operation in the room*” “require[s] transmission of some form of program or application that *communicates to the robot’s processor what to do*” as opposed to “*a simple instruction to begin the cleaning cycle.*”). Therefore, with respect to the “generating one or more instructions” limitation and based on the intrinsic record, the Commission affirms the ID and finds that the instructions generated by the mobile device must cause the wood-pellet grill to feed in wood pellets at a particular rate to maintain a set temperature.

The operation of the accused system here is undisputed. *See* ID at 12 (citing GMG’s Exh. 14 (Williams Expert Report) at ¶¶ 116-17). [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]. *Id.* In essence, the grill hardware controller performs the “generating one or more instructions” step in the accused system, not the mobile app.

The Commission also finds that the step of “generating one or more instructions,” consistent with the intrinsic record requires some action to be performed by the mobile device in response to the temperature input by the user beyond merely forwarding this temperature input to the grill hardware controller. There is no support in the intrinsic record that forwarding a user input is the same as *generating* an instruction. Relatedly, the Commission finds that it cannot be the case where one action, *i.e.*, receiving the user input of the desired temperature, satisfies two distinct claim steps as Traeger argues here. *See, e.g., Becton, Dickinson & Co. v. Tyco Healthcare Grp., LP*, 616 F.3d 1249, 1254 (Fed. Cir. 2010) (“Where a claim lists elements separately, the clear implication of the claim language is that those elements are distinct components of the patented invention.” (internal quotations omitted)).

Based on the foregoing, the Commission finds that the ID correctly determined that GMG’s accused products do not meet the “generating one or more instructions” step and therefore do not infringe asserted claims 1-3, 6-9, 11-14, 18, and 22-24 of the ’833 patent.

## IV. CONCLUSION

For the reasons set forth herein, the Commission determined to review the subject ID’s grant of summary determination of non-infringement and termination of the ’833 patent from the investigation. On review, the Commission: (1) affirms with supplemental reasoning, as discussed *supra*, the ID’s finding of non-infringement with respect to the “generating one or more instructions” limitation; and (2) affirms the remainder of the ID.

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By Order of the Commission.



Lisa R. Barton  
Secretary to the Commission

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