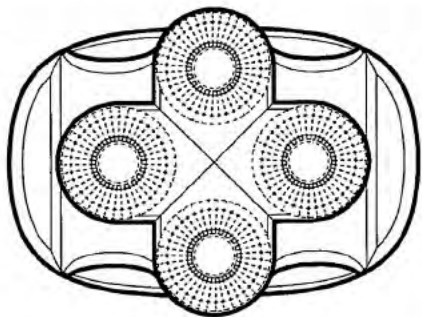



Claimed Design of the '504 Patent	Respondent Yiwu City's Accused Product
 <p data-bbox="456 632 548 663">FIG. 8</p>	

(See Hatch Decl., Ex. H at App. B-2.).

This evidence demonstrates that the design of Yiwu Xingye and Yiwu City's Accused Products are "substantially the same" as the ornamental design for an electric shaver, as shown and described in the '504 patent. As Mr. Hatch states, these Accused Products have "the following major design elements that contribute to the overall impression of the product as a whole: flat housing top; recesses along the lengths of the sides of the shaver housing; recesses along the bottom of the shaver housing; cutter positioned and spaced below the shaver housing and connected to the housing." (Hatch Decl., Ex. H at ¶¶ 190, 212.). In addition, Mr. Hatch notes that while there are some minor differences, they "do not carry sufficient weight to make the overall impression created by the [Accused Products] plainly dissimilar from the claimed design of the '504 patent." (*Id.* at ¶¶ 191-92, 213-14.).

Accordingly, based on Mr. Hatch's thorough Declaration, it is a finding of this decision that Skull Shaver has met its burden of proof, and that Skull Shaver is entitled to a summary determination that Respondents Yiwu Xingye and Yiwu City's Accused Products infringe the '504 patent. (See Hatch Decl., Ex. H at ¶¶ 187-95, 209-17, Apps. B-1, B-2.).

**D. Skull Shaver Has Not Proven that the Remaining Defaulting Respondents' Accused Products Infringe the '528 Patent**

Skull Shaver has not proven that Respondents Suzhou Kaidiya, Wenzhou Wending, Shenzhen Aiweilai, Shenzhen Junmao, Shenzhen Wantong, and Bald Shaver's Accused Products infringe claim 1 of the '528 patent.<sup>7</sup> Specifically, Skull Shaver fails to prove that each of Respondents Suzhou Kaidiya, Wenzhou Wending, Shenzhen Aiweilai, Shenzhen Junmao, Shenzhen Wantong, and Bald Shaver's Accused Products meet the "a second set of elongated spaced apart recesses formed in said bottom of said housing along said width entirely, and extending upwardly into said bottom, said recesses of said second set being located on opposite sides of said hub and extending perpendicular to said first pair of recesses" limitation of claim 1. The term "recesses" in claim 1 was construed as "indentations that are substantially concave surfaces." (*See* Order No. 20, App. A at 10-23.). None of these Respondents' Accused Products include indentations that are substantially concave surfaces.

Mr. Hatch's claim charts demonstrate that Skull Shaver's position is based on imagined depictions of what the bottom housing of the Accused Products would look like "[i]f it were not for the recesses on either side." (*See* Hatch Decl., Ex. H at Apps. A-6 at 13-19, A-7 at 12-19, A-8 at 13-19, A-9 at 13-19, A-10 at 12-18, A-11 at 12-18.). For example, reproduced below are several images from Mr. Hatch's claim chart for Respondent Suzhou Kaidiya's Accused Product, where he annotates photographs of the Accused Product with red lines to allege what the bottom

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<sup>7</sup> As to these Respondents, Skull Shaver is only asserting claim 1 of the '528 patent. (*See* Mem. at 19-20.). In addition, although Mr. Hatch's expert report includes discussion of the doctrine of equivalents for some claim limitations, Skull Shaver does not brief that issue in its motion. (*See id.*). Accordingly, any arguments with respect to the doctrine of equivalents are hereby waived. (*See* Ground Rule 10.1.).

housing would look like “[w]ithout recesses.”<sup>8</sup>



(Hatch Decl., Ex. H at App. A-7 at 13-14.).

The areas that Mr. Hatch points to are not “indentations that are substantially concave surfaces” formed in the bottom of the housing. Nor can one merely create such indentations out of thin air by drawing an arbitrary red line on an image of a product depicting what it could look like. What counts is what the product actually looks like, not what one imagines it could be. As Staff points out, Skull Shaver previously made this same argument with respect to Nukun’s accused products, which was rejected. (*See* Staff Resp. at 10-11; Order No. 21 at 5, 11-12 (Apr.

<sup>8</sup> Mr. Hatch annotates similar images with the same analysis for Respondents Wenzhou Wending, Shenzhen Aiweilai, Shenzhen Junmao, Shenzhen Wantong, and Bald Shaver’s Accused Products. (*See* Hatch Decl., Ex. H at Apps. A-6 at 13-19, A-8 at 13-19, A-9 at 13-19, A-10 at 12-18, A-11 at 12-18.).

26, 2021) (“Moreover, the ‘void’ that Mr. Hatch describes . . . is not a ‘recess’ in the housing. To describe those pictures with those voids as shown in Figure 2, above, as a ‘second set of recesses’ is nonsensical”). This argument is rejected yet again.

Thus, Skull Shaver has failed to show that Respondents Suzhou Kaidiya, Wenzhou Wending, Shenzhen Aiweilai, Shenzhen Junmao, Shenzhen Wantong, and Bald Shaver’s Accused Products infringe claim 1 of the ’528 patent.

## **IX. DOMESTIC INDUSTRY REQUIREMENTS**

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

### **A. Technical Prong**

#### **1. Legal Standard**

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

The test for claim coverage for the purposes of the technical prong of the domestic industry requirement is the same as that for infringement. *Certain Doxorubicin and Preparations*

*Containing Same*, Inv. No. 337-TA-300, Initial Determination at 109, 1990 WL 710463 (U.S.I.T.C. May 21, 1990), *aff'd*, Views of the Commission at 22 (October 31, 1990). “First, the claims of the patent are construed. Second, the complainant’s article or process is examined to determine whether it falls within the scope of the claims.” *Id.* The technical prong of the domestic industry can be satisfied either literally or under the doctrine of equivalents. *Certain Dynamic Sequential Gradient Devices and Component Parts Thereof*, Inv. No. 337-TA-335, Initial Determination at 44, Pub. No. 2575 (U.S.I.T.C. Nov. 1992).

**2. Skull Shaver Has Satisfied the Technical Prong of the Domestic Industry Requirement**

Skull Shaver has proven by a preponderance of the evidence that its DI Products practice claims 1-3 of the ’528 patent. (*See* Mem. at 20-21.). Skull Shaver asserts that all of the DI Products practice either one or all of the claims of the ’528 patent. (*See id.* at 5, 20-21.). To support its MSD, Skull Shaver submitted Mr. Hatch’s Declaration where he details his opinions on the technical prong of the domestic industry requirement in claim charts based on his analysis of each of the DI Products. (*See* Hatch Decl., Ex. H at Apps. C1-C9.). Mr. Hatch examined samples of the DI Products. (*See id.*, Ex. H at ¶¶ 16,18.). Mr. Hatch also prepared detailed claim charts that demonstrate how each of the DI Products practices each limitation of claims 1-3 of the ’528 patent. (*See id.*, Ex. H at Apps. C1-C9.).

Mr. Hatch concluded that each of Skull Shaver’s DI Products has a housing for containing an electrical source and drive-related components, a cutter mechanism beneath the bottom of the housing, a central hub extending from the bottom of the housing to the cutter mechanism, a first pair of elongated recesses formed on the sides of the housing, and a second set of elongated spaced apart recesses formed in the bottom of the housing along the width

entirely and extending upwardly into the bottom. (*See* Hatch Decl., Ex. H at ¶ 223, Apps. C1-C9.).

Skull Shaver has also proven by a preponderance of the evidence that the Pitbull Platinum PRO, Pitbull Gold PRO, Pitbull Silver PRO, Bald Eagle, Trinity, and Palm DI Products are “substantially the same” as the ornamental design for an electric shaver, as shown and described in the ’504 patent. (*See* Mem. at 23.). To support its MSD, Skull Shaver submitted Mr. Hatch’s Declaration where he details his opinions on the technical prong of the domestic industry requirement in claim charts based on his analysis of each of those DI Products. (*See* Hatch Decl., Ex. H at Apps. D1-D-6.). Mr. Hatch examined samples of those DI Products. (*See id.*, Ex. H at ¶¶ 16,18.). Mr. Hatch also prepared detailed claim charts that demonstrate how the design of the Pitbull Platinum PRO, Pitbull Gold PRO, Pitbull Silver PRO, Bald Eagle, Trinity, and Palm DI Products are substantially the same as the overall design of the ’504 patent. (*See id.*, Ex. H at Apps. D1-D-6.).

Mr. Hatch opined that the Pitbull Platinum PRO, Pitbull Gold PRO, Pitbull Silver PRO, Bald Eagle, Trinity, and Palm DI Products “are substantially the same in overall design to the invention of the ’504 Patent, and would be to an ordinary observer in light of the prior art.” (*See* Hatch Decl., Ex. H at ¶ 226.).

Accordingly, based on Mr. Hatch’s thorough Declaration, it is a finding of this decision that Skull Shaver has met its burden of proof, and that Skull Shaver is entitled to a summary determination that its DI Products practice the ’528 and ’504 patents. (*See* Hatch Decl., Ex. H at ¶¶ 221-27, Apps. C1-C-9, D-1-D-6.).

**B. Economic Prong**

**1. Legal Standard**

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

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

With respect only to the subsections of 19 U.S.C. § 1337(a)(3), because the economic requirement sub-prong criteria are listed in the disjunctive, satisfaction of any one of them will be enough to meet the economic prong of the domestic industry requirement. *Certain Integrated*

*Circuits, Chipsets and Prods. Containing Same*, Inv. No. 337-TA-428, Order No. 10, Initial Determination (unreviewed) (May 4, 2000).

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

To determine whether investments are “significant” or “substantial,” the actual amounts of a complainant’s investments or a quantitative analysis must be performed. *Lelo Inc. v. Int’l Trade Comm’n*, 786 F.3d 879, 883-84 (Fed. Cir. 2015) (“*Lelo*”). Even after *Lelo*, which requires some quantification of a complainant’s investments, there is still no bright line as to a threshold amount that might satisfy an economic industry requirement. It is the complainant’s burden to show by a preponderance of evidence that each prong of the domestic industry requirement is satisfied. *Certain Prods. Containing Interactive Program Guide and Parental Control Tech.*, Inv. No. 337-TA-845, Final Initial Determination, 2013 WL 3463385 at\*14 (June 7, 2013).



Moreover, the Commission makes its determination by “an examination of the facts in each investigation, the article of commerce, and the realities of the marketplace.” *Certain Male Prophylactic Devices*, Comm’n Op. at 39) (quoting *Certain Double Sided-Floppy Disk Drives and Components Thereof*, Inv. No. 337-TA-215, Comm’n Op. at 17, USITC Pub. 1859 (May 1986)).

**2. Skull Shaver Has Satisfied the Economic Prong of the Domestic Industry Requirement by Using a Revenue-Based Sales Allocation Method**

Skull Shaver submits a revenue-based sales allocation method. (*See* Mem. at 25-28.). In support of its economic prong contentions, Skull Shaver submitted a declaration from its economic expert, Mr. William Leitsch<sup>9</sup> (“Leitsch Declaration”). (*See* Leitsch Decl. and exhibits attached thereto). Specifically, Mr. Leitsch, presented four sales scenarios under which Skull Shaver’s domestic industry could be assessed. (Mem. at 26.). The four sales scenarios either include or exclude bundled products sold with the DI Products, replacement shaver blades, and other components and accessories. (*Id.*). Below is a table detailing the four sales scenarios.

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<sup>9</sup> Skull Shaver retained Mr. William Leitsch to address the economic prong of the domestic industry requirement related to the DI Products. (*See* Leitsch Decl., Ex. A at ¶ 4.). Skull Shaver also asked Mr. Leitsch to address certain factors related to the remedy phase of the Investigation. (*See id.*).

Scenario 1 Sales	'528 and '504 DI Product sales including DI Bundled Product sales (i.e., sales of the DI Products including DI Products sold either with or without DI Bundled Products).
Scenario 2 Sales	'528 and '504 DI Product sales, including DI Bundled Product sales and DI Replacement Blade sales.
Scenario 3 Sales	'528 and '504 DI Product sales, including DI Bundled Products, DI Replacement Blade sales, and DI Product Accessories
Scenario 4 Sales	'528 and '504 DI Product sales, excluding the revenue attributed to any Bundled Product. To isolate the revenues associated with the DI Products, I have removed the average selling price ("ASP") of the stand-alone accessories from the ASP of the bundled DI Products. This is conservative, as I understand bundled accessories are included at a discounted price. See Attachment 6.

(*Id.*; Leitsch Decl., Ex. A at ¶ 48.). Staff's support for Skull Shaver's domestic industry finding under section (B) is based on Scenario 4. (*See* Staff Resp. at 15.). As described above, Scenario 4 is the most conservative sales scenario. (*See* Mem. at 26-28.).

Mr. Leitsch provided the table below summarizing sales for the '504 patent and total Skull Shaver U.S. sales for January 1, 2019 through June 30, 2020. In addition, the table summarizes sales for the '504 patent as a percentage of total Skull Shaver U.S. sales.

	2019	January to June 2020	Total
Scenario 1 Sales			
Scenario 2 Sales			
Scenario 3 Sales			
Scenario 4 Sales			
Total U.S. Sales			
Scenario 1 Sales as % of Total U.S.			
Scenario 2 Sales as % of Total U.S.			
Scenario 3 Sales as % of Total U.S.			
Scenario 4 Sales as % of Total U.S.			

(Leitsch Decl., Ex. A at ¶ 52.).

Similarly, Mr. Leitsch provided the table below summarizing sales for the '528 patent and total Skull Shaver U.S. sales for January 1, 2019 through June 30, 2020. In addition, the table summarizes sales for the '528 patent as a percentage of total Skull Shaver U.S. sales.

	2019	January to June 2020	Total
Scenario 1 Sales			
Scenario 2 Sales			
Scenario 3 Sales			
Scenario 4 Sales			
Total U.S. Sales			
Scenario 1 Sales as % of Total U.S.			
Scenario 2 Sales as % of Total U.S.			
Scenario 3 Sales as % of Total U.S.			
Scenario 4 Sales as % of Total U.S.			

(Leitsch Decl., Ex. A at ¶ 53.).

Skull Shaver's approach is reasonable as the Commission routinely accepts sales allocation methods for expenditures that are allocated to each sub-section of the domestic industry requirement. *See, e.g., Certain Table Saws Incorporating Active Injury Mitigation Technology and Components Thereof*, Inv. No. 337-TA-965, Initial Determination, Order No. 10 at 13 (Mar. 22, 2016); *Certain Toner Cartridges & Components Thereof*, Inv. No. 337-TA-740, Order No. 26 at 14 (June 1, 2011); *Certain NOR and NAND Flash Memory Devices & Products Containing Same*, Inv. No. 337-TA-560, Order No. 37 at 5-7 (Nov. 17, 2006).

**3. Skull Shaver Has Made Significant Investments in Labor and Capital under Section 337(a)(3)(B)**

Skull Shaver has satisfied the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(B) based upon its significant investments in labor and capital.<sup>10</sup> (*See* Mem. at 32-38.). There are no disputes of material fact that would prevent summary determination on this issue. (*See* Staff Resp. at 14.).

All of Skull Shaver's employees are based in the U.S. (Mem. at 32; Leitsch Decl., Ex. A at ¶ 59.). In 2019, Skull Shaver employed [REDACTED] employees and in 2020, Skull Shaver employed [REDACTED] employees. (Mem. at 32; Leitsch Decl., Ex. A at ¶ 60.). During 2019 and 2020, all of Skull Shaver's employees performed job duties and responsibilities that related either directly or indirectly to the DI Products. (Mem. at 32; Leitsch Decl., Ex. A at ¶ 61.). This included product design and development, customer service, product support, and other functions such as management and sales. (Mem. at 32; Leitsch Decl., Ex. A at ¶ 61.).

“While there is no bright-line rule to determine whether a complainant's domestic activities are distinguishable from those of a mere importer the Commission has often considered some types of activities, such as administrative overhead, inspections, and warehousing costs associated with importation of the domestic industry products as well as sales and marketing of the product, to be indistinguishable from those of a mere importer and has not typically credited them when determining whether a domestic industry exists.” *See Certain Bone Cements, Components Thereof & Prods. Containing the Same*, Inv. No. 337-TA-1153, Comm'n Op. at 22

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<sup>10</sup> Skull Shaver states that “the ALJ may find that Complainant has satisfied the economic prong of the domestic industry requirement under any one of the Section 337(a)(3)(A)–(C) provisions.” (Mem. at 41.). However, in its motion, Skull Shaver does not specifically brief the issue of whether it satisfies the economic prong of the domestic industry requirement under section (C). (*See generally id.* at 23-41.). Accordingly, any argument to that effect is hereby waived. (*See* Ground Rule 10.1.).

(Jan. 12, 2021) (internal citations omitted) (“*Bone Cements*”). Here, where there is no evidence of domestic manufacturing activity, it is appropriate not to credit certain of Skull Shaver’s employees *solely* dedicated to such activities as sales and marketing, for example. *See id.*

Even with sales and marketing expenses withdrawn from Mr. Leitsch’s calculations as part of his supplemental declaration (“Supplemental Leitsch Declaration”) in support of Complainant Skull Shaver, LLC’s Submission in Support of Its Motion for Summary Determination Pursuant to Order No. 30 (“Supplemental Submission”), Skull Shaver would still not qualify as a mere importer.<sup>11</sup> For instance, Skull Shaver expends a substantial amount of resources for: (i) customer service operations (customer service, product support, and education); and (ii) domestic quality control measures (quality control and repair services). (Suppl. Submission at 5-13 (citations omitted)).<sup>12</sup> For 2019 through the first half of 2020, Skull Shaver’s expenditures for labor to provide these services were [REDACTED] for customer service operations and [REDACTED] for domestic quality control measures. (*Id.* at 10, 12; Suppl. Leitsch Dec., Ex. A at ¶ 49 and Table 14.).

The Commission has routinely recognized these types of activities and expenditures as characteristic of a significant domestic industry rather than of a mere importer. *See Certain Video Displays, Components Thereof, and Prods. Containing the Same*, Inv. No. 337-TA-687, Order No. 20 (ID), 2010 WL 2306671, at \*5 (May 20, 2010) (noting that the analysis under 19 U.S.C. § 1337(a)(3)(B) need not be “strictly tied to monetary expenditures,” as “[d]omestic

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<sup>11</sup> Order No. 30 instructed Skull Shaver to provide additional facts/support in light of the Commission’s recent domestic industry opinions, which Skull Shaver did on October 14, 2021. (*See* Order No. 30 (Sept. 28, 2021); Doc. ID No. 754210 (Suppl. Submission) (Oct. 14, 2021)).

<sup>12</sup> The specific activities are described in greater detail in Skull Shaver’s Supplemental Submission. (*See* Suppl. Submission at 5-13.).



activities relating to customer support, quality control, and repairs for similar products/industries have supported a finding of economic domestic industry under . . . section (B)").

In his initial Leitsch Declaration, Mr. Leitsch considered the following categories of employees in his labor calculations: (i) management; (ii) logistics/warehouse; (iii) customer service; (iv) marketing; and (v) and creative. (Leitsch Decl., Ex. A at ¶ 61.). With marketing expenses included in the initial Leitsch Declaration, for those employees in 2019, Skull Shaver incurred total payroll expenses of [REDACTED]; for those employees for January through June 2020, Skull Shaver incurred total payroll expenses of [REDACTED]. (*Id.*, Ex. A at ¶¶ 62-63.). The labor-related expenses include payroll expenses, compensation to officers, payroll fees, payroll taxes, and workmen's compensation. (*Id.*, Ex. A at ¶¶ 62-63.). The tables below summarize Skull Shaver's labor investment allocated to the '528 and '504 DI Products based upon the figures above.

**Table 9: Skull Shaver's Labor Domestic Industry Investment Allocation to the '528 DI Products<sup>166</sup>**

	2019	January to June 2020	Total
Allocation based on Scenario 1%	[REDACTED]		
Allocation based on Scenario 2%			
Allocation based on Scenario 3%			
Allocation based on Scenario 4%			

**Table 10: Skull Shaver's Labor Domestic Industry Investment Allocation to the '504 DI Products<sup>166</sup>**

	2019	January to June 2020	Total
Allocation based on Scenario 1%	[REDACTED]		
Allocation based on Scenario 2%			
Allocation based on Scenario 3%			
Allocation based on Scenario 4%			

(Leitsch Decl., Ex. A at ¶¶ 67-68.).

In the Supplemental Leitsch Declaration, Mr. Leitsch limited his calculations to certain employees categorized under: (i) management; (ii) marketing/creative; (iii) customer service; and (iv) logistics/warehousing. (Suppl. Leitsch Decl., Ex. A at ¶ 49 and Table 1.). Mr. Leitsch's revised calculation for labor expenses in 2019 through the second quarter of 2020 for the DI Products was [REDACTED] (out of a total of [REDACTED] in labor expenses for that time period). (*Id.*). These expenses consisted of: (i) [REDACTED] for management labor; (ii) [REDACTED] for marketing and creative labor; (iii) [REDACTED] for customer service labor; and (iv) [REDACTED] for logistics/warehousing labor. (*Id.*, Ex. A at ¶ 50.). Mr. Leitsch noted in the Supplemental Leitsch Declaration that these amounts are higher than his conclusions from the initial Leitsch Declaration because he capped all allocation percentages at 90% in his initial Leitsch Declaration. (*Id.*).

Skull Shaver also employed operating capital with respect to activities directed to the DI Products. (Mem. at 35.). This includes investments related to supplies, taxes, utilities, insurance, IT, and Internet that were "necessary for [Skull Shaver] to operate its business and sell the DI Products." (Mem. at 35; Leitsch Decl., Ex. A at ¶ 79-80.). This investment amounted to [REDACTED] for 2019 through June 2020. (Mem. at 35; Leitsch Decl., Ex. A at ¶ 81.). Below are two tables Mr. Leitsch presented showing how these investments are allocated to the Asserted Patents based on Skull Shaver's revenue-based allocation methodology.

**Table 14: Additional Relevant Operational Expense and Taxes Allocation to the '528 DI Products<sup>202</sup>**

	<b>2019</b>	<b>January to June 2020</b>	<b>Total</b>
Allocation based on Scenario 1%			
Allocation based on Scenario 2%			
Allocation based on Scenario 3%			
Allocation based on Scenario 4%			

**Table 15: Additional Relevant Operational Expense and Taxes Allocation to the '504 DI Products<sup>203</sup>**

	<b>2019</b>	<b>January to June 2020</b>	<b>Total</b>
Allocation based on Scenario 1%			
Allocation based on Scenario 2%			
Allocation based on Scenario 3%			
Allocation based on Scenario 4%			

(Mem. at 35-36; Leitsch Decl., Ex. A at ¶¶ 82-83.).

Below are two tables that were included in the initial Letisch Declaration showing Skull Shaver's total investment in labor and capital for 2019 through June 2020.

<b>'528 DI Products</b>	<b>Total Labor (Table 9 <i>supra</i>)</b>	<b>Total Operating Capital (Table 14 <i>supra</i>)</b>	<b>Total Labor and Capital</b>
Allocation based on scenario 1			
Allocation based on scenario 2			
Allocation based on scenario 3			
Allocation based on scenario 4			



'504 DI Products	Total Labor (Table 10 <i>supra</i> )	Total Operating Capital (Table 15 <i>supra</i> )	Total Labor and Capital
Allocation based on scenario 1			
Allocation based on scenario 2			
Allocation based on scenario 3			
Allocation based on scenario 4			

(Mem. at 38-39; Leitsch Decl., Ex. A at ¶¶ 67-68.).

The tables above were based upon Mr. Leitsch's lower figures for what he calculated to be "Total Labor" (column 2) in his initial Leitsch Declaration. (Leitsch Decl., Ex. A at ¶¶ 67-68.). As noted above, Mr. Leitsch's calculation for total labor expenses in the Supplemental Leitsch Declaration was higher ( ) for scenarios 1 and 4. (Suppl. Leitsch Decl., Ex. A at ¶ 50.). Under either set of calculations, Skull Shaver's numbers meet the significance test for labor and capital.

From 2019 through the second quarter of 2020, Skull Shaver's cost of goods sold was ( ). (Mem. at 39; Leitsch Decl., Ex. A at ¶ 99, n.219.). Thus, under the different scenarios, Skull Shaver's employment of labor and capital was between ( ) of its cost of goods sold. (Mem. at 39; Staff Resp. at 16; Suppl. Submission at 26 (citations omitted).). That Skull Shaver's employment of labor and capital in the United States is approximately ( ) of the total cost of making and procuring the DI Products demonstrates the quantitative significance Skull Shaver's U.S. operations. (Suppl. Submission at 26 (citations omitted).).

Skull Shaver's investment in labor and capital is also qualitatively significant. Qualitative factors may include, for example, whether the complainant's domestic activities or its purchases of components in the United States are crucial to its domestic industry products. *See, e.g., Lelo*, 786 F.3d at 882-83. Here, while Skull Shaver is a relatively new business, its business is focused

almost solely on the DI Products because the DI Products represent the majority of Skull Shaver's sales. (Mem. at 34, 40; Compl. Ex. 11C at ¶ 4; Leitsch Decl., Ex. A at ¶ 98.). In addition, all of Skull Shaver's employees are based in the U.S. and perform job duties and responsibilities related directly or indirectly to the DI Products. (Mem. at 32; Leitsch Decl., Ex. A ¶ 59.). During the relevant time frame, Skull Shaver's employees spent [REDACTED] of their time on activities supporting the DI Products, as summarized in the table below.





(Suppl. Leitsch Decl., Ex. A at ¶¶ 43, 49 and Table 1.).

Accordingly, Skull Shaver satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(B).

**4. Skull Shaver's Analysis under Section 337(a)(3)(A) is Flawed**

Skull Shaver also asserts that it has made significant investments in plant and equipment under Section (A). (*See* Mem. at 28-31.). Skull Shaver relies on lease expenses for its Moorestown, New Jersey and Pennsauken, New Jersey facilities. (*See* Mem. at 28-31; Leitsch Decl., Ex. A at ¶¶ 77-78.). In claiming that its investments are significant, Skull Shaver presents

tables summarizing the total allocation of expenses for 2019 and January to June 2020 that include rent, payroll, operational and marketing expenses, and other operational expenses. (*See* Mem. at 39-40 (“[B]ased on Scenario 4 for example, the allocation of rent, payroll, operational and marketing expenses to the ’528 DI Products in the amount of [REDACTED] represents approximately [REDACTED] of Complainant’s total expenses (including its cost of goods sold).”; Leitsch Decl., Ex. A at ¶¶ 96-97.).

As Staff points out, however, Skull Shaver’s analysis improperly combines rent with expenses that should not be allocated to section (A) – *i.e.*, payroll, operational and marketing expenses, and other operational expenses. (*See* Staff Resp. at 17 (“In the Staff’s view, this contextual analysis is improper, as it impermissibly combines expenses relocated to subparagraph (A) of the Statute with expenses relating to subparagraph (B) of the Statute, contrary to the Statute’s explicit expression that the two subparagraphs are disjunctive. Under Complainant’s analysis, it is impossible to tell whether investments related to subparagraph (A) of the Statute are significant.”)). Nor does Skull Shaver provide enough information to parse out the investments that would be properly allocated to section (A).

Furthermore, even if strictly considering Skull Shaver’s lease expenses alone, it is unclear whether such investments are significant. For example, Skull Shaver submits rent expenses allocated to the ’528 and ’504 patents as follows:

**Table 11: Skull Shaver’s Plant and Equipment Domestic Industry Investment Allocation to the ’528 DI Products<sup>190</sup>**

	2019	2020	Total
Allocation based on Scenario 1%	[REDACTED]		
Allocation based on Scenario 2%			
Allocation based on Scenario 3%			
Allocation based on Scenario 4%			



**Table 12: Skull Shaver's Plant and Equipment Domestic Industry Investment  
Allocation to the '504 DI Products<sup>191</sup>**

	2019	2020	Total
Allocation based on Scenario 1%			
Allocation based on Scenario 2%			
Allocation based on Scenario 3%			
Allocation based on Scenario 4%			

(Mem. at 31; Leitsch Decl., Ex. A at ¶¶ 77-78.).

Using Skull Shaver's calculation method, under Scenario 4, the allocation of Skull Shaver's rent expenses to the '528 DI Products represents approximately [REDACTED] of Skull Shaver's cost of goods sold and the allocation of Skull Shaver's rent expenses to the '504 DI Products represents approximately [REDACTED] of Skull Shaver's cost of goods sold.<sup>13</sup> Even when considering the most generous sales scenario, *i.e.*, Scenario 3, the allocation of Skull Shaver's rent expenses to the '528 DI Products still represents approximately [REDACTED] of Skull Shaver's total expenses and the allocation of Skull Shaver's rent expenses to the '504 DI Products still represents approximately [REDACTED] of Skull Shaver's total expenses.<sup>14</sup> Without more, a conclusion cannot be drawn that Skull Shaver's investments in rent in the United States are significant.

Accordingly, Skull Shaver fails to satisfy the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(3)(A).

<sup>13</sup> Mr. Leitsch's Declaration states that Skull Shaver's cost of goods sold is [REDACTED]. (Leitsch Decl., Ex. A at ¶ 99 n.219.). Thus, the allocation of Skull Shaver's rent expenses to the '528 DI Products represents about [REDACTED] of its total expenses (including cost of goods sold). Similarly, the allocation of Skull Shaver's rent expenses to the '504 DI Products represents about [REDACTED] of its total expenses (including cost of goods sold).

<sup>14</sup> Using the same calculation method, the allocation of Skull Shaver's rent expenses to the '528 DI Products represents about [REDACTED] of its total expenses (including cost of goods sold). Similarly, the allocation of Skull Shaver's rent expenses to the '504 DI Products represents about [REDACTED] of its total expenses (including cost of goods sold).

## **X. REMEDY AND BONDING**

Pursuant to Commission Rule 210.42, an administrative law judge must issue a recommended determination on: (1) an appropriate remedy if the Commission finds a violation of Section 337; and (2) an amount, if any, of the bond to be posted. 19 C.F.R. § 210.42(a)(1)(ii). When a Section 337 violation has been found, as here, “the Commission has the authority to enter an exclusion order, a cease and desist order, or both.” *Certain Flash Memory Circuits and Prods. Containing the Same*, Inv. No. 337-TA-382, Comm’n Opinion on the Issues under Review and on Remedy, the Public Interest and Bonding, at 26 (June 9, 1997). The Commission has broad discretion in selecting the form, scope, and extent of the remedy in a section 337 proceeding. *Viscofan, S.A. v. United States Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

Skull Shaver requests (i) limited exclusion orders (“LEOs”) on all infringing products imported by the Defaulting Respondents, (ii) a general exclusion order (“GEO”) on all infringing products, and (iii) that the Commission set the bond at 161% during the Presidential review period. (*See* Mem. at 41.). Skull Shaver also requests cease and desist orders (“CDOs”) as to all Defaulting Respondents, except Bald Shaver. (*See id.* at 58-59.).

### **A. Skull Shaver is Entitled to a General Exclusion Order (“GEO”)**

The Commission may issue a GEO to all infringing products, regardless of source, instead of an LEO directed only to persons determined to be in violation of Section 337, when:

(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) (emphasis added); *accord* 19 C.F.R. § 210.50(c); *Kyocera Wireless Corp. v. Int’l Trade Comm’n*, 545 F.3d 1340 (Fed. Cir. 2008); *see also Vastfame Camera, Ltd. v. Int’l Trade Comm’n*, 386 F.3d 1108, 1113 (Fed. Cir. 2004).

In this case, Skull Shaver has satisfied the requirements of Section 337(d)(2) and has demonstrated that a GEO is appropriate. Skull Shaver submits that “this case presents exactly the sort of situation where a GEO is the only possible effective remedy under either provision of 19 U.S.C. § 1337(d)(2).” (Mem. at 43.). Staff also agrees that if a violation of Section 337 is found, the appropriate remedy is a GEO directed to electric shavers that infringe the Asserted Patents. (Staff Resp. at 19.).

**1. Skull Shaver Has Established that a GEO is Necessary to Prevent Circumvention of a Limited Exclusion Order**

Skull Shaver asserts that certain U.S. market conditions, such as high U.S. demand, relatively low barriers to new entrants, extensive manufacturing sources, established distribution channel within the U.S., and anonymity, incentivize circumvention of a LEO. (Mem. at 44; Hatch Decl., Ex. H at ¶¶ 235-241; Leitsch Decl., Ex. A at ¶¶ 103-111.). The evidence shows that sellers of knockoff electric shavers can take advantage of the market and can maintain lower startup and production costs by reverse engineering and using e-commerce selling sites. (Mem. at 44; Leitsch Decl., Ex. A at ¶ 106.). Sellers of knockoff products can therefore set up shop quickly and face much lower startup costs. (*Id.*).

Distribution channels for infringing products are also well-established and knockoff electric shavers are sold under various brand and seller names on retail websites such as Amazon.com and Alibaba.com. (Mem. at 44; Hatch Decl., Ex. H at ¶ 236; Leitsch Decl., Ex. A at ¶ 107.). When sellers of knockoff products operate as third-party sellers on platforms like

Amazon.com, it allows them to “pop-up, disappear, and then pop-up again under a different name or brand, providing anonymity, and making it easier to circumvent a limited exclusion order.” (Mem. at 45; Hatch Decl., Ex. H at ¶ 240). In addition, Skull Shaver notes that the ability to rapidly proliferate third-party online marketplaces can greatly complicate enforcement efforts. (Mem. at 45; Leitsch Decl., Ex. A at ¶ 103).

For example, Respondent Yiwu Xingye’s Accused Product was sold under the brand name Roziapro on Amazon.com, which Skull Shaver purchased prior to filing the Complaint. (Mem. at 45.). Months later, however, Skull Shaver identified and purchased at least two virtually identical products that arrived in Roziapro branded packing, but that were listed on Amazon (1) under the brand name Roziahome sold by an entity named Xindi office, and (2) under the brand name Vsmooth sold by an entity named May Faulkner. (Mem. at 45-46; Hatch Decl. at ¶¶ 18, 21, 27, Exs. B and G.). This same pattern was identified for Respondent Yiwu City’s Accused Product, which was listed on Amazon under the brand name Surker sold by an entity named Yunce. (Compl. Ex. 10I.). A shaver sold by Respondent Shenzhen Wantong, under a different brand name and by a different Amazon seller, arrived in Surker-branded packaging with Surker markings on the shaver housing. (Compl. Ex. 22.).

In addition, of the fourteen newly-available shavers that Skull Shaver identified since filing its Complaint, at least twelve arrived in nearly identical packaging labeled as Electric Shaver LK-8820, despite being advertised on Amazon under different brand names (including Soonsell, Rockubot, MAWAER, Vsmooth, Roziahome, Foxsonic, Eenten, and Anself) and being sold by different sellers (including Guangrong, Fanyo, May Faulkner, Ruidemi Store, Sanxiaobro, Ningchen Store, Xindi office, Szkj, youngle, and alyer). (Mem. at 46; Hatch Decl. at ¶¶ 11-29, Exs. B and G.).



Skull Shaver contends that the ability for infringing products to enter the U.S. undetected is high. (Mem. at 46.). The evidence shows that many different electric shavers are listed for sale on platforms like Amazon.com and Alibaba.com. (Mem. at 46-47; Declaration of Neel Kulshreshtha<sup>15</sup> (“Kulshreshtha Declaration”) at ¶¶ 5-6; Hatch Decl. at ¶ 11.). Many sellers of such electric shavers provide questionable information as to their contact information or manufacturing origin. (Mem. at 47.). For example, Skull Shaver had difficulty serving its Complaint on many of the named Respondents, and in several instances, Respondents’ addresses changed from what appeared in publicly-available sources. (*Id.*; Proofs of Service of Complaint and NOI, Doc ID Nos 728170, 731720; Hatch Decl., Ex. H at ¶ 239; Leitsch Decl., Ex. A at ¶ 105.). Skull Shaver argues that without a GEO, detecting non-respondent infringing products would be difficult. (Mem. at 47.). The evidence shows that many of the infringing products arrive in generic packaging, which do not reliably include brand marks or visible identifying features. (*Id.*; Hatch Decl. at ¶¶ 25-27, Ex. G.).

The evidence presented by Skull Shaver demonstrates the difficulty in enforcing its rights against the widespread availability of apparently infringing electric shavers that are imported into and sold in the U.S. Thus, Skull Shaver has established that a GEO is necessary to prevent circumvention of LEOs.

## **2. Skull Shaver Has Provided Evidence of a Pattern of Violation of its Patents, Including from Unnamed Respondents**

Skull Shaver submits that the volume of infringers is very large, which precluded them

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<sup>15</sup> At the time he signed his declaration on May 26, 2021, Mr. Neel Nulshreshtha was the President of Skull Shaver. (Neulshreshtha Decl. at ¶ 1.). Mr. Neel Nulshreshtha previously submitted a declaration in this Investigation as Exhibit 11 to the Complaint, in which he set forth Skull Shaver’s domestic industry in the United States. (*Id.* at ¶ 3.). In that declaration, he also described Skull Shaver’s awareness of increased infringing activities abroad. (*Id.*).

from all being named in this Investigation. (Mem. at 48; Compl. at ¶¶ 111-112.). Nor has the universe of potential infringers diminished since then. (Mem. at 48; Kulshreshtha Decl. at ¶¶ 5-8, 11-12; Hatch Decl. at ¶ 11.). As previously mentioned, Skull Shaver has identified numerous newly-available electric shavers that became available for sale within the last several months through “pop-up sellers” on online platforms. (Mem. at 20, 23.).

For example, Skull Shaver purchased fourteen newly-available electric shavers from online platforms like Amazon.com and Alibaba.com, which Mr. Hatch inspected and analyzed. (*Id.*; Hatch Decl. at ¶¶ 11-29, Exs. A-G.). Mr. Hatch noted how these electric shavers are nearly identical in appearance and form to Respondents Yiwu Xingye and Yiwu City’s Accused Products. (Mem. at 20, 23; Hatch Decl. at ¶¶ 30-35.). Accordingly, Mr. Hatch concluded that each of the fourteen newly- available electric shavers infringe the Asserted Patents in the same manner as Respondents Yiwu Xingye and Yiwu City’s Accused Products. (*See* Mem. at 20, 23; Hatch Decl. at ¶¶ 30-35.).

Thus, Skull Shaver present compelling evidence of a pattern of infringement of the Asserted Patents, including from entities not named as respondents in this Investigation.

### **3. Skull Shaver Has Provided Evidence of the Difficulty in Identifying All Sources of Infringing Products**

Skull Shaver contends that Respondents like Yiwu Xingye and Yiwu City demonstrate the difficulty of identify product sources due to their generic packaging. (Mem. at 48; Hatch Decl. at ¶¶ 26-27, Ex. G.). For example, as shown below, Respondent Yiwu Xingye’s Accused Product was packed in generic packaging with the name Roziapro 360°.



(Mem. at 48-49; Compl. Ex. 19.). Similarly, as shown below, two of the newly-available shavers arrived in nearly identical packaging with the same name – one under the brand name Roziahome sold by an entity called Xindi office, and one under the brand name Vsmooth sold by an entity called May Faulkner.



(Mem. at 49; Hatch Decl. at ¶¶ 18-24; Exs. B, G at 9-10).

Skull Shaver also notes that other named parties in this Investigation demonstrate the difficulty of identifying the source of infringing products. (Mem. at 51.). For example, Skull Shaver attempted to serve Respondent Bald Shaver at multiple foreign addresses and via

electronic mail. (*See* Skull Shaver's Motion for an Order to Show Cause and Entry of Default as to Respondent Bald Shaver Inc., Doc ID No. 742961). Bald Shaver had listed a defunct contact phone number on its website, and two unrelated food service businesses, who were either unreachable or had never heard of Bald Shaver, were operating out of the same address listed as Bald Shaver's head office. (*See id.*). Meanwhile, despite this confusing contact information, Bald Shaver was still actively selling its Accused Products online. (*See id.*)

In addition, a large number of knockoff electric shavers combined with the overwhelming similarities between different electric shavers, makes identifying the source, sellers, and manufacturers difficult. As Skull Shaver points out, many of these products are sold or advertised without branding and thus, can be sold under a variety of brand names, changing brand names, or no brand names. (Mem. at 52; Kulshreshtha Decl. at ¶¶ 5-6; Hatch Decl. at ¶¶ 11-29, Exs. C-F; Compl. at ¶¶ 106-108.). Moreover, the evidence demonstrates a complicated and confusing web of entities involved in selling electric shavers manufactured abroad. (Mem. at 52.). For example, the [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]. (*Id.*; Chen Decl., Ex. 3 at 54:8-56:7, 58:3-59:2, 71:21-72:2, 77:5-13, 95:2-8, 97:3-6.). In fact, Skull Shaver purchased a Nukun Accused Product that was sold by an entity called MuYuTek that is the shortened named for Muyu. (Chen Decl., Ex. 3 at 95:2-8; Compl. Ex. 10F.). And the [REDACTED]  
[REDACTED]. (Chen Decl., Ex. 3 at 59:25-60:7, 54:8-17; Compl. Exs. 17, 10E.). Even though the [REDACTED]

[REDACTED], Skull Shaver found Nukun's products available on each of those platforms. (Chen Decl., Ex. 3 at 84:25-85:8.).

This proliferation of foreign-made knockoff electric shavers has been ongoing for years and only seems to be growing. In January 2018, Skull Shaver received a forwarded message that its Chinese manufacturing partner had received from a "sourcing specialist" inquiring about manufacturing terms for shavers it intended to supply to the U.S. market. (Kulshreshtha Decl. at ¶ 3; Compl. Ex. 11C at ¶ 14, Ex. A; Compl. at ¶ 109.). The message included specifications for the proposed shavers as well as photos of Skull Shaver's own products. (*Id.*) Similarly, in August 2017, Skull Shaver's CEO received an email message from a salesperson at Wenzhou iCare Electric Co., Ltd. in Wenzhou, China offering new products that included images of Skull Shaver's own DI Products. (Kulshreshtha Decl. at ¶ 4; Compl. Ex. 11C at ¶ 14, Ex. B; Compl. at ¶ 110).

Skull Shaver has therefore provided sufficient evidence of the difficulty in identifying all sources of potential infringing products.

#### **4. A GEO is in the Public Interest**

While the Commission did not require that I make findings of fact with respect to the public interest, Skull Shaver presents evidence that a GEO would not be contrary to the public interest.

Generally, concerns about a proposed remedy having a negative impact have arisen in investigation involving essential goods such as pharmaceuticals, essential equipment for medical treatment, or green technology products. Here, however, having a particular type of electric shaver is not essential for public health, safety, or welfare. In addition, Skull Shaver notes that there are numerous products widely available in the U.S. that use non-accused structures. (Mem.

at 57-58; Complainant's Public Interest Statement at 4; Hatch Decl., Ex. H at ¶¶ 56, 233.).

Evidence from Skull Shaver's contract manufacturer also indicates that it has the capacity to meet the demand for Skull Shaver's products if infringing products are excluded from the U.S.

(Compl. Ex. 11C at ¶ 15; Complainant's Public Interest Statement at 4-5.). Moreover, a general exclusion order would serve the strong public interest of enforcing U.S. intellectual property rights. *See Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips & Prods. Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Comm'n Op. at 150 (June 19, 2007).

**5. An Explicit Carve-Out Should be Included to Exempt Terminated Respondents Benepuri and Nukun's Accused Products**

As to Respondents Benepuri and Nukun, which were previously terminated from the investigation, Skull Shaver submits that "[a]ny remedy that may issue in this Investigation should not apply to those Respondents' formerly accused articles." (Mem. at 43 n.4.). In fact, Skull Shaver submits the following proposed language for inclusion into a GEO:

This Order does not apply to the following articles that are imported or manufactured abroad by entities:

a. Benepuri LLC: AsaVea Model LK-1800 5-in-1 Electric Shaver and Grooming Kit, Aroamas Model AS5-PRO300 5-in-1 Electric Shaver and Grooming Kit.

b. Shenzhen Nukun Technology Co., Ltd.: OriHea OH-BS02 5-in-1 Head Shaver, OriHea OH-BS03 5-in-1 Head Shaver, OriHea OH-BS06 6-in-1 Electric Razor, OH-BS07 5-in-1 Electric Razor.

*See* Complainant Skull Shaver, LLC's Response to Respondent Benepuri LLC's Brief to the Administrative Law Judge Pursuant to Order No. 27, Doc ID No. 745642 at 1. Staff does not oppose a provision explicitly exempting Benepuri's Accused Products from the scope of a

general exclusion order.<sup>16</sup> (See Staff's Response to Intervenor/Respondent Benepuri LLC's Brief to the Administrative Law Judge Pursuant to Order No 27, Doc ID No. 745626 at 6-10 ("Staff respectfully submits that the Judge should recommend that appropriate carve-out language exempting Benepuri's accused products be included in any remedial order that the Commission issues.")).

The Commission generally does not grant relief beyond that requested. *See, e.g., Certain Laminated Floor Panels*, Inv. No. 337-TA-545, Comm'n Op. at 29 (Jan. 5, 2007). In addition, a complainant's unilateral decision to terminate products from an investigation may make a carve-out for such products necessary and appropriate. *See Certain Cases For Portable Electronic Devices*, Inv. No. 337-TA-867/861, Comm'n Op. at 15 (June 20, 2014). Here, similar to the complainant in *Certain Power Supply Controllers*, Skull Shaver withdrew its complaint as to Benepuri and Nukun, and affirmatively indicated that any remedy should not apply to Benepuri and Nukun's Accused Products. (See Mem. at 43 n.4.). *Certain Cases For Portable Electronic Devices*, Inv. No. 337-TA-867/861, Comm'n Op. at 17; *Certain Power Supply Controllers & Prods. Containing Same*, Inv. No. 337-TA-541, Comm'n Op. at 4-5 (Aug. 11, 2006); *Certain Laminated Floor Panels*, Inv. No. 337-TA-545, Comm'n Op. at 29-30 (because complainant agreed to a "carve-out" to the general exclusion order, the Commission granted that request).

Accordingly, in the event the Commission finds a violation of Section 337, the recommended remedy is a GEO that encompasses the infringing electric shavers and components and accessories thereof. Such a GEO, however, should include an explicit carve-out exempting Benepuri and Nukun's Accused Products.

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<sup>16</sup> Staff did not indicate a position as to Nukun's Accused Products.

**B. Skull Shaver is Entitled to Limited Exclusion Orders (“LEOs”)**

Under section 337(d), if the Commission determines that there is a violation of section 337, the Commission may issue a limited exclusion order (“LEO”) directed to a respondent’s infringing products. 19 U.S.C. § 1337(d). A limited exclusion order instructs the U.S. Customs and Border Protection to exclude from entry all articles that are covered by the patent at issue that originate from a named respondent in the investigation. *Fuji Photo Film Co. Ltd. v. Int’l Trade Comm’n*, 474 F.3d 1281, 1286 (Fed. Cir. 2007).

Here, the Defaulting Respondents have “waived [their] right . . . to contest the allegations at issue in the investigation.” 19 U.S.C. § 210.16(b)(4). However, as discussed above, only Respondents Yiwu Xingye and Yiwu City’s Accused Products have been found to infringe the Asserted Patents. Therefore, if the Commission finds a violation, I recommend the issuance of LEOs covering Respondents Yiwu Xingye and Yiwu City’s Accused Products.

**C. Skull Shaver is Entitled to Cease and Desist Orders (“CDOs”)**

Under section 337(f)(1), the Commission may issue a cease-and-desist order (“CDO”) in addition to, or instead of, an exclusion order. 19 U.S.C. § 1337(f)(1). The Commission generally issues a CDO directed to a domestic respondent when there is a “commercially significant” amount of infringing, imported product in the United States that could be sold, thereby undercutting the remedy provided by an exclusion order. *See Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293 USITC Pub. 2391, Comm’n Op. on Remedy, the Public Interest and Bonding at 37-42 (June 1991); *Certain Condensers, Parts Thereof & Prods. Containing Same, Including Air Conditioners for Automobiles*, Inv. No. 337-TA-334 (Remand), Comm’n Op. at 26-28, 1997 WL 817767 at \*11-12 (U.S.I.T.C. Sept. 10, 1997).



Skull Shaver requests the issuance of CDOs against all of the Defaulting Respondents, except Bald Shaver. (*See* Mem. at 58.). However, as discussed above, only Respondents Yiwu Xingye and Yiwu City's Accused Products have been found to infringe the Asserted Patents. Respondents Yiwu Xingye and Yiwu City fulfill orders through Amazon.com fulfillment centers located in the U.S. (*See id.*; Compl. Exs. 19, 21 (shipping labels indicating that the accused products were shipped from Amazon.com facilities in Lexington, Kentucky and Las Vegas, Nevada)). This supports the inference that those Respondents maintain a commercially significant inventory of Accused Products in the United States. *See Certain Hand Dryers & Housing for Hand Dryers*, Inv. No. 337-TA-1015, Comm'n Op. at 10-11 (Oct. 30, 2017). Therefore, if the Commission finds a violation, I recommend that CDOs issue directed to Respondents Yiwu Xingye and Yiwu City.

**D. Bonding**

**1. Legal Standard**

The Commission typically sets the Presidential review period bond based upon the price differential between the imported or infringing product or based upon a reasonable royalty. *See, e.g., Certain Ink Cartridges and Components Thereof*, Inv. No. 337-TA-565, Comm'n Op. at 63 (November 2007) (setting bond based on price differentials); *Certain Plastic Encapsulated Integrated Circuits*, Inv. No. 337-TA315, Comm'n Op. on Issues Under Review and on Remedy, the Public Interest, and Bonding, at 45, USITC Pub. 2574 (November 1992) (setting the bond based on a reasonable royalty).

However, where the available pricing or royalty information is inadequate, the bond may be set at 100% of the entered value of the accused product. *See, e.g., Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Products Containing Same*, Inv. No. 337-TA-372, Comm'n

Op. on Remedy, the Public Interest and Bonding at 15, USITC Pub. 2964 (May 1996).

**2. A 100% Bond is Recommended**

Skull Shaver requests a bond of 161%. (*See* Mem. at 59-60.). However, as Skull Shaver concedes, full information on pricing is not available because none of the Defaulting Respondents participated in or produced discovery in this investigation. (*See id.* at 59.). Skull Shaver therefore proposes a bond rate of 161% based on a “simple average sales price” for the Accused Products. (*See id.* at 59-60.). Staff, however, submits that using the average sales price, as opposed to the weighted average sales price, “may imprecisely result in a higher bond.” (Staff Resp. at 23.). Accordingly, because complete pricing information is not available, I recommend a bond rate of 100%.

**XI. CONCLUSION**

For the reasons set forth above, Skull Shaver’s motion is hereby granted-in-part. This decision operates as both a finding of violation based upon a Motion for Summary Determination under Commission Rule 210.18 and as an Initial Determination on Violation of Section 337 of the Tariff Act of 1930 together with a Recommendation on Remedy and Bond.

Accordingly, this recommended decision is certified to the Commission. All orders and documents, filed with the Secretary, including the record exhibits in this Investigation, as defined in 19 C.F.R. § 210.38(a), are not certified, since they are already in the Commission’s possession in accordance with Commission Rules. *See* 19 C.F.R. § 210.38(a). In accordance with 19 C.F.R. § 210.39(c), all material found to be confidential under 19 C.F.R. § 210.5 is to be given *in camera* treatment.

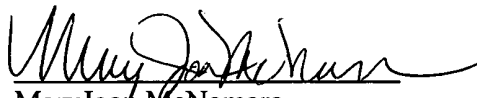
After Skull Shaver has provided proposed redactions of confidential business information (“CBI”) that have been evaluated and accepted, the Secretary shall serve a public version of this

ID upon Skull Shaver and Staff together with a confidential version.

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

Within fourteen (14) days of the date of this document, Skull Shaver and Staff shall submit to the Office of Administrative Law Judges a joint statement whether they seek to have any portion of this document deleted from the public version. The Parties' submission shall be made by hard copy and must include a copy of this ID with yellow highlighting, with or without red brackets, indicating any portion asserted to contain CBI to be deleted from the public version. The submission shall also include a chart that: (i) contains the page number of each proposed redaction; and (ii) states (next to each page number) every sentence or phrase, listed separately, that the party proposes be redacted; and (iii) for each such sentence or phrase that the party proposes be redacted, a citation to case law with an explanation as to why each proposed redaction constitutes CBI consistent with case law. Any proposed redaction that is not explained may not be redacted after a review. The Parties' submission concerning the public version of this document need not be filed with the Commission Secretary.

**SO ORDERED.**

  
MaryJoan McNamara  
Administrative Law Judge