

**PUBLIC VERSION**

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

**In the Matter of**

**CERTAIN MULTIPLE MODE OUTDOOR  
GRILLS AND PARTS THEREOF**

**Inv. No. 337-TA-895**

**Order No. 20: Initial Determination**

This investigation was reassigned to the undersigned by Chief Judge Bullock on January 6, 2014.

On November 27, 2013, pursuant to Commission Rules 210.21(b) and (c), complainants A&J Manufacturing, LLC, and A&J Manufacturing, Inc. (collectively, “complainants” or “A&J”) and respondent HEB Grocery Company, LP, d/b/a H-E-B (“H-E-B” or “HEB”) filed a joint motion to terminate this investigation as to HEB based on a consent order stipulation, proposed consent order, and confidential settlement and mutual release agreement. Motion Docket No. 895-10. On December 9, 2013, the Commission investigative staff (“Staff”) filed a response supporting the motion. No other response was filed. That motion was denied by Judge Lord because the proposed consent order failed to comply with Commission Rule 210.21(c)(4). Order No. 15 (Dec. 17, 2013).

On December 18, 2013, pursuant to Commission Rules 210.21(b) and (c), complainants and HEB filed a renewed joint motion. Motion Docket No. 895-15. In their renewed motion, the movants included a Consent Order Stipulation (“Consent Order Stipulation”) attached as Exhibit A, a revised proposed Consent Order (“Revised Proposed Consent Order”) attached as

Exhibit B, and a confidential settlement and mutual release agreement (“Settlement Agreement”) attached as Exhibit C, a second confidential settlement and mutual release agreement attached as Exhibit D,<sup>1</sup> and a public version of the confidential settlement and mutual release agreement attached as Exhibit E.<sup>2</sup> The movants also request “a stay of the investigation as to all events and Procedural Schedule deadlines related to H-E-B pending final resolution of the Motion to Terminate.” Mot. at 2. On December 30, 2013, the Staff filed a response in support of the renewed motion. No other response was filed.

Commission Rule 210.21(a)(2) provides that “[a]ny party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement ... or a consent order, as provided in paragraphs (b), (c) and (d) of this section.” 19 C.F.R. § 210.21(a)(2).

Commission Rule 210.21(b)(1) provides in relevant part that “[a]n investigation before the Commission may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement.” 19 C.F.R. § 210.21(b)(1). Similarly, Commission Rule 210.21(c) provides in relevant part that “[a]n investigation before the Commission may be terminated pursuant to section 337(c) of the Tariff

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<sup>1</sup> The motion states that the “second confidential version of the Settlement and Mutual Release Agreement (attached as Confidential Exhibit D) is being served on counsel for the remaining, non-settling Respondents. This version of the Settlement and Mutual Release Agreement has only the financial terms redacted. Disclosing this information to non-settling Respondents or their counsel could affect Complainants’ settlement prospects with the other Respondents.” Mot. at 2.

<sup>2</sup> As noted, in satisfaction of the Commission’s Rules of Practice and Procedure, movants provide public and confidential versions of the Settlement Agreement. *See* 19 C.F.R. § 210.21(b)(1) (public versions required for certain filings). Copies of the renewed public and confidential versions of the motion and Settlement Agreement are attached to the respective public and confidential versions of this initial determination. *See* 19 C.F.R. § 210.21(b)(2) (certain documents must be certified with an initial determination terminating an investigation in whole or in part).

Act of 1930 on the basis of a consent order.” 19 C.F.R. § 210.21(b)(1).

Pursuant to Commission Rules 210.21(b)(1) and (c), movants state that “[a]side from the Consent Order Stipulation and Settlement and Mutual Release Agreement, there are no other agreements, written or oral, express or implied, between the Complainants and H-E-B concerning the subject matter of the Investigation.” Mot. at 1-2; 19 C.F.R. § 210.21(b)(1) and (c).

With respect to the Settlement Agreement, movants submitted an unredacted confidential version attached as Exhibit C. Movants request that “essential financial terms” be redacted in the copies of the Settlement Agreement served on the non-moving respondents, as shown in Exhibit D. Mem. at 4. In this regard, Commission Rules 210.21(a)(1) and (b) provide that “[o]n motion for good cause shown, the administrative law judge may limit service of the agreements to the settling parties and the Commission investigative attorney.” 19 C.F.R. § 210.21(a)(1) and (b). Movants argue that disclosure of certain terms would disadvantage complainants in future settlement negotiations. Mem. at 4. The Staff argues that complainants have shown good cause. Staff Resp. at 5-6. The administrative law judge finds that movants have shown good cause to redact essential financial terms from the confidential versions served on the non-moving respondents.

Consent Order Stipulation complies with the requirements of Commission Rules 210.21(c)(3). Consent Order Stipulation, ¶¶ 2-6, 8-12 (complying with 19 C.F.R. § 210.21(c)(3)(i)(A)-(G)); *id.*, ¶¶ 13-14 (complying with 19 C.F.R. § 210.21(c)(3)(ii)(A)-(B)); *see also* Staff Resp. at 6-8.

Revised Proposed Consent Order complies with the requirements of Commission Rules 210.21(c)(4). Revised Proposed Consent Order, ¶¶ 1-14 (complying with 19 C.F.R. § 210.21(c)(4)(i)-(xi)); *see also* Staff Resp. at 8-10.

The Commission's Rules provide that in the case of a proposed termination by settlement agreement, consent order, or arbitration agreement, the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled, with respect to issues relating solely to the public interest. The administrative law judge is directed to consider and make appropriate findings "regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers." *See* 19 C.F.R. § 210.50(b)(2).


Movants argue that "[t]ermination of this Investigation as to H-E-B based on the Settlement and Mutual Release Agreement and proposed Consent Order is in the public interest and does not affect the public health and welfare, competitive conditions of the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers." Mem. at 3. The Staff agrees. Staff Resp. at 10-11. The undersigned does not find any evidence that terminating this investigation as to HEB based on the Settlement Agreement, Consent Order Stipulation and the Revised Proposed Consent Order would be contrary to the public interest.

Accordingly, it is the INITIAL DETERMINATION of the undersigned that Motion No. 895-15 is granted.

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 of the initial determination 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 contained herein.

A handwritten signature in black ink, appearing to read 'D. Shaw', is positioned above a horizontal line.

David P. Shaw  
Administrative Law Judge

Issued: February 6, 2014

**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, DC**

**The Honorable Sandra Dee Lord  
Administrative Law Judge**

In the Matter of

CERTAIN MULTIPLE MODE OUTDOOR  
GRILLS AND PARTS THEREOF

Investigation No. 337-TA-895

**RENEWED JOINT MOTION TO TERMINATE INVESTIGATION AS TO HEB  
GROCERY COMPANY, LP, d/b/a H-E-B BASED ON SETTLEMENT AGREEMENT  
AND CONSENT ORDER AND MOTION TO STAY INVESTIGATION AS TO H-E-B**

**Ground Rule 3.2 Certification**

Pursuant to Ground Rule 3.2, Complainants A&J Manufacturing, LLC, and A&J Manufacturing, Inc. (collectively, "Complainants") and Respondent HEB Grocery Company, LP d/b/a H-E-B ("H-E-B"), contacted the participating Respondents and the Commission Investigative Staff ("Staff") regarding this motion. As of the time of filing, none of the Respondents oppose the motion. The Staff indicated it would take a position after reviewing the papers.

Pursuant to Commission Rules 210.21(b) and (c), Complainants and Respondent HEB jointly move to terminate this investigation as to H-E-B based on a Consent Order Stipulation and proposed Consent Order (attached as Exhibits A and B, respectively), and confidential Settlement and Mutual Release Agreement (attached as Confidential Exhibit C). As detailed in the Consent Order Stipulation, H-E-B has, among other things, agreed not to import, sell for importation, or sell in the United States after importation any multiple mode outdoor grills or parts thereof that infringe the asserted patents, except under consent or license from Complainants. Aside from the Consent Order Stipulation and Settlement and Mutual Release

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Agreement, there are no other agreements, written or oral, express or implied, between the Complainants and H-E-B concerning the subject matter of the Investigation. Complainants and H-E-B also respectfully request a stay of the investigation as to all events and Procedural Schedule deadlines related to H-E-B pending final resolution of the Motion to Terminate.

Complainants and H-E-B further request that the Administrative Law Judge prevent access of the confidential version of the Settlement and Mutual Release Agreement to the other Respondents and their counsel as provided in Commission Rules 210.21(b)(1) and (c). The unredacted version of the confidential Settlement and Mutual Release Agreement is being served only on the Administrative Law Judge and the Staff as Confidential Exhibit C. The Settlement and Mutual Release Agreement includes Confidential Business Information as outlined in Commission Rule 201.6, namely, specific and highly-sensitive details that, if disclosed, could affect Complainants' settlement prospects with other Respondents. Accordingly, the other Respondents and their counsel should not have access to the confidential version of the Settlement and Mutual Release Agreement.

A second confidential version of the Settlement and Mutual Release Agreement (attached as Confidential Exhibit D) is being served on counsel for the remaining, non-settling Respondents. This version of the Settlement and Mutual Release Agreement has only the financial terms redacted. Disclosing this information to non-settling Respondents or their counsel could affect Complainants' settlement prospects with the other Respondents. Accordingly, Complainants and H-E-B request, pursuant to Commission Rules 210.21(b)(1) and (c), that they be permitted to serve only Confidential Exhibit D on the non-settling Respondents.

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Finally, pursuant to Commission Rule 210.21(b)(1), a public version of the Settlement and Mutual Release Agreement (attached as Exhibit E) is being filed with a public version of the Motion.

For the reasons set forth in the accompanying Memorandum of Points and Authorities, Complainants and H-E-B respectfully request the ALJ grant the motion and issue an initial determination terminating H-E-B from this Investigation and staying the Investigation as to H-E-B pending final resolution of the Motion to Terminate.

Dated: December 18, 2013

Respectfully submitted,

/s/ Erin A. Thomson

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**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, DC**

**The Honorable Sandra Dee Lord  
Administrative Law Judge**

In the Matter of

CERTAIN MULTIPLE MODE OUTDOOR  
GRILLS AND PARTS THEREOF

Investigation No. 337-TA-895

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
RENEWED JOINT MOTION TO TERMINATE THE INVESTIGATION AS TO HEB  
GROCERY COMPANY, LP, d/b/a H-E-B BASED ON SETTLEMENT AGREEMENT  
AND CONSENT ORDER AND MOTION TO STAY INVESTIGATION AS TO H-E-B**

Pursuant to Commission Rule 210.21(b) and (c), Complainants A&J Manufacturing, LLC, and A&J Manufacturing, Inc. (collectively, "Complainants") and Respondent HEB Grocery Company, LP d/b/a H-E-B, ("H-E-B") submit this memorandum in support of their Renewed Joint Motion to Terminate the Investigation as to H-E-B Based On A Consent Order and Settlement Agreement and Motion to Stay the Investigation as to H-E-B.

**A. The Investigation Should Be Terminated As To H-E-B  
Based On A Settlement Agreement and Consent Order**

Commission Rule 210.21(a)(2) provides that any party may move at any the time to terminate an investigation in whole or in part based on a settlement agreement and/or a consent order. Complainants and Respondent H-E-B have reached an agreement to settle this Investigation as to H-E-B and entered into a fully executed Settlement and Mutual Release Agreement. (Confidential Exhibit C). The Settlement and Mutual Release Agreement is fully effective and completely resolves the dispute in this Investigation between Complainant and H-E-B. Pursuant to this agreement, H-E-B has agreed to sign a Consent Order Stipulation and to the entry of a Consent Order. Complainants and H-E-B aver that the Settlement and Mutual Release Agreement reflects the entire and only agreement between Complainants and H-E-B

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regarding the subject matter of this Investigation. There are no other agreements, written or oral, express or implied, regarding the subject matter of this Investigation.

Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the parties, and termination based on settlement agreement is routinely granted. *See, e.g., Certain Consumer Electronics, Including Mobile Phones and Tablets*, Inv. No. 337-TA-839, Order No. 35 at 2 (Feb. 4, 2013) ("termination of litigation under these circumstances as an alternative method of dispute resolution is generally in the public interest and will conserve public and private resources"); *Certain Portable Communication Devices*, Inv. No. 337-TA-827, Order No. 15 at 2 (May 31, 2012) (unreviewed) (terminating investigation based on settlement agreement). Furthermore, the terms of the Consent Order Stipulation and proposed Consent Order are consistent with Commission Rule 210.21 and the Commission frequently terminates respondents on the basis of similar consent orders. *See, e.g. Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof*, Inv. No. 337-TA-879, Order No. 8, at 4-5 (June 26, 2013) (granting motion for termination by consent order based on application of amended Rule 210.21(c)). Accordingly, the Investigation should be terminated as to H-E-B.

In ruling on a motion to terminate based on a settlement agreement and/or proposed consent order, the Commission must consider the effect of the consent order "upon the public health and welfare, competitive conditions in the U.S. economy, the products of like or directly competitive articles in the United States, and U.S. consumers." 19 C.F.R. § 210.21(c)(2)(ii). If a consent order does not adversely affect the public health and welfare or competitive conditions in the United States, termination of the Investigation based on entry of the consent order is generally granted by the Commission. *See, e.g., Certain Digital Televisions & Components*

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*Thereof*, Inv. No. 337-TA-742, Order No. 7 (Jan. 28, 2011); *Certain Flat Panel Digital Televisions & Components Thereof*, Inv. No. 337-TA-733, Order No. 10 (Jan. 26, 2011). Termination of this Investigation as to H-E-B based on the Settlement and Mutual Release Agreement and proposed Consent Order is in the public interest and does not affect the public health and welfare, competitive conditions of the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers.

**B. The ALJ Should Protect the Confidential Terms of the Settlement Agreement From Disclosure to the Other Respondents and Their Counsel**

The Commission Rules provide that "[o]n motion for good cause shown, the administrative law judge may limit the service of the agreements to the settling parties and the Commission investigative attorney." 19 C.F.R. §§ 210.21(b)(1) and (c). Complainants are engaged in ongoing efforts to settle their patent infringement claims with other parties, including the remaining Respondents. Disclosure of the financial terms set forth in the Settlement and Mutual Release Agreement to the remaining Respondents or their counsel would prejudice Complainants by providing the remaining Respondents an unfair advantage in future negotiations. *See Certain Wiper Blades*, Inv. No. 337-TA-816, Order No. 103 (Initial Determination), at 2 (Sept. 30, 2013) (granting motion to terminate based on settlement agreement filed with a redacted version of the settlement agreement); *Certain Consumer Electronics with Display & Processing Capabilities*, Inv. No. 337-TA-884, Order No. 14 at 4 (July 31, 2013) (holding that a redaction of core financial terms from a settlement agreement was appropriate in light of revised Rule 210.21(b)(1)); *Certain Machine Vision Software, Machine Vision Systems & Prods. Containing Same*, Inv. No. 337-TA-680, Order No. 17 at 4 (Oct. 26, 2009) ("[F]orcing settling respondents and complainants to reveal the precise terms of their

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settlements to non-settling respondents could discourage settlements, even if such disclosures were made only to counsel who have subscribed to the protective order.").

Disclosure of the financial terms of the Settlement and Mutual Release Agreement to remaining Respondents or their counsel would place these parties at an advantage, and Complainants at a disadvantage, in potential future settlement negotiations. This imbalance would discourage future negotiations and settlements, which is contrary to the public policy of encouraging settlement. Thus, there is good cause for the Administrative Law Judge to bar disclosure of the Settlement and Mutual Release Agreement to the remaining Respondents and their counsel. Accordingly, Complainants and H-E-B should be permitted to provide the remaining Respondents with only a confidential version of the Settlement and Mutual Release Agreement, attached to the Motion as Confidential Exhibit D, wherein essential financial terms have been redacted. The unredacted version of the Settlement and Mutual Release Agreement, attached to the Motion as Confidential Exhibit C, filed with the Commission and served on the Staff should not be served on the non-settling Respondents in this Investigation.

**C. The ALJ Should Stay the Investigation as to H-E-B**

Complainants and H-E-B request a stay of the Investigation pending final resolution of the instant motion as to all events and Procedural Schedule deadlines related to H-E-B. Good cause exists to stay the investigation as to H-E-B pending resolution of the instant motion to terminate the investigation based on a settlement agreement and consent order. Such a stay will conserve the resources of the Commission and the parties. Similar requests for stay have been granted when parties have reached settlement. *See, e.g. Certain Hybrid Electric Vehicles*, Inv. No. 337-TA-688, Order No. 15, at 1 (July 15, 2010); *Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof*, Inv. No. 337-TA-879, Order No. 11, at 6 (July 17,



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2013); *Certain Consumer Electronics with Display and Processing Capabilities*, Inv. No. 337-TA-884, Order No. 32 at 1 (Oct. 18, 2013).

For the reasons set forth above, Complainants and H-E-B respectfully request that the ALJ grant the Motion to Terminate and issue an Initial Determination terminating H-E-B from this Investigation pursuant to Commission Rules 210.21(b) and (c). Further, the ALJ should limit service of the unredacted version of the confidential Settlement and Mutual Release Agreement to the settling parties and Staff, and stay the investigation pending final resolution of the Motion to Terminate.

Dated: December 18, 2013

Respectfully submitted,

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EXHIBITS TO RENEWED JOINT MOTION TO TERMINATE INVESTIGATION AS TO  
HEB GROCERY COMPANY, LP, D/B/A H-E-B BASED ON SETTLEMENT AGREEMENT  
AND CONSENT ORDER AND MOTION TO STAY INVESTIGATION AS TO H-E-B

- Exhibit A      Consent Order Stipulation, 11/26/13
- Exhibit B      Proposed Consent Order
- Exhibit C      Confidential Settlement Agreement, 11/18/13
- Exhibit D      Confidential Redacted Settlement Agreement, 11/18/13
- Exhibit E      Public Version of Settlement Agreement, 11/18/13

# EXHIBIT A

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

**Before The Honorable Sandra Dee Lord  
Administrative Law Judge**

**In the Matter of**

**CERTAIN MULTIPLE MODE OUTDOOR  
GRILLS AND PARTS THEREOF**

**Investigation No. 337-TA-895**

**CONSENT ORDER STIPULATION BY  
HEB GROCERY COMPANY, LP, d/b/a H-E-B**

WHEREAS, Complainants A&J Manufacturing, LLC and A&J Manufacturing, Inc. (collectively, "A&J") filed a Complaint before the United States International Trade Commission (the "Commission") on August 21, 2013, alleging unfair acts by HEB Grocery Company, LP, d/b/a H-E-B ("HEB") in the importation into the United States, sale for importation into the United States, and sale after importation into the United States of multiple mode outdoor grills and parts thereof that infringe one or more of claims 1-16 of U.S. Patent No. 8,381,712 and U.S. Design Patent D662,773;

WHEREAS, the Commission has instituted the above-captioned investigation under Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. § 1337), based upon the allegations in the Complaint filed by A&J;

WHEREAS, HEB agrees to the entry of a Consent Order, by the Commission, in the form attached hereto as Exhibit A; and

WHEREAS, A&J and HEB have executed a Settlement and Mutual Release Agreement authorizing HEB to sell its existing inventory of subject articles;

NOW THEREFORE, pursuant to Commission Rule 210.21(c)(1)(ii) and (c)(3), HEB stipulates and agrees as follows in connection with A&J's Motion to Terminate Investigation as to HEB Grocery Company, LP, d/b/a H-E-B Based on Settlement Agreement and Consent Order:

1. HEB is a limited partnership organized and existing under the laws of the state of Texas, and has its principal place of business at 646 S. Main Ave., San Antonio, TX 78204.
2. The Commission has: *in rem* jurisdiction over HEB's multiple mode outdoor grills and parts thereof that are the basis of this Investigation; *in personam* jurisdiction over

HEB for purposes of this Consent Order; and subject matter jurisdiction over this Investigation.

3. A&J asserts that HEB's multiple mode outdoor grills and parts thereof infringe one or more of claims 1-16 of U.S. Patent No. 8,381,712 and U.S. Design Patent D662,773.
4. HEB will not sell for importation, import, or sell after importation multiple mode outdoor grills and parts thereof that infringe one or more of claims 1-16 of U.S. Patent No. 8,381,712 or U.S. Design Patent D662,773 ("Subject Articles"), directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation of Subject Articles except under consent or license from A&J.
5. HEB will cease importing, distributing, selling, or otherwise transferring (other than exporting) Subject Articles in the United States.
6. Notwithstanding Paragraphs 4 and 5, pursuant to the November 18, 2013, Settlement and Mutual Release Agreement between A&J and HEB, HEB is authorized to sell its existing inventory of Subject Articles.
7. HEB agrees to the entry of a Consent Order, by the Commission, in the form attached hereto as Exhibit A, and consents to A&J filing a Motion to Terminate Investigation as to HEB Grocery Company, LP, d/b/a H-E-B Based on Settlement Agreement and Consent Order.
8. HEB expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order.
9. HEB will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.
10. Enforcement, modification, or revocation of the Consent Order will be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210, which is incorporated by reference herein.
11. The signing of this Consent Order Stipulation is for settlement purposes only and does not constitute an admission by HEB that any unfair act has been committed.
12. The Consent Order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and 19 C.F.R. Part 210 for other Commission actions, and the Commission may require periodic compliance reports pursuant to Subpart I of 19

C.F.R. Part 210 to be submitted by the person entering into the consent order stipulation.

13. The Consent Order shall not apply with respect to any claim of U.S. Patent No. 8,381,712 or U.S. Design Patent D662,773 that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable.
14. HEB and its officers, directors, employees, agents and any entity or individual acting on its behalf and with its authority will not seek to challenge the validity or enforceability of any of claims 1-16 of U.S. Patent No. 8,381,712 or U.S. Design Patent D662,773 in any administrative or judicial proceeding to enforce the Consent Order.
15. The Consent Order shall be applicable and binding upon HEB, its officers, directors, agents, servants, employees and all persons, firms, successors, assigns, or corporations acting or claiming to act on behalf of HEB or under the direction or authority of HEB.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

IT IS SO STIPULATED.

Dated: November 26, 2013

HEB Grocery Company, LP,  
d/b/a H-E-B  
646 S. Main Ave.  
San Antonio, TX 78204

By: 

Title: Group VP

CHAR703013

# EXHIBIT B

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

**In the Matter of**

**CERTAIN MULTIPLE MODE  
OUTDOOR GRILLS AND PARTS  
THEREOF**

**Investigation No. 337-TA-895**

**CONSENT ORDER**

The International Trade Commission (the "Commission") has instituted the above-captioned investigation under Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. § 1337), based upon the allegations contained in the Complaint filed by A&J Manufacturing, LLC and A&J Manufacturing, Inc., which alleges violations of Section 337 by Respondent HEB Grocery Company, LP, d/b/a H-E-B based upon the importation into the United States, the sale for importation into the United States, and/or the sale within the United States after importation of certain multiple mode outdoor grills and parts thereof that infringe one or more of claims 1-16 of U.S. Patent No. 8,381,712 and U.S. Design Patent D662,773.

Respondent HEB Grocery Company, LP, d/b/a H-E-B has executed a Consent Order Stipulation in which it agrees to the entry of this Consent Order and to all waivers and other provisions as required by the Commission's Rules of Practice and Procedure, has executed a Settlement Agreement with A&J authorizing HEB to sell its existing inventory, and has consented to A&J filing a Motion to Terminate Investigation as to HEB Grocery Company, LP, d/b/a H-E-B Based on Settlement Agreement and Consent Order.

NOW, THEREFORE, the Commission issues the following Consent Order:

1. The Complainants in this Investigation are A&J Manufacturing, LLC, 2465 Demere Road, St. Simons, GA 31522, and A&J Manufacturing, Inc., 903 Lake Asbury Drive, Green Cove Springs, FL 32043, (collectively, "A&J").
2. The Respondent covered by this Consent Order is HEB Grocery Company, LP, d/b/a H-E-B ("HEB"), which is a limited partnership organized and existing under the laws of the state of Texas, and has its principal place of business at 646 S. Main Ave., San Antonio, TX 78204.
3. The subject articles are multiple mode outdoor grills and parts thereof that infringe one or more of claims 1-16 of U.S. Patent No. 8,381,712 or U.S. Design Patent D662,773 (the "Subject Articles").



4. In its Complaint, A&J alleges that HEB sells for importation, imports, and/or sells in the United States after importation Subject Articles in violation Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. § 1337) by reason of infringement of one or more of claims 1-16 of U.S. Patent No. 8,381,712 and U.S. Design Patent D662,773 (the "Asserted Claims").
5. HEB has executed a Consent Order Stipulation and stipulates to the entry of this Consent Order.
6. HEB shall not sell for importation, import, or sell after importation Subject Articles, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation of Subject Articles except under consent, license from A&J, or to the extent permitted by the November 18, 2013, Settlement and Mutual Release Agreement between A&J and HEB.
7. HEB's disposition of existing inventory is governed by the November 18, 2013, Settlement and Mutual Release Agreement between A&J and HEB, the relevant contents of which are Confidential Business Information and therefore not publicly available.
8. Except as permitted by the November 18, 2013, Settlement and Mutual Release Agreement between A&J and HEB, HEB shall cease and desist from importing and distributing Subject Articles in the United States.
9. HEB shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order.
10. HEB shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.
11. HEB and its officers, directors, employees, agents and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of any of the Asserted Claims in any administrative or judicial proceeding to enforce the Consent Order.
12. When each of U.S. Patent No. 8,381,712 and U.S. Design Patent D662,773 (the "Asserted Patents") expire, this Consent Order shall become null and void as to such expired patent.
13. If any claim of any of the Asserted Patents is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any articles that has been found or adjudicated not to infringe the Asserted Patents in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable claim.

14. This Investigation is hereby terminated with respect to HEB; provided, however, that enforcement, modification, or revocation of this Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 C.F.R. Part 210.

Dated: \_\_\_\_\_

BY ORDER OF THE COMMISSION

\_\_\_\_\_  
Lisa Barton  
Acting Secretary

**CONFIDENTIAL EXHIBIT C**  
**REMOVED IN ITS ENTIRETY**

**CONFIDENTIAL EXHIBIT D**  
**REMOVED IN ITS ENTIRETY**

# EXHIBIT E

## PUBLIC VERSION

### SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement Agreement and Mutual Release ("Agreement") is effective this 18<sup>th</sup> day of November, 2013 (the "Effective Date"), by and between A&J Manufacturing, LLC, together with A&J Manufacturing, Inc. (collectively, "A&J"), and HEB Grocery Company, LP, d/b/a H-E-B ("HEB"). A&J and HEB are each a "Party" and collectively the "Parties."

#### RECITALS

1. A&J has filed a Complaint with the United States International Trade Commission (the, "Commission"), which has now been instituted as Investigation No. 337-TA-895, styled as *In the Matter of CERTAIN MULTIPLE MODE OUTDOOR GRILLS AND PARTS THEREOF* (the "Investigation"). HEB is named as a Respondent in said Investigation.
2. In its Complaint, A&J asserts that HEB has imported, sold for importation, and/or sold within United States after importation, multiple mode outdoor grills that infringe A&J's United States Patent Nos. 8,381,712 and D662,773; namely, the "Sear & Smoke Triad" model grills.
3. A&J has also filed a Complaint in the United States District Court for the Southern District of Georgia, Brunswick Division, Civil Action No CV213-117 (the "District Court Action"), naming as defendants HEB and Ningbo Huige Outdoor Products Co., Ltd. ("Huige"). The Complaint asserts that HEB and Huige infringe A&J's United States Patent Nos. 8,381,712 and D662,773; through offering to sell, selling and importing the "Sear & Smoke Triad" model grills.
4. HEB expressly denies any infringement or liability with respect to the Asserted Patents and disputes the validity and enforceability thereof. Without admitting infringement or liability and for the purpose of settling the Investigation to avoid the expense and uncertainty of continued litigation, HEB desires to settle all issues related to the Asserted Patents.
5. A&J and HEB have now agreed to settle all issues between them in both the Investigation and the District Court Action, under the terms set forth herein.

#### COVENANTS AND MUTUAL RELEASE

Now, therefore, in consideration of the mutual obligations set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, A&J and HEB covenant and agree as follows:

6. As used herein:

## PUBLIC VERSION

- a. "Affiliate" of a Party means any Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common control with such Party, as the case may be, but for only so long as such control exists.
  - b. "Asserted Patents" means (a) United States Patent Nos. 8,381,712 and D662,773, (b) all other patents and patent applications that relate to multiple mode outdoor grills and are owned by (whether solely or jointly), filed by, exclusively licensed by, or assigned to A&J and/or to any A&J Affiliate prior to or as of the Effective Date, and (c) any and all patents relating to the aforementioned patents and items, including but not limited to originals, divisionals, provisionals, re-exams, reissue or re-exam certificates, continuations, continuations-in-part, extensions or reissues, applications for any of the foregoing, any domestic, foreign, or international applications claiming priority from any of the foregoing, and any patent or patent application to which any of the foregoing claims priority, whether filed before, on, or after the Effective Date, in all countries of the world.
  - c. "Control" means (i) direct or indirect beneficial ownership of at least fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of the voting share capital or other equity interest in such Person or (ii) the power to direct the management of such Person by contract or otherwise.
  - d. "Person" means any individual, corporation, partnership, limited liability company, trust, governmental entity, or other legal entity of any nature whatsoever.
7. HEB stipulates to filing a Joint Motion to Terminate and entering a Consent Order in the Investigation. The Parties will promptly execute and file with the Commission the Joint Motion to Terminate (attached hereto as Exhibit A), Consent Order Stipulation (attached hereto as Exhibit B) and proposed Consent Order (attached hereto as Exhibit C) negotiated between the Parties.
8. A&J agrees that while the Joint Motion to Terminate on the basis of the Consent Order Stipulation is pending before the Commission, HEB will not be required to file any answer, response to discovery requests or any other motion filed by A&J. A&J agrees that HEB may file, and A&J will not oppose and agrees to join, any such motion that HEB deems necessary to extend the deadline for HEB's answer, responses to discovery requests or responses to any other motions or orders that would otherwise typically involve a response from HEB, pending the Commission's action on the Joint Motion to Terminate and/or the proposed Consent Order.
9. After HEB's filing of the Consent Order Stipulation with the International Trade Commission, A&J will promptly file a Notice of Dismissal, dismissing its claims, with prejudice, against HEB, pursuant to FRCP 41(a)(1)(A), in the District Court Action.
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PUBLIC VERSION

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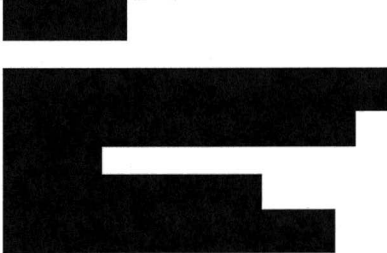
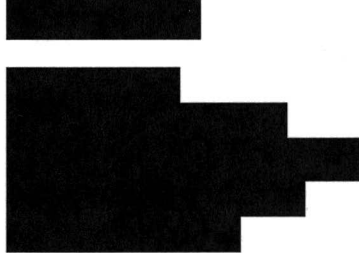
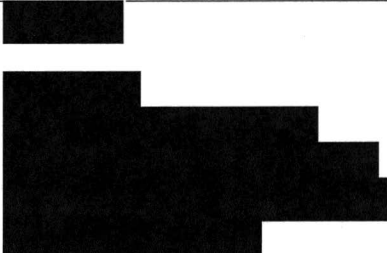
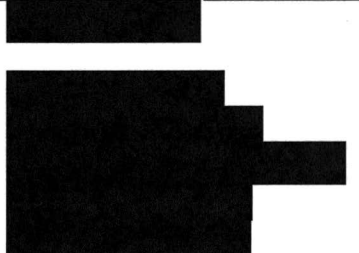
16. Each Party and each person signing this Agreement on behalf of a Party represents and warrants to the other(s) that:



PUBLIC VERSION

- a. Such Party has not entered this Agreement in reliance upon any promises, inducement, agreement, statement, or representation other than those contained in this Agreement.
- b. Such Party has the full right and power to enter into this Agreement, and the person executing this Agreement has the full right and authority to enter into this Agreement on behalf of such Party and the full right and authority to bind such Party and its Affiliates, successors and assigns to the terms and obligations of this Agreement.
- c. Such Party has not granted any prior rights, licenses, or covenants that are inconsistent with this Agreement or that would impair such Party's performance of this Agreement, and the execution of this Agreement does not breach any other agreement of such Party, and such Party needs no permission or authorization from any other entity or individual to execute this Agreement.
- d. Such Party is duly organized, validly existing and in good standing under the laws of the state, province or country of its organization or incorporation. Each Party and each of its Affiliates are currently operating as a going concern. And each Party is not, and none of its Affiliates are, subject to any bankruptcy, insolvency, liquidation or similar proceedings.





## PUBLIC VERSION

18. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between HEB or its Affiliates, on the one side, and A&J or its Affiliates, on the other side.
19. This Agreement may be executed in any number of counterparts each of which will be deemed an original, and all of which together will constitute one and the same instrument.
20. No delay or waiver by either Party of any condition or term in any one or more instances will be construed as a further or continuing waiver of such condition or term or of another condition or term.
21. Each Party agrees to execute, acknowledge and deliver such further instruments, and to perform all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.
22. To the extent that this Agreement imposes obligations, conditions or limitations on Affiliates of a Party, such Party agrees to cause its Affiliates to perform such obligations, conditions or limitations.
23. No amendment or modification of any provision of this Agreement will be effective unless in a prior writing signed by all Parties hereto. No provision of this Agreement will be varied, contradicted or explained by any oral agreement, course of dealing or performance or any other matter not set forth in an agreement in writing and signed by all Parties hereto.
24. In the event any provision of this Agreement is held invalid, illegal or unenforceable in any jurisdiction, the Parties will negotiate in good faith and enter into a valid, legal and enforceable substitute provision that most nearly reflects the original intent of the Parties. All other provisions of this Agreement will remain in full force and effect in such jurisdiction. Such invalidity, illegality or unenforceability will not affect the validity, legality or enforceability of such provision in any other jurisdiction.
25. This Agreement (including the documents attached as exhibits hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral agreements or communications as to such subject matter, all of which are merged and fully integrated into this Agreement.

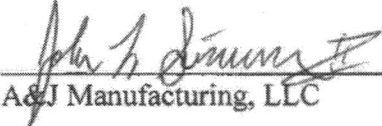
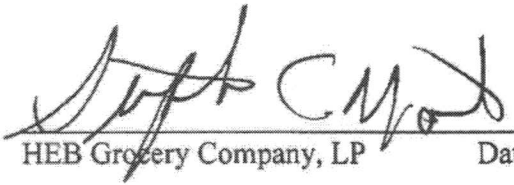
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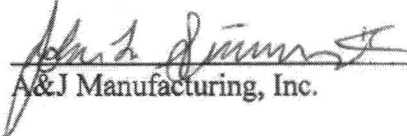
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PUBLIC VERSION

In witness whereof, A&J and HEB, by their authorized representatives, execute this Agreement:

	<u>11/9/13</u>		<u>11/18/13</u>
A&J Manufacturing, LLC	Date	HEB Grocery Company, LP	Date

	<u>11/20/13</u>
A&J Manufacturing, Inc.	Date

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **RENEWED JOINT MOTION TO TERMINATE INVESTIGATION AS TO HEB GROCERY COMPANY, LP, d/b/a H-E-B BASED ON SETTLEMENT AGREEMENT AND CONSENT ORDER AND MOTION TO STAY INVESTIGATION AS TO H-E-B AND MEMORANDUM IN SUPPORT THEREOF (PUBLIC VERSION)** was served to the parties, in the manner indicated below, this 18<sup>th</sup> day of December 2013:

The Honorable Lisa R. Barton  
Acting Secretary  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, SW, Room 112-A  
Washington, DC 20436

☒ **VIA ELECTRONIC FILING**

The Honorable Dee Lord  
Administrative Law Judge  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street, S.W. Rm.  
Washington, DC 20436

☒ **VIA HAND DELIVERY – 2 Copies**  
☒ **VIA ELECTRONIC MAIL**

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/s/ Patricia Cotton, Sr. Paralegal  
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**CERTAIN MULTIPLE MODE OUTDOOR  
GRILLS AND PARTS THEREOF**

**Inv. No. 337-TA-895**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **Order No. 20 (Initial Determination)** has been served by hand upon the Commission Investigative Attorney, **R. Whitney Winston, Esq.**, and the following parties as indicated, on \_\_\_\_\_.

**FEB - 6 2014**

  
Lisa R. Barton, Acting Secretary  
U.S. International Trade Commission  
500 E Street SW, Room 112A  
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**CERTAIN MULTIPLE MODE OUTDOOR  
GRILLS AND PARTS THEREOF**

Inv. No. 337-TA-895

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**CERTAIN MULTIPLE MODE OUTDOOR  
GRILLS AND PARTS THEREOF**

**Inv. No. 337-TA-895**

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**CERTAIN MULTIPLE MODE OUTDOOR  
GRILLS AND PARTS THEREOF**

**Inv. No. 337-TA-895**

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<p>Kenneth Clair <b>Thomson West</b> 1100 13<sup>th</sup> Street, NW, Suite 200 Washington, DC 20005</p>	<p>( ) Via Hand Delivery ( ) Express Delivery ( <input checked="" type="checkbox"/> ) Via First Class Mail ( ) Other: _____</p>