

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN THERMOPLASTIC-
ENCAPSULATED ELECTRIC MOTORS,
COMPONENTS THEREOF, AND
PRODUCTS AND VEHICLES
CONTAINING SAME II**

Inv. No. 337-TA-1073

**ORDER NO. 48: INITIAL DETERMINATION TERMINATING THE BMW
RESPONDENTS BASED ON A SETTLEMENT AGREEMENT**

(August 13, 2018)

Complainant Intellectual Ventures II LLC (“Intellectual Ventures”) and respondents Bayerische Motoren Werke AG; BMW of North America, LLC; and BMW Manufacturing Co., LLC (collectively, “BMW Respondents”)¹ filed a motion seeking to terminate this investigation as to the BMW Respondents based upon a Settlement and Patent License Agreement (“Agreement”). Motion Docket No. 1073-068. The Commission Investigative Staff (“Staff”) filed a response in support of the motion. The motion is otherwise unopposed. *See* Mot. at 3.

Commission Rule 210.21(b) provides:

An 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. The motion for termination by settlement shall contain copies of the licensing or other settlement agreements, any supplemental agreements, any documents referenced in the motion or attached agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement

¹ The motion refers to Intellectual Ventures and the BMW Respondents together as the “Settling Parties.” Mot. at 1.

with such information deleted shall accompany the motion. On 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).

I find that the pending motion for termination complies with the Commission Rules. In particular, the Settling Parties have provided confidential and public versions of the Agreement. Moreover, the Settling Parties state: “The Agreement reflects the entire and only agreement between the Settling Parties regarding the subject matter of this Investigation. The Settling Parties represent that there are no other agreements, written or oral, express or implied, between the Settling Parties concerning the subject matter of this Investigation.” Mot. at 2. In addition, I find there are no extraordinary circumstances that warrant denying the motion.

With respect to the public interest, the Commission Rules provide that when considering a motion to terminate based upon a settlement agreement, the Administrative Law Judge “shall consider and make appropriate findings in the initial determination 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.” 19 C.F.R. § 210.50(b)(2). The Settling Parties argue:

[T]ermination of this Investigation as to the BMW Respondents poses no threat to the public interest. Indeed, it is in the interest of the public and administrative economy to grant this motion. Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the private parties, and motions to terminate based on settlement are routinely granted.

. . . Moreover, termination of this Investigation as to the BMW Respondents pursuant to the license and settlement Agreement will not have any adverse impact on the public health and welfare and/or competitive conditions in the United States.

Mot. at 2-3.

The Staff argues:

In the Staff's view, the available information does not indicate that the Agreement will harm the public health or welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. Moreover, the public interest generally favors settlement in order to avoid needless litigation and to conserve public resources. . . . The Staff therefore submits that terminating this investigation as to the BMW Respondents based on the Agreement would not be contrary to the public interest.

Staff Resp. at 3-4.

Having considered the arguments of the parties, I find there is no evidence indicating that terminating this investigation based on the Agreement between Intellectual Ventures and the BMW Respondents would be contrary to the public interest.

Accordingly, it is my initial determination that Motion No. 1073-068 is granted. Respondents Bayerische Motoren Werke AG; BMW of North America, LLC; and BMW Manufacturing Co., LLC are hereby terminated from this investigation.²

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 herein.

SO ORDERED.



Thomas B. Pender
Administrative Law Judge

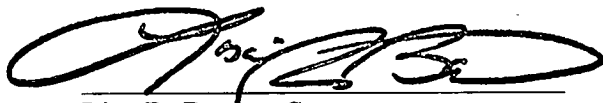
² The Settling Parties also moved to limit service of the unredacted Agreement to the Settling Parties and the Commission. Motion Docket No. 1073-069. Motion No. 1073-069 is granted.

**CERTAIN THERMOPLASTIC-ENCAPSULATED ELECTRIC
MOTORS, COMPONENTS THEREOF, AND PRODUCTS
AND VEHICLES CONTAINING SAME II**

INV. NO. 337-TA-1073

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **INITIAL DETERMINATION Order No. 48** has been served by hand upon the Commission Investigative Attorney, **Andrew Beverina, Esq.**, and the following parties as indicated, on **AUG 13 2018**



Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street SW, Room 112A
Washington, DC 20436

FOR COMPLAINANT INTELLECTUAL VENTURES II LLC

James M. Wodarski, Esq.
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**FOR RESPONDENTS AISIN SEIKI, CO., LTD, AISIN HOLDINGS OF AMERICA,
INC., AISIN TECHNICAL CENTER OF AMERICA, INC. & AISIN WORLD
CORPORATION OF AMERICA**

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**CERTAIN THERMOPLASTIC-ENCAPSULATED ELECTRIC
MOTORS, COMPONENTS THEREOF, AND PRODUCTS
AND VEHICLES CONTAINING SAME II**

INV. NO. 337-TA-1073

**FOR RESPONDENTS BAYERISCHE MOTOREN WERKE AG, BMW OF NORTH
AMERICA, LLC & BMW MANUFACTURING CO., LLC**

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**FOR RESPONDENTS HONDA MOTOR CO., LTD., HONDA NORTH AMERICA,
INC., AMERICAN HONDA MOTOR CO., INC., HONDA OF AMERICA MFG., INC.,
HONDA MANUFACTURING OF ALABAMA, LLC & HONDA R&D AMERICAS,
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**FOR RESPONDENTS MITSUBA CORPORATION & AMERICAN MITSUBA
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**FOR RESPONDENTS NIDEC CORPORATION & NIDEC AUTOMOTIVE
AMERICAS, LLC.**

John Flock, Esq.
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**CERTAIN THERMOPLASTIC-ENCAPSULATED ELECTRIC
MOTORS, COMPONENTS THEREOF, AND PRODUCTS
AND VEHICLES CONTAINING SAME II**

INV. NO. 337-TA-1073

**FOR RESPONDENTS TOYOTA MOTOR CORPORATON, TOYOTA MOTOR
NORTH AMERICA, INC., TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA
MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC.,
TOYOTA MOTOR MANUFACTURING, INDIANA, INC. & TOYOTA MOTOR
MANUFACTURING, KENTUCKY, INC.**

James R. Barney, Esq.
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GARRETT & DUNNER LLP**
901 New York Avenue N.W.
Washington, DC 20001

() Via Hand Delivery
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() Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

Before the Honorable Thomas B. Pender
Administrative Law Judge

In the Matter of

**CERTAIN THERMOPLASTIC-
ENCAPSULATED ELECTRIC MOTORS,
COMPONENTS THEREOF, AND
PRODUCTS AND VEHICLES
CONTAINING SAME II**

Investigation No. 337-TA-1073

**JOINT MOTION TO TERMINATE THE INVESTIGATION
AS TO THE BMW RESPONDENTS BASED ON SETTLEMENT**

Complainant Intellectual Ventures II LLC (“Intellectual Ventures”) and Respondents Bayerische Motoren Werke AG; BMW of North America, LLC; and BMW Manufacturing Co., LLC (collectively, “BMW Respondents”) jointly move to partially terminate the Investigation as to the BMW Respondents based on a Settlement and Patent License Agreement (the “Agreement”) between the parties (together, the “Settling Parties”).

A true and correct copy of the Agreement, redacted to protect the disclosure of confidential business information, is attached to this submission as Public Exhibit A and a highly confidential and unredacted version is attached as Exhibit B. Contemporaneously with this filing, the Settling Parties are also filing a motion pursuant to Commission Rule 210.21(a)(1), requesting that the ALJ limit service of the unredacted agreement to only the Settling Parties and OUII Staff.

The Agreement has been executed by the Settling Parties, and is fully effective as between them. The Agreement contains Confidential Business Information within the meaning

[REDACTED]

of 19 C.F.R. § 201.6(a), including, but not limited to, license and settlement fee amounts, the disclosure of which could impair parties' ability to enter into settlement agreements. The Agreement completely resolves the dispute between the Settling Parties in this Investigation. The Agreement reflects the entire and only agreement between the Settling Parties regarding the subject matter of this Investigation. The Settling Parties represent that there are no other agreements, written or oral, express or implied, between the Settling Parties concerning the subject matter of this Investigation.

The Settling Parties agree that termination of this Investigation on the basis of settlement as to only the BMW Respondents does not constitute a determination as to the violation of section 337 of the Tariff Act of 1930, including as to the merits of the claims or defenses raised during this Investigation. *See* 19 C.F.R. § 210.21(b)(2).

In view of the Agreement, there no longer exists a basis upon which to continue this Investigation as to the BMW Respondents. Further, termination of this Investigation as to the BMW Respondents poses no threat to the public interest. Indeed, it is in the interest of the public and administrative economy to grant this motion. Commission policy and the public interest generally favor settlements, which preserve resources for both the Commission and the private parties, and motions to terminate based on settlement are routinely granted. *See, e.g., Certain Computing or Graphics Systems, Components Thereof, and Vehicles Containing Same*, Inv. No. 337-TA-984, Order No. 59 (Oct. 24, 2016) (Pender, ALJ) (granting motion to terminate investigation as to one respondent group); *Certain Communications or Computing Devices and Components Thereof*, Inv. No. 337-TA-925, Order No. 37 (June 5, 2015) (terminating one respondent based on settlement agreement); *Certain Consumer Electronics with Display and Processing Capabilities*, Inv. No. 337-TA-884, Order No. 15 (Aug. 1, 2014) (terminating

[REDACTED]

investigation based on settlement agreements among complainant, certain respondents, and a third party); *Certain Consumer Electronics and Display Devices and Products Containing Same*, Inv. No. 337-TA-836, Order No. 30 at 3 (January 28, 2013) (unreviewed) (terminating investigation based on settlement agreements among complainant, remaining respondents, and a third party); *Certain Portable Communication Devices*, Inv. No. 337-TA-827, Order No. 15 at 2 (May 31, 2012) (unreviewed) (same) (citation omitted).¹

Moreover, termination of this Investigation as to the BMW Respondents pursuant to the license and settlement Agreement will not have any adverse impact on the public health and welfare and/or competitive conditions in the United States. Accordingly, the Administrative Law Judge is authorized to issue an initial determination terminating this investigation pursuant to 19 C.F.R. § 210.21(b).

Counsel for the Settling Parties have consulted with the other Respondents and with Commission Investigative Staff Attorney regarding this motion. The Commission Investigative Attorney will provide the position of the Office of Unfair Import Investigations after reviewing these papers in more detail. The other Respondents have indicated that that they take no position on the requested relief.

¹ See also *Certain Equipment for Telecommunications or Data Communications Networks, Including Routers, Switches, and Hubs, and Components Thereof*, Inv. No. 337-TA-574, Order No. 27 at 4 (May 24, 2007) (“termination of litigation under these circumstances is generally in the public interest as settlement avoids needless litigation and conserves public resources”); *Certain Semiconductor Chips and Products Containing Same*, Inv. No. 337-TA-753, Order No. 62 at 2-3 (February 22, 2012) (granting joint motion to partially terminate investigation on grounds that termination of the investigation based on the settlement agreement would have no adverse impact on the public interest); *Certain Video Analytics Software, Systems, Components Thereof, and Product Containing Same*, Inv. No. 337-TA-795, Order No. 19 at 1-2 (February 23, 2012) (granting joint motion to terminate, and noting that “[t]he Commission has stated that ‘in the absence of extraordinary circumstances, termination of the investigation will be readily granted to a complainant during the prehearing stage of an investigation.’”) (citations omitted).

[REDACTED]

For these reasons, the Settling Parties respectfully request that the Administrative Law Judge grant this motion and issue an initial determination terminating this Investigation with respect to the BMW Respondents only based on the accompanying Agreement.

Dated: July 30, 2018

By: /s/ Andrew H. DeVoogd
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*Counsel for Complainant
Intellectual Ventures II LLC*

Respectfully submitted,

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*Counsel for Respondents Bayerische Motoren
Werke AG, BMW of North America, LLC, and
BMW Manufacturing Co., LLC*



EXHIBIT A

SETTLEMENT AND PATENT LICENSE AGREEMENT

This SETTLEMENT AND PATENT LICENSE AGREEMENT (this "Agreement") is entered into as of July 25, 2018 ("Effective Date") between Intellectual Ventures II LLC, 3150 139th Ave, SE, Building 4, Bellevue WA 98005, a Delaware limited liability company ("Licensor" or "IV"), and BMW of North America, LLC, a Delaware limited liability company, with a place of business at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07675 U.S.A., ("Licensee"). (each a "**Party**" and together "**Parties**").

AGREEMENT

WHEREAS, Licensor is the owner of all right, title, and interest in the Licensed Patents (as defined below);

WHEREAS, Licensor filed suit against Bayerische Motoren Werke AG, BMW Manufacturing Co. LLC and BMW of North America, LLC (collectively "BMW") in the US International Trade Commission (Inv. No. 337-TA-1073) against BMW and others and in the District of New Jersey against BMW (Case No. 2:17-cv-08870-JMV-JBC) referred to herein as the "Pending Litigations");

WHEREAS, IV contends in the Pending Litigations that BMW infringes U.S. Patents Nos. 7,154,200 and 7,067,944 by using a wastegate actuator that BMW has used on vehicles with gasoline engines since at least 2012;

WHEREAS, the Parties dispute the validity and infringement of the patents involved in the Pending Litigations,

WHEREAS, the Parties desire to resolve all aspects of the present dispute between the Parties in order to minimize the time and expense of the Pending Litigations or other legal action;

WHEREAS, BMW desires to obtain a license to the Licensed Patents; and

In consideration of the mutual covenants and obligations herein undertaken, the sufficiency of which is hereby acknowledged, Licensee and Licensor agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms have the respective meanings set forth below:

"Control," "Controlled," or "Controlling" means the direct or indirect ownership of at least fifty percent (50%) of the shares or similar equity interests or voting power of the outstanding voting securities of such legal entity that represent the power to direct the management and policies of such entity.

"Affiliate" shall mean, with respect to Licensee at any given time during the term of this Agreement, any corporation or other legal entity (including joint ventures) controlling, controlled by, or under common control with Licensee. For the avoidance of doubt, Affiliates of Licensee include Bayerische Motoren Werke AG, a German stock company, and BMW Manufacturing, LLC, a Delaware limited liability company.

"Field of Use" or "FOU" means Licensee's and each Licensee Affiliates' automotive business as including Vehicles and vehicle components made and sold by any Licensee Party.

"ITC Action" means "Investigation No. 337-TA-1073, In the Matter of CERTAIN THERMOPLASTIC-ENCAPSULATED ELECTRIC MOTORS, COMPONENTS THEREOF, AND PRODUCTS AND VEHICLES CONTAINING SAME II".

[REDACTED]

"Licensed Products" means:

(a) any and all past, current, and future products, processes, services that are made, sold, or distributed by or on behalf of a Licensee Party or any of Licensee's Affiliates, including, without limitation, engines, wastegate actuators made by MELCO (as defined in Section 2.4 below), and products imported and used warranty, recall, replacement, service, repair and maintenance in the ordinary course of conducting business within the Field of Use; or

(b) any and all past, current and future products, technologies or services otherwise used by Licensee or a Licensee Affiliate for internal or developmental use.

(c) Without limitation, Licensed Products include products sold by BMW or its Affiliates under the brand names "BMW," "MINI," and "Rolls Royce."

"Licensee Parties" means Licensee and each Licensee Affiliates, and each of their respective distributors, resellers and authorized agents solely with respect to the Licensed Products, as well as end users, purchasers, or licensees of Vehicles sold by Licensee and its Affiliates.

"Licensed Patents" means US Patents 7,154,200 and US 7,067,944 (the "Patents in Suit") and each of their respective patents, patent applications, provisionals, substitutes, renewals, continuations, continuations-in-part, divisionals, foreign and other counterparts, reissues, oppositions (i.e., patents in opposition), continued examinations, reexaminations and extensions that claim priority to each of the Patents in Suit.

"Non-Licensee" means any person or entity that is not a Licensee Party.

"Term" has the meaning set forth in paragraph 3.1.

"Vehicles" means an operational vehicle including all components integrated with such vehicle at the time of sale by a Licensed Party branded with a trademark or other trade indicia of Licensee or a Licensee Affiliate.

2. GRANTS

2.1 **Non-Exclusive Patent License.** Subject to each Licensee Party's compliance with the limitations, terms, and conditions of this Agreement, Licensor hereby grants to Licensee Parties a nontransferable (except to the extent provided in Section 7), nonexclusive license, under the Licensed Patents to make, have made (by suppliers or sub-suppliers), use, sell, offer for sale, and import and export Licensed Products within the Field of Use. Licensor specifically recognizes that this license provides full freedom for Licensee, its Affiliates, dealers, and end users who buy or lease vehicles to sell or otherwise commercialize Licensed Products with respect to the Licensed Patents, and that such sale and commercialization will exhaust Licensor's rights as to customers (direct or indirect) of Licensee, its Affiliates, or its dealers with respect to Licensed Products.

2.1b **No Sublicenses.** The rights and Licenses granted under this Agreement to Licensee Parties exclude the right to grant sublicenses.

2.2 **Combinations.** Combinations of a Licensed Product and a product, process, or service of a Non-Licensee ("***Combination Product***") will not be covered under the license unless the Combination Product would not infringe any claim of any Licensed Patent but for the inclusion of the Licensed Product in the Combination Product.

[REDACTED]

2.3 Licensee Affiliate Rights. Subject to Licensee and each Licensee Affiliates' compliance with this Agreement, the rights granted under this Agreement to any Licensee Affiliate under the Licensed Patents will apply only for so long as such entity is within the definition of an "Affiliate" contained in this Agreement.

2.4 Covenant not to Sue. Licensor for itself and its respective legal successors, heirs and assigns, hereby covenants and irrevocably agrees that Licensor nor any Person directly or indirectly Controlled by Licensor, will bring suit or otherwise assert a claim (i) that a Licensed Product made for Licensee or its Affiliates or manufactured, imported, exported, used, offered for sale, or sold or otherwise distributed, by or for or on behalf of Licensee, its Affiliates, or its dealers infringes any of the Licensed Patents, or (ii) that is within the scope of the releases granted in Section 4.1 below. For avoidance of doubt, this section 2.4 covenant extends to (a) Mitsubishi Electric Co., a Japanese company or any other legal entity controlling, controlled by or under common control with Mitsubishi Electric Co, including specifically Mitsubishi Electric Europe, B.V. (together "MELCO"), but only to the extent it provides actuators to turbocharger suppliers for use in turbochargers for use in Licensed Products within the FOU, and (b) turbocharger suppliers for Licensed Products, but only to the extent that they provided turbochargers to Licensed Parties for use in Licensed Products within the FOU.

2.5 Reserved Rights; Additional Limitations. Nothing contained in this Agreement will be construed as conferring any rights to Licensee Parties by implication, estoppel or otherwise, under any intellectual property rights. The sole rights granted to Licensee Parties are those expressly granted in this Agreement with respect to the Licensed Patents. Subject to the license granted above, Licensor retains all its respective right, title and interest to the Licensed Patents.

3. TERM; TERMINATION

3.1 Term. This Agreement will become effective on the Effective Date and will continue until the earlier of:

(a) December 15, 2020; or

(b) until all claims of all Licensed Patents expire, or are held invalid and/or unenforceable by a court of competent jurisdiction from which no appeal can be taken,

unless earlier terminated as set forth in this Section 3.

3.2 Termination.

(a) In the event the Licensee fails to pay any amounts due to Licensor under this Agreement which failure is not cured within thirty (30) days after written notice thereof from Licensor to Licensee.

(b) Licensor acknowledges that in the event that Licensor moves to terminate the evidentiary hearing in the ITC Action, expected to conclude on or before July 27, 2018, against all other respondents without first entering into a license or settlement agreement of sufficient scope covering substantially all of the allegations of infringement that form the basis of the ITC Action, and if such motion is granted, this Agreement shall be void ab initio and, should such abandonment occur after the License Fee is paid, Licensor shall return the License Fee to Licensee. For the avoidance of doubt, this paragraph 3.2(b) shall expire upon the close of the evidentiary record in the ITC Action.

3.3 Patent Challenge. Licensor may terminate, after written notice and a cure period of sixty (60) days, to Licensee with respect to a Licensed Patent, in the event any Licensee Party leads or supports any

[REDACTED]

effort to challenge the validity, enforceability or scope of, or sustain an opposition, interference, reexamination, inter partes review or other post-grant review, including without limitation under the America Invents Act, of that Patent in the U.S. Patent and Trademark Office or an analogous procedure in any other government patent office, notwithstanding whether such an action is subsequently appealed before a court or other government agency other than the U.S. Patent and Trademark Office or other government patent office (any of the foregoing a "**Challenge**") of any Licensed Patent and such Licensee Party does not take all steps reasonably necessary under the applicable law and regulation and does not reasonably cooperate with the Licensors to cancel or terminate such Challenge after such written notice.

3.4 Effect of Termination; Survival.

- (a) In the event that the Term of this Agreement is terminated by a Licensors Party under paragraph 3.2(a), this Agreement and all licenses, releases and other rights granted to a Licensee Party pursuant to this Agreement by Licensors will terminate as of the termination date (except to the extent set forth in subparagraph 3.4(d)).
- (b) The Term of this Agreement is void ab initio under paragraph 3.2(b) as to all licenses, releases and other rights granted to all Licensee Parties with respect to all Licensed Patents.
- (c) In the event that the Term of this Agreement is terminated by Licensors under paragraph 3.3 with respect to a challenged Licensed Patent, this Agreement and all licenses releases and other rights granted to a Licensee Party pursuant to this Agreement will terminate (except to the extent set forth in paragraph 3.4(d)), but only with respect to the challenged Patent, as the date of such termination under paragraph 3.3. In the event of a termination under paragraph 3.3, unearned royalties prepaid by Licensee for the period after the date of termination will be returned to Licensee.
- (d) The provisions of paragraphs 3.2, 3.4, and 7.4 and Sections 1, 5, 6, and 9 will survive any termination of this Agreement by Licensors, or of the Term thereof.

4. **RELEASES**

4.1 Release by Licensors. Upon payment in full of the amount due under paragraph 5.1 of this Agreement, Licensors will release Licensee Parties and each of their current and former dealers, customers, suppliers, manufacturers, employees, representatives, agents, officers, directors, parents, subsidiaries, past and present, of and from any and all claims, demands, damages, debts, liabilities, accounts, reckonings, obligations, costs, expenses, liens, attorneys' fees, actions and causes of action of every kind and nature whatever, (i) solely arising out of or in connection with the Licensed Products with respect to the Licensed Patents, and/or (ii) based in whole or in part on acts of Licensee or its Affiliates prior to the Effective Date of this Agreement that would have been licensed under this Agreement if performed after the Effective Date of this Agreement. Such release applies only to the extent any such infringing activity would have been licensed under this Agreement if the license granted under this Agreement had been in effect at the time of such infringing activity. For avoidance of doubt, this section 4.1 release extends to (a) MELCO, but only to the extent it provides actuators to Licensed Parties or turbocharger suppliers for use in turbochargers for use in Licensed Products within the FOU, and (b) turbocharger suppliers for Licensed Products, but only to the extent that they provided turbochargers to Licensed Parties for use in Licensed Products within the FOU.

4.2 Release by Licensee. Licensee, on behalf of itself and each Licensee Affiliate, hereby releases Licensors each of its current and former employees, representatives, agents, officers, directors, parents,

[REDACTED]

subsidiaries, past and present, arising out of or in connection with the Licensed Patents prior to the Effective Date.

4.3 Pending Actions.

(a) The Parties shall jointly file a motion to terminate the ITC Action on the basis of settlement with the International Trade Commission ("ITC") as and to the extent it relates to the BMW respondents within two (2) business days of the Effective Date of this Agreement, and further agree to move to prevent disclosure of the monetary terms of this Agreement to the remaining respondents in the ITC Action.

(b) Within two (2) business days of the Effective Date of this Agreement, the Parties shall take all appropriate steps with the Patent Trial and Appeals Board ("PTAB") to withdraw and dismiss all of Licensee's pending IPRs adverse to the Licensed Patents, including IPR2017-01558 ('200 patent) IPR2017-01836 ('944 patent). Licensee shall file a copy of this Agreement, as may be necessary, separately and under the designation 'business confidential information' to the extent possible. Simultaneously with submitting this Agreement to the PTAB, Licensee shall file a joint (with Licensor) motion to keep this Agreement confidential and shall file any other pleadings necessary to accomplish the goal of termination of IPR2017-01558.

(c) Within two (2) business days of the Effective Date of this Agreement, Licensor will file a unilateral motion to dismiss the New Jersey complaint under Fed. R.Civ.P. 41(a)(1)(A), with each party to the Pending Litigation to bear its own costs.

5. PAYMENTS

5.1 License Fees and Payment. In consideration of the licenses and other rights granted in this Agreement, Licensee will pay Licensor a license fee of [REDACTED] USD) (the "**License Fee**") no later than fifteen (15) calendar days after the Effective Date. The License Fee [REDACTED] shall be paid by Licensee by wire transfer in a manner specified by an invoice issued by Licensor to Licensee.

Contact Person with respect to a wire transfer:

Bryan Burpee, Accounting Manager (BrvanB@intven.com) and at accountsreceivableUS@intven.com

Contact Person at Bank in the event of wire transfer problems shall be included on the invoice issued by Licensor.

5.2 No Refunds. Subject to paragraphs 3.2(b) and 3.4(c), all payments hereunder are final and mandatory, and no refund, credit or other adjustment of payment will be made by Licensor for any reason. Rights to receive all payment will not be affected by any statement appearing on any check or other document, except to the extent that any such right is expressly waived or surrendered by a party having such right and signing such statement.

5.3 No Deduction or Offset. Licensee acknowledges and agrees that the payments due hereunder have been fully earned by Licensor by entrance into this Agreement, and accordingly, except as provided in paragraphs 3.2(b) and 3.4(c) above, no amendment, default, termination or other event or circumstance with respect to this Agreement or any rights granted hereunder shall constitute or give rise to a termination or failure of any condition precedent or relieve Licensee of its obligations to make all payments due hereunder without deduction, withholding, offset, setoff, counterclaim, defense, reduction, recoupment or other charge.

[REDACTED]

5.4 Taxes. The obligation of Licensee to make all payments to Licensor provided for under this Agreement shall be made without any deduction, offset, setoff, withholding, counterclaim, defense, reduction, recoupment, refund for taxes. Each party shall be responsible for its own taxes in connection with its performance under this Agreement.

5.5 License Fee/Royalty Basis. The Parties acknowledge that, for the convenience of the Parties, the License Fee represents at a royalty rate of \$3.15 per US Vehicle, based on the following annual US Vehicle units sold:

(a) a calculation based on Company's actual US Vehicle units sold in 2017 of 352,790* ; and

[REDACTED]

*as reported in https://www.press.bmwgroup.com/usa/article/detail/T0277617EN_US/bmw-group-u-s-reports-december-2017-and-year-end-sales?language=en_US

5.6 [REDACTED]

6. INFRINGEMENT SUITS, AND PATENT ACQUISITION AND MAINTENANCE

6.1 Licensor. Licensor (A) makes no warranty or representation as to the validity, enforceability or scope of any of the Licensed Patents or any claims thereof; (B) has no obligation under this Agreement to institute any action or suit against any third party for infringement of any of the Licensed Patents or claims thereof, or to be party to or defend any action or suit brought by any third party that challenges or

concerns the validity, enforceability or scope of any of the Licensed Patents or any claims thereof; or (C) has no obligation under this Agreement to file or prosecute any patent application of the Licensed Patents, secure any Licensed Patents, or maintain any Licensed Patents in force.

6.2 Licensee Party. No Licensee Party (A) has any right under this Agreement to institute any action or suit for infringement of any of the Licensed Patents or, unless sued directly, impleaded, or otherwise involuntarily joined, to be a party to or defend any action or suit brought by any third party that challenges or concerns the validity, enforceability, or scope of any of the Licensed Patents; or (B) will have any obligation to develop or distribute any products or services that exercise any licenses or other rights granted to Licensee Parties under this Agreement.

6.3 No Domestic Industry. Licensor agrees that it will not use the fact of this Agreement or the terms hereof to contend in any ITC action that Licensee's or Licensee's Affiliates operation constitute a "Domestic Industry" as that term is understood in Section 337 Actions in the ITC.

7. ASSIGNMENT

7.1 No Assignment by Licensee Parties. Except as provided in this Section 7, this Agreement and the licenses, and other rights granted under this Agreement are nontransferable (by operation of law or otherwise) by any Licensee Party, and any uncured attempted transfer will be void and be a material breach of this Agreement. Only an assignment made with Licensor's written consent will relieve Licensee Parties from any of their obligations under this Agreement.

7.2 Assignment by Licensor. Licensor may transfer, assign or partially assign their rights under this Agreement (an "Assignment"). Nothing in this Agreement will prohibit or otherwise restrict the ability of Licensor to sell, assign, transfer, license or otherwise convey to third parties any rights in the Licensed Patents, provided that any such action by Licensor will be subject to the license granted to Licensee Parties hereunder under such Licensed Patents. Licensor will give Licensee notice of any such Assignment within a reasonable time after the Assignment is finalized.

7.3 Effect of Change of Control. In the event of any Change of Control (defined below) after the Effective Date, Licensee will promptly give notice thereof to Licensor.

7.3.1 Contexts in Which Rights Remain Unaffected. A Change of Control is permitted under this Agreement with no effect on the parties' rights and obligations hereunder in the following circumstances ("Permitted Event(s)"):

- (a) Where such events are primarily for internal corporate structuring, restructuring or tax purposes and such events do not make any Non-Licensee the beneficial owner of the Licensee; or
- (b) Where (i) the Licensee is maintained as a separate reporting entity and (ii) the Licensee elects to exclude the entity that becomes the beneficial owner thereof, and all other entities under common Control of that entity, from the licenses and other rights granted under this Agreement, effective as of the date of such Change of Control.

7.3.2 Contexts in which Rights are Limited. In the event of any Change of Control other than a Permitted Event, effective as of the effective date of such Change of Control, the licenses, covenants, and other rights under this Agreement granted to Licensee Parties (a) will automatically become limited to the then-existing Licensed Products of Licensee and any applicable Licensee Affiliate within the Field of Use that are then in commercial release, or for which, as of the date of such Change of Control, Licensee or any applicable Licensee Affiliate have made significant steps toward commercialization, and for new versions thereof that have merely incremental differences from such existing Licensed Offerings (the

[REDACTED]

"Existing Products"), and (b) will not, after such Change of Control, in any event include any products, processes or services of any other parties to such Change of Control that were not previously included as Existing Products.

7.3.3 Reporting/Audit. In the event of any Change of Control other than through a Permitted Event, the beneficial owner of the Licensee shall, in addition to the foregoing, keep and maintain (and cause the other Licensee Affiliates to keep and maintain) true and complete records of US Vehicle sales sold in the ordinary course consistent with past practice and GAAP. The beneficial owner of the Licensee and the Licensee Affiliates shall make such records available at reasonable times, during regular business hours, for inspection by Licensor's designated third party professional auditors. Licensor agrees that it shall not make an audit request under this paragraph 7.3.3 more than once per calendar year.

For purposes of this paragraph 7.3, the following definition applies:

"Change of Control" means an entity becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of securities of the Licensee representing fifty percent (50%) or more of the total voting power represented by the Licensee's then outstanding voting securities.

7.4 Binding on Permitted Successors. Subject to the restrictions on assignment set forth in this Section 7, this Agreement will be fully binding upon the parties, the Licensee Subsidiaries and their respective permitted successors and assigns.

8. ADDITIONAL PROVISIONS

RESERVED

9. MISCELLANEOUS PROVISIONS

9.1 Confidentiality of Terms. The existence of this Agreement and the identities of the parties are not confidential, however, unless otherwise agreed by the Parties, the other terms and conditions of this Agreement are confidential and shall not be disclosed by either Party to any third party except:

- (a) as required by law or legal process, including, without limitation, by a taxing authority;
- (b) in confidence to such Party's legal counsel and professional advisors, tax preparers, accountants, auditors, and directors; or
- (c) in confidence to such third parties that are bound by confidentiality obligations at least as restrictive as those contained in this paragraph 9.1.

In the event either Party determines disclosure of this Agreement or any terms is required under the SEC rules or other applicable securities trading rules, such Party will file a confidential treatment request of this Agreement in connection with a disclosure obligation under such rules (unless such Party has a good faith belief that such a filing would be futile), in addition to complying with the other obligations of this paragraph 9.1, and following prior consultation and review with the other Party in order to ensure that such disclosure is no greater than reasonably necessary. In the event such confidential treatment request is denied by the SEC or other similar securities exchange, the filing Party shall have no obligation to appeal the denial of the request.

Licensor agrees that it will not use the existence of this Agreement and the identity of Licensee in any of its marketing efforts and will not publish the existence of this Agreement or the identity of Licensee on its web pages.

[REDACTED]

However, notwithstanding the foregoing and any prior agreement between the Parties and pursuant to a confidentiality agreement protecting the disclosure of following information described below in (i) and (ii),

(i) Licensor may disclose the terms and conditions of this Agreement in confidence to: (y) their affiliates, current and prospective investors of Licensor and their affiliates, and any acquirer or prospective acquirer of, or of a substantial interest in, any of the Licensed Patents, and (z) the Ford Motor Company; and

(ii) Licensee and Licensee Subsidiaries may disclose this Agreement, and all its terms and conditions, in confidence to any prospective acquirer of Licensee or a Licensee Affiliate or to any supplier of Licensee or any Licensee Affiliate with respect to the Licensed Products. For the avoidance of doubt, Licensee may disclose this Agreement and the terms and conditions hereof in confidence to both direct (Tier 1) suppliers and to indirect (Tier 2 or more) suppliers and may, in confidence, disclose the Agreement and its terms and conditions to MELCO entities that have a need to know the terms and conditions of the Agreement, again on a confidential basis.

In addition, disclosure of the terms and conditions of this Agreement is permitted to the ITC in connection with a motion to terminate the ITC Action, subject to the terms of the Protective Order in such ITC Action.

The foregoing confidentiality restrictions will not apply to a party with respect to any terms or conditions of the Agreement that become publicly known through no fault of such party.

9.2 Acknowledgements. Licensor and Licensee acknowledge and agree that this Agreement has been entered into in order to avoid patent disputes concerning infringement of the Licensed Patents and Licensee agrees that the license fees for the licenses and other rights granted under this Agreement will be paid, without regard for the coverage or duration of particular Licensed Patents, or their validity or enforceability, on the basis set forth in Section 5.

9.3 Governing Law. This Agreement, and the rights and obligations of the parties to this Agreement and any and all disputes or claims with respect to this Agreement's subject matter (including non-contractual disputes or claims), shall be interpreted and construed in accordance with and governed by the laws of the State of Delaware, without regard to its choice of law principles to the contrary.

9.4 Disputes. With the exception of disputes relating to the Licensee's failure to pay to Licensor any amounts due under the terms of this Agreement, any dispute arising under, or in connection with, this Agreement or concerning its interpretation will be escalated to an executive of each party who has the authority to act on behalf of such party including, but not limited to, the CEO, COO, CFO or General Counsel.

9.5 Remedies. Subject to paragraph 9.4, Licensor retains all rights and remedies provided in this Agreement and each other remedy available under applicable laws.

9.6 Representations and Warranties of Licensor. EXCEPT AS SET FORTH IN THIS PARAGRAPH 9.6, LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE LICENSED PATENTS. THE LICENSED PATENTS ARE PROVIDED "AS IS." LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, EVEN IF LICENSOR HAS BEEN MADE AWARE OF SUCH PURPOSE. NOTHING IN THIS AGREEMENT WILL BE CONSTRUED AS AN ASSURANCE, WARRANTY OR REPRESENTATION (A) AS TO THE VALIDITY, ENFORCEABILITY OR SCOPE OF ANY LICENSED PATENT OR ANY COVERED PATENT OR

[REDACTED]

ANY CLAIMS THEREOF; (B) THAT PRACTICE OF THE LICENSED PATENTS OR ANYTHING MADE, USED, SOLD OR OTHERWISE DISTRIBUTED OR DISPOSED OF UNDER ANY LICENSE GRANTED HEREIN IS OR WILL BE FREE FROM INFRINGEMENT OF ANY OTHER PATENTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, EVEN IF LICENSOR HAS BEEN MADE AWARE OF SUCH INFRINGEMENT; OR (C) THAT THE LICENSED PATENTS WILL NOT BE FOUND INVALID, UNPATENTABLE OR UNENFORCEABLE FOR ANY REASON IN ANY ADMINISTRATIVE, ARBITRATION, JUDICIAL OR OTHER PROCEEDING.

Licensor represents and warrants that:

9.6.1 Licensor has full power and authority to execute this Agreement;

9.6.2 Licensor has good title to the Licensed Patents and full power and authority to grant the rights granted in this Agreement and to perform its obligations hereunder;

9.6.3 No other permissions or licenses are or at any time will be necessary to effectuate the licenses and other rights granted in this Agreement to any Licensed Patents;

9.6.4 The execution and delivery of this Agreement by Licensor, the consummation of the transactions contemplated hereby with respect to Licensor, and the performance by Licensor of its obligations under this Agreement does not conflict with or violate any provision of federal, state or local law, rule or regulation to which Licensor is subject to as of the Effective Date, or any agreement or other obligation directly or indirectly applicable to, or binding upon the assets of Licensor, except where such conflict or violation would not have a material adverse effect on Licensor's ability to perform its obligations under this Agreement.

9.7 Representations and Warranties of Licensee. Licensee represents and warrants that

9.7.1 Licensee has full power and authority to execute this Agreement;

9.7.2 Licensee has full power and authority to perform its obligations hereunder;

9.7.3 No other permissions will be necessary to effectuate the Licensee's performance under this Agreement;

9.7.4 The execution and delivery of this Agreement by Licensee and the consummation of the transactions contemplated hereby, and performance by Licensee of its obligations under this Agreement does not conflict with or violate any provision of federal, state or local law, rule or regulation to which a Licensee Party is subject to as of the Effective Date, or any agreement or other obligation directly or indirectly applicable to, or binding upon the assets of a Licensee Party, except where such conflict or violation would not have a material adverse effect on Licensee's ability to perform its obligations under this Agreement; and

9.8 Limitation of Liability; Damages. NO PARTY WILL BE LIABLE TO ANY OTHER PARTY FOR INDIRECT DAMAGES, INCLUDING ANY LOST PROFITS OR OTHER INCIDENTAL OR CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF THIS AGREEMENT, INCLUDING THE USE OR INABILITY TO USE ANY PATENT OR PRODUCT, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NO PARTY'S LIABILITY TO ANY OTHER PARTY FOR CLAIMS ARISING UNDER THIS AGREEMENT WILL EXCEED THE LICENSE FEE RECEIVED BY LICENSOR UNDER THIS AGREEMENT AS OF THE DATE THAT SUCH PARTIES HAVE BEEN NOTIFIED OF A CLAIM; PROVIDED, HOWEVER

[REDACTED]

THAT THIS LIMITATION WILL NOT APPLY TO REDUCE OR OTHERWISE LIMIT THE AMOUNTS DUE AND OWING TO LICENSOR UNDER THIS AGREEMENT, INCLUDING UNDER SECTION 5.

9.9 Relationship of Parties. The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, employment, franchise or agency relationship between Licensor and a Licensee Party. No party has any express or implied right or authority to assume or create any obligations on behalf of any other or to bind any other to any contract, agreement, or undertaking with any third party.

9.10 Headings. The section and paragraph headings used in this Agreement are for convenience only and the parties do not intend that they be used in interpreting this Agreement.

9.11 Severability. If any provision in this Agreement is held to be invalid or unenforceable, the remainder of this Agreement will have full force and effect, and the invalid or unenforceable provision will be modified or partially enforced, to the maximum extent permitted to implement the original intent of the parties.

9.12 Modifications and Amendment. Neither party will be bound by any modifications, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or in a writing signed with or subsequent to execution hereof by an authorized representative of the party to be bound thereby.

9.13 Nonwaiver. Failure by either party to enforce any term of this Agreement will not be deemed a waiver of future enforcement of that or any other term of this Agreement or any other agreement that may be in place between the parties.

9.14 Notices. All notices given under this Agreement will be given in writing in English, and will be effective when delivered in person or by internationally-recognized overnight to the addresses below of the addressee party. Any party may from time to time give written notice pursuant to this paragraph 9.14 of a change in its address for future notice purposes under this Agreement.

If to Licensor:

Intellectual Ventures II, LLC
3150 139th Ave. SE
Building 4
Bellevue, WA 98005
Attention: Managing Director

With a copy to:

Intellectual Ventures Management, LLC
3150 139th Ave. SE
Building 4
Bellevue, WA 98005
Attention: General Counsel

If to Licensee:

BMW of North America, LLC
300 Chestnut Ridge Road
Woodcliff Lake, NJ 07677

Attention: General Counsel

[REDACTED]

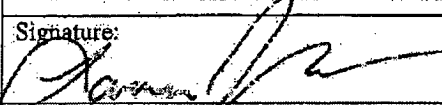
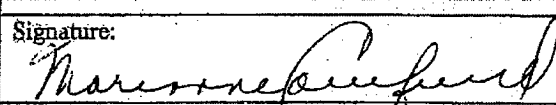
9.15 Interpretation; Comprehension. The official language version of this Agreement is English. Each party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement and that it has executed this Agreement with the consent and on the advice of such counsel. Each party further acknowledges that it and its counsel have had adequate opportunity to investigate or inquire about the subject matter of this Agreement prior to the execution hereof.

9.16 Entire Agreement. This Agreement (including exhibits thereto) constitute the entire agreement between the parties with respect to the subject matter hereof, and merges and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions with respect to such subject matter. Neither of the parties will be bound by any conditions, definitions, warranties, understandings or representations with respect to the subject matter hereof other than as expressly provided herein or in a writing signed by authorized representatives of all parties.

9.17 Counterparts; Signature. This Agreement may be executed in counterparts, and once signed, any reproduction of this Agreement made by reliable means (for example, .pdf or .TIFF format), will be considered an original, and all of which together constitute one and the same instrument. After delivery of a complete copy of such reproduction showing the party's execution of this Agreement, such party will promptly deliver to all other parties a copy of the Agreement bearing the original signature for such party.

[signature page to License Agreement to follow]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

Licensor:	Company (on behalf of itself and Licensee Affiliates):
Name: Intellectual Ventures II, LLC	Name: BMW of North America, LLC
Signature: 	Signature: 
Name/Title of person signing (please print): Lawrence Freiber / CFO	Name/Title of person signing (please print): MARIANNE CAULFIELD / Corp Counsel
Signature Date: July 26, 2018	Signature Date: 7/27/18

[signature page to License Agreement]

EXHIBIT B

**Omitted as Highly
Confidential Business
Information**

United States International Trade Commission

Docket No. 337-TA-1073

Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II

CERTIFICATE OF SERVICE

I, Svetlana Santos, hereby certify that on July 30, 2018, true and correct copies of the foregoing were served on the following listed below:

The Honorable Lisa R. Barton Secretary U.S. INTERNATIONAL TRADE COMMISSION 500 E Street SW Washington, DC 20436	<input checked="" type="checkbox"/> Via EDIS <input type="checkbox"/> Via Federal Express Overnight Delivery <input checked="" type="checkbox"/> Via Hand Delivery
The Honorable Thomas P. Pender U.S. INTERNATIONAL TRADE COMMISSION 500 E Street SW, Room 317 Washington, DC 20436	<input type="checkbox"/> Via Federal Express Overnight Delivery <input checked="" type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail <i>patricia.chow@usitc.gov</i>
Mr. Andrew Beverina Investigative Attorney Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street, S.W., Suite 401 Washington, D.C. 20436	<input type="checkbox"/> Via Federal Express Overnight Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail <i>Andrew.Beverina@usitc.gov</i>
<i>Counsel for Respondents Aisin Seiki Co., Ltd., Aisin Holdings of America, Inc., Aisin Technical Center of America, Inc., Aisin World Corporation of America</i> Eric W. Schweibenz Robert C. Mattson John S. Kern Alexander B. ENglehart OBLON, McCELLAND, MAIER & NEUSTADT, L.L.P. 1940 Duke Street Alexandria, Virginia 22314 Telephone: 703-413-3000 Facsimile: 703-413-2220	<input type="checkbox"/> Via Federal Express Overnight Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail <i>IV_AisinITC@oblon.com</i>

United States International Trade Commission

Docket No. 337-TA-1073

Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II

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United States International Trade Commission

Docket No. 337-TA-1073

Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II

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United States International Trade Commission

Docket No. 337-TA-1073

Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II

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Automotive Motor Americas, LLC*

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United States International Trade Commission

Docket No. 337-TA-1073

Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II

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United States International Trade Commission

Docket No. 337-TA-1073

Certain Thermoplastic-Encapsulated Electric Motors, Components Thereof, and Products and Vehicles Containing Same II

/s/ Svetlana Santos

Svetlana Santos

Legal Assistant

MINTZ, LEVIN, COHN, FERRIS,

GLOVSKY AND POPEO, P.C.

One Financial Center

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sasantos@mintz.com