

**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN OUTDOOR AND SEMI-  
OUTDOOR ELECTRONIC DISPLAYS,  
PRODUCTS CONTAINING SAME,  
AND COMPONENTS THEREOF**

**Inv. No. 337-TA-1331**

**ORDER NO. 21: INITIAL DETERMINATION AND ORDER GRANTING-IN-PART  
AND DENYING-IN-PART RESPONDENTS' MOTION FOR  
SUMMARY DETERMINATION**

(June 20, 2023)

On April 27, 2023, Respondents Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung SDS Co. Ltd., Samsung SDS America, Inc., Industrial Enclosures Corporation d/b/a Palmer Digital Group, Coates Signco Pty Limited, and Coates US Inc. (“Respondents”) filed a motion for summary determination with a memorandum of points and authorities in support (“Motion” and “Mem.,” Docket No. 1331-007). On May 8, 2023, Complainant Manufacturing Resources International, Inc. (“Complainant,” or “MRI”) filed its opposition (the “Compl. Opp.,” EDIS Doc. ID 795962). On May 11, 2023, Respondents filed a reply (“Resp. Reply,” EDIS Doc. ID 796245).

Respondents’ motion seeks adjudication of non-infringement for certain non-accused with respect to certain claims of the asserted patents. The patents at issue in this investigation are U.S. Patent No. 8,854,595 (“the ‘595 patent”); U.S. Patent No. 9,173,322 (“the ‘322 patent”); U.S. Patent No. 9,629,287 (“the ‘287 patent”); U.S. Patent No. 10,506,740 (“the ‘740 patent”); and U.S. Patent No. 11, 013, 142 (“the ‘142 Patent”). *See* 87 *Fed. Reg.* 58132 (Sept. 23, 2022).

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For the reasons set forth below, the motion is GRANTED-IN-PART and DENIED-IN-PART. In addition, additional clarification regarding one product, the “OH24B” product is required from Complainant.

### I. LEGAL STANDARDS

#### A. Summary Determination

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

The determination sought by the moving party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

19 C.F.R. § 210.18(b). By analogy to Fed. R. Civ. P. 56 (a), in deciding whether to grant summary determination the evidence “must be viewed in the light most favorable to the party opposing the motion . . . with doubts resolved in favor of the nonmovant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (citations omitted); *see also Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001) (“When ruling on a motion for summary judgment, all of the nonmovant’s evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant’s favor.”).

The moving party bears the initial burden to demonstrate the absence of a genuine issue of fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 251-52, 256 (1986). Once the moving party has met its initial burden, the burden shifts to the non-movant to show a genuine issue for trial. *Id.*; *see also Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software*, Inv. No. 337-TA-724, Order No. 18, 2011 WL 1686359, at \*1 (Feb. 11, 2011) (“The moving party bears the initial burden of establishing that there is an absence of a genuine issue of material fact and that it is entitled to judgment as a



matter of law . . . . When such an initial showing is established, the burden shifts to the opposing party, who must set forth specific facts showing that there is a genuine issue for trial.”) (internal quotations omitted).

Under Rule 56, summary judgment is proper where a party fails to make a showing “sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The burden of the moving party may be discharged by pointing out to the court the lack of evidence supporting the non-moving party’s case. *Id.* at 325. Where the non-moving party bears the burden of proof at trial, that party must produce in response to a motion for summary determination more than a “scintilla of evidence . . . ; there must be evidence on which the jury could reasonably find for the plaintiff.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Further, “[i]f an element of a cause of action deemed essential as a matter of law cannot be proved, summary judgment is appropriate regardless of disputes over other issues.” *Certain Carbon and Alloy Steel Prods.*, Inv. No. 337-TA-1002, Order No. 103, at 23 (Oct. 2, 2017) (EDIS Doc. ID 627606) (citing *Celotex*, 477 U.S. at 322-23)).

#### **B. Adjudication of Non-Accused Products**

The Commission has set forth four factors to consider when determining whether a “redesigned or alternative” product which has not been accused, but which the respondent seeks to be adjudicated, should be addressed. *Certain Human Milk Oligosaccharides and Methods of Producing the Same*, Inv. No. 337-TA-1120, Comm’n Op., 2020 WL 3073788, at \*11 (June 8, 2020) (“*Oligosaccharides*”). These are: “(1) whether the product is within the scope of the investigation; (2) whether it has been imported; (3) whether it is sufficiently fixed in design; and (4) whether it has been sufficiently disclosed by respondent during discovery.” *Id.* (citing *Certain Two-Way Radio Equipment and Systems, Related Software, & Components Thereof*, Inv.

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No. 337-TA-1053, Comm'n Op., 2018 WL 8648379 (Dec. 18, 2018)). In connection with this test, the Commission stated that it has a “policy in favor of adjudicating redesigns to prevent subsequent and potentially burdensome proceedings that could have been resolved in the first instance in the original Commission investigation.” *Id.*

In opposition to the motion, Complainant suggests that the Commission’s *Oligosaccharides* opinion only applies to products that are denominated “redesigns.” See Compl. Opp. at 4, 18-19. In the undersigned’s view, the *Oligosaccharides* framework is not limited to “redesigns,” and Complainant identifies no meaningful difference between a redesigned product and an alternative non-accused product. Indeed, *Oligosaccharides* itself refers to the adjudication of a “redesigned *or alternative*” product. 2020 WL 3073788, at \*11 (emphasis added).<sup>1</sup> Further, citing *Oligosaccharides*, the Commission has indicated that non-accused products may be adjudicated so long as a respondent “put[s] a particular product at issue during discovery, and in its substantive arguments before the ALJ.” *Certain Audio Players & Controllers, Components Thereof, and Prods. Containing the Same*, Inv. No. 337-TA-1191, Comm’n Op., 2022 WL 355867 at \*17 n.19 (Feb. 1, 2022) (“*Certain Audio Players*”) (“[w]here a product has not been accused by the complainant, it is incumbent upon a respondent to put a particular product at issue during discovery, and in its substantive arguments before the ALJ, if it wants a particular product to be explicitly adjudicated as not infringing”) (citing *Oligosaccharides*)<sup>2</sup>; see also *Certain Road Constr. Machines and Components Thereof*, Inv. No.

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<sup>1</sup> Similarly, in *Certain Two-Way Radio Equipment and Systems, Related Software and Components Thereof*, Inv. No. 337-TA-1053, 2018 WL 8648379, at \*13 (Dec. 18, 2018), the Commission noted that non-accused products appropriate for adjudication are “typically redesigned products,” indicating that such adjudication is not limited to redesigned products.

<sup>2</sup> In *Certain Audio Players*, the respondent had sought a carve-out from an exclusion order for non-accused products “that are within the scope of the Investigation and for which Google provided technical information and other discovery,” but which had not been adjudicated. See *Certain Audio Players*,



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337-TA-1088, Initial Determination, 2019 WL 11027837, at \*16 (adjudicating non-accused “older series” of milling machines, the “series 1310 machines” within the scope of the investigation) (Feb. 14, 2019) (cited in Resp. Reply at 5)<sup>3</sup>; *Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tools, Products Containing Same, and Power Tool Products with Lithium-Ion Batteries Containing Same*, Inv. No. 337-TA-951, Order No. 19, at 11 (Sept. 14, 2015) (EDIS Doc. ID 566036) (“*Lithium-Ion Batteries*”) (“Administrative Law Judges may grant summary determination of non-infringement where a Complainant fails to present evidence of infringement on a product, yet seeks to have the product covered by the exclusion order.”). This approach is consistent with the Commission’s policy in favor of preventing “subsequent and potentially burdensome proceedings that could have been resolved in the first instance in the original Commission investigation” (*Oligosaccharides*, 2020 WL 3073788, at \*11)—a concern which applies regardless of whether the product is identified as a redesign. *See* Mem. at 20-21.<sup>4, 5</sup>

Adjudication is unnecessary, however, if Complainant does not seek to include the non-accused product within the scope of any remedial order. *See Lithium-Ion Batteries*, Order No. 19

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Respondent Google’s Submission on Remedy, Bond, and Public Interest, at 14-15 (Dec. 2, 2021) (EDIS Doc. ID 758487).

<sup>3</sup> The Commission declined to review this issue and included a carve-out for the 1310 machines in the limited exclusion order that issued. *See Certain Road Constr. Machines and Components Thereof*, Inv. No. 337-TA-1088, Comm’n Op., 2019 WL 6003332, at \*2-3, \*25-27 (July 15, 2019); 86 Fed. Reg. 27478 (May 20, 2021) (rescinding limited exclusion order on other grounds).

<sup>4</sup> An exclusion order “is typically not limited to the accused products, but includes all products within the scope of the investigation that are covered by the patent claims for which a violation is found” (*Certain Audio Players*, 2022 WL 355867, at n.19), and thus may encompass both redesigned products and other non-accused products. *See also Oligosaccharides*, 2020 WL 3073788, at \*11.

<sup>5</sup> Certain of the ALJ orders cited by Complainant (*see* Compl. Opp. at 5-6, 19), *inter alia*, preceded *Oligosaccharides* and/or differ from the circumstances here. In *Certain Integrated Circuits* (cited in Compl. Mem. at 6), for example, Complainant had represented it would not seek to include the disputed products in an exclusion order. 2022 WL 1115484, at \*4 (Apr. 4, 2022). In *RF Capable Integrated Circuits* (cited in Compl. Mem. at 5), the ALJ noted the lack of noninfringement contentions or expert reports. 2016 WL 4426486, at \*6 (Aug. 4, 2016); *see generally* Resp. Reply at 3-5.



at 11 (summary judgment of non-infringement was “not warranted . . . because Complainants no longer accuse the products-at-issue here and agreed to exclude them from the scope of any exclusion order”); *contrast with Certain Electronic Digital Media Devices and Components Thereof*, Inv. No. 337-TA-796, Comm’n Op., 2013 WL 10734395, at \*71 (Sept. 6, 2013) (affirming the ALJ’s decision to adjudicate products where “[t]he ALJ determined that Apple did not seem to want the design around products adjudicated, but still wanted to be able to argue that they fall within the scope of any exclusion order that may issue”).<sup>6</sup>

## II. DISCUSSION

Respondents seek adjudication of four categories of products. These are: (1) the “OH24B Product” (*see* Mem. at 4); (2) the “Non-Accused OM Products,” specifically the OM46N, OM55N, OM46B, OM55B, and OM75A products (Mem. at 8)<sup>7</sup>; (3) the “OH46/55 Products” (Mem. at 13); and (4) the “OH75/85 Products” (Mem. at 13).<sup>8</sup> *See also* Compl. Opp. at 8, 12,

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<sup>6</sup> Complainant further argues that adjudication is improper because it “risks creating confusion in the enforcement of remedial orders due to the nature of Respondents’ arguments.” Compl. Opp. at 19-20. To the contrary, adjudication of known, non-accused products (to the extent Complainant seeks to include them in an exclusion order) will simplify, not complicate, enforcement. Complainant also argues that granting Respondents’ motion would “unfairly transform the limitations Complainant was forced to make due to Commission procedures into forced admissions of non-infringement.” *Id.* at 1. The Commission has rejected such arguments where non-accused products have been sufficiently placed at issue and has emphasized the policy of avoiding “potentially burdensome proceedings” that could have been resolved in the original Commission investigation. *See Certain Electronic Digital Media Devices and Components Thereof*, Inv. No. 337-TA-796, Comm’n Op., 2013 WL 10734395, at \*71 (Sept. 6, 2013); *Oligosaccharides*, 2020 WL 3073788, at \*11. To the extent Complainant believed that the hearing time and prehearing brief lengths were inadequate (*see* Compl. Opp. at 1), Complainant should have raised these issues rather than disregarding Respondents’ disclosures and non-infringement contentions.

<sup>7</sup> Complainant notes that it has accused certain “OM” products of infringement (*see* Compl. Opp. at 7 n.2); for purposes of this Initial Determination and Order, the “Non-Accused OM Products” or “OM Products” refer to the OM46N, OM55N, OM46B, OM55B, and OM75A products.

<sup>8</sup> Respondents identify the OH46/55 and OH75/85 Products as Samsung’s OH46F, OH46B, OH55F, OH55A-S, OH75F, OH75A, OH85F and OH85N Products. *See* Mem. at 13. The OH46/55 Products are accused products with respect to certain asserted claims but not others. Similarly, the OH 75/85 Products are accused products with respect to a different set of asserted claims but not others. Respondents’ motion seeks a finding of non-infringement with respect to products not accused of infringing particular claims. *See* Mem. at 25.



13, 15. With regard to each category, the parties dispute both whether the product(s) should be adjudicated and, if they are adjudicated, whether issues of material fact preclude summary determination.

**A. OH24B Product**

Respondents argue that the OH24B Product should be adjudicated as non-infringing. In particular, Respondents argue that the product falls within the scope of the investigation (Mem. at 4, citing Ex. 1 at 9 and Ex. 5 at 21), that it has been imported (*id.*, citing Ex. 4 (Inventory and Importation Stipulation)), and that Respondents “fully disclosed the technical features and functionality of the OH24 Product” in certain technical documents produced in January 2023 (*id.*). Respondents contend that the OH24B product is fixed in design. *Id.* at 22; *see also id.* at 4 (identifying technical documents produced). Respondents further submit that they have “consistently set forth contentions and evidence that show in detail why the OH24B Product does not infringe any Asserted Claim,” including in initial non-infringement contentions, final non-infringement contentions, and their expert’s report. *See id.* at 5.

Complainant, in opposition, argues that adjudication is improper because it has “never accused” this product of infringement. Compl. Opp. at 18-20. Complainant states that “it has been made clear that the OH24B Product is not within the scope of the investigation.” *Id.* at 18. Complainant does not dispute that the product has been imported and is fixed in design. Complainant also do not contest Respondents’ statements regarding the discovery and contentions provided regarding this product. *See id.*

As discussed above in Part I.B, the fact that Complainant has not accused the OH24B product does not preclude adjudication. The undersigned finds that this product is within the scope of the investigation (at least to the extent Complainant does not seek to include it within

the scope of an exclusion order).<sup>9</sup> The undersigned further finds that the product has been imported and is fixed in design based on the undisputed evidence and representations set forth by Respondents discussed above. The record also shows sufficient disclosure during discovery to put the product at issue based on Respondents' identification of the OH24B product in response to Complainant's interrogatory seeking an identification of "Accused Products,"<sup>10</sup> the parties' stipulation addressing importation of this this product (Mot. Ex. 4), Respondents' non-infringement contentions regarding this product,<sup>11</sup> Respondents' undisputed representations of documents produced (*see* Mem. at 4), and Respondents' disclosure of their expert's opinion regarding non-infringement for this product.<sup>12</sup> Accordingly, the four *Oligosaccharides* factors weigh in favor of adjudication.

Thus, to the extent Complainant seeks to include the OH24B product within the scope of any remedial order, the product may be adjudicated. However, Complainant's submissions to date suggest (but do not clearly state) that it would not seek to include the OH24B product within the scope of any exclusion order because that product is not "the subject of the asserted patents." *See* Compl. Opp. at 9 ("MRI has . . . only accused displays over 24 inches, which are those

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<sup>9</sup> The scope of the investigation is defined as "outdoor and semi-outdoor electronic displays, products containing same (housings, enclosures, kiosks, and menu boards), and components thereof (systems for cooling electronic displays)." Notice of Institution of Investigation, 87 *Fed. Reg.* 58132 (Sept. 23, 2022) ("Notice of Institution"). Respondents have submitted an interrogatory response indicating that the OH24B Product is an outdoor or semi-outdoor electronic display, and Complainant has not provided contrary evidence. *See* n.10 *infra*.

<sup>10</sup> Complainant defined "Accused Products" as "Samsung outdoor and semi-outdoor electronic displays and products containing same, including, but not limited to" certain identified products and sought an identification of each "Accused Product" in its Interrogatory No. 1. *See* Mem. at 3 (citing Ex. 19 at 3, 8). Respondents identified the OH24B product in its responses to Interrogatory No. 1. *See id.* (citing Ex. 1 at 8-12).

<sup>11</sup> *See* Ex. 12 at 29 ('595 patent), 52 ('322 patent), 71 ('287 patent), 77 ('740 patent), 79-80 ('142 patent); Ex. 13 at 30-31 ('595 patent), 63 ('322 patent), 91-93 ('287 patent), 108 ('740 patent), 115-116 ('142 patent); Mem. at 5.

<sup>12</sup> *See* Ex. 14 at ¶¶ 197-201 ('595 patent), 289-295 ('322 patent), 350-354 ('287 patent), 425-429 ('740 patent), 461-466 ('142 patent); Mem. at 5.



displays that require the advanced cooling systems that are the subject of the asserted patents.”); *id.* at 20 (“MRI has not accused the OH24B of infringement. The product is too small.”); *id.* at 18 (“it has been made clear that the OH24B Product is not within the scope of the investigation”); Compl. Prehearing Br. at 24 (June 5, 2023) (EDIS Doc. ID 797866) (“MRI has only accused displays over 24-inches in size, which are those displays that are the subject of the asserted patents. Thus, the OH24B product is not at issue for that reason alone.”). In the interests of efficiency for the parties and the Court, Complainant should confirm whether it seeks to include the OH24B product within the scope of any exclusion order. Complainant should provide this disclosure by June 21, 2023 to the other parties and to the ALJ.

## **B. The Non-Accused OM Products**

### **1. Whether the Non-Accused OM Products Should Be Adjudicated**

Respondents also seek adjudication of the Non-Accused OM Products. Respondents argue that these are semi-outdoor displays that fall within the scope of the investigation (Mem. at 8 (citing Mot. Ex. 15 at 8 and Ex. 3 at 9)), that they have been imported (*id.* at 9, citing Mot. Ex. 4), and that Respondents produced documents relating to these products in November 2022 and February 2023 (*id.* at 8-9). Respondents argue that these products are fixed in design, as shown by their commercial availability. *Id.* at 23. Respondents further state that they have “consistently explained that the OM Products do not infringe any asserted claim of the Asserted Patents,” including in final non-infringement contentions and their expert’s report. *See id.* at 9-10 (citing Mot. Ex. 13 and 14).

Complainant, in opposition, argues that adjudication is improper for the same reasons it is improper for the OH24B product. Complainant does not appear to dispute that these products fall within the scope of the investigation and have been imported and are fixed in design, or

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contest Respondents' statements regarding the specific discovery and contentions provided regarding these products. *See* Compl. Opp. at 23. Complainant alleges, however, that Respondents "rely on conclusory expert testimony based on the limited information produced during discovery on these products." *Id.* at 12. Respondents argue, on reply, that MRI has never previously argued that the document production was deficient and that "MRI cites many of these types of documents in its infringement analysis for claims not addressed in Respondents' Motion." Resp. Reply at 8-9.

As with the OH24B Product, the undersigned finds that the record supports a finding that the Non-Accused OM Products are within the scope of the investigation, have been imported, and are sufficiently fixed in design. *See* Mem. at 8-10, 23; Mot. Ex. 15 at 8; Mot. Ex. 3 at 9; Notice of Institution; Mot. Ex. 4; Part II.A *supra*.

With respect to the sufficiency of disclosure during discovery, the key question is whether Respondents provided "sufficient (not extensive) fact and expert discovery to put [complainant] on notice of that [product] and its relevant features." *Oligosaccharides*, 2020 WL 3073788, at \*12; *see also id.* (adjudication was proper where the "documentary evidence as well as fact and expert testimony" were sufficient to put Complainant "on notice of the relevant features" of the product). Here, the record shows that the discovery produced by Respondents was sufficient to provide this notice. In particular, Respondents' disclosure of these products in response to Complainant's interrogatory (*see* Mem. at 8), the parties' importation stipulation identifying these products (Mot. Ex. 4), Respondents' production of technical information, and Respondents' provision of non-infringement contentions—all during fact discovery—provided notice to Complainant. *See* Mem. at 8-10; Mot. Ex. 15 at 8; Mot. Ex. 3 at 9; Mot. Ex. 13 (final non-infringement contentions) at 32-36 ('595 patent), 64-69 ('322 patent), 93-96 ('287 patent),



108-112 ('740 patent), 116-123 ('142 patent); Mem. at 3. Having received such notice, Complainant should have sought additional discovery if needed. *See Oligosaccharides*, 2020 WL 3073788, at \*10, 13 (finding sufficient disclosure where Respondent produced “relevant discovery . . . within the fact discovery period,” including certain discovery responses served on the last day of fact discovery, and stating that if Complainant “and its expert deemed such evidence to be insufficient, [Complainant] could and should have taken available procedural steps, such as a motion to reopen discovery or to compel further discovery, because the burden of establishing infringement remains with [Complainant]”).<sup>13</sup> Additional disclosures were provided by Respondents’ expert report. *See* Mot. Ex. 14 at ¶¶ 202-212, 296-308, 355-364, 430-437, 467-480. Following the guidance provided by *Oligosaccharides*, the fact and expert discovery provided Complainant sufficient notice of the Non-Accused OM Products and their relevant features.

Accordingly, the *Oligosaccharides* factors weigh in favor of adjudicating the Non-Accused OM Products.

## **2. Whether Summary Determination of Non-Infringement is Warranted**

The undersigned further finds that, with respect to the Non-Accused OM Products, summary determination of non-infringement is proper with respect to certain asserted claims. Complainant bears the burden of proof of infringement as to alternative products properly placed at issue. *See Oligosaccharides*, 2020 WL 3073788, at \*13 (finding non-infringement of non-accused product where Complainant “failed to satisfy its burden of establishing infringement”).<sup>14</sup>

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<sup>13</sup> Fact discovery closed on March 24, 2023. *See* Order No. 7. The deadline for motions to compel fact discovery was March 29, 2023. *Id.*

<sup>14</sup> There may ultimately be a question regarding whether Complainant must provide evidence sufficient to show, by a preponderance, that all limitations of the asserted claims are met by the alternative non-accused product, or only evidence regarding individual limitations properly challenged by Respondents. *See* discussion *supra*. This Order does not address that issue because, *inter alia*, Respondents’ motion

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Here, Respondents have pointed to multiple limitations for each of the asserted claims for which they contend that Complainant cannot show infringement. *See* Mem. at 10-13. Regarding

the '595 patent, Respondents assert non-infringement based on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 10 (citing paragraphs of Respondents' expert report).

Regarding the '322 patent, Respondents assert non-infringement based on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See* Mem. at 11 (citing paragraphs of Respondents' expert report).

Regarding the '287 patent, Respondents assert non-infringement based on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See* Mem. at 11.

Regarding the '740 patent, Respondents assert non-infringement based on [REDACTED]

[REDACTED]

*See* Mem. at 11.

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focuses on the limitations Respondents have disputed in their non-infringement contentions. To the extent the parties believe this question is significant, they should address it in posthearing briefs.



Regarding the '142 patent, Respondents assert non-infringement based on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Mem. at 12-13.

In response, Complainant asserts that Respondents' arguments rely on a disputed claim construction regarding [REDACTED]

[REDACTED] Compl. Opp. at 10-11, 12. Complainant further argues that Respondents rely on "conclusory expert testimony based on the limited information produced during discovery on these products." *Id.* at 12-13. Finally, Complainant argues that Respondents' arguments regarding the '595 and '322 patent are inconsistent with Respondents' invalidity contentions. Complainant does not provide any expert declaration in support of infringement as to the Non-Accused OM Products.

Upon review of the parties' submissions, summary determination is GRANTED as to claims 9, 12, 13, and 16 of the '322 patent; claims 12 and 15 of the '287 patent; claims 1, 5, and 6 of the '740 patent, and claims 1, 2, 3, 6, 8, 10, 11, and 12 of the '142 patent.

With respect to claims 9, 12, 13, and 16 of the '322 patent, Respondents have alleged that the Non-Accused OM Products fail to meet claim 9's requirement of a posterior surface "where no electronics are mounted to the posterior surface of the electronics display," which is also incorporated into dependent claims 12, 13, and 16. See '322 patent, claims 9, 12, 13, and 16; Mem. at 11. Complainant's only argument potentially drawn to this limitation is that Respondents' expert testimony is "conclusory" and based on "limited information produced during discovery," which lacked "CAD files." See Compl. Opp. at 12-13. It is Complainant's

burden to prove infringement. *See Oligosaccharides*, 2020 WL 3073788, at \*13. Complainant has identified no expert declaration or other evidence sufficient to support a finding that this limitation is met by the Non-Accused OM Products. With regard to the asserted limited discovery, the discovery provided was sufficient such that it was incumbent on Complainant to seek further information if needed.<sup>15</sup> *See Oligosaccharides*, 2020 WL 3073788, at \*12 (Respondent “was required to provide sufficient (not extensive) fact and expert discovery to put Glycosyn on notice of that strain and its relevant features”); *id.* at \*13 (where sufficient relevant discovery was produced, complainant “could have and should have taken available procedural steps” to obtain any further necessary information). Accordingly, summary determination of non-infringement on these claims is warranted. *See, e.g., Bayer AG v. Elan Pharm. Res. Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000) (“If any claim limitation is absent from the accused device, there is no literal infringement as a matter of law.”).<sup>16</sup>

Similarly, for the ‘287, ‘740, and ‘142 patents, Respondents have alleged non-infringement based on the failure of the Non-Accused OM Products to meet the requirement of a “closed loop of isolated gas which circulates within the housing” of claim 12 (and dependent claim 15) of the ‘287 patent; the requirement of “a closed loop gas circulation path about the electronic image assembly” of claim 1 (and dependent claims 5 and 6) of the ‘740 patent; the requirement of “a closed loop airflow pathway passing through the housing, wherein said closed loop airflow passes around said electronic image assembly and is configured to accommodate circulating gas, and wherein at least a portion of said closed loop airflow pathway extends

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<sup>15</sup> Respondents provided non-infringement contentions and expert opinion on this limitation, including citations to documents. *See* Mot. Ex. 13 (Respondents’ non-infringement contentions) at 66-67, 69; Mot. Ex. 14 (Neikirk Rpt. at ¶¶ 301-302, 306-307); Part II.B.1 *supra*.

<sup>16</sup> There is also no contention that this limitation (or any other limitation addressed in this Order) is met under the doctrine of equivalents.



between said electronic image assembly and said cover panel” of claim 1 (and dependent claims 2-3) of the ‘142 patent; the requirement of “a closed loop gas circulation pathway contained within the housing, wherein a portion of said closed loop gas circulation pathway passes between said transparent cover panel and said electronic image assembly” of claim 6 (and dependent claims 8, 10 and 11) of the ‘142 patent; and the requirement of a “a closed loop airflow pathway within said housing, wherein at least a portion of said closed loop airflow pathway extends between an electronic image assembly and a cover panel forming a front portion of said housing and spaced apart from said electronic image assembly” of claim 12 of the ‘142 patent. Mem. at 10-12.<sup>17</sup> Complainant has identified no expert declaration or other evidentiary support sufficient to meet its burden of proof and thus summary determination on these claims is warranted.

In addition, with respect to the ‘142 patent, Respondents have alleged non-infringement based on a lack of limitations drawn to the “at least one polarizer located at an inward facing surface of said cover panel” of claim 1 (and dependent claims 2-3); the “one or more solar energy reduction layers located at said transparent cover panel” of claim 6 (and dependent claims 8, 10, and 11); and the “one or more solar energy reduction layers at an inward facing surface of said cover panel” of claim 12. See Mem. at 12-13.<sup>18</sup> Complainant has identified no expert declaration or other evidentiary support sufficient to meet its burden of proof and thus summary determination on these claims is warranted for this reason too.

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<sup>17</sup> Respondents provided non-infringement contentions and expert opinion on these limitations, including citations to documents. See Mot. Ex. 13 at 93-96 (‘287 patent), 108-112 (‘740 patent), 116-123 (‘142 patent); Mot. Ex. 14 (Neikirk Rpt. at ¶¶ 357-358, 361-362, 431-432, 435-436, 468, 470, 472, 475, 477, 479). The undersigned notes that the term “closed loop” was disputed during *Markman* proceedings, but Complainant’s motion response provides no evidence or argument of infringement relying upon the construction of “closed loop.” Moreover, the *Markman* Order specifically provided an opportunity for the parties to address any holdings in the *Markman* Order “including in connection with pending summary determination motions” that they could not have previously addressed. See Order No. 13, at 55. No party sought to supplement briefing on this motion in view of the *Markman* Order.

<sup>18</sup> Respondents provided non-infringement contentions and expert opinion on this issue, including citations to documents. See Mot. Ex. 13 at 119-120, 122-123; Neikirk Rpt. at ¶¶ 469-70, 476-477.

Regarding the asserted claims of the '595 patent and the remaining asserted claims of the '322 patent, and taking the evidence in the light most favorable to the non-moving party, summary determination is denied. It is unclear from Respondents' arguments, *inter alia*, whether the limitations relied upon by Respondents in their summary determination motion concern rejected claim construction arguments and/or issues involving inconsistencies in expert testimony. *See, e.g.*, Compl. Resp. at 9-10, 12-13; Respondents' Opposition to MRI's Motion for Summary Determination, at 4 (May 8, 2023) (EDIS Doc. ID 795057) (arguing that inconsistencies in expert testimony may support denial of summary determination); Mem. at 9; Compl. Opp. at 20-21 (claim construction disputes may make summary determination inappropriate); *cf. Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (trial court may act "with caution in granting summary judgment" and may "deny summary judgment in a case where there is reason to believe that the better course would be to proceed to trial"). Taking the evidence in the light most favorable to Complainant, these issues will be determined in the Final ID.

### **C. Non-Asserted Claims for the OH46/55 Products**

Respondents further seek adjudication that the OH46/55 products do not infringe certain non-asserted claims of the asserted patents. *See* Mem. at 15, 25.

#### **1. Whether the OH46/55 Products Should Be Adjudicated As To The Non-Asserted Claims**

Respondents argue that the *Oligosaccharides* factors have been met regarding adjudication of the OH46/55 products as to the unasserted claims. Respondents submit that these products are within the scope of the investigation, are imported, and are fixed in design. *See* Mem. at 24 (noting that MRI has accused these products of infringing other claims).

Respondents contend that there has been extensive discovery regarding these products (*see* Mem.



at 14-15), and that Respondents have “consistently articulated” its non-infringement theories as to the unasserted claims in non-burden contentions and in expert testimony. *See id.* at 15-16, 25-26.

Complainant maintains that summary determination is not warranted because “[n]o efficiency or predictability is provided by adjudicating noninfringement of the Accused Products by claims that have not been asserted against them” and that the requested adjudication “risks creating confusion in the enforcement of remedial orders and at the hearing.” Compl. Opp. at 24-25.

Based on the evidence of record and Respondents’ undisputed representations, the undersigned finds that the *Oligosaccharides* factors weigh in favor of adjudicating the OH46/55 Products as to the unasserted claims. There is no dispute that the products are within the scope of the investigation, are imported, and are fixed in design. *See* Notice of Institution; Mot. Ex. 4 (Importation Stipulation); Mem. at 14-15. Complainant does not dispute that document discovery was provided as to these products, and Respondents set forth specific non-infringement contentions as to these claims in their initial non-infringement contentions, final non-infringement contentions, and expert report. *See* Mot. Ex. 12 at 27-28 (‘595 patent); *id.* at 50-51 (‘322 patent), *id.* at 76-77 (‘740 patent); *id.* at 78-79 (‘142 patent); Mot. Ex. 13 at 28-29 (‘595 patent); *id.* at 61-62 (‘322 patent), *id.* at 107-108 (‘740 patent); *id.* at 114-115 (‘142 patent); Ex. 14 (expert report) at ¶¶ 144-148 (‘595 patent), 271-274 (‘322 patent), ¶¶ 372-75 (‘740 patent), ¶¶ 442-447 (‘142 patent).<sup>19</sup>

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<sup>19</sup> Moreover, as discussed *supra*, adjudicating these products will, if anything, aid the enforcement of remedial orders.

**2. Whether Summary Determination of Non-Infringement Is Warranted**

Respondents seek an adjudication that the OH46/55 Products do not infringe claims 4, 7, and 8 of the '595 patent, claims 4, 5, and 8 of the '322 patent, claims 1, 5, and 6 of the '740 patent, and claims 1-3, 6, 8, and 10-12 of the '142 patent.

Regarding the '595 patent, Respondents assert non-infringement (as to claim 4 and dependent claims 7 and 8) based on [REDACTED]

[REDACTED]

[REDACTED]

Mem. at 16. Respondents also assert non-infringement as to claim 7 based on [REDACTED]

[REDACTED]

[REDACTED] *See id.*

Regarding the '322 patent, Respondents assert non-infringement (as to claims 4, 5, and 8) based on the "same reasons" described for claim 4 of the '595 patent. Mem. at 16. Respondents further assert non-infringement based on [REDACTED]. *Id.*

Regarding the '740 patent, Respondents assert non-infringement (as to claims 1, 5, and 6) based on [REDACTED]

[REDACTED] *Id.*

Regarding the '142 patent, Respondents assert non-infringement based on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## PUBLIC VERSION

Complainant opposes the motion. Regarding the ‘595 patent and ‘322 patents, Complainant argues that certain of Respondents’ arguments rely on improper claim construction or are contradicted and/or disputed by expert testimony on these issues. *See* Compl. Opp. at 25-26. Regarding the ‘142 patent, Complainant argues that Respondents’ contentions “are unsupported by any evidence” other than “conclusory statements of its expert” and that “Dr. Neikirk identifies no evidence or reasoning to support his conclusions as to any limitations of the ‘142 patent other than the lack of heat exchangers.” *Id.* at 26. Complainant contends that there is a dispute regarding the meaning of “heat exchangers” and that “summary determination of noninfringement as to the OH46/55 Products for the ‘740 Patent could only be premised upon the lack of heat exchangers and the ALJ would be implicitly construing that term as excluding any device in the OH46/55 Products without the benefit of a complete record.” *Id.* at 27.

Upon review of the submissions, summary determination is GRANTED as to claims 1-3, 6, 8, 10, 11, and 12 of the ‘142 patent. Respondents allege non-infringement based on a failure to satisfy the limitation requiring airflow “between said electronic image assembly and said cover panel” is satisfied (as required by claim 1 and dependent claims 2-3). *See* ‘142 patent, claim 1 (requiring “at least a portion of said closed loop airflow pathway extends between said electronic image assembly and said cover panel”). Respondents also allege non-infringement regarding similar limitations of claims 6 and 12 (and dependent claims 8, 10, and 11). *See* ‘142 patent, claim 6 (requiring “a closed loop gas circulation pathway contained within the housing, wherein a portion of said closed loop gas circulation pathway passes between said transparent cover panel and said electronic image assembly”); *id.* claim 12 (requiring “a closed loop gas circulation pathway contained within the housing, wherein a portion of said closed loop gas

circulation pathway passes between said transparent cover panel and said electronic image assembly”).

Regarding these limitations of the ‘142 patent, Complainant generally objects that Respondents’ contentions “are unsupported by any evidence.” Compl. Opp. at 26-27. It is Complainant’s burden to prove infringement. *See Oligosaccharides*, 2020 WL 3073788, at \*19 (finding non-infringement where Complainant “failed to satisfy its burden of establishing infringement with respect to” the redesigned or alternative product). Upon review of the record as a whole, the undersigned finds that Respondents’ disclosures were sufficient to place these products and structures at issue, and thus summary determination is warranted based on Complainant’s failure of proof.<sup>20</sup>

Summary determination is also GRANTED as to claim 7 of the ‘595 patent. Complainant provides no evidence that claim 7’s requirement of a fan placed “near the exit of the constricted convection channel” is satisfied. *See* Compl. Opp. at 25-26.<sup>21</sup>

Regarding the remaining claims, it is unclear from the record whether the deficiencies pointed to by Respondents in their summary determination motion concern rejected and/or disputed claim construction arguments that the parties have not adequately briefed in connection with this motion, and/or issues implicating inconsistent expert testimony. *See* Part II.B.2 *supra*. Accordingly, the remaining infringement issues for the OH46/55 Products will be determined upon a more developed record.

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<sup>20</sup> Respondents’ non-infringement arguments were disclosed in Respondents’ non-infringement contentions and supported by Respondents’ expert opinion, and Complainant does not argue that it lacked sufficient document discovery regarding the structures at issue. *See* Mot. Ex. 12 at 78-79; Mot. Ex. 13 at 114-115; Mot. Ex. 14 at ¶¶ 12, 442-447; *see also* Part II.C.1 *supra*; Mem. at 24-26.

<sup>21</sup> This contention was disclosed in Respondents’ non-infringement contentions and supported by Respondents’ expert opinion, and Complainant does not argue it lacked sufficient document discovery regarding the structures at issue. *See* Ex. 12 at 11, 27-28; Ex. 13 at 14, 29; Ex. 14 at ¶¶ 137, 146; *see also* Part II.C.1 *supra*; Mem. at 24-26.



**D. Non-Asserted Claims for the OH75/85 Products**

Respondents further seek an adjudication that the OH75/85 Products do not infringe certain non-asserted claims of the asserted patents. *See Mem. at 15, 25.*

**1. Whether the OH75/85 Products Should Be Adjudicated As To The Non-Asserted Claims**

Respondents argue that the *Oligosaccharides* factors weigh in favor of adjudicating the OH75/85 Products as to the non-asserted claims. Respondents state that these products are within the scope of the investigation, are imported, and are fixed in design. *See Mem. at 24; Part II.C.1 supra.* Respondents state that there has been extensive discovery regarding these products (*see Mem. at 14-15*), and that Respondents have “consistently articulated” its non-infringement theories as to the unasserted claims in non-burden contentions and in expert testimony. *See Mem. at 15-16, 25-26.*

Complainant does not dispute these statements but maintains that summary determination is not warranted because “[n]o efficiency or predictability is provided by adjudicating noninfringement of the Accused Products by claims that have not been asserted against them” and that the requested adjudication “risks creating confusion in the enforcement of remedial orders and at the hearing.” *Compl. Opp. at 24-25.*

Based on the evidence of record and Respondents’ undisputed representations, the undersigned finds that the *Oligosaccharides* factors weigh in favor of adjudicating the OH75/85 Products as to the unasserted claims. There is no dispute that the products are within the scope of the investigation, are imported, and are fixed in design. *See Notice of Institution; Mot. Ex. 4 (Importation Stipulation); Mem. at 14-15; Part II.C.1 supra.* Complainant does not dispute that document discovery was provided as to these products, and Respondents set forth specific non-infringement theories during fact and expert discovery. *See Mot. Ex. 12 at 28 (‘595 patent); id.*

at 51-52 (‘322 patent), *id.* at 69-70 (*inter alia*, claims 12 and 15 of the ‘287 patent); Mot. Ex. 13 at 29-30 (‘595 patent); *id.* at 61-62 (‘322 patent), *id.* at 89-90 (‘287 patent); Mot. Ex. 14 at ¶¶ 194-196 (‘595 patent), 285-288 (‘322 patent), ¶¶ 347-349 (‘287 patent).

Accordingly, the undersigned finds that the *Oligosaccharides* factors weigh in favor of adjudication of the OH75/85 Products. *See also* Part II.C.1 *supra*.

## 2. Whether Summary Determination of Non-Infringement Is Warranted

Respondents seek an adjudication that the OH75/85 Products do not infringe claim 1 of the ‘595 patent, claims 9, 12, 13, and 16 of the ‘322 patent, and claims 12 and 15 of the ‘287 patent.

Regarding the ‘595 patent, Respondents assert non-infringement (as to claim 1) based on

[REDACTED]

[REDACTED] Mem. at 18. Regarding the ‘322 patent, Respondents assert non-infringement (as to claims 9, 12, 13, and 16) based on the “same reasons” described for claim 4 of the ‘595 patent. Mem. at 18. Regarding the ‘287 patent, Respondents assert non-infringement (as to claims 12 and 15) based on [REDACTED]

[REDACTED] *Id.*

Complainant opposes the motion. With respect to the ‘595 patent, Complainant argues its expert, Mr. Credelle, has provided testimony that [REDACTED] [REDACTED] *See* Compl. Opp. at 27 (citing Ex. 10 at ¶¶ 267-284). Complainant also argues that there is an issue of fact regarding whether the OH75/85 products [REDACTED] [REDACTED] based on testimony of Dr. Neikirk. *Id.* at 27 (citing Ex. 14 ¶¶ 377-381). With respect to the ‘322 patent, Complainant cites testimony of its expert, provided with respect to claim 4 of the ‘595 patent, that the requisite [REDACTED]. With



respect to the '287 patent, Complainant argues that Dr. Neikirk's views are contradicted by other testimony in his report regarding the "along the backlight" term. *Id.* at 28.

Upon review of the submissions, it is unclear from the record whether the deficiencies pointed to by Respondents in their summary determination motion concern rejected and/or disputed claim construction arguments, and the extent to which certain of Complainant's and Respondents' expert testimony, if accepted, necessitate findings applicable to the disputed issues here. Both Respondents and Complainant provide cursory discussions of these matters. Accordingly, they will be determined after a full evidentiary hearing.

### **III. CONCLUSION**

For the reasons discussed above, Respondents' motion (1331-007) is hereby GRANTED-IN-PART and DENIED-IN-PART. In addition, resolution of issues concerning the OH24B product is deferred. Complainant must provide the disclosure set forth in Part II.A by June 21, 2023.

For the OM46N, OM55N, OM46B, OM55B, and OM75A Products, summary determination is GRANTED as to claims 9, 12, 13, and 16 of the '322 patent; claims 12 and 15 of the '287 patent; claims 1, 5, and 6 of the '740 patent; and claims 1-3, 6, 8, 10, 11, and 12 of the '142 patent.

For the OH46/55 products, summary determination is GRANTED as to claims 1-3, 6, 8, 10, 11, and 12 of the '142 patent and claim 7 of the '595 patent.


Pursuant to Commission Rule 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 Commission Rule 210.43(a), or the Commission, pursuant to Commission Rule 210.44, orders, on its own motion, a review of the initial determination or certain issues contained herein. 19 C.F.R. § 210.42(d).

**PUBLIC VERSION**

The motion is otherwise DENIED.

This initial determination and order has been issued with a confidential designation, and within seven days of the date of this document, the parties shall submit a joint statement as to whether or not they seek to have any portion of this document deleted from the public version. If the parties do seek to have portions of this document deleted from the public version, they must submit a single proposed public version of this order with any proposed redactions in the manner specified by Ground Rule 1.9. To the extent possible, the proposed redacting should be made electronically, in a PDF of the issued order, using the “Redact Tool” within Adobe Acrobat, wherein the proposed redactions are submitted as “marked” but not yet “applied.” The submission shall be made by email to [Bhattacharyya337@usitc.gov](mailto:Bhattacharyya337@usitc.gov) and need not be filed with the Commission Secretary.

**SO ORDERED.**

  
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Monica Bhattacharyya  
Administrative Law Judge