PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of **CERTAIN WET DRY SURFACE CLEANING DEVICES**	**INV. NO. 337-TA-1304**

RECOMMENDED DETERMINATION ON REMEDY AND BOND

Chief Administrative Law Judge Clark S. Cheney

(April 7, 2023)

On March 24, 2023, I issued a final initial determination that a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), has occurred in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wet dry surface cleaning devices by reason of infringement of certain claims of U.S. Patent No. 11,076,735 and U.S. Patent No. 11,071,428 by respondents Tineco Intelligent Technology Co., Ltd.; TEK (Hong Kong) Science & Technology Ltd.; and Tineco Intelligent, Inc. (collectively, "Respondents" or "Tineco"). *See* EDIS Doc. ID 793154 at 270-71. The complaint in the investigation was brought by BISSELL Inc. and BISSELL Homecare, Inc. (collectively, "Complainants" or "BISSELL"). The Office of Unfair Import Investigations is not a party to the investigation.

In accordance with 19 C.F.R. § 210.42(a)(l)(ii), I now issue this recommended determination concerning the appropriate remedy in the event the Commission finds a violation of section 337, as well as a recommended amount of bond to be posted by Tineco during Presidential review of any Commission action. For the reasons explained below, I recommend that the

Commission issue a limited exclusion order and a cease and desist order directed to the Tineco respondents. I additionally recommend and that the Commission set a bond of set a bond of $49.01 for the infringing Tineco ifloor 3 products, a bond of $99.01 for the infringing Tineco Floor ONE S3 products, and a bond of $0 for all other infringing Tineco vacuums.

I. Limited Exclusion Order

The Commission has broad discretion in selecting the form, scope, and extent of the remedy in a section 337 proceeding. *Viscofan, S.A. v. U.S. Int'l Trade Comm'n*, 787 F.2d 544, 548 (Fed. Cir. 1986). A limited exclusion order directed to a respondent's infringing products is among the remedies that the Commission may impose. *See* 19 U.S.C. § 1337(d).

The parties agree that I should recommend a limited exclusion order with a certification provision for non-infringing products. CIB at 114 ("[T]he CALJ should recommend a lim[i]ted exclusion order with a certification provision applying only to products adjudicated as non-infringing."); CRB at 88 ("The parties agree that the CALJ should recommend a limited exclusion order with a certification provision."); RRB at 117 ("Any LEO and CDO should include a certification provision with a carveout for noninfringing redesigned products"); RIB at 130 ("The certification provision should carveout non-infringing redesigned products.").

But the parties appear to disagree about the scope of any limited exclusion order. First, Tineco contends that any limited exclusion order should contain an exemption for warranty and repair. *See* RRB at 117. BISSELL did not address whether a limited exclusion order should contain a warranty and repair exemption. *See* CIB at 114; CRB 88-91.

Second, BISSELL states that "any certification provision" contained in a limited exclusion order "should carve out only the specific redesigned wet dry products that were presented for adjudication and which are explicitly found to be non-infringing." CRB at 90. Tineco states that

a "certification provision should carveout non-infringing redesigned products" that were adjudicated in this investigation, but does not address whether the certification provision could apply to other products. RIB at 130; *see also* RRB at 117.

a. No warranty and repair exception

In its responsive post-hearing brief, Tineco contended for the first time that any exclusion order should contain an exception for service, warranty, repair, or replacement of products.[1] RRB at 117. In prior investigations, the Commission has granted exemptions from its remedial orders "for service and repair of existing devices to prevent harm to innocent third parties and U.S. consumers who have purchased infringing goods" prior to any finding that section 337 had been violated. *Certain Elec. Digital Media Devices & Components Thereof*, Inv. No. 337-TA-796, Comm'n Op. at 122 (Sep. 6, 2013); *see also Certain Road Construction Machines and Components Thereof*, Inv. No. 337-TA-1088, Comm'n Op. at 49-50 (July 15, 2019); *Certain Magnetic Data Storage Tapes & Cartridges Containing the Same*, Inv. No. 337-TA-1012, Comm'n Op. at 127 (Apr. 2, 2018); *Certain Mobile Devices, Associated Software & Components Thereof*, Inv. No. 337-TA-744, Comm'n Op at 22 (June 5, 2012); *Certain Automated Teller Machines, ATM Modules, Components Thereof & Prods. Containing the Same*, Inv. No. 337-TA-972, Comm'n Op. at 26-27 & n.l5 (June 12, 2017) (collecting cases).

[1] The Ground Rules for this investigation required Tineco to raise its request for a warranty and repair exception in its pre-hearing brief so that all parties would have notice of this issue at trial. *See* Order 2 (Ground Rules) at 17 ("Any contentions not set forth in detail in the pre-hearing brief shall be deemed abandoned or withdrawn, except for contentions of which a party is not aware and could not be aware in the exercise of reasonable diligence at the time of filing the pre-hearing brief."). Because Tineco did not raise its request for this provision in its pre-hearing brief, EDIS Doc. ID 784957, it has forfeited the argument. This is an additional, independent reason that I do not recommend a warranty and repair exception.

The Commission, however, has declined to issue service and repair exemptions to limited exclusion orders where the record contains insufficient evidence regarding the burdens and expenses that would be imposed on third parties in the absence of an exemption. *See, e.g.*, *Certain Optical Disk Controller Chips & Chipsets & Prods. Containing Same, Including DVD Players & PC Optical Storage Devices*, Inv. No. 337-TA-506, Comm'n Op., 2007 WL 4713920, *65 (Sept. 28, 2005); *Certain Optoelectronic Devices for Fiber Optic Commc'ns, Components Thereof, & Prods. Containing the Same*, Inv. No. 337-TA-860, Comm'n Op. at 31-33 (May 9, 2014).

Here, Tineco has not provided evidence that would justify a warranty and repair exception to a limited exclusion order. At most, Tineco has shown that one accused product, its Floor One S3 Series, is "subject to warranty obligations." RRB at 117 (citing JX-0069.0024-25, an instruction manual for the Floor One S3 Series product, which contains warranty provisions). But Tineco has not described its warranty obligations or how an exclusion order would render Tineco unable to satisfy any such obligations. *See id*. Additionally, Tineco identifies no detrimental effects on U.S. consumers without a service and repair exception.

Moreover, neither authority Tineco cites supports its position. In *Certain Digital Video Receivers & Related Hardware & Software Components*, the respondent presented unrebutted trial testimony regarding its contractual warranty and repair obligations. Inv. No. 337-TA-1103, Initial Determination at 314-15 (June 4, 2019). In contrast, Tineco cites no trial testimony here discussing a Tineco warranty program. *See* RRB at 117. The Commission's determination in *Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof* also has little relation to the facts here. That investigation concerned medical devices, and the warranty and repair exception was influenced by public health considerations. Inv. No. 337-TA-890, Comm'n Op. at 45-47 (Jan. 16, 2014).

The facts here are more like those in investigations where respondents did not put forth sufficient evidence that warranty obligations required continued importation or evidence that consumers would be harmed without a warranty exception. *See, e.g., Certain Light-Emitting Diode Products, Fixtures, and Components Thereof*, 337-TA-1213, Comm'n Op. at 13, EDIS Doc. ID 760491 (Jan. 14, 2022) (declining to provide warranty exemption where complainant did "not present any record evidence of any previous warranty service imports or customer use of the warranty replacement provision," where "the warranty agreement. . . allows for refund, credit, or reimbursement," and where there was "no record evidence of harm to U.S. consumers to justify the warranty exemption"); *Certain Cloud-Connected Wood-Pellet Grills and Components Thereof*, Inv. No. 337-TA-1237, Comm'n Op., 2022 WL 1732625 at *7 (May 24, 2022) (declining to include exemption for service and repair absent adequate evidence of record); *Certain Magnetic Data Storage Tapes and Cartridges Containing the Same (II)*, Inv. No. 337-TA-1076, Comm'n Op. at 61-62, EDIS Doc. ID 679042 (Jun. 20, 2019) (declining to include exemption for warranty repair and replacement where, *inter alia*, the warranties provided Respondent "the option to provide a refund rather than replace or repair the subject product"). Where the record lacks sufficient evidence regarding warranty and repair obligations, the Commission has declined to include a warranty and repair exception in a limited exclusion order. *See id*.

Because there is no record evidence here that would justify a warranty and repair exception, I do not recommend such an exception be included in any limited exclusion order.

b. Certification for adjudicated, redesigned products

According to Tineco, any exclusion order should include a provision allowing Tineco to certify that it is familiar with the terms of the order, has made an appropriate inquiry, and that, to the best of its knowledge and belief, the products being imported are not excluded from entry by

the order. RIB at 130. Tineco contends "[t]he certification provision should carveout non-infringing redesigned products" because Customs and Border Patrol would have a difficult time assessing whether a product was a non-infringing redesigned product as opposed to a prior infringing version *Id*.

BISSELL does not dispute that any limited exclusion order should include a certification provision for the products adjudicated as non-infringing in this investigation. *See, e.g.*, CRB at CRB at 90. But BISSELL asserts that the certification provision should only apply to products affirmatively adjudicated as non-infringing in the present investigation. CIB at 114; CRB at 88-91.

Here, I find that the standard certification provision would sufficiently address both parties' concerns regarding a certification provision. The standard certification provision already addresses BISSELL's concern regarding non-adjudicated products. U.S. Customs and Border Patrol ("CBP") "only accepts a certification that the goods have been previously determined by CBP or the Commission not to violate the exclusion order." *Certain Composite Aerogel Insulation Materials & Methods for Mfg. the Same*, Inv. No. 337-TA-1003, Comm'n Op. at 62 (Feb. 22, 2018) (citing *Certain Network Devices, Related Software and Components Thereof (I)*, Inv. No. 337-TA-944, Comm'n Op. at 53 n.19 (Jul. 26, 2016). "The standard certification provision does not allow an importer to simply certify that it is not violating the exclusion order . . ." *Id*.

And the standard certification will allow Tineco to certify that the "non-infringing redesigned products" (RIB at 130) are not subject to a limited exclusion order because the final initial determination found that those Tineco vacuum models having redesigned source code did not infringe the patents asserted in this investigation. *See* EDIS Doc. ID 793726 at 268-70.

Accordingly, I recommend that any limited exclusion order include the standard certification provision.

c. A limited exclusion order directed to the Tineco Respondents would be appropriate

In sum, if the Commission determines Tineco has violated section 337, I recommend the Commission issue a limited exclusion order directed to the Tineco respondents. I recommend that the limited exclusion order contain a standard certification provision but that it not include an exception for warranty and repair activities.

II. Cease And Desist Order

Section 337 provides that in addition to, or in lieu of, the issuance of an exclusion order, the Commission may issue a cease and desist order as a remedy. 19 U.S.C. § 1337(f)(1). Under Commission precedent, "[c]ease and desist orders are generally issued when, with respect to the imported infringing products, respondents maintain commercially significant inventories in the United States or have significant domestic operations that could undercut the remedy provided by an exclusion order." *Certain Air Mattress Systems, Components Thereof, and Methods of Using the Same*, Inv. No. 337-TA-971, Comm'n Op. at 49 (May 17, 2017) (citations and footnote omitted). Additionally, at least one Commissioner is of the opinion that the "presence of some infringing domestic inventory, regardless of the commercial significance, provides a basis to issue a cease and desist order." *Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production*, Inv. No. 337-TA-1005, Comm'n Op. at 52 n.49 (Jan. 11, 2018).

Here, Tineco stipulated that it maintains a commercially significant inventory in the United States, and the parties do not dispute that a cease and desist order should issue in the event of a violation. *See* CX-1035.0002 ¶ 7; CIB at 114; RRB at 117. The parties disagree, however, about the scope of any cease and desist order. Tineco argues that any "CDO [cease and desist order] should include a certification provision with a carveout for noninfringing redesigned products" and should also contain an exception for warranty and repair activities. RRB at 117.

The authorities cited by Tineco do not support a "certification provision" in a cease and desist order. Certification provisions have traditionally been included with exclusion orders to assist Customs and Border Patrol in administering the Commission's exclusion orders. *See Composite Aerogel Insulation Materials*, Inv. No. 337-TA-1003, Comm'n Op. at 62-63 (Feb. 22, 2018). Cease and desist orders, unlike exclusion orders, are not enforced by Customs and Border Patrol. *Certain Agric. Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380, Order No. 62 ("Whereas the U.S. Customs Service enforces exclusion orders, cease and desist orders are independent remedies, in addition to, or in lieu of exclusion orders, that are enforced by the Commission through civil penalties." (cleaned up)). Tineco has not explained what purpose a certification provision for a cease and desist order would serve in that context. The authority that Tineco cites, RIB at 130, only discusses the application of certification provisions with respect to exclusion orders, not cease and desist orders. Accordingly, I do not recommend a certification provision in any cease and desist order.

Tineco also argues that any cease and desist order should include an exception for service, warranty, repair, or replacement of any products sold before the issuance of the order because "relief at the Commission is not intended to punish U.S. consumers that purchased the accused products prior to any finding of violation." RRB at 117. As with its argument for a warranty and repair exception to any limited exclusion order, Tineco did not raise this issue in its pre-hearing brief and therefore the argument is forfeited. *See* Order 2 (Ground Rules) at 17.

Even if the argument were considered on its merits, it would not be persuasive. For the same reasons discussed above regarding the scope of a limited exclusion order, the record does not support an exception for service, warranty, repair, or replacement activities in any cease and desist order.

In sum, if the Commission determines Tineco has violated section 337, I recommend the Commission order the Tineco respondents to cease and desist from importing, selling, marketing, advertising, or distributing articles found to infringe the asserted patents. I do not recommend that such an order include a certification provision or an exception for warranty and repair activities.

III. Bond

Pursuant to section 337(j)(3), the Commission must determine the amount of bond to be required of a respondent during the 60-day Presidential review period following the issuance of permanent relief. The purpose of the bond is to protect the complainant from any injury. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3).

When reliable price information is available, the Commission has often set the bond by eliminating the difference in sales prices between the domestic product and the imported, infringing product. *Certain Microsphere Adhesives, Process for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24 (Dec. 8, 1995) (USITC Pub. No. 2949). Calculation of a price differential requires comparing competing products. "Where the record establishes that the calculation of a price differential is impractical or there is insufficient evidence in the record to determine a price differential or a reasonable royalty, the Commission has imposed a 100 percent bond." *In the Matter of Certain Stainless Steel Prod., Certain Processes for Mfg. or Relating to Same, & Certain Prod. Containing Same*, Inv. No. 337-TA-933, Comm'n Op. at 52 (June 9, 2016).

However, in investigations where a complainant fails to demonstrate that it would be harmed by importation during the Presidential review period, the Commission has set a 0% bond rate. *See, e.g.*, *In the Matter of Certain Variable Speed Wind Turbine Generators & Components Thereof*, USITC Inv. No. 337-TA-1218, Corrected Comm'n Op. at 49-51 (Mar. 25, 2022) (setting

0% bond where complainant "failed to present any argument or evidence why it would be harmed by importation during the period of Presidential review"); *In the Matter of Certain Smart Thermostat Sys., Smart Hvac Sys., Smart Hvac Control Sys., & Components Thereof*, USITC Inv. No. 337-TA-1258, Initial Determination on Violation of Section 337 & Recommended Determination on Remedy & Bond at 139 (Apr. 4, 2022) (recommending 0% bond where there was "no evidence of direct competition between the domestic industry product and the accused products, which suggests that [complainant] will not suffer injury from displaced sales during the presidential review period"); *In the Matter of Certain Power Inverters & Converters, Vehicles Containing the Same, & Components Thereof*, USITC Inv. No. 337-TA-1267, Recommended Determination on Remedy, Bonding, & the Pub. Int., at 9 (Aug. 26, 2022) (recommending 0% bond in an investigation where the domestic industry products did "not compete with the accused products").

BISSELL argues that because some of Tineco's imported products directly compete with BISSELL's, BISSELL will continue to be harmed if infringing products continue to be imported during the Presidential review period. CIB at 115. BISSELL relies on testimony from its expert Dr. Michael P. Akemann opining that a bond rate of $101 to $104 per unit is appropriate based on a comparison of retail prices for some of BISSELL's domestic industry products to a subset of accused Tineco products. *Id.*; Tr. (Akemann) at 430:4-431:10. Dr. Akemann calculated an average price differential, weighted by unit sales, of $101.39 per unit. Tr. (Akemann) at 430:4-431:10; CDX-0008C at 23. Dr. Akemann's calculations are reproduced below:

Bond

DI Product	BISSELL U.S. Retail Mass Price	Accused Product	Tineco U.S. Retail List Price	Price Differential	Tineco Importation
[A]	[B]	[C]	[D]	[E]=[B]-[D]	[F]
CrossWave 2.0	$329	No Corded	N/A	N/A	
CrossWave 2.5	$349	ifloor	$169.00	$180.00	120,976
CrossWave 2.5	$349	ifloor 2	$199.00	$150.00	93,975
CrossWave 2.5	$349	ifloor Breeze	$249.99	$99.01	10,767
CrossWave 2.5	$349	ifloor 3	$299.99	$49.01	128,184
CrossWave 3.0	$399	Floor ONE S3	$399.99	($0.99)	
CrossWave 4.0	$499	Floor ONE S3	$399.99	$99.01	
Weighted CW 3.0 and 4.0 Price	$439.57		Floor ONE S3: FY 2022 Crosswave Unit Sales Weighted Average	$39.58	118,753

JX-0021 at JX-0021.0003, JX-0034C at JX-0034.0016, CX-1025C, JPX-0006C, JX-0054C

Simple Average	Weighted Average
$103.52	$101.39

CDX-0008C_23

CDX-0008C at 23.

Tineco argues that BISSELL's bond calculation is flawed because BISSELL compared the BISSELL CrossWave 3.0 and 4.0 products to Tineco's Floor One S3 product but ignored higher priced Tineco products, including the Tineco S5 Pro product. RRB at 117. Tineco notes that, at a retail price of $599.99, its S5 Pro is priced $100.99 higher than BISSELL's CrossWave 4.0, which lists at $499. *Id.* (citing JX-0034.0016; Tr. 430:12-19). Tineco also seems to imply that because it entered into a stipulation that its S5 Pro model was representative of eight other Tineco vacuums, those other eight Tineco products are also priced higher than BISSELL's competing product. *See* RRB at 117 (citing CX-1036C.0003). Finally, Tineco argues BISSELL's bond calculation is flawed because of the pricing data it utilizes. RRB at 117-18. In view of these alleged flaws, Tineco contends that the bond rate should be $0 for all accused products.

Neither party's positions are entirely satisfactory in view of the present record. For the reasons explained below, I recommend that the Commission set a bond of $49.01 for the infringing

ifloor 3 products and $99.01 for the infringing Floor ONE S3 products. However, I find that BISSELL has not demonstrated that the remaining accused products should be subject to a bond.

BISSELL's reliance on Dr. Akemann's bond calculations is problematic for several reasons. First, as indicated by the above demonstrative, Dr. Akeman's price differential calculations include the ifloor, ifloor 2, and ifloor breeze. CDX-0008C at 23. The final initial determination did not find any violation of section 337 had occurred with respect to those products. *See* EDIS Doc. ID 793154 at 16-19, 270-71. Because Tineco is free to continue importing the ifloor, ifloor 2, and ifloor breeze products, BISSELL has not demonstrated why those products should be included in a bond calculation. I therefore do not recommend using the averages that Dr. Akemann calculated in setting a bond because those averages include the price differentials for the ifloor, ifloor 2, and ifloor breeze products. *See* CDX-0008C at 23.

Second, Dr. Akemann's average price calculation ignores the fact that at least one of Tineco's products, the S5 Pro, is actually priced higher than the highest priced BISSELL product. In other investigations, the Commission has determined that where the imported infringing goods "are priced significantly higher than [the patent owner's] competing products," no bond is necessary to protect the patentee from injury. *See, e.g., Certain Elec. Devices, Including Wireless Commc'n Devices, Portable Music & Data Processing Devices, & Tablet Computers*, Inv. No. 337-TA-794, Comm'n Op., 2013 WL 12410037, *73 (July 5, 2013); *see also, e.g., Certain Recombinant Factor VIII Products*, Inv. No. 337-TA-956, Comm'n Op., 2016 WL 11682088, *5 (June 3, 2016) (where an "infringing product is not more favorably priced than" an authorized product, "there is no danger" to a complainant). Applying this principle to the limited facts briefed

by the parties, at least the Tineco S5 Pro should not be subject to a bond because sales of those products do not threaten injury to BISSELL.[2]

Third, utilizing Dr. Akemann's average price differential calculations to set a bond for all the accused products is problematic because BISSELL did not demonstrate that all the accused products compete with BISSELL products. The evidence cited by BISSELL at best indicates that Tineco's ifloor, ifloor 2, ifloor Breeze, ifloor 3, and Floor ONE S3 products compete with BISSELL products. *See* CIB at 115; *see also* Tr. (Akemann) at 430:12-19; CDX-0008C at 23. BISSELL has not provided any evidence or explanation regarding how importation of other accused products during the Presidential review period will harm BISSELL.[3] It would therefore not be appropriate to require a bond for those other accused products. *See, e.g.*, *In the Matter of Certain Variable Speed Wind Turbine Generators & Components Thereof*, USITC Inv. No. 337-TA-1218, Corrected Comm'n Op. at 49-51 (Mar. 25, 2022) (setting 0% bond where complainant "failed to present any argument or evidence why it would be harmed by importation during the period of Presidential review"); *In the Matter of Certain Smart Thermostat Sys., Smart Hvac Sys., Smart Hvac Control Sys., & Components Thereof*, USITC Inv. No. 337-TA-1258, Initial Determination on Violation of Section 337 & Recommended Determination on Remedy & Bond at 139 (Apr. 4, 2022) (recommending 0% bond where there was "no evidence of direct competition

[2] Tineco also seems to imply that because it entered into a stipulation that its S5 Pro model was representative of eight other Tineco vacuums, no bond is appropriate for those other eight Tineco products. *See* RRB at 117 (citing CX-1036C.0003). But the stipulation cited by Tineco states it is for the purpose of establishing "infringement (or the lack thereof) or technical domestic industry (or the lack thereof) for any of the represented products based on the features or capabilities of the 'Representative Product' for that category of products." *See* CX-1036C.0005. There is no indication in the stipulation that the representative products are materially similar in price. Accordingly, I find the stipulation does not indicate that the eight other vacuum models cited by Tineco are also priced higher than patented BISSELL products.

[3] The final initial determination found a violation of section 337 based on the original versions of the products listed at pages 19-20 of that determination. *See* EDIS Doc. ID at 793154.

between the domestic industry product and the accused products, which suggests that [complainant] will not suffer injury from displaced sales during the presidential review period"); *In the Matter of Certain Power Inverters & Converters, Vehicles Containing the Same, & Components Thereof*, USITC Inv. No. 337-TA-1267, Recommended Determination on Remedy, Bonding, & the Pub. Int., at 9 (Aug. 26, 2022) (recommending 0% bond in an investigation where the domestic industry products did "not compete with the accused products").

Although Dr. Akemann's overall calculations are problematic, I find that he did provide reliable information for which a bond for the Tineco ifloor 3 and Floor ONE S3 products could be calculated. BISSELL presented evidence that it would be harmed if Tineco imported those products during the Presidential review period. *See* Tr. (Akemann) at 430:12-19; CDX-0008C at 23. Moreover, I find that the individual price differentials Dr. Akemann calculated for those products is reliable. In particular, Dr. Akeman testified that the price differential for the ifloor 3 products was $49.01 and the price differential for the Floor ONE S3 product was $99.01 when it competed with at least one of BISSELL's products. *See* Tr. (Akemann) at 430:4-431:10; CDX-0008C at 23. I therefore recommend that the Commission set a bond of $49.01 for the infringing ifloor 3 products and $99.01 for the infringing Floor ONE S3 products.

Tineco's only argument that implicates the $49.01 and $99.01 price differentials is Tineco's contention that the pricing data that BISSELL utilized is flawed. RRB at 117-18. In particular, Tineco contends that BISSELL's proffered bond rate is incorrect because it based on suggested retail pricing for the parties' products rather than the wholesale prices each company charges to retailers. *Id.* at 117-118. Tineco also contends that BISSELL "did not consider other factors that could impact pricing, such as differences in product bundles and differences in

customer and distribution mix." *Id.* Tineco contends that "actual sales data" would more accurately show any price differential. *Id*.

Notwithstanding its argument that "actual sales data" would be best for determining any bond, Tineco cites no such data in its briefs. *See* RRB at 117-18. In the face of that deficit, BISSELL's pricing data is the most persuasive evidence in the record of the harm to BISSELL during the Presidential review period.

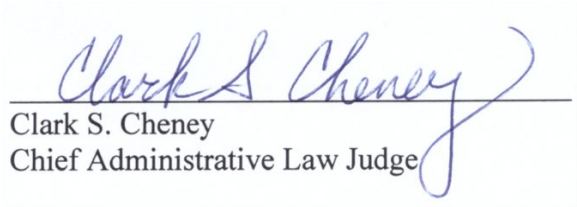
Based on that evidence, I recommend the Commission impose a bond amount of $49.01 for the infringing ifloor 3 products and $99.01 for the infringing Floor ONE S3 products. For the reasons explained above, I do not recommend that the Commission require a bond for the other accused products.[4]

IV. Order

Within seven days of the date of this document, the parties shall jointly submit a single proposed public version of this document with any proposed redactions indicated in red. If the parties submit excessive redactions, they may be required to provide declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in 19 C.F.R. § 201.6(a). To the extent possible, the proposed redactions should be made electronically, in a single PDF file using the "Redact Tool" within Adobe Acrobat. The proposed redactions should be submitted as "marked" but not yet "applied." The proposed redactions should be submitted via email to Cheney337@usitc.gov and not filed on EDIS.

[4] The entire issue of bond may become more academic than practical because Tineco redesigned the products upon which the infringement findings in the final initial determination were based. *See* EDIS Doc. ID 793154 at 125, 268-71. The final initial determination found that the redesigned version of those products do not infringe BISSELL's asserted patents. The parties have not indicated whether Tineco is now only importing the non-infringing redesigned products.

SO ORDERED.



Clark S. Cheney
Chief Administrative Law Judge