

In the Matter of

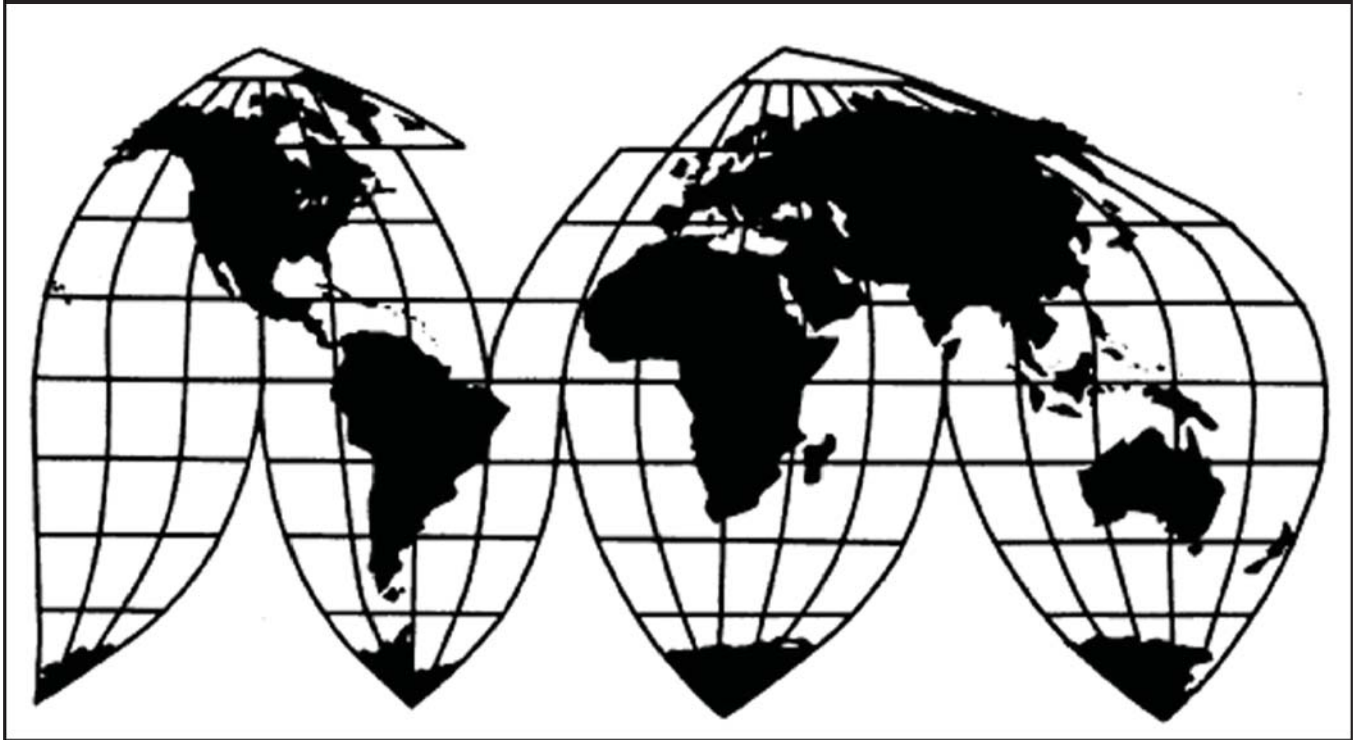
**Certain Lighting Control Devices
Including Dimmer Switches
and Parts Thereof (IV)**

Investigation No. 337-TA-776

Publication 4403

July 2013

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436
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In the Matter of

**Certain Lighting Control Devices
Including Dimmer Switches
and Parts Thereof (IV)**

Investigation No. 337-TA-776



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

In the Matter of

**CERTAIN LIGHTING CONTROL
DEVICES INCLUDING DIMMER
SWITCHES AND PARTS THEREOF (IV)**

Investigation No. 337-TA-776

**FINAL COMMISSION DETERMINATION OF VIOLATION; ISSUANCE OF A
GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; AND
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a general exclusion order directed against infringing lighting control devices including dimmer switches and parts thereof, and cease and desist orders directed against respondents American Top Electric Corp. ("American Top") and Big Deal Electric Corp. ("Big Deal"), both of Santa Ana, California; Elemental LED, LLC d/b/a Diode LED ("Elemental") of Emeryville, California; and Zhejiang Yuelong Mechanical and Electrical Co. ("Zhejiang Yuelong") of Zhejiang, China.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 15, 2011, based on a complaint filed by Lutron Electronics Co., Inc. ("Lutron") of Coopersburg, Pennsylvania. 76 *Fed. Reg.* 35015-16. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the

sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and parts thereof by reason of infringement of certain claims of U.S. Patent No. 5,637,930 (“the ‘930 patent”) and U.S. Patent No. 5,248,919 (“the ‘919 patent”). The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named the following respondents: American Top; Big Deal; Elemental; Zhejiang Lux Electric Co. Ltd. (“Zhejiang Lux”), Zhejiang Yuelong, and Wenzhou Huir Electric Science & Technology Co. Ltd. (“Wenzhou Huir”), all of Zhejiang, China; Westgate Manufacturing, Inc. (“Westgate”) of Vernon, California; Elemental LED, LLC (“Elemental LED”) and Diode LED (“Diode”) both of Emeryville, California; Pass & Seymour, Inc. (“Pass & Seymour”) of Syracuse, New York; and AH Lighting of Los Angeles, California. The Office of Unfair Import Investigations was named as a party to the investigation.

On September 9, 2011, the Commission issued notice of its determination not to review the presiding administrative law judge’s (“ALJ”) initial determination (“ID”) (Order No. 9) granting Lutron’s motion to amend the complaint and notice of investigation to substitute Elemental LED, LLC d/b/a Diode LED (“Elemental”) as a respondent in place of Elemental LED and Diode. On November 22, 2011 and February 27, 2012, respectively, the Commission issued notices of its determinations not to review the ALJ’s IDs (Order Nos. 10 and 15) terminating Pass & Seymour and AH Lighting from the investigation based on consent orders.

On December 12, 2011, the ALJ issued an ID (Order No. 11) finding Elemental in default under Commission Rule 210.16(b)(3) based on its own election. On January 17, 2012, the Commission issued notice of its determination to review the ID, and on review to find Elemental in default under Commission Rules 210.16(a)(2) and (b)(2). Also, on January 17, 2012, Westgate filed a notice electing to default. On March 5, 2012, the ALJ issued an ID (Order No. 17) finding Westgate in default under Commission Rules 210.16(a)(2) and (b)(2). In the same ID, the ALJ found respondents Big Deal, American Top, Wenzhou Huir, Zhejiang Yuelong, and Zhejiang Lux in default under Commission Rule 210.16 for failing to respond to the complaint and notice of investigation, and for failing to respond to the show cause order issued on February 8, 2012 (Order No. 14). On March 21, 2012, the Commission issued notice of its determination not to review the ID finding these six respondents in default.

On January 20, 2012, Lutron filed a motion for summary determination of violation of section 337 pursuant to Commission Rule 210.16(c)(2) and requested entry of a general exclusion order with respect to the ‘930 patent. Lutron also requested entry of a limited exclusion order with respect to the ‘919 patent directed against the accused products of all defaulting respondents. Lutron further requested cease and desist orders with respect to both asserted patents against all defaulting respondents, except for Westgate. The Commission investigative attorney (“IA”) filed a response supporting the motion.

The ALJ issued the subject ID on June 7, 2012, granting in-part the motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement and that complainant satisfied the domestic industry requirement. *See* 19 U.S.C. §§ 1337(a)(1)(B), (a)(2). He found that each of the defaulting respondents’ accused products

infringe one or more of the asserted claims of the '930 patent, except for one accused product with respect to claim 178. He found that the defaulting respondents infringe the asserted claims of the '919 patent in accordance with Commission Rule 210.16(c). The ID also contained the ALJ's recommended determination on remedy and bonding. Specifically, the ALJ recommended issuance of a limited exclusion order with respect to all defaulting respondents for the asserted claims of both asserted patents. Also, he recommended cease and desist orders directed against domestic respondents Big Deal, American Top, and Elemental with respect to the asserted claims of both asserted patents. The ALJ further recommended that the Commission set a bond of 100 percent of the entered value of the covered products during the period of Presidential review.

On July 19, 2012, the Commission issued notice of its determination to review-in-part the ALJ's ID. On review, the Commission vacated all portions of the ID relating to the '919 patent because the patent expired on March 31, 2012. The Commission determined not to review the remainder of the ID. The Commission also requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *77 Fed. Reg.* 43612-14 (July 25, 2012). On August 2 and 9, 2012, respectively, Lutron and the IA each filed a brief and a reply brief regarding remedy, the public interest, and bonding.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) a general exclusion order prohibiting the unlicensed entry of lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 65, 94, and 178 of the '930 patent; and (2) cease and desist orders prohibiting American Top, Big Deal, Elemental, and Zhejiang Yuelong from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of the '930 patent.

The Commission further determined that the public interest factors enumerated in sections 337(d)(1) and (g)(1) (19 U.S.C. §§ 1337(d)(1), (g)(1)) do not preclude issuance of the general exclusion order or the cease and desist orders. Finally, the Commission determined that there shall be a bond in the amount of 100% of the entered value of the covered products to permit temporary importation during the period of Presidential review (19 U.S.C. §§ 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.50).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 17, 2012

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

In the Matter of

**CERTAIN LIGHTING CONTROL DEVICES
INCLUDING DIMMER SWITCHES AND
PARTS THEREOF (IV)**

Inv. No. 337-TA-776

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale of certain lighting control devices including dimmer switches and parts thereof that infringe claims 36, 65, 94, and 178 of U.S. Patent No. 5,637,930 (“the '930 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary to prevent circumvention of an exclusion order limited to products of the named respondents and because there is a pattern of violation of section 337 and it is difficult to identify the source of infringing products. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of infringing lighting control devices including dimmer switches and parts thereof.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the general exclusion order, and that there shall be a

bond in the amount of 100 percent for all covered products during the period of Presidential review.

Accordingly, the Commission hereby **ORDERS** that:

1. Lighting control devices including dimmer switches and parts thereof covered by one or more of claims 36, 65, 94, and 178 of the '930 patent are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patent, except under license of the patent owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid lighting control devices including dimmer switches and parts thereof, are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under a bond in the amount of 100 percent of the entered value for the covered products pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative and until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import lighting control devices including dimmer switches and parts thereof that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not

excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to lighting control devices including dimmer switches and parts thereof that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

6. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and U.S. Customs and Border Protection.

7. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.


Lisa R. Barton
Acting Secretary to the Commission

Issued: October 17, 2012

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

In the Matter of

**CERTAIN LIGHTING CONTROL DEVICES
INCLUDING DIMMER SWITCHES AND
PARTS THEREOF (IV)**

Inv. No. 337-TA-776

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT American Top Electric Corp. 2442 Hunter St., Los Angeles, California 90021 cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of U.S. Patent No. 5,637,930 ("the '930 patent") in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainant" shall mean Lutron Electronics Co., Inc., 7200 Suter Road, Coopersburg, Pennsylvania 18036.

(C) "Respondent" shall mean American Top Electric Corp. 2442 Hunter St., Los Angeles, California 90021.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(F) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(G) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(H) The term "covered products" shall mean lighting control devices including dimmer switches and parts thereof that infringe one or more of claim 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of the '930 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of the Respondent in the United States is prohibited by the Order.

For the remaining term of the '930 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '930 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document and two copies with the Office of the Secretary. Any Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of the '930 patent.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 210.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 100 percent of the entered values of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

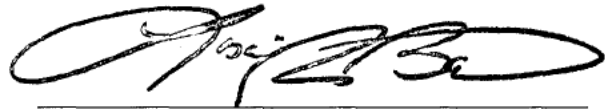
The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. See Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the

Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written over a horizontal line.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 17, 2012

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

In the Matter of

**CERTAIN LIGHTING CONTROL DEVICES
INCLUDING DIMMER SWITCHES AND
PARTS THEREOF (IV)**

Inv. No. 337-TA-776

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Elemental LED, LLC d/b/a Diode LED of 1195 Park Ave., Suite 211, Emeryville, California 94608 cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of U.S. Patent No. 5,637,930 ("the '930 patent") in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainant" shall mean Lutron Electronics Co., Inc., 7200 Suter Road,
Coopersburg, Pennsylvania 18036.

(C) "Respondent" shall mean Elemental LED, LLC d/b/a Diode LED of 1195 Park Ave., Suite 211, Emeryville, California 94608.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(F) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(G) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(H) The term "covered products" shall mean lighting control devices including dimmer switches and parts thereof that infringe one or more of claim 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of the '930 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of the Respondent in the United States is prohibited by the Order.

For the remaining term of the '930 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '930 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document and two copies with the Office of the Secretary. Any Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of the '930 patent.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 100 percent of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.


The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the

Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: October 17, 2012

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

In the Matter of

**CERTAIN LIGHTING CONTROL DEVICES
INCLUDING DIMMER SWITCHES AND
PARTS THEREOF (IV)**

Inv. No. 337-TA-776

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Zhejiang Yuelong Mechanical & Electrical Co. Ltd of Yaa Rd. & Nanxi Rd., Jiaying, Zhejiang 31400 cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of U.S. Patent No. 5,637,930 ("the '930 patent") in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainant" shall mean Lutron Electronics Co., Inc., 7200 Suter Road,
Coopersburg, Pennsylvania 18036.

(C) "Respondent" shall mean Zhejiang Yuelong Mechanical & Electrical Co. Ltd of Yaao Rd. & Nanxi Rd., Jiaxing, Zhejiang 31400.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(F) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(G) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(H) The term "covered products" shall mean lighting control devices including dimmer switches and parts thereof that infringe one or more of claim 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of the '930 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of the Respondent in the United States is prohibited by the Order.

For the remaining term of the '930 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '930 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document and two copies with the Office of the Secretary. Any Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the dates of expiration of the '930 patent.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 210.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 100 percent of the entered values of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the

Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written over a horizontal line.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 17, 2012

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

In the Matter of

**CERTAIN LIGHTING CONTROL DEVICES
INCLUDING DIMMER SWITCHES AND
PARTS THEREOF (IV)**

Inv. No. 337-TA-776

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Big Deal Electric Corp. of 1208 E. Walnut Ave., Suite G, Santa Ana, California 92701 cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of U.S. Patent No. 5,637,930 ("the '930 patent") in violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainant" shall mean Lutron Electronics Co., Inc., 7200 Suter Road,
Coopersburg, Pennsylvania 18036.

(C) "Respondent" shall mean Big Deal Electric Corp. of 1208 E. Walnut Ave., Suite G, Santa Ana, California 92701.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(F) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(G) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(H) The term "covered products" shall mean lighting control devices including dimmer switches and parts thereof that infringe one or more of claim 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of the '930 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of the Respondent in the United States is prohibited by the Order.

For the remaining term of the '930 patent, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '930 patent licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2013. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. Respondents filing written submissions must file the original document and two copies with the Office of the Secretary. Any Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant's counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of the '930 patent.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of the Order should be in accordance with Commission Rule 210.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond in the amount of 100 percent of the entered values of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the general exclusion order issued by the Commission, and are not subject to this bond provision.

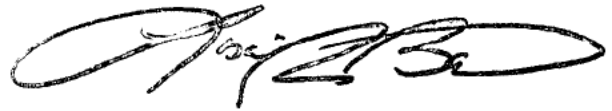
The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the

Respondent must serve a copy of the bond and any accompanying documentation on Complainant's counsel.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: October 17 2012

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon, the Commission Investigative Attorney, Lisa M. Kattan, Esq. and the following parties as indicated on **October 17, 2012**.



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

On Behalf of Complainant Lutron Electronics Co., Inc.:

V. James Adduci, II
ADDUCI, MASTRIANI & SCHAUMBERG LLP
1133 Connecticut Avenue, 12th Floor
Washington, DC 20036

() Via Hand Delivery
() Via Overnight Delivery
() Via First Class Mail
() Other: _____

On Behalf of Respondent Elemental LED, LLC (d/b/a Diode LED):

Michael A. Berta, Esq.
ARNOLD & PORTER LLP
One Embarcadero Center, 22nd Floor
San Francisco, California 94111

() Via Hand Delivery
() Via Overnight Delivery
() Via First Class Mail
() Other: _____

Respondents:

Big Deal Electric Corp.
1202 E. Walnut Avenue, Suite H
Santa Ana, CA 92701

() Via Hand Delivery
() Via Overnight Delivery
() Via First Class Mail
() Other: _____

American Top Electric Corp.
1202 E. Walnut Avenue, Suite H
Santa Ana, CA 92701

() Via Hand Delivery
() Via Overnight Delivery
() Via First Class Mail
() Other: _____

Zhejiang Yuelong Mechanical & Electrical Co. Ltd.
Yao Road & Nanxi Road
Jiaying, Zhejiang
314005 China

() Via Hand Delivery
() Via Overnight Delivery
() Via First Class Mail
() Other: _____

Public Version

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

In the Matter of

**CERTAIN LIGHTING CONTROL
DEVICES INCLUDING DIMMER
SWITCHES AND PARTS THEREOF (IV)**

Investigation No. 337-TA-776

COMMISSION OPINION ON REMEDY, THE PUBLIC INTEREST, AND BONDING

I. INTRODUCTION

In this investigation, the Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), by certain defaulting respondents with respect to lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of U.S. Patent No. 5,637,930 (“the ‘930 patent”). The Commission has determined to issue a general exclusion order (“GEO”) under 19 U.S.C. § 1337(g)(2) with respect to subject articles that infringe claims 36, 65, 94, and 178 of the ‘930 patent. The Commission has also determined to issue cease and desist orders (“CDO”) with respect to articles that infringe claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of the ‘930 patent of defaulting respondents American Top Electric Corp. (“American Top”) and Big Deal Electric Corp. (“Big Deal”), both of Santa Ana, California; Elemental LED, LLC d/b/a Diode LED (“Elemental”) of Emeryville, California; and Zhejiang Yuelong Mechanical and Electrical Co. (“Zhejiang Yuelong”) of Zhejiang, China. The Commission has further determined that

consideration of the public interest factors does not preclude issuance of these remedial orders and that a bond in the amount of 100 percent of the entered value of the covered products is appropriate during the period of Presidential review. This opinion sets forth the reasons for the Commission's determinations.

II. PROCEDURAL HISTORY

The Commission instituted this investigation on June 15, 2011, based on a complaint filed by Lutron Electronics Co., Inc. ("Lutron") of Coopersburg, Pennsylvania. *76 Fed. Reg.* 35015-16. The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and parts thereof by reason of infringement of certain claims of the '930 patent and U.S. Patent No. 5,248,919 ("the '919 patent"). The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named the following respondents: American Top; Big Deal; Zhejiang Yuelong; Zhejiang Lux Electric Co. Ltd. ("Zhejiang Lux") and Wenzhou Huir Electric Science & Technology Co. Ltd. ("Wenzhou Huir"), both of Zhejiang, China; Westgate Manufacturing, Inc. ("Westgate") of Vernon, California; Elemental LED, LLC ("Elemental LED") and Diode LED ("Diode") both of Emeryville, California; Pass & Seymour, Inc. ("Pass & Seymour") of Syracuse, New York; and AH Lighting of Los Angeles, California.

On September 9, 2011, the Commission issued notice of its determination not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") granting Lutron's motion to amend the complaint and notice of investigation to substitute Elemental LED, LLC

d/b/a Diode LED (“Elemental”) of Emeryville, California as a respondent in place of Elemental LED and Diode. On November 22, 2011 and February 27, 2012, respectively, the Commission issued notices of its determinations not to review the ALJ’s IDs terminating Pass & Seymour and AH Lighting from the investigation based on consent orders.

On December 12, 2011, the ALJ issued an ID (Order No. 11) finding Elemental in default under Commission rule 210.16(b)(3) based on its own election. On January 17, 2012, the Commission issued notice of its determination to review the ID, and on review to find Elemental in default under Commission rules 210.16(a)(2) and (b)(2). On March 5, 2012, the ALJ issued an ID (Order No. 17) finding Westgate in default under Commission rules 210.16(a)(2) and (b)(2) based on its own election. In the same ID, the ALJ found respondents Big Deal, American Top, Wenzhou Huir, Zhejiang Yuelong, and Zhejiang Lux in default under Commission rule 210.16 for failing to respond to the complaint and notice of investigation, and for failing to respond to his show cause order. On March 21, 2012, the Commission issued notice of its determination not to review the ID finding these six respondents in default.¹

On January 20, 2012, Lutron filed a motion for summary determination (“MSD”) of a violation of section 337 pursuant to Commission rule 210.16(c)(2) and requested entry of a GEO with respect to the ’930 patent. Also, Lutron requested entry of a limited exclusion order (“LEO”) with respect to both asserted patents for all defaulting respondents under Commission rule 210.16(c)(1). Lutron further requested CDOs directed against all defaulting respondents, except for Westgate. The Commission investigative attorney (“IA”) filed a response supporting

¹ Elemental, American Top, Big Deal, Zhejiang Lux, Zhejiang Yuelong, Wenzhou Huir, and Westgate are referred to hereinafter as “the defaulting respondents.”

the motion. On March 16, 2012, Lutron filed a motion for leave to file a reply to the IA's response.

The ALJ issued a final ID on June 7, 2012, granting in-part the MSD and granting Lutron's motion for leave to file a reply. The ALJ issued his recommendation on remedy and bonding in the same document (hereinafter "ID/RD"). The ALJ found that all defaulting respondents met the importation requirement and that complainant satisfied the domestic industry requirement. *See* 19 U.S.C. §§ 1337(a)(1)(B), (a)(2). He found that each of the defaulting respondents' accused products infringe asserted independent claims 36, 65, 94, and 178 of the '930 patent, except for one accused product with respect to claim 178, based on substantial, reliable, and probative evidence. He found that the defaulting respondents infringe the asserted claims of the '919 patent in accordance with Commission rule 210.16(c)(1). No petitions for review of the subject ID/RD were filed. The ALJ recommended issuance of an LEO directed to the infringing products of all the defaulting respondents with respect to the asserted claims of both patents, and CDOs directed against infringing products of Big Deal, Elemental, and American Top. The ALJ further recommended that the Commission set a bond of 100 percent of the entered value of the covered products during the period of Presidential review.

On July 19, 2012, the Commission issued notice of its determination to review-in-part the ALJ's ID/RD. On review, the Commission vacated as moot all portions of the ALJ's ID/RD relating to the '919 patent because the patent expired on March 31, 2012. *See 77 Fed. Reg.* 43612-14 (July 25, 2012). The Commission determined not to review the remainder of the ID/RD. The Commission's notice also requested submissions regarding remedy, the public interest, and bonding. On August 2, 2012, Lutron and the IA each submitted a brief on remedy,

the public interest, and bonding along with proposed orders.² On August 9, 2012, Lutron and the IA filed reply briefs.³

III. DISCUSSION

A. Prior Commission Investigations Involving Lighting Control Products and the '930 Patent

The Commission has instituted three previous investigations relating to lighting control devices based on complaints filed by Lutron, all of which included allegations of infringement of the '930 patent. See *Lighting Control Devices Including Dimmer Switches and/or Switches and Parts Thereof (I)*, Inv. No. 337-TA-599, Comm'n Notice, 72 *Fed. Reg.* 16819 (Apr. 5, 2007); *Lighting Control Devices Including Dimmer Switches and Parts Thereof (II)*, Inv. No. 337-TA-676, Comm'n Notice, 74 *Fed. Reg.* 21820 (May 11, 2009); *Lighting Control Devices Including Dimmer Switches and Parts Thereof (III)*, Inv. No. 337-TA-681, Comm'n Notice, 74 *Fed. Reg.* 36744 (July 24, 2009). *Lighting Control Devices I* was terminated by settlement and *Lighting Control Devices II* and *III* were both terminated by consent order.

B. Relevant Law

² See Complainant Lutron Electronics Co., Inc.'s Submission on the Issues of Remedy, the Public Interest, and Bonding ("Lutron's Sub."); Brief of the Office of Unfair Import Investigations on the Issues of Remedy, the Public Interest, and Bonding ("IA's Sub.").

³ See Complainant Lutron Electronics Co., Inc.'s Reply to the Office of Unfair Import Investigations' Briefing on Remedy, the Public Interest, and Bonding ("Lutron's Reply"); Office of Unfair Import Investigations' Reply Brief on the Issues of Remedy, the Public Interest, and Bonding ("IA's Reply").

Default Remedy

A default remedy may be appropriate when a named respondent “fails to respond to the complaint and notice of investigation in the manner prescribed in § 210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.” 19 C.F.R. § 210.16(a). The Commission may issue an LEO and/or CDO against the defaulting respondent only if:

- (A) a complaint is filed against a person under this section;
- (B) the complaint and notice of investigation are served on the person;
- (C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;
- (D) the person fails to show good cause why the person should not be found in default; and
- (E) the complainant seeks relief limited solely to that person.

19 U.S.C. § 1337(g)(1). If these requirements are satisfied, the Commission must presume the facts alleged in the complaint to be true and, upon request, issue an exclusion from entry order and/or a CDO limited to the defaulter, unless, after considering the effect of such remedial orders upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the Commission finds that such orders should not be issued. *Id.*

The Commission is authorized to issue a general exclusion order in a default case if:

- (A) no person appears to contest an investigation concerning a violation of the provisions of this section;
- (B) such a violation is established by substantial, reliable, and probative evidence, and
- (C) the requirements of subsection (d)(2) of this section are met.

19 U.S.C. § 1337(g)(2). Section 337(d)(2) provides authority for the Commission to issue a GEO if:

(A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2).

The Public Interest

As discussed above, when issuing a default remedy under section 337(g), the Commission must weigh the remedy sought against the effect such a remedy may have on the following public interest factors: (1) the public health and welfare; (2) the competitive conditions in the U.S. economy; (3) the production of articles in the United States that are like or directly competitive with those subject to the investigation; and (4) U.S. consumers. *See* 19 U.S.C. § 1337(g)(1).

Respondents' Bond

Section 337(j) provides for entry of infringing articles during the sixty day period of Presidential review upon payment of a bond and states that the bond is to be set at a level "sufficient to protect the complainant from any injury." 19 U.S.C. § 1337(j)(3); *see also* 19 C.F.R. § 210.50(a)(3). When reliable price information is available, the Commission has often set the bond by eliminating the differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24 (1995). In other cases, the Commission has turned to alternative approaches,

especially when the level of a reasonable royalty could be ascertained. *See, e.g., Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41 (1995). A 100 percent bond has been imposed when no effective alternative existed. *See, e.g., Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26-27 (July 1997).

C. ALJ's ID/RD

1. *Default Remedy*

The ALJ did not recommend issuance of a GEO because he found that neither provision of section 337(d)(2) was satisfied by Lutron. *See* ID/RD at 32-41.

Section 337(d)(2)(A) - Prevention of Circumvention of an LEO

The ALJ found that the evidence submitted by Lutron failed to establish that a GEO is necessary to prevent circumvention of an LEO. ID/RD at 34-36. Specifically, he considered two factors that the Commission has deemed relevant to determining whether a GEO is warranted under section 337(d)(2)(A): (1) whether conditions are ripe for circumvention, and (2) the appearance of circumvention. *Id.* (citing *Certain Electronic Paper Towel Dispensing Devices and Components Thereof ("Towel Dispensers")*, Inv. No. 337-TA-718, Comm'n Notice (Dec. 1, 2011)). Regarding whether the conditions are ripe for circumvention, Lutron had argued, relying on *Towel Dispensers*, that the barriers to enter the U.S. dimmer switch market are low due to lower industry costs in China and the fact that there are a large number of potential entrants to the U.S. market for dimmer switches. ID/RD at 34-35. However, the ALJ found that the evidence Lutron submitted: (1) related to U.S. industry costs only, (2) included unsupported conclusions, and (3)

did not establish what the actual, or even estimated, industry costs would be in China (or even estimated to be). *Id.* He found that this evidence failed to show how expensive or inexpensive it would be to enter the U.S. market. *Id.*

The ALJ also found that Lutron's assertions regarding numerous potential entrants to the U.S. market were unsupported by the record evidence. ID/RD at 35-36. In addition, the ALJ found that the operation of some defaulting respondents under different names (or two different names representing the same company) did not, by itself, establish evasive activity that would support a finding of circumvention, especially because the companies were still easily identifiable by Lutron. *Id.* (citing *Certain Ground Fault Circuit Interrupters and Products Containing Same ("Ground Fault Circuit Interrupters (I)")*), Inv. No. 337-TA-615, Comm'n Op. at 25-26 (March 26, 2009) (finding that the likelihood of circumvention of a limited exclusion order due to the ease and frequency of name changes by Chinese companies, by itself, does not warrant a general exclusion order)).

Further, the ALJ found that the product at issue here is more complicated than the mechanical towel dispensers at issue in *Towel Dispensers*. ID/RD at 35. He noted that Lutron acknowledges that software is necessary to manufacture a dimmer switch, but merely claims that it is readily available from third-party vendors in countries such as China. *Id.* In making this finding, the ALJ relied on the declaration of Lutron's Director of Manufacturing Operations, [[]], which stated that "software for the microprocessor required for such products could be programmed by a third-party vendor." *Id.* (citing MSD, Ex. 55 at ¶ 7).

Regarding whether there is an appearance of circumvention, the ALJ acknowledged that Lutron presented reliable evidence that a respondent in *Lighting Control Devices (II)*, Universal

Although the ALJ found that a pattern of violation was established, he found that Lutron submitted insufficient evidence to establish difficulty in identifying the source of infringing products under section 337(d)(2)(B). ID/RD at 39-42. Specifically, the ALJ acknowledged that the defaulting respondents sell the accused products over the internet, which encourages anonymity and facilitates distribution; however, he found no evidence that the sellers or manufacturers of the accused products are deliberately trying to conceal their identity. *Id.* While acknowledging Lutron's evidence that the manufacturer supplying AH Lighting, CN Dina, used various websites and email addresses with different signature blocks, the ALJ found that this activity was not evidence of concealment, especially because AH Lighting was still able to purchase the accused products. *Id.* The ALJ also relied on the testimony of the President of AH Lighting who stated: (1) identification of the manufacturers of the accused products can be performed via an online search; and (2) Chinese companies are no longer manufacturing the accused products. *Id.* Based on this testimony, the ALJ found that manufacturers of the accused products can be identified by simply performing an online search. *Id.*

Lutron also argued that infringing manufacturers shipped their packages to the United States using generic packaging with an Underwriters Laboratories (“UL”) number to identify the source of the goods. *Id.* Lutron contended that the UL number was an unreliable source of origin because an importer, as opposed to the manufacturer, may be able to put its own UL number on the product and mask the identity of the true source of the products being imported. *Id.* However, the ALJ found that the mere fact that three manufacturers shipped their packages in generic packages with a UL number is insufficient to show that Lutron is unable to identify the source of the product. *Id.* He found that Lutron has provided no evidence on the size of the

dimmer switches market (and how much of that market is being supplied by unidentifiable manufacturers), nor had Lutron shown that numerous, unidentifiable non-respondent manufacturers were importing significant quantities of the accused products. *Id.* The ALJ therefore found that the presence of three manufacturers shipping their products in generic packaging, by itself, does not “substantially and reliably” prove that there is or would be difficulty in identifying the source.⁴ *Id.* Rather, he found that Lutron’s ability to identify these manufacturers as respondents in this investigation belies that very assertion.

Based on the above, the ALJ found that Lutron had failed to show that it is difficult to determine the source of the infringing products, and therefore he did not recommend issuance of a GEO. The ALJ recommended, in the event the Commission does not issue an GEO, that the Commission issue LEOs directed against the infringing products of the defaulting respondents.

Cease and Desist Orders

In addition, the ALJ found that CDOs directed against domestic respondents Elemental, American Top, and Big Deal were warranted. ID/RD at 42-43 (citing 19 U.S.C. § 1337(f)(1)). The ALJ agreed with the IA and Lutron that these respondents possessed commercially significant domestic inventories of the infringing imported product. *Id.* However, the ALJ did not find that CDOs were warranted against foreign respondents Zhejiang Yuelong, Zhejiang Lux, and Wenzhou Huir. *Id.* The ALJ found that Lutron presented no evidence that the Commission has authority to issue CDOs against foreign respondents and, even if these orders were issued, enforcement of such orders is highly unlikely. *Id.*

⁴ As discussed below, the “substantial and reliable” evidence standard applies to the finding of violation, not the type of evidence that is required to demonstrate the need for a GEO.

2. *Bonding*

The ALJ found that, because none of the defaulting respondents participated in discovery, reliable price information is not available and therefore recommended setting a bond amount of 100 percent of the entered value of the imported infringing products during the period of Presidential review. ID/RD at 44-45 (citing *Certain Oscillating Sprinklers, Sprinkler Components and Nozzles ("Oscillating Sprinklers")*, Inv. No. 337-TA-448, USITC Pub. No. 3498, Limited Exclusion Order at 4-6 (Mar. 2002).

D. Parties' Submissions

1. *Remedy*

Lutron contends that the appropriate remedy is a GEO barring importation of infringing lighting control devices including dimmer switches and parts thereof. Lutron's Sub. at 1-13. Lutron notes that this investigation is Lutron's fourth action before the Commission involving the '930 patent, and that complainant is still seeking an appropriate remedy to stop rampant importation of infringing products. Lutron's Sub. at 2; see *Lighting Control Devices (I-III)*. Lutron submits that previous investigations have not deterred a steady stream of infringers from entering the U.S. market, and furthermore, a previously named respondent, USE, has violated a consent order by selling infringing dimmer switches under its own name, as well as through a related company. *Id.* (citing *Lighting Control Devices (II)*).

Specifically, regarding section 337(d)(2)(A), Lutron argues that the ALJ failed to consider all of the evidence Lutron presented to demonstrate that there are numerous entrants and potential entrants to the U.S. market for dimmer switches. Lutron's Sub. at 3-4. Complainant submits that it presented evidence indicating that at least three non-respondent manufacturers, as well as three

non-respondent online retailers, offer infringing dimmer switches for sale. *Id.* Lutron also submits that it presented six additional websites that offer dimmer switches for sale that, as shown by their appearance or indicated by their use of Lutron's registered trademark, infringe the asserted '930 patent. *Id.* Lutron therefore contends that it identified twelve potential entrants to the U.S. market in support of its argument that the conditions are ripe for circumvention of an LEO and therefore warrant a GEO. *Id.*

Lutron further submits evidence that it contends was not available until after it filed its March 16, 2012 reply brief with respect to its MSD. Lutron's Sub. at 4-8. Specifically, Lutron contends that it learned that three additional Chinese manufacturers offer for sale online dimmer switches that, as shown by their appearance, infringe the '930 patent. *Id.* Lutron also contends that non-respondent wholesaler Morris Products, initially identified in Lutron's MSD, has significantly grown after Lutron filed its reply brief and now has at least 24 models of infringing dimmer switches, all or some of which are available for direct sale online using the websites of at least nine other previously unknown merchants. *Id.*; see Table 1 (Lutron's Sub., Exs. 9-17). In addition to these nine direct sale websites, Lutron submits that nine other online entities offer Morris Products dimmer switches for sale on their websites, and also link the purchaser to another website to transact the sale. *Id.*; see Table 2 (Lutron's Sub., Exs. 18-27). Tables 1 and 2 below, Lutron submits, summarize these 18 online sources (and linked websites) for infringing dimmer switches. Lutron's Sub., Exs. 9-27.

Table 1

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Online Merchant	Website Selling Infringing Product
KSCO Supply	kscosupply.com
Electric Supply Online	electricsupply.com
Westwayelectricshop.com	westwayelectricshop.com
Wayfair.com	wayfair.com
Fish307.com	fish307.com
Deal Time	dealtime.com
Dale Electric Supply Co.	dale-electric.com
BLI Lighting Specialists	budgetlighting.com
Amazon.com	amazon.com

Table 2

Online Merchant	Website Linked To Purchasers
Amazon.com	kscosupply.com, Boston Industrial
Globalspec.com	amazon.com
HookPrice.com	walmart.com

Nextag.com	wayfair.com
Pricegrabber.com	amazon.com
Sears.com	Boston Industrial
Shopping.com	amazon.com, walmart.com, wayfair.com
Thefind.com	amazon.com, fish307.com, wayfair.com
Walmart.com	wayfair.com

Lutron thus submits that, in the four months after filing its reply, it found online 21 additional potential U.S. entrants offering for sale online infringing dimmer switches. These 21 non-respondents include: three foreign manufacturers, nine direct online sellers, and nine indirect online retailers that link customers to direct sellers. *Id.* Lutron contends that, when added to the 12 potential entrants it identified in its MSD, the total number of potential entrants identified as offering for sale infringing dimmer switches rises to 33. *Id.* Accordingly, Lutron submits that this growing number of potential U.S. entrants indicates that the conditions for circumvention exist and are rapidly expanding, thereby necessitating issuance of a GEO, which would make it unnecessary for Lutron to come back to the Commission for a fifth, sixth, or seventh time to seek the remedy it deserves. *Id.*

Also, Lutron submits that the ALJ misstated the appropriate statutory standard under section 337(d)(2)(A) when, in discussing prior respondent USE's violation of a consent order, he stated that "[USE's] behavior is not necessarily indicative of a *pattern* of circumvention." Lutron's Sub. at 8-9 (emphasis added). Lutron notes that section 337(d)(2)(B) requires "a pattern

of violation” together with difficulty identifying the source of the infringing products, but that section 337(d)(2)(A) does not require a pattern of circumvention. *Id.* Complainant therefore contends that the ALJ committed error by apparently conflating the two different statutory provisions which led him to not recommend a GEO. *Id.* Lutron submits that application of an erroneous standard caused the ALJ to reject Lutron’s argument that USE’s violation of the Commission’s earlier consent order evidenced conditions ripe for circumvention. *Id.* Lutron submits that the Commission recently issued a GEO under similar circumstances after finding such a remedy necessary to prevent circumvention of an LEO in *Certain Ground Fault Circuit Interrupters and Products Containing Same (“Ground Fault Circuit Interrupters (II)”)*, Inv. No. 337-TA-739, Comm’n Op. at **53-57, 2012 WL 2394435 (June 8, 2012). Complainant contends that, in *Ground Fault Circuit Interrupters (II)*, the evidence suggested that two parties “may be attempting to circumvent” an LEO issued in a previous investigation based on evidence that one company “transferred its business or changed its name to a new entity in response to the exclusion order” in the earlier investigation. *Id.* at *53, *56. Lutron points out that the ALJ here found that USE circumvented the Commission’s consent order by selling infringing dimmer switches under its name and under the name of a related company, Enerlites, but dismissed it as “insufficient to show evasive activity.” *Id.* (citing ID/RD at 36, MSD at 100-02). Complainant argues that, in contrast, the Commission in *Ground Fault Circuit Interrupters (II)* relied on evidence that “some respondents and other potential manufacturers have a propensity and ability to change names and corporate forms,” to support its determination to issue a GEO and did not suggest that an independent showing of “evasive activity” was required. *Id.*

In addition, Lutron argues that the market conditions for lighting control devices, including dimmer switches, make circumvention likely. Lutron's Sub. at 10-12. Complainant submits that it has presented evidence that the financial barriers to entry into the lighting control business are low for retailers and manufacturers of dimmer switches alike. *Id.* Lutron argues that, contrary to the ALJ's finding, it did submit evidence relating to production costs in China. *Id.* Specifically, Lutron asserts that it presented the following evidence of the prices paid by three of the domestic respondents for infringing dimmers purchased from the foreign defaulting respondents: (1) respondent Elemental purchased infringing switches from [[]], where this cost included the outer enclosure of the product and the electrical components within the enclosure; (2) respondent AH Lighting purchased infringing dimmers from Wenzhou Huir at prices ranging from \$2.50 to \$3.50; (3) respondent Westgate purchased infringing products from Zhejiang Yuelong and Zhejiang Lux at a unit cost between \$7.50 and \$9.90. *Id.* (citing MSD at 68-69). Lutron submits that these costs necessarily were greater than the cost of manufacturing the accused products in China because they included the manufacturer's profit. Lutron therefore contends that it presented ample evidence that the cost of entering the U.S. market for lighting control devices, including dimmer switches, is very low. Also, complainant submits that Elemental testified that [[]]. *Id.* (citing Lutron's Statement of Material Facts ("SMF") in support of the MSD at ¶ 131) (Jan. 20, 2012). Lutron further submits that it is common knowledge that the labor rates are significantly lower in China than in the United States. Lutron's Sub. at 11 n.8 (citing *Manufacturing in China*, Dept. of Labor, Bureau of Labor Statistics (Apr. 4, 2011)).

Lutron also contends that, contrary to the ALJ's finding, the infringing dimmer switches at issue in this investigation are *less* complicated than the mechanical towel dispensers at issue in *Towel Dispensers* and do not require software. Lutron's Reply at 3 (emphasis added). Lutron contends that the ALJ incorrectly interpreted [[]] declaration because his discussion of software from a third-party vendor pertained to "products *other* than Diva-type [Lutron's] dimmer switches." *Id.* (citing MSD at Ex. 55, [[]] Decl. at ¶ 7 (emphasis added)); *see* Lutron's Compl. at 13-14. Lutron therefore submits that the Diva-type dimmer switches covered by the '930 patent do not require any software whatsoever. *Id.*

Further, regarding the second prong of section 337(d)(2)(B), Lutron submits that it presented evidence that established difficulty in identifying the source of the infringing products. Lutron's Sub. at 12-13. Lutron acknowledges that it was able to identify certain manufacturers of the domestic respondents' infringing dimmers, but argues that this identification was possible only through the limited discovery provided by Elemental. *Id.* Complainant contends that Elemental received its accused products from [[]] prepackaged in a generic white box with custom labels which included Elemental's name, the product name and a SKU number, and that there was no other source-identifying information provided on the box, label, or installation instructions included with the accused product. *Id.* (citing MSD at 88). Lutron further submits that Elemental, which uses the same packaging it receives from the foreign manufacturer, [[]]

]]. Lutron's Reply at 5. Lutron therefore contends that it has established difficulty in identifying the source of the infringing products since it was only through the limited discovery

provided by Elemental that Lutron was able to identify the manufacturer of Elemental's infringing products.

Based on the above, Lutron submits that it has satisfied the heightened burden under either section 337(d)(2)(A) or section 337(d)(2)(B) required for the Commission to issue a GEO covering the infringing lighting control products.

Finally, Lutron submits that CDOs directed to respondents Elemental, American Top, Big Deal, and Zhejiang Yuelong are warranted here. Lutron's Sub. at 14-15. Regarding foreign respondent Zhejiang Yuelong, Lutron submits that the Commission has issued CDOs against foreign respondents where the "foreign respondent's domestic distributor has maintained a commercially significant inventory." *Id.* (citing *Certain Toner Cartridges and Components Thereof ("Toner Cartridges")*, Inv. No. 337-TA-740, Comm'n Op. at 7 (Oct. 5, 2011)). Similarly, here, Lutron submits that respondent [[

]] *Id.* (citing SMF at ¶ 27; Ex. 6, [[

]] Decl. ¶ 8). Lutron also contends that it submitted evidence that domestic respondent Westgate has imported 240 units of infringing products from Zhejiang Yuelong. *Id.* (citing MSD at Ex. 7, Hadjian (Chief Marketing Officer) Dep. at 32:7-13). Lutron thus contends that the record evidence demonstrates the commercially significant inventory of foreign respondent Zhejiang Yuelong purchased by, and in the possession of, domestic respondents [[

]] and Westgate. Accordingly, Lutron submits it is necessary and appropriate for the Commission to issue a CDO directed to Zhejiang Yuelong.

The IA agrees with the ALJ that a GEO is not appropriate under the facts of this investigation. IA's Sub. at 3-10. Regarding whether the conditions are ripe for circumvention

under section 337(d)(2)(A), the IA submits that although Lutron has demonstrated an established demand for the products at issue, high profit margins, and available distribution chains, Lutron has not shown low barriers to entry into the U.S. market to warrant issuance of a GEO in this case. IA's Reply at 5. The IA contends that although a good may be produced inexpensively once production facilities are in existence as Lutron has shown, it does not necessarily follow that the cost of entering a market is low. *Id.* The IA submits that Lutron has failed to present the types of evidence that were relied on in other investigations where a likelihood of circumvention was found. *Id.* (citing *Towel Dispensers*, Comm'n Op. at 15 (low barriers to entry shown)).

The IA also submits that Lutron failed to show that distributors, retailers, or manufacturers of the infringing goods have engaged in any kind of evasive activity that would support a finding of circumvention under section 337(d)(2)(A). IA's Sub. at 6. The IA further contends that although respondents operate under different names to sell their products, the companies were still easily identifiable by Lutron as shown in this investigation. *Id.* (citing *Ground Fault Circuit Interrupters (I)*, Comm'n Op. at 25-26).

Regarding the appearance of circumvention and the violation of a consent order by prior respondent USE, the IA submits that the Commission should not infer that the respondents in this investigation will circumvent an LEO directed to them based on the conduct of another player in the market. IA's Reply at 6. The IA contends that *Ground Fault Circuit Interrupters (II)*, relied on by Lutron, found evidence that two of the respondents *in that investigation* may be attempting to circumvent an LEO, thereby distinguishing it from the facts in this investigation. *Id.* (emphasis added).

Regarding whether there is difficulty in identifying the source of the infringing products under section 337(d)(2)(B), the IA submits that the ALJ correctly found that the mere fact that manufacturers shipped their packages in generic packaging is insufficient to show that Lutron is unable to identify the source of the product. IA's Reply at 7-8. The IA contends that Lutron provided no evidence on the size of the market for dimmer switches (and how much of that market is being supplied by unidentifiable manufacturers). *Id.* The IA also argues that Lutron did not show that there are numerous, unidentifiable non-respondent manufacturers involved in the importation of significant quantities of the accused products. *Id.* The IA contends that the ALJ correctly noted that Lutron's identification of the respondents in this investigation belies its assertion of difficulty in identifying the relevant sources of the infringing goods. *Id.*

Finally, the IA agrees with the ALJ that an LEO is warranted in this case in accordance with section 337(g)(1). IA's Sub. at 10, 12-13; IA's Reply at 5-6. The IA agrees with Lutron that CDOs are appropriate against domestic respondents Elemental, American Top, and Big Deal, as well as against foreign respondent Zhejiang Yuelong. IA's Reply at 6 (citing *Toner Cartridges*, Comm'n Op. at 7).

2. *Public Interest*

Lutron submits that there are no public interest considerations that would preclude entry of remedial orders in this investigation and that there will be no negative impact on public health, safety, and welfare. Lutron's Sub. at 15-16. Lutron also submits that the availability of the accused products is not a concern because it is capable of meeting U.S. consumer demand for dimmer switches. *Id.* The IA agrees with Lutron that there are no public interest concerns that

would preclude issuance of an LEO or CDOs as proposed by the IA in this investigation. IA's Sub. at 13; IA's Reply at 7.

3. *Bonding*

Lutron and the IA agree with the ALJ's recommendation of a bond amount of 100 percent of the entered value of the covered products during the period of Presidential review because none of the defaulting respondents participated in discovery and only limited pricing information is available, thereby making a reliable price comparison unavailable. Lutron's Sub. at 17-18; IA's Reply at 7, both citing ID/RD at 44-45.

E. Analysis

Remedy

The Commission finds that Lutron has presented evidence satisfying both provisions of section 337(d)(2) sufficient to warrant issuance of a GEO directed to the infringing lighting control devices. First, regarding section 337(d)(2)(A), the record evidence demonstrates that a likelihood of circumvention of limited exclusion orders exists. *See* ID/RD at 36-39; Lutron's Sub. at 1-12, Exs. 3-27; MSD at 68-69, 76-77, 91-103; Lutron's Reply to MSD at 20, Exs. 3-10; *Towel Dispensers*, Comm'n Op. at 15 (issuing a GEO when finding evidence including interchangeability of manufacturers in a large distribution system in which molds could be resold and/or noninfringing molds could be retooled at low cost to make the infringing products, and well-established distribution channels including abundant distributors and internet retailers); *Ground Fault Circuit Interrupters (II)*, Comm'n Op. at 88-89 (April 27, 2012) (issuing a GEO when finding evidence including two named respondents who appeared to be attempting to circumvent the exclusion order issued in another ITC investigation, and some respondents and

other potential manufacturers having a propensity and ability to change company names and corporate forms). As in those cases, the facts here establish business conditions that suggest circumvention of an LEO may be likely to occur. Lutron has submitted evidence showing significant and increasing demand for the infringing products, widespread U.S. marketing and distribution networks with multiple intermediaries, a large number of non-respondent foreign manufacturers/distributors, and frequent name changes for foreign manufacturers/distributors. See Lutron's Sub. at 1-12 (Tables 1, 2), Ext. 3-27; MSD at 68-69, 76-77, 91-103; SMF at ¶¶ 123-41; Lutron's Reply to MSD at 20, Exs. 3-10; ID/RD at 34-39. The evidence also suggests a low barrier to enter the U.S. market through high profit margins and low retail costs in the United States for foreign infringing dimmers, indicative of low foreign manufacturing costs. MSD at 68-69; SMF at ¶ 129; Ex. 5, Darling Dep. 38:1-8; SMF at ¶ 133; Ex. 5, Darling Dep. 48:3-5; SMF at ¶ 134; Ex. 3, Neydavoud Dep. 55:14-56:1; SMF at ¶ 136; Ex. 7, Hadjian Dep. 47-48.

Lutron has also presented evidence that USE, a prior respondent in *Lighting Control Devices (II)*, circumvented a Commission consent order by selling dimmer switches that infringe the '930 patent under its own and under a different name. See ID/RD at 36; Lutron's Sub. at 8; MSD at 99, Exs. 60-62. Contrary to the IA's argument, this record evidence is relevant to the Commission's determination of whether a likelihood of circumvention of an LEO exists. See *Ground Fault Circuit Interrupters (II)*, Comm'n Op. at 88-89 (considering evidence showing that respondents and other potential respondents have the propensity and ability to change names and corporate forms); *Towel Dispensers*, Comm'n Op. at 15 (considering evidence of interchangeability of manufacturers in a large distribution system in which molds could be resold and/or noninfringing molds could be retooled at low cost to make the infringing products).

Moreover, the complaint includes allegations that the products of several named respondents in this investigation appear to be the same as, or contain the same components as, products of respondents named in the Commission's prior investigations involving lighting control devices. *See* Lutron's Compl. at ¶ 114-119. These complaint allegations are deemed to be true under 19 U.S.C. § 1337(g)(1). Further, similar to the product in *Towel Dispensers*, the dimmer switch product at issue covered by the '930 patent is not complex, *e.g.*, it does not require software. *See* '930 Patent; Lutron's Sub. at 8 n.7 ("Diva-type dimmer switches do not require any software whatsoever.").

Moreover, the ALJ misstated section 337(d)(2) and used an improper evidentiary standard under this section. Specifically, the ALJ misstated section 337(d)(2)(A) which only requires "circumvention," not a "pattern of circumvention," and which may be satisfied under certain conditions by a single company engaged in infringing activities that indicate circumvention of a Commission remedial order directed to a named respondent, such as USE. *See* ID/RD at 36; *Ground Fault Circuit Interrupters (II)*, Comm'n Op. at 88-89 (citing the propensity and ability of individual respondents to change names and corporate forms).

We also find that section 337(d)(2)(B) has been satisfied by Lutron's evidence. *See* *Certain Foam Footwear ("Foam Footwear")*, Inv. No. 337-TA-567, Comm'n Op. at 6-7 (July 15, 2011) (issuing a GEO where there was a large number of non-respondent internet retailers and the infringing shoes lacked identifying information). Likewise, here, Lutron has presented evidence of at least 33 non-respondent internet retailers of lighting control devices that are selling infringing products at very low prices, *e.g.*, less than \$10, which can be purchased easily by U.S. consumers or resellers. *See* Lutron's Sub. at 6-8 (Tables 1, 2), Exs. 3-9; MSD at 68-69, 98-99; SMF at ¶¶

129, 131-36; Lutron's Reply to MSD at 20, Exs. 3-10. These facts establish a pattern of violation of Section 337. As to the difficulty of identifying the source of infringing goods, similar to the complainant in *Foam Footwear*, Lutron has presented evidence that infringing products sold by numerous internet retailers and distributors are packaged with no clear identifiable designation of source using generic packaging and unreliable UL numbers. *Id.*; *see also* Lutron's Sub. at 3-8, 12-13; Exs. 6a, 6b, 7-8; MSD at 77, 84-91; ID/RD at 35-42. In our view, this generic packaging, along with the significant number of non-respondent distributors/retailers, makes it difficult to identify the actual source of the infringing products. *Id.*; *see also* ID/RD at 35-42.

Furthermore, the ALJ also erred by applying a "substantial and reliable" evidentiary standard when analyzing whether Lutron had shown difficulty in identifying the source of the infringing articles under section 337(d)(2)(B). *See* ID/RD at 41. Rather, "substantial and reliable" is part of the evidentiary standard for granting a motion for summary determination of violation in a default case in accordance with section 337(g)(2) and Commission rule 210.16(c)(2), but it is not the standard for showing that a GEO is warranted under section 337(d)(2). Also, the Commission has wide discretion in deciding the form of remedy. *See Viscofan, S.A. v. U.S. Int'l Trade Comm'n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

Based on the above, we find that Lutron's evidence has satisfied both section 337(d)(2)(A) and section 337(d)(2)(B) and therefore the Commission has determined to issue a GEO directed to the infringing lighting control products.

Further, Lutron has demonstrated that a commercially significant inventory of foreign respondent Zhejiang Yuelong's products is held by domestic resellers [[]] and Westgate, and therefore has determined to issue CDOs directed against Zhejiang Yuelong and domestic

respondents [[]], American Top, and Big Deal.⁵ See ID/RD at 43; Lutron's Sub. at 14-15 (citing SMF at ¶ 27; MSD Ex. 6, [[]] Decl. ¶ 8); MSD at 3-4, 20-21, 103-06; MSD Ex. 7, Hadjian Dep. 32; *Toner Cartridges*, Comm'n Op. at 7-8 (issuing a CDO against foreign respondents where the "foreign respondent's domestic distributor has maintained a commercially significant inventory."); *Video Game Systems, Accessories, and Components Thereof*, Inv. No. 337-TA-473, Comm'n Op. at 2 (Dec. 24, 2002) (defaulting domestic respondents are presumed to maintain commercially significant U.S. inventories of the infringing imported products).

Public Interest

In determining whether to issue a general exclusion order and cease and desist orders against defaulting respondents in this investigation, the Commission is required to consider the effect of these remedies upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers. 19 U.S.C. §§ 1337(d)(1), (g)(1). We find no public interest concerns that militate against issuing relief in this investigation. We find that there will be no negative impact on public health, safety, and welfare by reason of the GEO and CDOs with respect to the covered lighting control devices including dimmer switches and parts thereof because these articles have not been shown to have any major public health, safety, or welfare implications under the current record. See '930 patent; MSD at 7-12. Thus, the GEO and CDOs covering these products are unlikely to have any significant impact upon the statutory public interest considerations. See *Certain Compact Multipurpose Tools*, Inv. No. 337-TA-416, Comm'n Op. at 9-10 (Sept. 1, 1999). Also, the availability of the accused lighting control

⁵ Lutron did not request a CDO against Westgate.

products is not a concern, because Lutron has shown that it is capable of meeting U.S. consumer demand. *See* MSD at 2, 7-9; Lutron's Compl. at 5-8. Nor is there record evidence that competitive conditions in the United States, U.S. production of lighting control devices, or U.S. consumers of these products would be adversely impacted by the GEO or the cease and desist orders. Accordingly, the Commission concludes that the statutory public interest factors do not preclude the issued remedial orders.

Bonding

Under circumstances where it is difficult or impossible to calculate a bond based upon price differentials, and particularly where reliable information is unavailable due to the inability to conduct discovery of defaulting respondents regarding pricing data, the Commission has set the amount of the bond at 100 percent of the entered value of the infringing imported products. *See Oscillating Sprinklers*, Limited Exclusion Order at 4-6 (setting the bond at 100 percent of the entered value of the infringing imported product when the defaulting respondent failed to provide pricing information). Accordingly, we agree with the ALJ, Lutron, and the IA and have determined to set a bond in the amount of 100 percent of the entered value of the infringing lighting control devices including dimmer switches and parts thereof during the period of Presidential review.

V. CONCLUSION

For the reasons set forth in this opinion, the Commission has determined to issue a general exclusion order that excludes from entry for consumption into the United States lighting control devices including dimmer switches and parts thereof that are covered by one or more of

claims 36, 65, 94, and 178 of the '930 patent.⁶ The Commission has also determined to issue cease and desist orders directed against defaulting respondents American Top, Big Deal, Elemental, and Zhejiang Yuelong with respect to claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of the '930 patent. The Commission further has determined that the public interest factors enumerated in sections 337(d)(1) and (g)(1) (19 U.S.C. §§ 1337(d)(1), (g)(1)) do not preclude issuance of the GEO or CDOs. Finally, the Commission has determined that there should be a bond in the amount of 100 percent of the entered value of the covered products during the period of Presidential review.

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: November 8, 2012

⁶ Complainant requested that only these claims be included in the general exclusion order. *See* ID/RD at 16-17 n.2.

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION** has been served by hand upon, the Commission Investigative Attorney, Lisa M. Kattan, Esq. and the following parties as indicated on **November 8, 2012**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
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On Behalf of Complainant Lutron Electronics Co., Inc.:

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On Behalf of Respondent Elemental LED, LLC (d/b/a Diode LED):

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() Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

In the Matter of

**CERTAIN LIGHTING CONTROL
DEVICES INCLUDING DIMMER
SWITCHES AND PARTS THEREOF (IV)**

Investigation No. 337-TA-776

**NOTICE OF COMMISSION DECISION TO REVIEW-IN-PART AN INITIAL
DETERMINATION GRANTING IN-PART COMPLAINANT'S MOTION FOR
SUMMARY DETERMINATION OF VIOLATION OF SECTION 337, AND ON REVIEW
TO VACATE ALL PORTIONS OF THE INITIAL DETERMINATION RELATING TO
U.S. PATENT NO. 5,248,919; REQUEST FOR SUBMISSIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part an initial determination ("ID") (Order No. 18) of the presiding administrative law judge ("ALJ") granting in-part complainant's motion for summary determination of violation of section 337. The Commission has determined on review to vacate all portions of his ID relating to U.S. Patent No. 5,248,919 ("the '919 patent") as moot due to the expiration of the patent on March 31, 2012. The Commission also requests written submissions regarding remedy, bonding, and the public interest, relating to U.S. Patent No. 5,637,930 ("the '930 patent").

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 15, 2011, based on a complaint filed by Lutron Electronics Co., Inc. ("Lutron") of Coopersburg, Pennsylvania. 76 *Fed. Reg.* 35015-16. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting

control devices including dimmer switches and parts thereof by reason of infringement of certain claims of the '930 and '919 patents. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: American Top Electric Corp. ("American Top") and Big Deal Electric Corp. ("Big Deal"), both of Santa Ana, California; Zhejiang Lux Electric Co. Ltd. ("Zhejiang Lux"), Zhejiang Yuelong Mechanical and Electrical Co. ("Zhejiang Yuelong"), and Wenzhou Huir Electric Science & Technology Co. Ltd. ("Wenzhou Huir"), all of Zhejiang, China; Westgate Manufacturing, Inc. ("Westgate") of Vernon, California; Elemental LED, LLC ("Elemental") and Diode LED ("Diode") both of Emeryville, California; Pass & Seymour, Inc. ("Pass & Seymour") of Syracuse, New York; and AH Lighting of Los Angeles, California.

On September 9, 2011, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 9) granting Lutron's motion to amend the complaint and notice of investigation to substitute Elemental d/b/a Diode LED ("Elemental") as a respondent in place of Elemental and Diode. On November 22, 2011 and February 27, 2012, respectively, the Commission issued notices of its determinations not to review the ALJ's IDs (Order Nos. 10 and 15) terminating Pass & Seymour and AH Lighting from the investigation based on consent orders.

On December 12, 2011, the ALJ issued an ID (Order No. 11) finding Elemental in default under Commission rule 210.16(b)(3) based on its own election. On January 17, 2012, the Commission issued notice of its determination to review the ID, and on review to find Elemental in default under Commission rules 210.16(a)(2), (b)(2). Also, on January 17, 2012, Westgate filed a notice electing to default. On March 5, 2012, the ALJ issued an ID (Order No. 17) finding Westgate in default under Commission rules 210.16(a)(2), (b)(2). In the same ID, the ALJ found respondents Big Deal, American Top, Wenzhou Huir, Zhejiang Yuelong, and Zhejiang Lux in default under Commission rule 210.16 for failing to respond to the complaint and notice of investigation, and for failing to respond to his show cause order issued on February 8, 2012 (Order No. 14). On March 21, 2012, the Commission issued notice of its determination not to review his ID finding these six respondents in default.

On January 20, 2012, Lutron filed a motion for summary determination of violation of section 337 pursuant to Commission rule 210.16(c)(2) and requested entry of a general exclusion order with respect to the '930 patent. Lutron also requested entry of a limited exclusion order with respect to the '919 patent directed against the accused products of all defaulting respondents. Lutron further requested cease and desist orders with respect to both asserted patents against all defaulting respondents, except for Westgate. The Commission investigative attorney ("IA") filed a response supporting much of the motion.

The ALJ issued the subject ID on June 7, 2012, granting in-part the motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement and that complainant satisfied the domestic industry requirement. *See* 19 U.S.C. § 1337(a)(1)(B), (a)(2). He found that each of the defaulting respondents' accused products infringe one or more of the asserted claims of the '930 patent, except for one accused product with respect to claim 178. He found that the defaulting respondents infringe the asserted claims of the '919 patent in accordance with Commission rule 210.16(c). The ID also contained the ALJ's recommended

determination on remedy and bonding. Specifically, the ALJ did not recommend issuance of a general exclusion order with respect to the '930 patent, and recommended issuance of a limited exclusion order with respect to all defaulting respondents for the asserted claims of both asserted patents. Also, he recommended cease and desist orders directed against respondents Big Deal, American Top, and Elemental with respect to the asserted claims of both asserted patents. The ALJ further recommended that the Commission set a bond of 100 percent of the entered value of the covered products during the period of Presidential review. No petitions for review of the subject ID were filed.

Having examined the record of this investigation, including the ALJ's ID, the Commission has determined to review-in-part the ID. The '919 patent expired on March 31, 2012, which terminated the Commission's jurisdiction as to this patent. *See* 19 U.S.C. § 1337(a)(1)(B)(i). The Commission has therefore determined on review to vacate all portions of the ALJ's ID relating to the '919 patent as moot including his finding of a violation of section 337 with respect to the '919 patent based on infringement. The Commission has determined not to review the remainder of the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

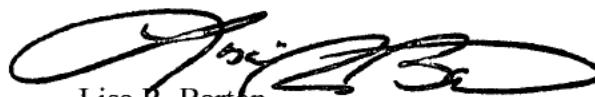
Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the '930 patent expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on August 2, 2012. Reply submissions must be filed no later than the close of business on August 9, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number ("Inv. No. 337-TA-776") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42-46 and 210.50).

By order of the Commission.

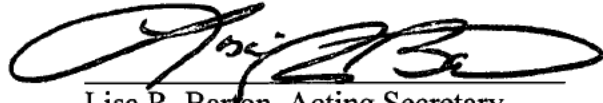


Lisa R. Barton
Acting Secretary to the Commission

Issued: July 19, 2012

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon, the Commission Investigative Attorney, Lisa M. Kattan, Esq. and the following parties as indicated on **July 19, 2012**.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
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UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN LIGHTING CONTROL
DEVICES INCLUDING DIMMER
SWITCHES AND PARTS THEROF (IV)**

Inv. No. 337-TA-776

**ORDER NO. 18: INITIAL DETERMINATION GRANTING IN PART MOTION BY
COMPLAINANT LUTRON ELECTRONICS CO., INC. FOR
SUMMARY DETERMINATION OF VIOLATION OF SECTION
337 AND RECOMMENDED DETERMINATION ON REMEDY**

(June 7, 2012)

Lutron Electronics Co., Inc. (“Lutron”) of Coopersburg, Pennsylvania is the complainant. 76 Fed. Reg. 35015. The respondents named in the Notice of Investigation are Pass & Seymour, Inc. of Syracuse, New York (“Pass & Seymour”), AH Lighting of Los Angeles, California (“AH Lighting”); American Top Electric Corp of Santa Ana, California (“American Top”); Big Deal Electric Corp. of Santa Ana, California (“Big Deal”); Diode LED of Emeryville, California (“Diode LED”); Elemental LED, LLC of Emeryville, California (“Elemental”); Wenzhou Huir Electric Science and Technology Co. Ltd. of Zhejiang, China (“Wenzhou Huir”); Westgate Mfg., Inc. of Vernon, California (“Westgate”); Zhejiang Lux Electric Co. Ltd. of Zhejiang, China (“Zhejiang Lux”); and Zhejiang Yuelong Mechanical & Electrical Co. Ltd. of Zhejiang, China (“Zhejiang Yuelong”). *Id.* at 35016.

On January 20, 2012, Lutron filed a Motion for Summary Determination of Violation of Section 337 (“MSD”). (Motion Docket No. 776-014.) Lutron seeks a determination that a

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domestic industry exists, that there has been a violation of Section 337 and for entry of a general exclusion order with respect to U.S. Patent No. 5,637,930 (“the ‘930 Patent”), a limited exclusion order with respect U.S. Patent No. 5,248,919 (“the ‘919 Patent”), and cease and desist order with respect to all Defaulting Respondents.

On January 26, 2012, Lutron filed an unopposed motion for leave to file a corrected motion for summary determination. (Motion Docket No. 776-016.) The motion sought to correct certain typographical and citation errors and to make certain additions that were either inadvertently omitted or that add clarification. The motion states that the Commission Investigative Staff does not oppose the motion and there were no responses to the motion. Motion No. 776-016 is hereby GRANTED.

The Commission Investigative Staff (“Staff”) requested supplemental information in connection with the MSD. On February 24, 2012, Lutron filed a supplemental submission in support of their motion for summary determination where they withdrew their request for a general exclusion order with respect to all previously asserted dependent claims of the ‘930 Patent and responded to the Staff’s request to explain whether 35 U.S.C. § 112 ¶ 6 applies to the terms “switch means,” “first actuator means” and “second actuator means” (“First Supplement”). On February 27, 2012, Lutron filed a Second Supplemental Response to the Staff’s Request for Supplemental Information and provided the Declaration of Ken Ayer, the Director of Manufacturing and Operations for Lutron, and the Declaration of Phillip N. Smith, a patent agent employed by Lutron (“Second Supplement”).

On February 28, 2012, Staff filed a response to Lutron’s Motion for Summary Determination of Violation of Section 337, as supplemented, supporting much of Lutron’s Motion for Summary Determination (“Staff Resp.”). Staff agreed with Lutron’s claim

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constructions except as to the term “actuator” as used in the phrases “first actuator means” and “second actuator means.” Under Staff’s claim construction and infringement analysis, the Westgate Zhejiang Lux Smart Dimmer does not infringe. Staff also concluded that Lutron failed to show that Elemental met the importation requirement.

On March 16, 2012, Lutron filed a motion for leave to file a reply to the Commission Investigative Staff’s Response to Lutron’s Motion for Summary Determination on Violation (“Reply”) opposing the staff’s claim construction. (Motion Docket No. 776-020.) The motion states that Staff does not oppose the motion and no other responses were filed. Motion No. 776-020 is hereby GRANTED.

On that same day, Lutron filed a motion for leave to submit a supplemental expert report of Robert J. Anders. (Motion Docket No. 776-019.) The motion states that Staff does not oppose and no other responses were filed. Motion No. 776-019 is hereby GRANTED.

I. BACKGROUND

A. Institution and Procedural History of This Investigation

On May 16, 2011, Lutron filed a Complaint with the Commission alleging violations of 19 U.S.C. § 1337 based on the infringement of one or more claims of U.S. Patent Nos. 5,637,930 (the “930 Patent”) and 5,248,919 (the “919 Patent”) by the following respondents: AH Lighting, American Top, Big Deal, Diode, Elemental, Pass & Seymour, Wenzhou Huir, Westgate, Zhejiang Yuelong, and Zhejiang Lux.

By publication of a notice in the *Federal Register* on June 15, 2011, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation on June 10, 2011, naming each of the foregoing entities as respondents. 76 *Fed. Reg.* 35015-16 (June 15, 2011).

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On July 21, 2011, Lutron and respondents Elemental and Diode jointly moved to amend the Complaint to correctly identify Elemental and Diode. The Notice of Investigation named these respondents as separate entities, however, the evidence showed that Elemental does business under the name Diode LED. Thus, the ALJ granted the motion by Initial Determination amending the Complaint and Notice of Investigation to correctly name Elemental d/b/a Diode LED (“Elemental”) as a Respondent. (Order No. 9.) The Commission determined not to review the order. (*Notice of Commission Decision Not to Review an Initial Determination Granting a Joint Motion to Amend the Notice of Investigation* (September 9, 2011).)

On November 2, 2011, the ALJ terminated Pass & Seymour from the investigation based on a unilateral consent order. (Order No. 10.) The Commission determined not to review the order. (*Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation as to Respondent Pass & Seymour, Inc. Based on a Consent Order; Issuance of a Consent Order* (November 22, 2011).)

On December 12, 2011, the ALJ found Elemental in default under Commission Rule 210.16(b)(3) based on its own election. (Order No. 11.) The Commission reviewed the Initial Determination only to note that the appropriate authority for finding default was Commission Rules 210.16(a)(2) and (b)(2), and not Commission Rule 210.16 (b)(3), because Elemental had responded to the Complaint and Notice of Investigation. (*Notice of Commission Determination to Review the Initial Determination Finding Certain Respondents in Default and on Review to Find Respondents in Default Under Commission Rules 210.16(a)(2) and (b)(2)* (January 17, 2012).)

On January 17, 2012, Westgate filed a notice electing to default. Westgate requested that this notice be treated as a motion for default. On March 5, 2012, the ALJ found Westgate in

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default pursuant to § 210.16(a)(2) and (b)(2). (Order No. 17.) The Commission determined not to review the order. (*Notice of a Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default* (March 21, 2012).)

On January 20, 2012, Lutron and AH Lighting jointly moved to terminate the investigation as to AH Lighting based on a Consent Order. On February 8, 2012, the ALJ granted the motion. (Order No. 15.) The Commission determined not to review the order. (*Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation as to Respondent AH Lighting Based on a Consent Order; Issuance of Consent Order* (February 27, 2012).)

On December 23, 2011, Lutron filed a motion for an order to show cause why Big Deal, American Top, Wenzhou Huir, Zhejiang Yuelong, and Zhejiang Lux should not be found in default. On February 8, 2012, the ALJ granted the motion and gave these Respondents until February 22, 2012 to show cause. (Order No. 14.) No responses were received by that date. On March 5, 2012, the ALJ issued an initial determination finding respondents Big Deal, American Top, Wenzhou Huir, Zhejiang Yuelong and Zhejiang Lux in default pursuant to 19 C.F.R. §§ 210.16 (a) for failing to respond to the Complaint and notice of investigation and 19 C.F.R. §§ 210.16(a)(2), 210.16(b)(2), and 210.17 for failing to respond to discovery requests, respond to the show cause order, comply with Order No. 2 or otherwise participate in the investigation. (Order No. 17.) The Commission determined not to review the order. (*Notice of a Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default* (March 21, 2012).)

On January 20, 2012, Lutron filed its MSD seeking a determination that a domestic industry exists; that there has been a violation of Section 337; for entry of a general exclusion

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order with respect to the '930 Patent, a limited exclusion order with respect to the '919 Patent, and cease and desist orders with respect to the remaining respondents, namely American Top, Big Deal, Elemental, Wenzhou Huir, Westgate, Zhejiang Yuelong and Zhejiang Lux (collectively "Defaulting Respondents").

B. The Parties

Lutron manufacturers lighting control devices, including dimmer switches that fall under Lutron's Wallbox platform and Home Systems Business units platform ("Wallbox platform" or "Home Systems platform"). (Statement of Undisputed Material Facts ("SUMF") ¶67.) There are three families of dimmer switches stemming from these platforms that practice the '930 Patent—the Maestro family, the RadioRA family and the Diva family ("Lutron's Dimmer Switches"). (SUMF ¶ 70.)

American Top and Big Deal are corporations located in Santa Ana, California.¹ (SUMF ¶ 16.) American Top imports and/or sells in the United States after importation American Top's Decorative Dimmer – Three way 120 VAC 60 Hz 700w dimmer, Model TD3LW (MSD at Ex. 10, EX. C.II.C.24.) and Big Deal imports into the United States and/or sells in the United States after importation lighting control devices, including dimmer switches. American Top and Big Deal failed to answer the Complaint and Notice of Investigation and were found to be in default. (Order No. 17.)

Elemental imports into the United States and sells in the United States after importation dimmer switches [REDACTED]. (SUMF ¶25, Ex. 5, Darling Dep 31:9-14.) Elemental was found to be in default of its own election. (Order No. 11.)

¹ Big Deal is a corporation located in Santa Ana, California and is listed under the same address as American Top in the California's Secretary of State's List of Business Entities. (SUMF ¶ 16-17.) According to the California Secretary of State Business Entity listing, as of November 25, 2011, Big Deal's business status is "dissolved." (SUMF ¶ 16.)

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Westgate imports into the United States and sells in the United States after importation dimmer switches from Zhejiang Lux and Zhejiang Yuelong. (SUMF ¶¶ 42-46.) Westgate was found to be in default of its own election. (Order No. 17.)

Wenzhou Huir manufactures dimmer switches in China. (SUMF ¶ 32, Ex. 1, Compl. ¶¶30, Ex. 4, Neydavoud Decl. ¶4.) Wenzhou Huir failed to answer the Complaint and Notice of Investigation and was found to be in default. (Order No. 17.)

Zhejiang Lux manufactures dimmer switches in China. (SUMF ¶ 58, Ex. 1, Compl. ¶¶ 38, 39; Ex. 7, Hadjian Dep. 30:14-18.) Zhejiang Lux failed to answer the Complaint and Notice of Investigation and was found to be in default. (Order No. 17.)

Zhejiang Yuelong manufactures lighting control devices, including dimmer switches and parts thereof in China. (SUMF ¶ 62, Ex. 8, Hadian Decl. ¶ 8; Ex. 7, Hadjian Dep. 33:21-43:11.) Zhejiang Yuelong failed to answer the Complaint and Notice of Investigation and was found to be in default. (Order No. 17.)

C. The Products at Issue

The products at issue in this investigation are numerous aftermarket lighting control devices, including dimmer switches and parts thereof. *See* 76 Fed. Reg. 35015-6. The aftermarket products are interchangeable with one or more of Lutron’s Dimmer Switches and may infringe specific claims of the ‘930 and ‘919 Patents. Lutron argues that the following accused lighting control devices, including dimmer switches and parts thereof (collectively the “Accused Products”), infringe at least claims 36, 38-41, 47, 53, 54-56, 58, 60, 65, 67-70, 76, 82, 83, 85, 87, 89, 94, 96-99, 105, 111, 112, 114, 116, 118, 178, 180, 189, 193, and 197 of the ‘930 Patent and claims 1, 2, 5-8, 11-13, 15-20, 23, 25-32, 35, and 36 of the ‘919 Patent:

- AH Lighting 3-way sliding 600 W Dimmer – Model No. SDM3 and bearing UL Certification Number E225133 registered to Wenzhou Huir (“AH Lighting Dimmer”);

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- American Top’s Decorative Dimmer – Three Way 120 VAC 60Hz 700W dimmer, Model TD3LW (“TD3L Decorator Dimmer”);
- Elemental REIGN Rocker Slide Dimmer Switch 12V – Model EL-WDRS12V (“REIGN Rocker Slide Dimmer”);
- Westgate Decorator Slide Dimmer Magnetic Low Voltage 120 VAC 60 Hz 500 VA Model No. 56311 bearing UL Certification Number E312733 registered to Zhejiang Yuelong (“Westgate Decorator Dimmer 56311”); and
- Westgate Dimmer 120 VAC 60 Hz 600 W – Model No. LUX DM600-11 bearing UL Certification Number E250099 registered to Zhejiang Lux (“Westgate Smart Dimmer”).

(See Motion No. 776-014 at 9-12.)

II. SUMMARY DETERMINATION STANDARD

A. Legal Standard

Pursuant to Commission Rule 210.18, summary determination “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); *see also DeMarini Sports Inc.*, 239 F.3d 1314, 1322 (Fed. Cir. 2001); *Wenger Mfg., Inc. v. Coating Machinery Systems, Inc.*, 239 F.3d 1225, 1231 (Fed. Cir. 2001). The evidence “must be viewed in the light most favorable to the party opposing the motion . . . with doubt resolved in favor of the nonmovant.” *Crown Operations Int’l, Ltd v. Solutia, Inc.* 289 F.3d 1367, 1375 (Fed. Cir. 2002); *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.”) “Issues of fact are genuine only if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party.” *Id.* at 1375 (quoting *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248

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(1986)). The trier of fact should “assure itself that there is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” *EMI Group North America, Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998). “In other words, ‘[s]ummary judgment is authorized when it is quite clear what the truth is,’ [citations omitted] and the law requires judgment in favor of the movant based upon facts not in genuine dispute.” *Paragon Podiatry Laboratory, Inc. v. KLM Laboratories, Inc.* 984 F.2d 1182, 1185 (Fed.Cir. 1993).

A violation of Section 337 may not be found unless supported by “reliable, probative, and substantial evidence.” 35 U.S.C. § 559; *see also Certain Sildenafil or any Pharmaceutically Acceptable Salt Thereof, Such as Sildenafil Citrate and Products Containing Same*, Inv. No. 337-TA-489, Com. Op. Remedy, the Public Interest, and Bonding at 4-5 (July 2004).

III. VALIDITY AND ENFORCEABILITY

A patent is presumed valid under 35 U.S.C. § 282. *Microsoft Corp. v. i4i Ltd. P’ship*, 131 S.Ct. 2238 (2011). Therefore the burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity. *Id.*

Lutron has submitted certified copies of the patents-in-suit as well as the assignments of the ‘930 and the ‘919 Patents to Lutron. (Ex. 9, Ex. 78, Ex. 79, Ex. 80.) Lutron has also submitted a certified copy of the results of the ‘930 Patent’s re-examination proceeding before the United States Patent and Trademark Office. (Ex. 77.) Respondents and Staff have not challenged the validity or enforceability of any of the asserted claims of the ‘930 Patent or the ‘919 Patent. (Staff Resp. at 20-21.)

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There is no evidence, nor any arguments, before the ALJ that the '919 and/or the '930 Patents are invalid and/or unenforceable. Therefore, on this record, the ALJ finds that the '919 and '930 Patents are valid and enforceable.

IV. IMPORTATION

Section 337 (a)(1)(B) declares unlawful the "importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer or consignee of articles that infringe a valid and enforceable United States patent.

Lutron must establish that the Defaulting Respondents' products were imported into the United States, sold for importation, or sold within the United States after importation. 19 U.S.C. § 1337 (a)(1)(B). Lutron asserts that the Accused Products were imported in the United States, sold for importation, or sold within the United States after importation. Lutron offers evidence that the Accused Products were manufactured abroad and that they were sold in the United States. (MSD at 17-23.) Staff does not dispute the evidence and argues that Lutron has satisfied the importation requirement. (Staff Resp. at 7.)

A. American Top/Big Deal

American Top and Big deal are corporations located in Santa Ana, California. (Ex. 14, Smith Decl. ¶ 6.) Big Deal appears to be associated with American Top as they are both listed under the same address in California's Secretary of State of State list of Business Entities. (Ex. 15.)

Six TD3L Decorator Dimmers were ordered from American Top. (Ex. 14, Smith Decl. ¶6.) The dimmers were selected from an American Top advertisement and ordered through the contact information listed in the advertisement. (*Id.*) American Top's decorator dimmers bear

country of origin markings “Made in China” on the products and packaging. (Ex. 14, Smith Decl. ¶ 7; Ex. 14 & Compl. Ex. 9-O, 9-P.)

As of at least December 21, 2011, Big Deal was selling at least ten products that appear to be substantially similar to the Accused Products on eBay. (Ex. 17.)

Thus, the evidence shows that American Top/Big Deal has imported, sold for importation and/or sold after importation into the United States the Accused Products.

B. Elemental

Elemental imports the Accused Products [REDACTED] into the United States. (Ex. 5, Darling Dep. 31:9-14, 75:1-10. Ex. 14, Smith Decl. ¶ 9; Compl. Ex. 9-S.) An Elemental representative verified that China is the country of origin for the Accused Products. (Ex. 14, Smith Decl. ¶ 9; Ex. 1, Compl. ¶ 84.) Six REIGN Rocker Slide Dimmers bearing no markings were purchased through Elemental’s website and delivered in the United States. (Ex. 14, Smith Decl. ¶ 9 & Compl. Ex. 9-S.) Elemental placed its first order [REDACTED] [REDACTED] [REDACTED]. (Ex. 5, Darling Dep. 75:1-10 & Dep. Ex. 13.)

Thus, the evidence shows that Elemental has imported, sold for importation, and/or sold after importation into the United States the Accused Products.

C. Wenzhou Huir

Wenzhou Huir, which also operates under the name of CN Dina, manufactures the Accused Products in China. (Ex.1, Compl. ¶ 30; Ex. 4, Neydavoud Decl. ¶4.) Wenzhou Huir manufactures AH Lighting Dimmers that AH Lighting purchased through CN Dina’s/Wenzhou Huir’s websites. (Ex. 4, Neydavoud Decl. ¶ ¶ 6, 9.) From 2007 until late 2010 or early 2011, AH Lighting purchased dimmer switches from a Chinese company it knew as CN Dina, which it

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later learned also operates under the Wenzhou Huir name. (Ex. 4, Neydavoud Decl. ¶ 4.) CN Dina/Wenzhou Huir exported dimmer switches to AH Lighting as a result of online orders placed directly in China. (Ex. 4, Neydavoud Decl. ¶ 7; Ex. 1, Compl. ¶ 30.) AH Lighting placed orders with CN Dina/Wenzhou Huir and, upon wiring the final amount to CN Dina/Wenzhou Huir, the Chinese company released the cargo from the Port of Long Beach, California. (Ex. 4, Neydavoud Decl. ¶ 7; Ex. 1, Compl. ¶ 30.)

Thus, the evidence shows that Wenzhou Huir has imported, sold for importation, and/or sold after importation into the United States the Accused Products.

D. Westgate

Westgate purchased the Accused Products from Zhejiang Lux from December 6, 2009 to October 5, 2010. (Ex 7, Hadjian Dep. 30:14-21; Ex. 8, Hadjian Decl. ¶ 9.) Westgate also purchased the Accused Products from Zhejiang Yuelong on August 28, 2008. (Ex. 8, Hadjian Decl. ¶¶ 4, 14.) Westgate imported and sold the Accused Produced in the United States. (Ex. 7, Hadjian Dep. 37:11-13, 17-19; 38:20-22; 42:12-14.)

Six Westgate Smart Dimmers were ordered on site at Ventura Wholesale Electric Inc., located in Ventura CA. (Ex 18, Flotho Decl. ¶ 4.) The products bore a UL certification number that identified the manufacturer as being located in China. (Ex. 18, Flotho Decl. ¶5; Ex. 1, Compl. ¶90.) Six Westgate Decorator Slide Dimmers were ordered on site at Ventura Wholesale Electric, Inc., located in Ventura California. (Ex. 18 ¶ 2.) The products bear “Made in China” country of origin markings. (Ex. 18, Flotho Decl. ¶ 3; Ex. 1, Compl. ¶ 86.)

Thus, the evidence shows that Westgate has imported, sold for importation, and/or sold after importation into the United States the Accused Products.

E. Zhejiang Lux

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Zhejiang Lux is a Chinese company that manufactures lighting control devices, including dimmer switches and parts thereof. (Ex. 1, Compl. ¶¶ 38, 39; Ex. 7, Hadjian Dep. 30:14-18.) Westgate purchased Accused Products from Zhejiang Lux from December 6, 2009 to October 5, 2010. (Ex. 7, Hadjian Dep. 30:14-21; Ex. 8, Hadjian Decl. ¶ 9.) Westgate was the importer of the products it purchased from Zhejiang Lux. (Ex. 7, Hadjian Dep. 42:12-14.) Westgate sold those products purchased from Zhejiang Lux in the United States. (*Id.*, 38: 20-22.)

Thus, the evidence shows that Zhejiang Lux has imported, sold for importation, and/or sold after importation into the United States the Accused Products.

F. Zhejiang Yuelong

Zhejiang Yuelong is a Chinese Company that manufactures lighting control devices, including dimmer switches and parts thereof. (Ex. 8, Hadjian Decl. ¶ 8; Ex. 7, Hadjian Dep. 33:21-43:11.) Based on Westgate's experience, Zhejiang Yuelong uses at least one website to offer the products. (Ex. 8, Hadjian Decl. ¶ 7.) Westgate purchased the Accused Products from Zhejiang Yuelong on August 28, 2008. (*Id.* ¶¶ 4, 14; Ex. 7, Hadjian Dep. 30:14-21.) Westgate was the importer of the products it purchased from Zhejiang Yuelong. (*Id.*, 37:11-13.) Westgate sold the products purchased from Zhejiang Yuelong in the United States. (Ex. 7, Hadjian Dep. 32:17-19.)

Thus, the evidence shows that Zhejiang Yuelong has imported, sold for importation, and/or sold after importation into the United States the Accused Products.

As set forth *supra*, the undisputed evidence shows that each Defaulting Respondents imported into the United States, sold for importation, or sold within the United States after

importation, the dimmer switches and components thereof at issue. Accordingly, the ALJ finds that the Defaulting Respondents satisfy the importation requirement.

V. INFRINGEMENT

A. Legal Standard

Pursuant to the Notice of Investigation, this investigation is a patent-based investigation. See 76 Fed. Reg. 35015-6. (June 15, 2011). Accordingly, all of the unfair acts alleged by Lutron to have occurred are instances of infringement of the '919 and/or '930 Patents.

A finding of infringement or non-infringement is a two-step analysis. First, the asserted patent claims must be construed as a matter of law to determine their proper scope. Claim interpretation is a question of law. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370 (1996); *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1455 (Fed. Cir. 1998). Second, a factual determination must be made as to whether the properly construed claims read on the accused devices. *Markman*, 52 F.3d at 976.

1. Claim Construction

In construing claims, the ALJ should first look to intrinsic evidence, which consists of the language of the claims, the patent's specification, and the prosecution history, as such evidence "is the most significant source of the legally operative meaning of disputed claim language." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996); see also *Bell Atl. Network Servs., Inc. v. Covad Comm'n Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). The words of the claims "define the scope of the patented invention." *Id.* The claims themselves "provide substantial guidance as to the meaning of particular claim terms." *Phillips v. AWH Corp.*, 415 F. 3d 1303, 1314 (Fed. Cir. 2005), *cert denied*, 546 U.S. 1170 (2006). It is essential to consider a claim as a whole when construing each term, because the context in which a term is

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used in a claim “can be highly instructive.” *Id.* Claim terms are presumed to be used consistently throughout the patent such that the usage of the term in one claim can often illuminate the meaning of the same term in other claims. *Research Plastics, Inc. v. Federal Pkg. Corp.*, 421 F.3d 1290, 1295 (Fed. Cir. 2005).

Sometimes a claim term will have a specialized meaning in a field of art, in which case it is necessary to determine what a person of ordinary skill in that field of art would understand the disputed claim language to mean, viewing the claim terms in the context of the entire patent. *Phillips*, 415 F. 3d at 1312-14; *Vitronics*, 90 F. 3d at 1582. Under such circumstances, the ALJ must conduct an analysis of the words of the claims themselves, the patent specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, as well as the meaning of technical terms and the state of the art. *Id.*

A patentee may deviate from the conventional meaning of a claim term by making his or her intended meaning clear in the specification and/or during the patent’s prosecution history. *Lear Siegler, Inc. v. Aeroquip Corp.* 733 F. 2d 881, 889 (Fed. Cir. 1984). If a claim term is defined contrary to the meaning given to it by those of ordinary skill in the art, the specification must communicate a deliberate and clear preference for the alternate definition. *Kumar v. Ovonic Battery Co.*, 351 F.3d 1362, 1368 (Fed. Cir. 2003). In other words, the intrinsic evidence must “clearly set forth” or “clearly redefine” a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term. *Bell Atl.*, 262 F. 3d at 1268.

When the meaning of a claim term is uncertain, the specification is usually the first and best place to look, aside from the claim itself, in order to find that meaning. *Phillips*, 415 F.3d at 1315. The specification of a patent “acts as a dictionary” both “when it expressly defines terms

used in the claims” and “when it defines terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents” *Phillips*, 415 F.3d at 1323. “The construction that stays true to the claim language and most naturally aligns with the patent’s description of the invention will be, in the end, the correct construction.” *Id.* at 1316. However, as a general rule, particular examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Markman*, 52 F.3d at 979.

2. Infringement

Once the patent claims are construed as a matter of law to determine their scope and meaning, a factual inquiry must be conducted in order to compare the claims, as properly construed, to the accused device or process. *MBO Labs., Inc. v. Becton Dickinson & Co.*, 474 F.3d 1323, 1329 (Fed. Cir. 2007). A patent claim may be infringed literally or under the doctrine of equivalents. Literal infringement requires the actual presence of each and every claim limitation as properly construed in the accused device. *TechSearch L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1371 (Fed. Cir. 2002). “A device that does not literally infringe a claim may nonetheless infringe under the doctrine of equivalents if every element in the claim is literally or equivalently present in the accused device.” *Sage Prods. V. Devon Indus., Inc.*, 126 F. 3d 1420, 1423 (Fed. Cir. 1997).

B. The ‘930 Patent

The ‘930 Patent is directed to a dimmer switch having a switching control sized and arranged relative to a dimming control so that the switching function is emphasized over the dimming function from the perspective of the user. (Ex. 9.) Although Lutron has asserted that the Defaulting Respondents infringe claims 36, 38-41, 47, 53, 54-56, 58, 60, 65, 67-70, 76, 82, 83, 85, 87, 89, 94, 96-99, 105, 111, 112, 114, 116, 118, 178, 180, 189, 193, and 197 of the ‘930

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Patent, Lutron requests a general exclusion order covering only independent claims 36, 65, 94, and 178.² (See Lutron 1st sup.)

Independent claim 36 is exemplary and recites the following (with disputed claim terms in **bold**):

36. A wall-mountable system for controlling electrical power to a load comprising, in combination:
- (a) **Switch means** for turning said power on and off, said switch means including a **first actuator means** constructed and arranged for operating said switch means and
 - (b) **dimmer means** for controlling the amount of power provided to said load, said dimmer means including a **second actuator means** constructed and arranged for operating said dimmer means, said first actuator means constructed and arranged for being operated by a user and having a surface area which is **substantially larger** than the surface area of said second actuator means which is constructed and arranged for being operated by the user, said second actuator means being located at the perimeter of said first actuator, whereby the switch function is emphasized over the dimmer function to the user.

(‘930 Patent, claim 36.)

1. Claim Construction for the ‘930 Patent

Staff argues that, although all of the respondents have either been terminated or are in default, the following terms require construction: (1) “actuator,” (2) “switch means,” (3) “dimmer means,” (4) “first actuator means,” (5) “second actuator means,” (6) “substantially larger.” Lutron and Staff agree that the claim terms “switch means,” “dimmer means,” “first actuator means,” “second actuator means” should not be construed under the means plus function framework of section 112 ¶ 6. The ALJ agrees and finds that there is sufficient structure provided in the claim to overcome the presumption that section 112 ¶ 6 applies to these terms.

² Thus, with respect to the asserted dependent claims for which Lutron requests only a limited exclusion order against the Defaulting Respondents, the ALJ presumes all infringement allegations in the Complaint to be true under 337(g)(1). 19 U.S.C. § 1337(g)(1). Accordingly, infringement of the dependent claims asserted is not addressed here.

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Staff and Lutron further agree on the constructions of “switch means,” “dimmer means,” and “substantially larger.” The ALJ finds that these terms shall be given the agreed upon meanings. (See First Supplement at 6).³ As for the remaining terms, Staff has proposed the following definitions of the terms:

- (1) “actuator” should be construed to mean “a part(s) of the switch and/or dimmer that visibly moves and/or provides for visible movement to effectuate the function(s) of switch control or dimming control.”
- (2) “first actuator means” should be construed to mean “the part of the operating mechanism that is visibly moved by the user to effectuate the switch control function.”
- (3) “second actuator means” should be construed to mean “the part of the operating mechanism that is visibly moved to effectuate the dimming control function.”

Lutron disagrees with Staff’s constructions for “actuator,” “first actuator means” and “second actuator means” arguing that requiring visible actuator travel is unduly limiting and that the actuators, as used in the ‘930 Patent, require little or no movement at all. (Reply at 5.) Thus, the dispute centers on whether the term “actuator” requires the first and second actuators, to “visibly move.”

In support of its construction, Staff cites Column 2, lines 63-65, which state that:

The term actuator, as used herein, is understood to comprise the entire element that is seen to move (e.g., 12), not just the handle (e.g., 13). Thus the length of the actuator 12 is slightly greater than that of switch 10.

³ Specifically, (1) “switch means” should be construed to mean a “switch” which is “a device for opening and closing, and for changing the connections of a circuit”; (2) “dimmer means” should be construed to mean a “dimmer which is “a device intended to control the power to a load” ; and (3) “substantially larger” should be construed to mean “at least twice as large.”

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(‘930 Patent at 2:63-65.) Lutron argues that Staff incorrectly relied on a single sentence from the specification to read a movement requirement into the term “actuator.” (Reply at 5.) Such a limitation, argues Lutron, would improperly exclude a touch switch or a tap switch, which were disclosed in the specification of the ‘930 Patent, and does not require actuator movement. Lutron explains that the ‘930 Patent specification discloses that the “first actuator means: can comprise a touch switch which requires ‘little or no actuator means to accomplish its function.’” (‘930 Patent at 2:66-3:2.) Lutron also points out that its expert, Mr. Anders, agrees that Staff’s claim construction requiring the actuator to “visibly move” is incorrect. (Supplemental Expert Report Robert John Anders (March 16, 2012) at 2.)

The ALJ finds that, while the specification supports a finding that the actuators must actually move to effectively actuate, the required movement is not necessarily “visible” and, thus, rejects both Staff’s and Lutron’s constructions. Although, at first glance, the Staff’s reference to column 2, lines 63-65 of the specification would appear to be an explicit definition, a reading of the *entire* specification makes evident that this is only one embodiment, which the claim should not be limited to. A limitation such as this would exclude an embodiment that the inventor clearly contemplated: namely a touch switch. (*See e.g.* 3:7-8 (“In a preferred embodiment, switch 10 is a biased, alternate-action *touch switch*”) (emphasis added)). As disclosed in the ‘930 Patent specification, the “first actuator means” can comprise a touch switch which requires “little or no actuator travel to accomplish its function.” (*Id.* at 2:66-3:2.) The Staff’s construction would essentially eviscerate the touch switch embodiment and, thus, cannot be correct. *Vitronics Corp. v. Conceptronics, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996) (A claim construction that excludes a preferred embodiment “is rarely, if ever, correct”).

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However, the ALJ finds that the actuators used in the '930 Patent still require some movement. *Honeywell Int'l Inc. v. Universal Avionics Sys. Corp.*, 493 F.3d 1358, 1362 (Fed. Cir. 2007) (“A claim term may be defined differently from its ordinary meaning even “without an explicit statement of redefinition.” (quoting *Bell Atl.*, 262 F.3d at 1268)). It is evident from the specification that the patentee defined an actuator as requiring movement. ('930 Patent at 2:63-65.) The movement is not necessarily visible for at least one reason that is apparent from the specification: it may be so slight that the human eye cannot detect it. According to the '930 Patent a “touch switch is a switch that is activated by a soft touch and that involves little or no actuator travel.” ('930 Patent at 2:66-3:2.) The ALJ notes that by stating that a touch switch “involves little or no actuator travel,” the movement may be minimal, and, thus, not readily detectable by the human eye. However, this “soft touch” still exerts some pressure and thus moves the actuator to make the lighting device operational. (*Id.* at 2:52-3:10.) The '930 Patent does not disclose or depict any lighting device that is able to operate in the absence of *some* actuator movement.

Although the specification suggests that “[d]evices of similar appearance could be remotely operated, controlled by wire or wireless. Infrared, radio, sound or other wireless methods, well known in the art are suitable, provided that the devices have the appropriate detectors” ('930 Patent at 5:16-20), the specification neither describes such embodiments nor explains how one such embodiment might enable the dimmer/switch described in the '930 Patent to require no actuator movement. The '930 Patent fails to show any type of light switch that does not require actuator movement and further acknowledges that the actuator movement of a touch switch may be slight. Every embodiment described in the patent realizes some type of actuator movement. (Fig.'s 1-9) Thus, the ALJ finds that the term “actuator” as used in the

phrases “first actuator means” and “second actuator means” is properly construed to mean “a part(s) of the switch and/or dimmer that moves and/or provides for movement to effectuate the function(s) of switch control or dimming control.”

2. Infringement of the ‘930 Patent by the Accused Products

i. *AH Lighting Dimmer*

The AH Lighting Dimmer consists of a large rectangular control (paddle switch) used to turn a light on and off and a thinner and shorter white rectangle on the right side of the device (dimmer slide), which can be raised and lowered to control the intensity level of the light. (Ex. 10, Anders Report , Ex. C II.B.24.) Lutron’s expert, Mr. Anders, submitted an expert report comparing the AH Lighting Dimmer to independent claims 36, 65, 94 and 178. (*Id.*)

The ALJ finds that Mr. Ander’s expert report sets forth substantial, reliable and probative evidence that all of the AH Lighting Dimmer infringe the independent claims of the ‘930 Patent. In particular, the ALJ finds that the AH Lighting Dimmer meets each and every limitation as construed by the ALJ, Staff or Lutron because the AH Lighting Dimmers each have the requisite switch means, namely a paddle switch (i.e., a first actuator means) that turns the power on and off to a load, and dimmer means, a dimming slider (i.e., a second actuator means) that controls the amount of power provided to a load. (Ex. 10, Anders Report , Ex. C II.B.24.) The ALJ, Staff and Lutron only disagree with respect to whether “actuator” requires any movement, visible movement, or no movement at all. Hence, even under Staff’s narrower construction requiring *visible* movement, Mr. Anders’ report provides substantial, reliable and probative evidence that the AH Lighting Dimmer’s paddle switch and slide dimmer meet the “first actuator means” and “second actuator means,” respectively, because the paddle switch and the slider dimmer both provide for visible movement. (Ex. 10, Anders Report, Ex. C II.B.)

ii. *TD3L Decorator Dimmer*

The TD3L Decorator Dimmer consists of a large white rectangular control (paddle switch) used to turn the light on and off, and a thinner and shorter white oval control (dimming slider) on the right side of the device to raise and lower the light intensity. (Ex. 10, Anders Report, Ex. C II.C.24.)

The ALJ finds that the TD3L Decorator Dimmer meets the claim limitations of asserted independent claims 36, 65, 94 and 178 of the '930 Patent in the same manner as the AH Lighting Dimmer. Thus, for the reasons cited in section V.B.2.i., the ALJ finds that the TD3L Decorator Dimmer meets each and every limitation as construed by the ALJ, Staff or Lutron.

iii. *REIGN Rocker Slide Dimmer*

The REIGN Rocker Slide Dimmer consists of a large white rectangular control (paddle switch) used to turn the light on and off, and a thinner and shorter white oval control (dimming slider) on the right side of the device to raise and lower the light intensity. (Ex. 10, Anders Report, Ex. C II.D.23.)

The ALJ finds that the REIGN Rocker Slide Dimmer meets the claim limitations of asserted independent claims 36, 65, 94 and 178 of the '930 Patent in the same manner as the AH Lighting Dimmer. Thus, for the reasons cited in section V.B.2.i., the ALJ finds that the REIGN Rocker Slide Dimmer meets each and every limitation as construed by the ALJ, Staff or Lutron.

Staff notes that while it agrees that Lutron has provided sufficient evidence to show infringement of the asserted independent claims with respect to the Elemental REIGN Rocker Slide Dimmer model No. DI-RRSW, Lutron failed to show a violation of Section 337 because it used Model No. EL-WDRS12V to show importation. (Staff Resp. at 19; *compare* Ex. 14 at 3 with Ex. 10 at 1.9.) Lutron argues that the two models are identical and only have different

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model numbers because one is sold by Elemental and the other is sold by Elemental d/b/a “Diode”. (Reply at 13-14.) Lutron also cites the declaration of Don Smith, which states that Mr. Smith ordered six REIGN Rocker Slide Dimmers Model No. EL-WDRS12V and received six REIGN Rocker Slide Dimmers, each in a plain white box bearing only the label “diode led DI-RRSW.” (Reply at 14; Ex. 14 at ¶¶ 8- 9.) Furthermore, Lutron’s expert analyzed one of the six REIGN Rocker Slide Dimmers received by Mr. Smith and also found that they were identical. (See Ex. 14, Smith Decl. at ¶¶ 8, 9.) Thus, the ALJ finds that the evidence supports the conclusion that Lutron has shown both importation and infringement as the two models are identical.

iv. *Westgate Decorator Dimmer 56311*

The Westgate Decorator Dimmer 56311 consists of a large white rectangular control (paddle switch) used to turn the light on and off, and a thinner and shorter white oval control (dimming slider) on the right side of the device to raise and lower the light intensity. (Ex. 10, Anders Report, Ex. C II.E.23.)

The ALJ finds that the Westgate Decorator Dimmer 56311 meets the claim limitations of asserted independent claims 36, 65, 94 and 178 of the ‘930 Patent in the same manner as the AH Lighting Dimmer. Thus, for the reasons cited in section V.B.2.i., the ALJ finds that the Westgate Decorator Dimmer 56311 meets each and every limitation as construed by the ALJ, Staff or Lutron.

v. *Westgate Smart Dimmer*

The Westgate Smart Dimmer consists of a large white, rectangular control (tap switch) used to turn a light on and off, and thinner, shorter, white rectangular controls (dimming push buttons/raise, lower rocker) to raise and lower the light intensity level of the light, and circular

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apertures arranged vertically on the left side of the device arranged in a column through which ten LEDs illuminate to provide an indication of the approximate light intensity level of the light.

(Ex. 10, Anders Report, Ex. C II.F.18.)

Staff and Lutron disagree as to whether the Westgate Smart Dimmer infringes the '930 Patent. (Staff Resp. at 20; Reply at 11.) According to Staff, the Westgate Smart Dimmer's "tap switch . . . does not have the claimed 'first actuator means; because it does not include 'the part of the operating mechanism that is visibly moved by a user to effectuate the switch control function.'" (Staff Resp. at 20.) Lutron argues that the Staff's improper limitation on the term "actuator" to require visible movement is not supported by the '930 Patent and, thus, the Staff's infringement analysis is flawed. (Reply at 11.)

The ALJ finds that Lutron has provided substantial, reliable and probative evidence that the Westgate Smart Dimmer infringes independent claims 36, 65, and 94 of the '930 Patent. Mr. Anders expert report makes clear that both a tap switch and a touch switch are "activated by tapping, touching or pressing the switch with a fingertip or fingertips *using a slight force to cause activation.*" (See Ex. 1, Supplemental Expert Report at 1-2) (emphasis added). Thus, the evidence shows that a touch switch's or tap switch's actuator necessarily has some kind of movement that effectuates actuation as some kind of pressure is required thereby effectuating movement and is not necessarily visible to the eye. Under the ALJ's claim construction, this satisfies the "actuator" means limitations.

Staff noted, however, that Lutron did not assert infringement of independent claim 178 for the Westgate Smart Dimmer as with the other Accused Products. Specifically, a review of Lutron's corrected Motion for Summary Determination shows that it inconsistently asserts that the Westgate Smart Dimmer infringes only claims 35, 65 and 94 in some instances, but then

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asserts that it infringes claims 36, 65, 94 and 178 in other instances – all within the same analysis. (See Motion No. 776-016 Attachment A at 44-47.) Lutron did not address this inconsistency in their response to Staff’s Response, but instead simply asserted, that the Westgate Smart Dimmer infringes claims 36, 65 and 94 and 178, without any explanation as to the omission. (Reply at 11.) The evidence relied upon by Lutron, namely Mr. Anders’ Expert Report, only provides an analysis for claims 36, 65 and 94 and does not provide an analysis for claim 178. (See Ex. 10, Anders’ Expert Report and Anders’ Supplemental Expert Report.) Therefore, the ALJ has no evidence before him on infringement of claim 178 with respect to the Westgate Smart Dimmer nor does he have an explanation as to the inconsistency in Lutron’s argument. Therefore, the ALJ’s infringement finding with respect to the Westgate Smart Dimmer is limited to claims 36, 65 and 94.

C. The ‘919 Patent

The Defaulting Respondents have been found in default. (Order Nos. 11 and 17; *Notice of a Commission Determination Not to Review an Initial Determination Finding Certain Respondents in Default* (March 21, 2012).) As such, pursuant to 10 C.F.R. 210.16(c), “[t]he facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent.” Thus, the ALJ finds that the Defaulting Respondents infringe the asserted claims of the ‘919 Patent.

VI. DOMESTIC INDUSTRY

In patent proceedings under Section 337, a complainant must establish that an industry “relating to the articles protected by the patent. . .exists or is in the process of being established” in the United States. 19 U.S.C. § 1337(a)(2). Under Commission precedent, the domestic industry requirement of Section 337 consists of two prongs, a “technical prong” and an

“economic prong.” *Certain Video Graphic Display Controllers*, Inv. No. 337-TA-412, Initial Determination at 9 (May 17, 1999).

A. Technical Prong

In order to satisfy the technical prong the complainant must show that it practices the patents-in-suit in the United States. *Crocs, Inc. v. International Trade Comm’n*, 598 F.3d 1294, 1306-07 (Fed. Cir. 2010). The test for determining whether the technical prong is met through the practice of the patent “is essentially the same as that for infringement, *i.e.*, a comparison of domestic products to the asserted claims.” *Alloc v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003). Commission precedent only requires that there be one claim of the asserted patent for which there is a domestic industry, not a domestic industry for each patent claim asserted. *Certain Microsphere Adhesives*, Inv. No. 337-TA-336, Comm. Op. at 16 (Jan. 16, 1996).

Lutron relies on the following three products to establish domestic industry:

- (1) The Maestro Product;
- (2) The RadioRa Product; and
- (3) The Diva Product.

(Ex. 10, Anders Rep. at B.II.A, B.II.B., and B.II.E.)

Staff argues that only the Diva product practices the ‘930 Patent as the Maestro and Radio Ra Products both use a “tap button switch,” which do not meet the Staff’s claim limitation requiring the “actuator” to be “visibly moved.” (Staff Resp. at 22.) Lutron argues that the Staff’s claim construction is incorrect, but also argues that the tap switch “visibly moves” when pressed by the user. (Reply at 11.)

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The ALJ finds that, under the ALJ's claim construction, the tap button switches of the Maestro and Radio Ra Product move as required by the '930 Patent in order for actuation to occur. (*See* Ex. 1, Supplemental Expert Report at 2.) Lutron's expert, Mr. Anders, submitted an expert report as part of a sworn declaration showing the Maestro, RadioRa, and Diva Products meet each and every limitation of independent claim 65 of the '930 Patent. (Ex. 10, Anders Rep. at B.II.A, B.II.B., and B.II.E.) Specifically, the evidence shows that each of the domestic industry products contain a switch means, namely the tap button switch in the Maestro and RadioRa and the paddle switch in the Diva, and a dimmer means, namely the dimming rocker in the Maestro and RadioRa and the dimming slider in the Diva. (*Id.*) Thus, the evidence shows that the Maestro, RadioRa, and Diva Product lines meet each and every limitation of claim 65. The ALJ finds that Lutron has satisfied the technical prong of the domestic industry requirement by substantial, reliable and probative evidence.

B. Economic Prong

In patent based proceedings under section 337, a complainant must establish that an industry "relating to the articles protected by the patent . . . exists or is in the process of being established" in the United States. 19 U.S.C. § 1337(a)(2). Under Commission precedent, the domestic industry requirement of Section 337 consists of a "technical prong" and an "economic prong." The "technical prong" of the domestic industry requirement is satisfied when the complainant's activities relate to an article "protected by the patent." The "economic prong" of the domestic industry requirement is satisfied when the economic activities set forth in subsections (A), (B), and/or (C) of subsection 337(a)(3) have taken place or are taking place with respect to the protected articles. *Certain Data Storage Systems and Components Thereof*, Inv. No. 337-TA-471, Initial Determination Granting EMC's Motion No. 471-8 Relating to the

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Domestic Industry Requirement's Economic Prong (unreviewed) at 3 (Public Version, October 25, 2002); *see also Certain Printing and Imaging Devices and Components Thereof*, Inv. No. 337-TA-690, Commission Op. at 25 (February 17, 2011) ("*Printing and Imaging Devices*").

With respect to the "economic prong," 19 U.S.C. § 1337(a)(2) and (3) provide, in full:

(2) Subparagraphs (B), (C), (D), and (E) of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, mask work, or design concerned, exists or is in the process of being established.

(3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent, copyright, trademark, mask work, or design concerned—

(A) significant investment in plant and equipment;

(B) significant employment of labor or capital; or

(C) substantial investment in its exploitation, including engineering, research and development, or licensing.

Id. Given that these criteria are in the disjunctive, satisfaction of any one of them will be sufficient to meet the domestic industry requirement. *Certain Integrated Circuit Chipsets and Products Containing Same*, Inv. No. 337-TA-428, Order No 10 at 3, Initial Determination (Unreviewed) (May 4, 2000), citing *Certain Variable Speed Wind Turbines and Components Thereof*, Inv. No. 337-TA-376, Commission Op. at 15, USITC Pub. 3003 (Nov. 1996). The Commission has embraced a flexible, market-oriented approach to domestic industry, favoring case-by-case determination "in light of the realities of the marketplace" that encompass "not only the manufacturing operations" but may also include "distribution, research and development and sales." *Certain Dynamic Random Access Memories*, Inv. No. 337-TA-242, USITC Pub. 2034, Commission Op. at 62 (Nov. 1987) ("*DRAMs*").

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Congress enacted 19 U.S.C. § 1337(a)(3) in 1988 as part of the Omnibus Trade and Competitiveness Act. *See Certain Plastic Encapsulated Integrated Circuits*, Inv. No. 337-TA-315, USITC Pub. No. 2574 (Nov. 1992), Initial Determination at 89 (October 16, 1991) (unreviewed in relevant part). The first two sub-paragraphs codified existing Commission practice. *See id.* at 89; *see also Certain Male Prophylactic Devices*, Inv. No. 337-TA-546, Commission Op. at 39 (June 29, 2007). Under Commission precedent, these requirements could be met by manufacturing the articles in the United States, *see, e.g., DRAMs*, Commission Op. at 61, or other related activities, *see Schaper Mfg. Co. v. U.S. Int'l Trade Comm'n*, 717 F.2d 1368, 1373 (Fed. Cir. 1983) (“[I]n proper cases, ‘industry’ may encompass more than the manufacturing of the patented item. . .”).

In addition to subsections (A) and (B), there is also subsection (C). “In amending section 337 in 1988 to include subsection (C), Congress intended to liberalize the domestic industry requirement so that it could be satisfied by all ‘holders of U.S. intellectual property rights who are engaged in activities genuinely designed to exploit their intellectual property’ in the United States.” *Certain Multimedia Display and Navigation Devices and Systems and Components Thereof, and Products Containing Same*, Inv. No. 337-TA-694, Commission Op. at 7 (August 8, 2011) (quoting *Certain Digital Processors and Digital Processing Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-559, Final Initial Determination at 93 (unreviewed in relevant part) (May 11, 2007)). Thus, “[u]nlike sub-parts (A) and (B), sub-part (C) of section 337(a)(3) ‘does not require actual production of the article in the United States if it can be demonstrated that substantial investment and activities of the type enumerated are taking place in the United States.’” *Certain Personal Data and Mobile Communications Devices and Related Softwares*, No. 337-TA-710, Order 102: ID on Economic Prong at 4 (April 6, 2011)

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(unreviewed in relevant part) (“*Personal Data and Mobile Communications Devices*”) (quoting H.R. Rep. No. 100-40, pt. 1, at 157 (1987)).

In *Printing and Imaging Devices*, the Commission held that “under the statute, whether the complainant's investment and/or employment activities are ‘significant’ is not measured in the abstract or absolute sense, but rather is assessed with respect to the nature of the activities and how they are ‘significant’ to the articles protected by the intellectual property right.”

Printing and Imaging Devices, Commission Op. at 26. The Commission further stated that:

the magnitude of the investment cannot be assessed without consideration of the nature and importance of the complainant's activities to the patented products in the context of the marketplace or industry in question whether an investment is ‘substantial’ or ‘significant’ is context dependent. (*Id.* at 31.)

Indeed, the Commission has emphasized that “there is no minimum monetary expenditure that a complainant must demonstrate to qualify as a domestic industry under the ‘substantial investment’ requirement” of section 337(a)(3)(C). *Certain Stringed Musical Instruments and Components Thereof*, Inv. No. 337-TA-586, Commission Op. at 25 (May 16, 2008). Moreover, the Commission has stated that the complainant need not “define or quantify the industry itself in absolute mathematical terms.” *Id.* at 26.

Lutron argues that its activities related to the Maestro, RadioRa and Diva product lines satisfy the economic prong of the domestic industry requirement under all three prongs. Staff's arguments were limited to those of the Diva products as those products were the only ones that met the technical prong of the domestic industry requirement under Staff's construction.

The evidence shows, however, that Lutron has satisfied the economic prong of the domestic industry requirement under each subsection. Specifically, with regard to Sections (A) and (B), the evidence shows that:

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- Lutron has [REDACTED] facilities that are dedicated, in whole or in part, to the production of domestic products and are located [REDACTED]. (Ex. 19, Ayer Decl., Confidential Ex. A.)
- Lutron has expended [REDACTED] on equipment for the Maestro Products, [REDACTED] on equipment for the RadioRa Products, and [REDACTED] on equipment for the Diva Products. (*Id.* at Confidential Ex. B.)
- Dimmer switches, including the Maestro, RadioRa and Diva Products have been manufactured, at least in part, since the beginning of 1998 [REDACTED]. (Ex. 19, Ayer Decl., Confidential Ex. A.)
- [REDACTED] for certain models of the Maestro and Diva Products [REDACTED]. (*Id.* at ¶ 3.)
- In 2010, Lutron employed [REDACTED]. (Ex. 19, Ayer Decl., Ex. C.)
- In 2010, Lutron employed [REDACTED]. (Ex. 19, Ayer Decl., Ex. C.)
- [REDACTED]. (Second Supplemental, Ayer Decl. ¶ 3.)
- The Maestro, RadioRa and Diva products are manufactured in the United States, from raw materials, including [REDACTED]. (*Id.* at ¶ 6.)⁴

As for Section (C), the evidence shows that Lutron spent more than [REDACTED] million to develop, launch and hone the Maestro, RadioRa and Diva switches and over [REDACTED] million on

⁴ There is a substantial production of Maestro, RadioRa and Diva Products that practice the '930 Patent within the United States. The investments in equipment, labor, and in research and development and engineering are substantial and sufficient to establish the existence of a domestic industry. *See Certain Handbags, Luggage, Accessories, and Packages Thereof*, Order No. 7, Initial Determination 2011 WL 2870505, (June 10, 2011) (finding the economic prong of domestic industry satisfied where complainant manufactured product in the United States) (unreviewed by the Commission)

engineer salaries alone who were dedicated to the development and continued improvement of the Maestro, RadioRa and Diva switches.. (Ex. 19, Ayer Decl. Ex. D.)

In view of these activities, the ALJ finds that the evidence shows that Lutron has satisfied the economic prong of the domestic industry requirement.

VII. Remedy

A. General Exclusion Order

Under Section 337(d), the Commission may issue either a limited or a general exclusion order. A limited exclusion order instructs the U.S. Customs and Border Protection (“CBP”) to exclude from entry all articles that are covered by the patent at issue and that originate from a named respondent in the investigation. A general exclusion order instructs the CBP to exclude from entry all articles that are covered by the patent at issue, without regard to source.

A general exclusion order may issue in cases where (a) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named respondents; or (b) there is a widespread pattern of violation of Section 337 and it is difficult to identify the source of infringing products. 19 U.S.C. § 1337(d)(2). The statute essentially codifies Commission practice under *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90, Commission Opinion at 18-19, USITC Pub. 119 (Nov. 1981) (“*Spray Pumps*”). See *Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing the Same*, Inv. No. 337-TA-372 (“*Magnets*”), Commission Opinion on Remedy, the Public Interest and Bonding at 5 (USITC Pub. 2964 (1996)) (statutory standards “do not differ significantly” from the standards set forth in *Spray Pumps*). In *Magnets*, the Commission confirmed that there are two requirements for a general exclusion order: a “widespread pattern of unauthorized use;” and “certain business conditions from which one might reasonably infer

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that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles.” The focus now is primarily on the statutory language itself and not an analysis of the *Spray Pump* factors. *Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25 (March 9, 2009); *Hydraulic Excavators and Components Thereof*, Inv. No. 337-TA-582, Comm’n Op. at 16-17 (January 21, 2009).

Lutron argues that a general exclusion order prohibiting the entry of all infringing dimmer switches and components thereof is warranted. In support of its argument, Lutron relies heavily on the recent general exclusion order issues in *Certain Elec. Paper Towel Dispensing Devices*, Inv. No. 337-TA-TA-718, Notice of Commission Issuance of a General Exclusion Order and Cease and Desist orders; Termination of Investigation (Dec. 1, 2011) (“*Towel Dispensing*”). The Commission reviewed and confirmed the finding of the ALJ. *Towel Dispensing Devices*, Comm’n Det. (Public Version) (Jan. 20, 2012). In its motion for Summary Determination, Lutron attempts to either analogize its situation to that of the complainant in *Towel Dispensers* or argue that the ALJ adopt a new standard for granting a general exclusion order.

Staff’s analysis focuses on whether Lutron met the “heightened requirements of Section 337(d)(2)(A) or (d)(2)(B).” *Kyocera Wireless Corp. v. Int’l Trade Commission*, 545 F.3d 1340, 1358 (Fed. Cir. 2008). The Staff concluded that (1) the evidence does not show that a general exclusion order is necessary to prevent circumvention of a limited exclusion order and (2) while the evidence does show that there is a widespread pattern of violation, it does not establish a difficulty in identifying the source.

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Applying the statute-based analysis, the ALJ finds that the evidence submitted by Lutron is insufficient to meet the heightened requirements of Section 337 (d)(2)(A) or (d)(2)(B). Thus, the ALJ recommends that Lutron's request for a GEO be denied. *Kyocera Wireless Corp. v. ITC*, 545 F.3d 1340, 1356 (Fed. Cir. 2008) ("If a complainant wishes to obtain an exclusion order operative against articles of non-respondents, it must seek a GEO by satisfying the *heightened burdens* of §§ 1337(d)(2)(A)and(B).) (emphasis added). The ALJ analyzes in detail the statutory requirements below.

1. Prevention of Circumvention (Section 337 (d)(2)(A))

A general exclusion order is appropriate when necessary to prevent circumvention of a limited exclusion order. The ALJ finds that the evidence submitted fails to show that a general exclusion order is necessary to prevent circumvention of a limited exclusion order.

Lutron argues that the following two factors from *Towel Dispensers* are relevant to determine whether a general exclusion order is necessary to prevent circumvention of a limited exclusion order: whether conditions are ripe for circumvention and the appearance of circumvention. (MSD at 92-103.) Specifically, Lutron argues that conditions are ripe for circumvention of a GEO because there are low barriers to entry, a large number of potential entrants, well-established distribution channels, heavy U.S. consumption and demand for the products. (*Id.* at 92.) Lutron further argues that respondents can (and have) easily changed their names to avoid a limited exclusion order. (*Id.* at 96-99.)

Staff argues that the evidence fails to show that a general exclusion order is necessary to prevent circumvention of a limited exclusion order. (Staff Resp. at 30-34.)

The ALJ finds that evidence fails to show that conditions are ripe for circumvention. Lutron cites the Declaration of its Director of Manufacturing Operations, Ken Ayer, to show that

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the barriers to enter the dimmer switch market are low. (Ex. 55, Ayer Decl.) While the declaration shows the U.S. industry costs associated with the Lutron's Dimmer Switches, Mr. Ayer makes a broad and unsupported conclusion that while "[t]he figures set forth in paragraphs 2-6, above, represent costs in the United States. Assuming that tooling is designed and made in China, the costs would be considerably lower." (Ex. 55, Ayer Decl. ¶ 8.) The record contains no evidence of what the cost would actually be in China (or even estimated to be) and, thus, how expensive or inexpensive it would be to enter the market.

Similarly, in attempting to show that there are a large number of potential entrants to the U.S., Lutron merely states that, like in *Towel Dispensers*, there are numerous potential entrants. At most, Lutron claims to have found 4 other nonrespondents that may infringe. (MSD at 98-99.) Lutron also cites the possibility that other manufacturers may sell their molds. (*Id.* at 95-96.) While this consideration was relevant in *Towel Dispensers*, the complainant in that investigation actually had evidence that one of the respondents purchased existing dispenser molds from another company to establish a production line. Here, there is no such evidence, just a conjecture that the Respondents "could choose to sell their molds."

Additionally, the product at issue here is more complicated than the mechanical towel dispenser at issue in *Towel Dispensers*. Lutron acknowledges that software is necessary to manufacture a dimmer switch, but merely claims that it is readily available from third party vendors in countries such as China. (MSD at 72) In support of this, Lutron refers to Mr. Ayer's declaration which actually only states, "software for the microprocessor required for such products could be programmed by a third party vendor." (Ex. 55, ¶55.) Simply put, this appears to be nothing more than mere speculation and does not adequately support Lutron's assertion.

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Furthermore, the ALJ agrees with Staff that Lutron has failed to show that distributors, retailers, or manufacturers of the infringing goods have engaged in any kind of evasive activity that would support a finding of circumvention under Section 337(d)(2)(A). (Staff Resp. at 30-31.) The fact that Zhejiang Lux also operates under the name General Protecht, CN Dina also operates under the name Wenzhuir Huir Electric Science and Technology, and that American Top and Big Deal are possibly the same company are insufficient to show evasive activity. The ALJ agrees that these allegations merely show that the Respondents operate under different, known names to sell their products. Indeed, as evident in this investigation, the companies were easily identifiable.⁵

In regards to an appearance of circumvention, Lutron submits reliable evidence that Universal Smart Electric Corporation (“USE”), a respondent to a prior investigation, has violated a consent order and is selling infringing dimming switches. (Supp. Expert Report of Robert J. Anders at 2-10.) However, the ALJ finds that this behavior is not necessarily indicative of a pattern of circumvention. Rather, USE is blatantly and openly disregarding the consent order and selling the dimmer switches under its own name as well as through a related company Enerlites. (Mot. at 100.) Lutron can address USE’s violation of the consent order by bringing an enforcement proceeding against USE.

Thus, the ALJ finds that the evidence presented, particularly to the extent it relies on mere speculation and conjecture, fails to meet the heightened burden of showing that a general exclusion order is necessary to prevent circumvention of a limited exclusion order.

⁵ The Commission recently held that the likelihood of circumvention of a limited exclusion order due to the ease and frequency of name changes by Chinese companies, by itself, does not warrant a general exclusion order. *Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same*, Inv. No. 337-TA-650, Comm’n Op, 2011 ITC LEXIS 2827 (Int’l Trade Comm’n Nov. 1, 2011) (citing *Certain Ground Fault Circuit Interrupters and Products Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25-26 (U.S.I.T.C., March 26, 2009) (“Ground Fault Interrupters”).)

**2. Pattern of Violation and Difficulty of Identifying the Source
(Section 337 (d)(2)(B))**

The second statutory factor of Section 337(d)(2)(B) focuses on whether there is a pattern of violation and a difficulty in identifying the source of the patented invention. Lutron must show both a widespread pattern of violation and difficulty in identifying the source, the ALJ addresses each prong independently below.

i. Widespread Pattern of Violation

Lutron argues that there is evidence sufficient to show a widespread pattern of violation, namely (a) the market for the unauthorized product is very lucrative; (b) the barrier to entry for future participants is low; (c) there is an established demand for the product; (d) online marketplaces such as Amazon and eBay provide retailers a dedicated, flexible way to sell to consumers; (e) there have been multiple section 337 investigations relating to the product; (f) there has been importation of infringing products by non-respondents; (g) the identification of previously unknown manufacturers and/or retailers of infringing products; and (h) some respondents have been found in default and other respondents have agreed to consent orders. (MSD at 67-83.) Staff agrees that there is sufficient evidence to support a finding that a widespread pattern of violation exists. (Staff Resp. at 34-38.)

The ALJ finds that the evidence shows that there is a widespread pattern of violation. While the unauthorized use is relatively small in scale, the existing market conditions support a finding that there is a widespread pattern of violation. Specifically, the market conditions suggest that foreign exporters and domestic importers (other than the former and current respondents) might attempt to enter the U.S. market with infringing articles. *Cigarettes* at pp. 6-7 (March 18, 2009). For example, the record shows that there is an established demand for the Domestic Industry Products. Lutron has sold [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*)

Further, Elemental has marketing materials that emphasizes the use and benefits of the patented dimmer switches:

When developing the Reign line of dimmable switches, Joe Martin, our Director of Engineering, wanted to ensure that they would fit right in with existing home and office decor We designed it to be indistinguishable from a Lutron or other name-brand dimmer and give similar performance.

(MSD, Ex. 5, 40:16-41:8.) An alleged infringer’s marketing materials touting the benefits of the patented product is strong evidence of demand for the patented product.

Moreover, that demand is expected to grow due to changes in energy laws for the United States in an effort to go “green.” For example, on January 1, 2010, California put into effect a new law for residential buildings that required all new and remodeled houses in that State to incorporate efficient lighting and controls. (MSD at p. 74; Ex. 5, 35:1-9. Ex. 6 at ¶ 20; Ex. 8 at ¶ 28.) The record shows that the Domestic Industry Products provide a “cost effective consumer-friendly solution” to meeting this new law. (*Id.*) Furthermore, sales forecasts also show the energy retrofit market could double or triple in the next 10 years as they look for distributors to provide a steady stream of lighting products for their projects. (Memo, Ex. 31 at p. 18.) Thus, it is likely that companies will look to products, like the Domestic Industry Products, to meet the need in that niche market. The evidence shows that there is an established demand for the patented product as other companies have recognized the patented product’s benefits, and it provides an easy and cheap solution to the increasing need to cut energy costs.

The evidence also shows that the profit margin of the accused products is high. Specifically, the record shows that [REDACTED]

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█. (MSD at p. 69, Ex. 5, 37:6-8.) This provides an added incentive for an entity to enter the market. As for the availability of marketing and distribution networks, the evidence shows that foreign entities wishing to enter the dimmer switch market have ready access to established distribution networks. The record shows that online business-to-business internet portals, such as alibaba.com, allow foreign manufactures to sell its products internationally. (Ex. 3, 5.) For example, Elemental first █ in order to purchase the allegedly infringing dimmer switches. (Ex. 3 at 49:2-3; 53:19-54:3.) Moreover, internet sites, such as Amazon and EBay, provide cheap, simple, and well-established means for companies to distribute the infringing products. (Ex. 32, 33.)

Thus, the ALJ finds that the evidence shows a widespread pattern of violation.

ii. Difficulty Identifying the Source

Lutron argues that it is extremely difficult to identify the source of the infringing lighting control devices because (a) the internet allows for anonymity and difficulty determining source; (b) the uncertainty in the relationship between defaulting respondents makes it difficult to identify the source; (c) there is a lack of identifying labels; and (d) the UL number is an unreliable indicator of source. (*Id.* at 84-91.) Staff argues that Lutron has failed to show that there is difficulty identifying the source as there is little evidence of concealment of identity by respondents and the mere use of generic packaging is insufficient. (Staff Resp. at 39-41.) Furthermore, Staff argues that there is no evidence that the UL number is unreliable and that Lutron's assertions otherwise are mere speculation. (*Id.* at 41-42.)

The ALJ finds that the evidence fails to show that there is difficulty identifying the source of the infringing products. While the respondents do sell the accused products over the internet, which has been found to be a means that encourages anonymity and facilitates

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distribution, there is no evidence showing that sellers or manufactures of the accused products are deliberately trying to conceal their identity. The only evidence of such concealment was the difficulty in identifying one manufacturer. The President of AH Lighting, a retailer of the accused products, testified that seven years ago it purchased the accused products from a manufacturer by the name of CN Dina. (Memo Ex. 3, 25:17-26:5, 28:14-17.) Over the course of their relationship, CN Dina used various websites and email addresses with different signature blocks, *i.e.*, Yeuqing Dina Electrics Co. and Wenzhou Huir Science, while doing business with AH Lighting. (Ex. 3, 32:3-6, 33:12-15.) However, the ALJ finds that the use of various websites and email addresses with different signature blocks is not evidence of concealment, especially in conjunction with the fact that AH Lighting was still able to purchase the accused products.

The President of AH Lighting also testified that he went to visit CN Dina's factory in 2004/2005 and he did not believe the factory was capable of manufacturing the accused products and thought that some other entity manufactured the accused products. (Ex. 3, 30:10-22.) When questioned further about who manufactured the accused products, the President of AH Lighting testified as follows:

Q. Okay. Do you know who does manufacture the accused product?

MR. RALIDIS: The one that we've been talking about.

THE WITNESS: Nobody right now. I just was online and check everybody.
Nobody make it in China. They are very scared of you.

(Ex. 3, 31:1-7.) As Staff correctly notes, this excerpt is significant because (1) the President of AH Lighting believes that identifying the manufacturers of the accused product can be done simply by an online search and (2) he believes Chinese companies are no longer manufacturing

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the accused products. The evidence shows that finding manufacturers of the accused products can be done with an online search.

As for Lutron's argument that manufacturers ship the accused product in generic packaging with no identifying labels, the mere fact that manufacturers shipped their packages in generic packages is insufficient to show that Lutron is unable to identify the source of the product. Lutron has provided no evidence on the size of the market for dimmer switches (and how much of that market is being supplied by unidentifiable manufacturers). Nor has it shown that there are numerous non-respondent manufacturers, which Lutron is unable to identify, involved in the importation of significant quantities of the accused products. Thus, the fact that three manufacturers ship their products in generic packaging alone does not "substantially and reliably" prove that there is or would be difficulty in identifying the source. Indeed, the fact that Lutron has been able to identify these manufacturers as respondents in this investigation belies that very assertion.

Furthermore, the mere use of generic packaging when the products ship with a Underwriters Laboratories "UL" number, which may provide the identity of the company which sourced the product, weighs against Lutron's assertion that the source is difficult to identify. Lutron argues that the UL number is not reliable because an importer, as opposed to the manufacturer, may be able to put its own UL number on the product and mask the identity of the true source of the products at issue in this investigation. (MSD at 90.) Lutron has provided no evidence, however, that this has occurred in this investigation or in any other instance. Thus, it is mere speculation.

Lutron further argues that not all the accused products have a UL number but it was, nevertheless, able to identify the source of the products at issue in this investigation. Moreover,

the evidence shows that Lutron used the UL number to determine the source for products sold by Westgate. (Ex. 1, p. 19.) Thus, whether a UL number is present or absent from the accused products did not have any effect on Lutron's ability to identify the source of the accused products in this investigation (although, the presence of a UL number may certainly provide a means of identifying the source of the accused products).

Therefore, the ALJ finds that Lutron has failed to show that it is difficult to determine the source of the accused products..

B. Limited Exclusion Order

Under Section 337(d), the Commission may issue either a limited or a general exclusion order. A limited exclusion order directed to respondents' infringing products is among the remedies that the Commission may impose, as is a general exclusion order that would apply to all infringing products, regardless of their manufacturer. See 19 U.S.C. § 1337(d).

In the event that a general exclusion order is not granted, Lutron seeks a limited exclusion order. (Motion No. 776-014 at 103). The ALJ agrees that a limited exclusion order against the Defaulting Respondents is appropriate with respect to both the '930 and '919 Patents.

C. 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 for violation of section 337. See 19 U.S.C. § 1337(f)(1). The Commission generally issues a cease and desist order directed to a domestic respondent when there is a "commercially significant" amount of infringing, imported product in the United States that could be sold so as to undercut the remedy provided by an exclusion order. See *Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, USITC Pub. 2391, Comm'n Op. on Remedy, the Public Interest and Bonding at 37-42 (June 1991);

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Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles, Inv. No. 337-TA-334, Comm'n Op. at 26-28 (Aug. 27, 1997).

Here, Lutron asks for a cease and desist order directed to Elemental, Zhejiang Lux, Zhejiang Yuelong, Wenzhou Huir, American Top, and Big Deal. (Motion No. 776-014 at 105). The ALJ agrees with the Staff that domestic defaulting respondents Elemental, American Top and Big Deal possess commercially significant domestic inventories of the infringing imported product, as argued by Lutron and recommends that a cease and desist order should be granted against Elemental, American Top and Big Deal with regard to claims 36, 38-41, 47, 53, 54, 46, 48, 60, 65, 67-70, 76, 82, 83, 85, 87, 89, 94, 96-99, 105, 111, 112, 114, 116, 118, 178, 180, 189 and 197 of the '930 Patent.

As to Lutron's request for a cease and desist order directed to Zhejiang Yuelong, Zhejiang Lux, and Wenzhou Huir, the ALJ does not recommend that the Commission issue a cease and desist order against these foreign respondents. First, Lutron presents no evidence that the Commission has the authority to issue a cease and desist order against foreign respondents and, even assuming such an order issued, the enforcement of such an order against foreign respondents is highly unlikely. Furthermore, as Staff noted in its brief, these entities are Chinese manufacturers and the Commission has declined to draw adverse inferences with respect to foreign respondents. *Certain Agricultural Tractors*, 337-TA-486, Comm. Op. on Remedy, Bonding, and Public Interest at 18, 20 (July 14, 2003). As such, the ALJ does not support Lutron's request for a cease and desist order against these foreign manufacturers.

D. Bonding

The Administrative Law Judge and the Commission must determine the amount of bond to be required of a respondent, pursuant to section 337(j)(3), during the 60-day Presidential

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review period following the issuance of permanent relief, in the event that the Commission determines to issue a remedy. The purpose of the bond is to protect the complainant from any injury. 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 differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. a 24 (1995). In other cases, the Commission has turned to alternative approaches, especially when the level of a reasonable royalty rate could be ascertained. *See, e.g., Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41 (1995). A 100 percent bond has been required when no effective alternative existed. *See, e.g., Certain Flash Memory Circuits and Products Containing Same*, Inv. No. 337-TA-382, USITC Pub. No. 3046, Comm'n Op. at 26-27 (July 1997)(a 100% bond imposed when price comparison was not practical because the parties sold products at different levels of commerce, and the proposed royalty rate appeared to be de minimis and without adequate support in the record).

Because none of the Defaulting Respondents participated in discovery, reliable price information is not available. In similar circumstances the Commission has set the bond at 100% of the entered value of the imported infringing products. *Certain Oscillating Sprinklers, Sprinkler Components and Nozzles*, Inv. No. 337-TA-448, USITC Pub. No. 3498, Limited Exclusion Order at 4-6 (March 2002).

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The ALJ finds that there is insufficient reliable price information to set a bond based on price differential. Therefore, the ALJ recommends a bond of 100% during the Presidential review period.

VIII. CONCLUSION

In conclusion, the ALJ finds that Lutron has shown that (1) the AH Lighting/Wenzhou Huir Decorator Dimmer, (2) the TD3L Decorator Dimmer, (3) the REIGN Rocker Slide Dimmer, and (4) the Westgate Decorator Dimmer 5631 infringe independent claims 36, 65, 94, and 178 of the '930 Patent, and (5) the Westgate Smart Dimmer infringes independent claims 36, 65, and 94 of the '930 Patent.

With respect to domestic industry, Lutron has shown that the MALV-600-WH Dimmer for the Maestro Product line, the RadioRa Product, and the DVELV-300P-WH model for the Diva product line all practice claim 65 of the '930 Patent and that its activities with regard to the Maestro, RadioRa and Diva product lines satisfies the economic prong of the domestic industry requirement.

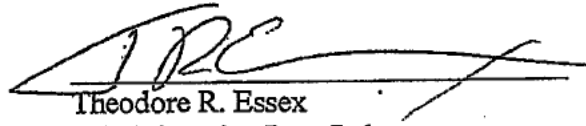
As to remedy, the ALJ concludes that Lutron is entitled to a limited exclusion order with respect to the asserted claims of the '930 and '919 Patents and a cease and desist order with respect to Respondents Elemental, American Top and Big Deal. The ALJ further recommends that the bond be set at 100% of the entered value during the Presidential review period.

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

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Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. Any party seeking to have any portion of this document deleted from the public version thereof shall also submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.

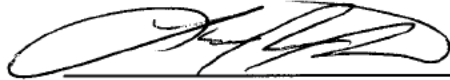

Theodore R. Essex
Administrative Law Judge

**CERTAIN LIGHTING CONTROL DEVICES
INCLUDING DIMMER SWITCHES AND
PARTS THEREOF (IV)**

Inv. No. 337-TA-776

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER 18** has been served by hand upon the Commission Investigative Attorney, **Lisa M. Kattan, Esq.**, and the following parties as indicated on **June 29, 2012**.



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