

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN FLASH-SPUN NONWOVEN
MATERIALS AND PRODUCTS CONTAINING
SAME

Inv. No. 337-TA-1424

INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND
RECOMMENDED DETERMINATION ON REMEDY AND BOND

Administrative Law Judge Bryan F. Moore

(July 1, 2026)

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LIST OF ABBREVIATIONS

The following abbreviations may be used in this Initial Determination:

CDX	Complainants' demonstrative exhibit
CPX	Complainants' physical exhibit
CX	Complainants' exhibit
CIB	Complainants' initial post-hearing brief
CRB	Complainants' responsive post-hearing brief
CPHB	Complainants' pre-hearing brief
Dep.	Deposition
JX	Joint Exhibit
RDX	Kingwills' demonstrative exhibit
RPX	Kingwills' physical exhibit
RX	Kingwills' exhibit
RIB	Kingwills' initial post-hearing brief
RRB	Kingwills' responsive post-hearing brief
RPHB	Kingwills' pre-hearing brief
SIB	Staff's initial post-hearing brief
SRB	Staff's responsive post-hearing brief
SPHB	Staff's pre-hearing brief
Tr.	Transcript

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In the Matter of

**CERTAIN FLASH-SPUN NONWOVEN
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CONTAINING SAME**

Inv. No. 337-TA-1424

**INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND
RECOMMENDATION ON REMEDY AND BOND**

Administrative Law Judge Bryan F. Moore

(July 1, 2026)

Pursuant to the Notice of Investigation, this is the final initial determination in the matter of *Certain Flash-Spun Nonwoven Materials and Products Containing Same*, Inv. No. 337-TA-1424.

For the reasons stated herein, I have determined that a violation of section 337 of the Tariff Act of 1930, as amended, has occurred in the importation into the United States of certain flash-spun nonwoven materials and products containing same, based on misappropriation of trade secrets and wrongful use and exploitation of stolen confidential and proprietary information, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States. I have also determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash-spun nonwoven materials and products containing same by reason of infringement of U.S. Trademark Registration Nos. 817,194; 818,688; and 818,737.

I. INTRODUCTION

A. Procedural History

Complainants DuPont de Nemours, Inc. (“DuPont de Nemours”), DuPont Safety & Construction, Inc. (“DuPont S&C”), and DuPont Specialty Products USA, LLC (“DuPont SP USA”) (collectively, “DuPont”) filed a complaint on October 9, 2024. 89 *Fed. Reg.* 92,159-60. Supplements to the complaint were filed on October 29, 2024. This investigation was instituted on November 21, 2024. *Id.* The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain flash-spun nonwoven materials and products containing the same by reason of misappropriation of trade secrets and wrongful use and exploitation of stolen confidential and proprietary information, the threat or effect of which is to destroy or substantially injure a domestic industry. *Id.* The complaint further alleges violations of section 337 based upon infringement of DuPont’s federal registered trademarks. *Id.*

The Commission’s notice of investigation (“NOI”) named the following respondents: Xiamen Dangs New-Materials Co., Ltd., AKA Dawnsens New Materials Co., Ltd.; Beijing Dangsheng Technology Co., Ltd.; and Xiamen Dangsheng Technology Co., Ltd. (collectively, “Dangs”); Kingwills New Material Technology Co., Ltd; Zhenjiang Qingyun New Material Co., Ltd; Jiangsu Qingyun New Materials Co., Ltd. AKA Jiangsu Kingwills New Materials Co. Ltd.; Shanghai Qingyun New Material Technology Co., Ltd.; and Kingwills International Ltd. (collectively, “Kingwills”); Harbourpoint Innovations Inc. (“Harbourpoint”); Impak Corporation (“Impak”); Shenzhen Zhengming Science and Technology Co., Ltd. (“Shenzhen Zhengming”); Weifang Konzer Safety Protective Equipment Co., Ltd. (“Weifang Konzer”); Jiangsu Tubo New

Material Co., Ltd. (“Jiangsu Tubo”); Emedia Group, Inc. (“Emedia”); endur-tec, LLC (“endur-tec”); Hangzhou Several Sets of Electronic Commerce Co., Ltd. (“JGT Live”); Hangzhou Qiao Shell Digital Technology Co. Ltd. (“Quoko”); and Zhenping County Weihe Commerce and Trade Co., Ltd. (“County Weihe”). *Id.* The Office of Unfair Import Investigations (“Staff”) is also a party to this investigation. *Id.*

On May 13, 2025, the Commission amended the complaint and NOI to (i) add allegations of trade secret misappropriation and wrongful use and exploitation of proprietary information against Impak and Jiangsu Tubo, (ii) add TOBO Group as a new respondent, (iii) update the addresses for Jiangsu Tubo and JGT Live Sets to reflect where service was effected, and (iv) make certain non-substantive amendments to the complaint. 90 *Fed. Reg.* 21,334-335 (May 19, 2025); *see also* Order No. 25 (Apr. 22, 2025), *unreviewed by* Comm’n Notice (May 14, 2025).

Over the course of the proceeding, several respondents were terminated based on withdrawal of the complaint and consent orders and settlement agreements, while others were found in default. Order No. 10 (Jan. 22, 2025), *unreviewed by* Comm’n Notice (Feb. 21, 2025) (as to Harbourpoint); Order No. 11 (Jan. 22, 2025), *unreviewed by* Comm’n Notice (Feb. 21, 2025) (as to Shenzhen Zhengming); Order No. 12 (Jan. 22, 2025), *unreviewed by* Comm’n Notice (Feb. 21, 2025) (as to Emedia and endur-tec); Order No. 24 (Apr. 22, 2025), *unreviewed by* Comm’n Notice (May 14, 2025) (as to County Weihe); Order No. 36 (July 30, 2025), *unreviewed by* Comm’n Notice (Aug. 28, 2025) (as to Dangs Respondents); Order No. 46 (Sept. 29, 2025), *unreviewed by* Comm’n Notice (Dec. 3, 2025) (finding Weifang Konzer, Jiangsu Tubo/TOBO Group, JGT Live, and Quoko in default); Order No. 71 (Mar. 4, 2026), *reviewed & affirmed with supp. findings by* Comm’n Notice (Mar. 24, 2026) (finding Impak in default).

An evidentiary hearing was held January 26-30, 2026.¹

B. The Parties

1. Complainants

Complainants consist of three entities— DuPont de Nemours, DuPont S&C, and DuPont SP USA. CX-3589C (Flattery WS) at Q/A 11. Each is a Delaware corporation with a principal place of business in Wilmington, Delaware. EDIS Doc. ID 851293 (“Amended Compl.”), ¶¶ 28-30. DuPont S&C and DuPont SP USA are wholly owned subsidiaries of DuPont de Nemours. CX-3589C (Flattery WS) at Q/A 12.

DuPont manufactures and sells its proprietary flash-spun nonwoven material under the brand name Tyvek® (hereinafter, “Tyvek”). CX-0005C, ¶ 7. DuPont S&C “owns all of the global trade secrets, know-how, Asserted Trademarks, and patents for the Tyvek® business’, and licenses the right to use and sublicense such IP to DuPont SP USA.” CPHB at 7; *see also* CX-3589C (Flattery WS) at Q/A 12. DuPont SP USA operates the Tyvek business in the United States and employs all Tyvek U.S. employees. CX-3589C (Flattery WS) at Q/A 12.

2. The Kingwills Respondents

The Kingwills Respondents consist of Jiangsu Qingyun New Materials Co., Ltd. aka Kingwills (Advanced) New Material Technology Co., Ltd.; Zhejiang Qingyun New Material Co., Ltd.; Shanghai Qingyun New Material Technology Co., Ltd.; and Kingwills International Ltd. All are Chinese companies with places of business in Jiangsu Province, Zhejiang Province, Shanghai, and Hong Kong. Am. Compl., ¶ 38-42. Kingwills makes and sells flash-spun nonwoven material

¹ Prior to the hearing, DuPont filed a motion for summary determination with respect to importation, domestic industry, and trademark infringement as to the respondents found in default. EDIS Doc. ID 804586. With the issuance of this initial determination, DuPont’s motion for summary determination (Motion Docket No. 1424-027) is moot.

under the trade name Hypak™ (hereinafter, “Hypak”). RX-5960C (Chen WS) at Q/A 11. Several Kingwills employees, including its founder and CEO, are former DuPont employees.² *Id.* at Q/A 60.

Shanghai Qingyun was founded in 2014 [REDACTED]
[REDACTED] *Id.* at Q/As 18-22. Zhenjiang Qingyun was founded in 2020 [REDACTED]
[REDACTED]. *Id.* at Q/As 18, 23. Jiangsu Qingyun aka Kingwills Advanced was found in 2021 [REDACTED]
Id. at Q/As 18, 26-27. It focuses on research, development, production, manufacturing, and sales of Hypak. *Id.* at Q/A 26. Zhenjiang Qingyun is a fully-owned subsidiary of Jiangsu Qingyun. *Id.* at Q/A 18. Kingwills International was founded in 2023 and sells Hypak outside of China. *Id.* at Q/As 18, 28.

3. The Downstream Respondents

The Downstream Respondents have all been found in default.³ *See* Section I.A.

a) Impak

Impak is a Delaware company with a principal place of business in Los Angeles, California. Am. Compl., ¶ 46. DuPont alleges that Impak “is a distributor of ... Kingwills Accused Products.” *Id.*

² These individuals were not in technical roles at DuPont but rather in non-technical roles such as sales. RX-5960C (Chen WS) at Q/As 59-60.

³ Because DuPont is seeking a general exclusion order under 19 U.S.C. § 1337(d)(2), it must establish importation, its trade secret misappropriation claims, and its trademark infringement claims with substantial, reliable, and probative evidence. *See Certain Urine Splash Guards & Components Thereof*, Inv. No. 337-TA-1430, Comm’n Op. at 10 (Mar. 25, 2026) (“The same ‘substantial, reliable, and probative evidence’ standard, as required under the Administrative Procedure Act (‘APA’) for section 337 violations, applies to the issuance of a GEO under both section 337(d)(2) and section 337(g)(2).”).

b) Weifang Konzer

Weifang Konzer is a Chinese company with a principal place of business in Shandong, China. *Id.* at ¶ 48. Weifang Konzer manufactures protective garments using the accused flash-spun nonwoven material and then imports those garments into the United States. Am. Compl., ¶ 48, 139.

c) Jiangsu Tubo / TOBO Group

Jiangsu Tubo and TOBO Group are both Chinese companies. Am. Compl., ¶¶ 49-50. Jiangsu Tubo is located in Jiangsu, China, while TOBO Group has its principal place of business in Shanghai, China. *Id.* TOBO Group is doing business as Jiangsu Tubo by assuming Jiangsu Tubo's operations. *Id.* at ¶ 50; *see also* Order No. 25 at 4-5 (finding that Jiangsu Tubo is doing business at TOBO Group's address). Jiangsu Tubo / TOBO Group market and sell the accused products. *Id.* at ¶¶ 141, 162.

d) JGT Live

JGT Live is a Chinese company with a principal place of business in Hangzhou, China. *Id.* at ¶ 52. JGT Live sells the accused products on AliExpress and imports the products into the United States. *Id.* at ¶¶ 144, 164.

e) Quoko

Quoko is a Chinese company with a principal place of business in Hangzhou, China. *Id.* at ¶ 53. Quoko sells and markets the accused products on AliExpress and imports the products into the United States. *Id.* at ¶¶ 145, 165.

C. Technology Overview

The technology at issue in this investigation involves flash spinning of nonwoven materials. Flash-spun nonwoven material is made from very fine fibers of high-density polyethylene ("HDPE"). CX-3590C (Jackson WS) at Q/A 26. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. Asserted Trade Secrets

The asserted trade secrets are generally categorized into two groups: (1) [REDACTED]

[REDACTED] and (2) [REDACTED]

[REDACTED]

[REDACTED] CIB at 10.

DuPont asserts seven alleged trade secrets. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED] Documents
TS No. 11	[REDACTED]	
TS No. 15	[REDACTED]	

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Trade Secret	Description	Cited Documents
TS No. 17	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	
TS No. 18	[REDACTED]	CX-2059C CX-2596C CX-2655C CX-2198C
TS No. 19	[REDACTED]	CX-2587C CX-2648C CX-2666C CX-2673C CX-2336C CX-2652C CX-2668C CX-2654C CX-2667C CX-2674C CX-3411C CX-2609C
TS No. 22	[REDACTED]	CX-2655C CX-2665C CX-2639C CX-2181 CX-2330C

Trade Secret	Description	Cited Documents
TS No. 25		CX-2597C CX-2599C CX-2627C CX-3413C CX-2629C CX-2626C CX-2628C CX-2618C CX-2622C

CIB at 10.

E. Asserted Trademarks

DuPont asserts the following trademarks:

Trademark	Registration No.	Registered Goods
TYVEK	817,194	Sheets and laminates of man-made fibers for general use in the industrial arts
TYVEK	818,688	Sheeting of man-made material suitable for use as printing paper, bookbinding, wrapping, and wall covering, and for other similar applications
TYVEK	818,737	Fabrics of man-made fibers and filaments suitable for making into household furnishings and apparel for industrial uses
	7,370,316	Protective clothing, namely coveralls for protection against dust, aerosols, dangerous and non-dangerous liquid splash in industrial, manufacturing and agricultural environments

JX-0010-JX0017; CX-0005C, ¶¶ 16-19. The three TYVEK word marks will be collectively referred to as the “TYVEK Word Marks”. The design mark will be referred to as the “Blue Octagon Mark”.

F. Products at Issue

The plain language description of the accused products or category of accused products is “flash-spun nonwoven materials sold in both paper-like hard structure or cloth-like soft structure.” 89 *Fed. Reg.* 92,159. These materials may be sold and imported as “roll goods” (*i.e.*, raw materials) or incorporated into different types of downstream products. CIB at 6. Examples of “hard structure” products include medical packaging and house wrap, as seen below.



CX-3744C; CX-3745C; CX-3590C (Jackson WS) at Q/As 30-31. Examples of “soft structure” products include protective apparel and consumer products, as shown below:



CX-3746C; CX-3747C; CX-3590C (Jackson WS) at Q/A 32.

1. The Accused Products

The accused products are flash-spun nonwoven materials made and sold by Kingwills under the brand name Hypak. CIB at 6. Kingwills manufactures and sells Hypak as “roll goods” [REDACTED] which, as explained above, are rolls of raw materials that can be used to make various end-products. RX-5960C (Chen WS) at Q/As 15-16.

[REDACTED]

CX-2993C.

2. The Domestic Industry Products⁴

DuPont relies on a wide range of Tyvek products to satisfy the domestic industry requirement. Of these products, DuPont only manufactures and sells HomeWrap® and protective

⁴ The domestic industry products will be referred to herein as the “DI Products.”

apparel as finished products. CIB at 12. The protective apparel DI Products include, but are not limited to, products associated with the following product style codes:

Tyvek Garment Product Style Codes
Tyvek 400 D
Tyvek 400
Tyvek 400 FC
Tyvek 500 HV
Tyvek 500
Tyvek 600
Tyvek 800
Tyvek IsoClean OS
Tyvek IsoClean OB
Tyvek IsoClean OC
Tyvek IsoClean CS

CPHB at 15. The remaining categories of DI Products are sold in the form of “roll goods” of Tyvek flash-spun nonwoven material that is incorporated into products made by downstream manufacturers, called converters, and sold by downstream distributors. *Id.* at 16. These products are used in many applications, including industrial and consumer packaging (*e.g.*, printing paper, envelopes, art packaging, food active packaging, protective coverings/tarps, car/RV covers, part protection, and desiccants); agricultural barriers (*e.g.*, barriers for moisture and sunlight management); building protection (*e.g.*, water resistive barriers and seam tape); printing applications (*e.g.*, racing bibs, wristbands, durable tags, labels, graphics, signage, and advertisements); Personal Protective Equipment (“PPE”) (*e.g.*, coveralls (painters, mechanics, medical, sanitation, clean-room, agricultural, industrial applications)), disposable garments, and industrial protective clothing); consumer goods (*e.g.*, apparel, identification bracelets, household furnishings, book bindings, wall coverings, lamps, cooking accessories, and coverings); and medical packaging (*e.g.*, medical pouches). CX-3588C (Reichert WS) at Q/As 12-13. The

consumer and industrial DI Products, include but are not limited to, products associated with the following product style codes:

Tyvek C&I Product Style Codes
Tyvek 1025B
Tyvek 1025D
Tyvek 1056D
Tyvek 1057D
Tyvek 1059B
Tyvek 1070D
Tyvek 1073B
Tyvek 1073D
Tyvek 1082D
Tyvek 1085D
Tyvek 1442R
Tyvek 1443R
Tyvek 1460C
Tyvek 1473R
Tyvek 2025B
Tyvek 2058C
Tyvek 2462C

CPHB at 16.

II. PRELIMINARY ISSUES

A. Statutory Authority

The Commission has statutory authority to investigate a potential violation of section 337 based on the factual allegations in a complaint under oath. 19 U.S.C. § 1337(a)(1) (“[T]he following [unfair acts] are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section.”), (b)(1) (“The Commission shall investigate any alleged violation of this section on complaint under oath[.]”). Here, DuPont’s complaint alleges a violation of section 337 by reason of (1) misappropriation of

trade secrets; (2) wrongful use and exploitation of stolen confidential and proprietary information;⁵ and (3) trademark infringement. 92 *Fed. Reg.* 92,159. I find that the Commission has statutory authority to conduct this investigation in accordance with the Commission's governing statutes. *See, e.g.*, 19 U.S.C. §§ 1333, 1337(e)-(f).

As discussed below, the accused products have been imported into the United States. No party disputes the Commission's statutory authority to issue a remedy against imported accused products in accordance with 19 U.S.C. § 1337 if there is a violation of that statute. I find that the Commission has statutory authority over the imported accused products in accordance with 19 U.S.C. § 1337. *See Sealed Air Corp. v. Int'l Trade Comm'n*, 645 F.2d 976, 985–86 (C.C.P.A. 1981); 19 U.S.C. § 1337.

Both DuPont and Kingwills have actively participated in this investigation. The private parties do not contest the Commission's statutory authority over them. CPHB at 17; RIB at 1. I find that the Commission has statutory authority over the private parties in accordance with the Commission's governing statutes. *See, e.g.*, 19 U.S.C. §§ 1333, 1337(e)-(f).

B. Importation

Section 337 prohibits “[u]nfair methods of competition and unfair acts in the importation of articles . . . into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is—[] to destroy or substantially injure an industry in the United States . . .” 19 U.S.C. § 1337(a)(1)(A)(i). A single importation of an accused product is sufficient to satisfy the importation requirement of section 337. *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, USITC Pub. No. 1605, Comm’n Op. at 7–8 (Nov. 1984) (deeming the importation requirement satisfied by the importation of a single product of no commercial value).

⁵ DuPont has only identified a legal claim for the tort of conversion. CIB at 83-87.

1. The Kingwills Respondents

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In

view of the record evidence, I find that the importation requirement has been satisfied as to Kingwills.

2. The Downstream Respondents

a) Impak

Impak is a “downstream purchaser and importer.” EDIS Doc. ID 872580. According to DuPont, Impak sells the accused products as “TyePAK” at trade shows in the United States and on its website. CX-3624C.93. Impak admitted that “[a]s of the present date, [it] has minimal domestic inventory levels of the subject material and/or goods manufactured from said material.” EDIS Doc. ID 872580.

Based on Impak’s concession, I find that the importation requirement has been satisfied.

b) Weifang Konzer

On July 30, 2024, a DuPont representative purchased “Tyvek Equivalence Coveralls” made from the accused Hypak material from Weifang Konzer. CX-0005C, ¶ 116. The coveralls were shipped from Nanjing, China to an address in Highland, Utah. *Id.* In view of the record evidence, I find that the importation requirement has been satisfied as to Weifang Konzer.

c) Jiangsu Tubo / TOBO Group

DuPont used a third-party vendor to purchase accused products from Jiangsu Tubo/TOBO Group in April 2025. CX-3624C.166. The accused products were shipped from China to the third-

party in Utah and from there, to DuPont's facility in Richmond, Virginia. Jackson, Tr. at 331:5-332:3; CX-3590C (Jackson WS) at Q/A 82. In view of the record evidence, I find that the importation requirement has been satisfied as to Jiangsu Tubo/TOBO Group.

d) JGT Live

Dupont purchased samples of the accused products from JGT Live over the e-commerce site AliExpress. Flattery, Tr. at 120:6-122:19. These items were shipped from China to an address in California. *Id.*; *see also* CX-0005C, ¶ 119. In view of the record evidence, I find that the importation requirement has been satisfied as to JGT Live.

e) Quoko

Dupont ordered samples of the accused products from Quoko over AliExpress. Flattery, Tr. at 122:6-19. Those samples were shipped from China to an address in California. *Id.*; *see also* CX-0005C, ¶ 120. In view of the record evidence, I find that the importation requirement has been satisfied as to JGT Live.

III. WHETHER THERE ARE PROTECTABLE TRADE SECRETS

A. Legal Standard

Trade secret misappropriation is “a method of unfair competition defined by the common law.” *Certain Rubber Resins & Processes for Mfg. Same*, Inv. No. 337-TA-849, Comm’n Op. at 9 (Feb. 26, 2014) (“*Rubber Resins*”). A “single federal standard,” rather than the law of a particular state, applies to investigations into trade secret misappropriation under section 337. *TianRui Grp. Co. v. Int’l Trade Comm’n*, 661 F.3d 1322, 1327 (Fed. Cir. 2011). Sources for this federal standard include the Restatement of Unfair Competition, the Uniform Trade Secrets Act (“UTSA”), the Restatement of Torts, federal statutes, and federal common law. *Id.* at 1327-28. The Commission has identified the elements of trade secret misappropriation as:

- (1) the existence of a process that is protectable as a trade secret (*e.g.*, that is (a) of economic value, (b) not generally known or readily ascertainable, and (c) that the complainant has taken reasonable precautions to maintain its secrecy);
- (2) the complainant is the owner of the trade secret;
- (3) the complainant disclosed the trade secret to respondent while in a confidential relationship or that the respondent wrongfully took the trade secret by unfair means; and
- (4) the respondent has used or disclosed the trade secret causing injury to the complainant.

Rubber Resins, Comm’n Op. at 10; *see also* UTSA, § 1(4).

The existence of a trade secret is a prerequisite for a trade secret misappropriation claim. *Id.* The complainant bears the burden of showing “the existence of a process that is protectable as a trade secret.” *Id.* at 56–59. “The common law does not provide ‘precise criteria for determining the existence of a trade secret,’ but instead requires ‘a comparative evaluation of all the relevant factors, including the value, secrecy, and definiteness of the information as well as the nature of the defendant’s misconduct.’” *Certain Activity Tracking Devices, Sys., & Components Thereof*, Inv. No. 337-TA-963, Initial Determination at 18 (Sept. 22, 2016), *unreviewed by* Comm’n Notice (Oct. 20, 2016) (quoting Restatement (Third) of Unfair Competition § 39 cmt. d.) (“*Activity Tracking*”). The Commission has considered the following six factors—each of which relates to issues of value and/or secrecy—to determine whether a trade secret exists:

1. the extent to which the information is known outside of complainant’s business;
2. the extent to which it is known by employees and others involved in complainant’s business;
3. the extent of measures taken by complainant to guard the secrecy of the information;
4. the value of the information to complainant and to his competitors;

5. the amount of effort or money expended by complainant in developing the information; and

6. the ease or difficulty with which the information could be properly acquired or duplicated by others.

Certain Processes for the Manufacture of Skinless Sausage Casings & Resulting Prod., Inv. Nos. 337-TA-148/169, Initial Determination, 1984 WL 273789, *94 (July 31, 1984), *unreviewed by* Comm’n Op., 1984 WL 273970 (1984) (“*Sausage Casings*”); *see also* Restatement of Torts § 757, cmt. B. These factors are “instructive guidelines,” not a six-pronged test. *Certain Bone Cements & Components Thereof & Prods. Containing the Same*, Inv. No. 337-TA-1153, Comm’n Op. at 7 (Jan. 25, 2021) (“*Bone Cements*”).

Considering the *Sausage Casings* factors, I first consider whether there are any protectable trade secrets.

B. Reasonable Measures

The record evidence establishes that DuPont has implemented measures to safeguard its confidential intellectual property, including the asserted trade secrets.⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁶ Kingwills’ expert does not challenge Mr. Flattery’s detailed explanation of the measures DuPont took to protect its asserted trade secrets. Dorsey, Tr. at 1024:25-1025:14; *see also id.* at 1023:15-1024:1.

⁷ [REDACTED]

[REDACTED]

DuPont has employed physical security measures at its facilities, [REDACTED]

[REDACTED]

[REDACTED] CX-3589C (Flattery WS) at Q/A 26; CX-4250C.

Other physical security measures include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kingwills claims that DuPont did not adequately protect [REDACTED]

[REDACTED] The evidence shows otherwise. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As Staff correctly noted, “reasonable measures need only be reasonable, not perfect.” SIB at 14 (citing *Computer Assocs. Int’l v. Quest Software, Inc.*, 333 F. Supp. 2d 688, 696 (N.D. Ill. 2004)); see also *Learning Curve Toys, Inc. v. PlayWood Toys, Inc.*, 342 F.3d 714, 725 (7th Cir. 2003) (“The Act requires the trade secret owner to take actions that are ‘reasonable under the circumstances to maintain [the] secrecy or confidentiality’ of its trade secret; it does not require perfection.”).

C. Asserted Trade Secret No. 11

Trade Secret 11 relates to [REDACTED]

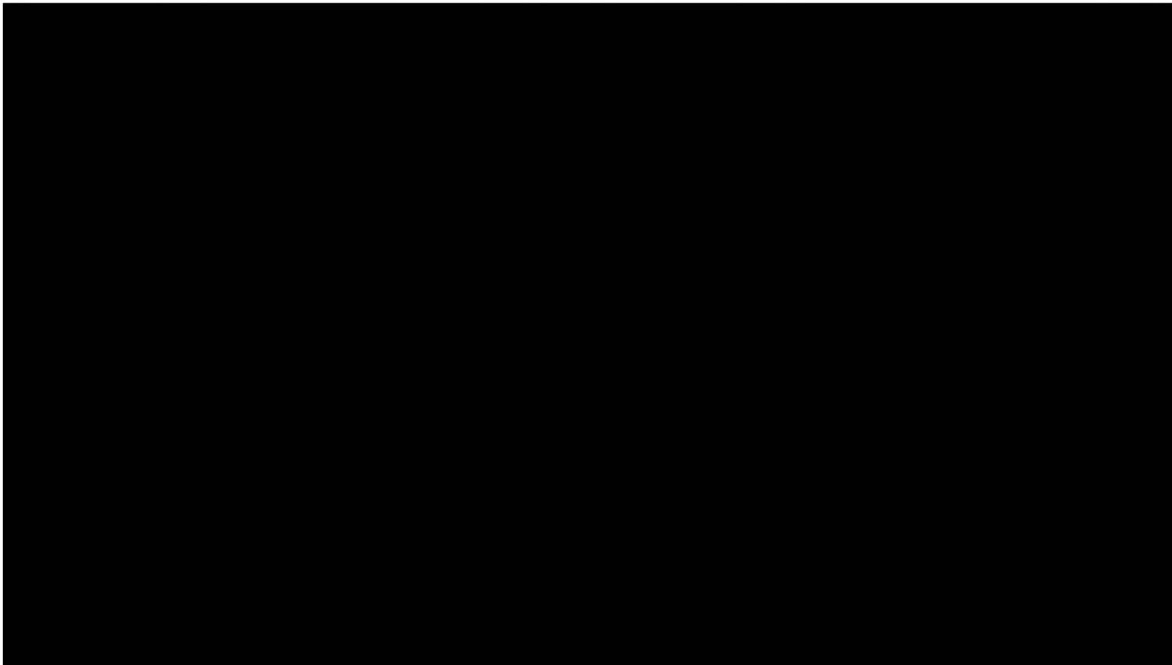
[REDACTED] According to DuPont, [REDACTED]

[REDACTED]

CIB at 21.

1. Sufficient Particularity

[REDACTED]



Reasonable particularity “must be ‘particular enough as to separate the trade secret from matters of general knowledge in the trade or special knowledge of persons skilled in the trade.’” *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368, 381 (6th Cir. 2022); *see also Activity Tracking*, Initial Determination at 17. It is also well established that the “disclosure of a trade secret in a patent places the information comprising the secret into the public domain.” *Ultimax Cement Mfg. Corp. v. CTS Cement Mfg. Corp.*, 587 F.3d 1339, 1355 (Fed. Cir. 2009); *see also Atl. Rsch. Mktg. Sys., Inc. v. Troy*, 659 F.3d 1345, 1357 (Fed. Cir. 2011) (“A trade secret is secret. A patent is not. That which is disclosed in a patent cannot be a trade secret.”) (citation omitted).

⁸ In DuPont’s



Here, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Similarly, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“[A]lthough a trade secret cannot subsist in information in the public domain, it can subsist in a *combination* of such information, as long as the combination is itself secret.” *Comprehensive Techs. Int’l, Inc. v. Software Artisans, Inc.*, 3 F.3d 730, 736 (4th Cir. 1993) (emphasis in original), *vacated pursuant to settlement*. DuPont must therefore show that the combination of these [REDACTED] is specific enough to be accorded trade secret status. *See Bimbo Bakeries USA, Inc. v. Sycamore*, 39 F.4th 1250, 1262 (10th Cir. 2022) (“The plaintiff bears the burden of providing the existence of a trade secret, and there is no presumption in [its] favor.”) (citation and quotation marks omitted). However, DuPont’s argument here is too conclusory, consisting of one sentence.

[REDACTED]

[REDACTED]; *see also McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) (“Issues adverted to in a perfunctory manner, unaccompanied by some effort at

developed augmentation, are deemed [forfeited]. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to ... put flesh on its bones.”) (quoting *Citizens Awareness Network, Inc. v. U.S. Nuclear Regul. Comm’n*, 59 F.3d 284, 293-294 (1st Cir. 1995)). As such, DuPont’s argument is waived per Ground Rule 14.2.

Even if this argument were not waived, I would still find that DuPont has not met its burden to show that this trade secret has been defined with sufficient particularity. DuPont provides no explanation for how to distinguish between what is generally known or available and what it contends to be a protectable trade secret. *See Mallet & Co., Inc. v. Lacayo*, 16 F.4th 364, 385 (3d Cir. 2021) (A “meaningful review requires enough factual detail to permit us to draw a connection between the alleged trade secret and its value as a “*particular* secret[] of the complaining employer” and not general know-how of the trade.”) (quoting *Capital Bakers v. Townsend*, 231 A.2d 292, 294 (1967)). For example, while DuPont lists [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Accordingly, I find that Trade Secret 11 has not been defined with sufficient particularity.

2. The *Sausage Casing* factors

Neither DuPont, Kingwills, nor Staff specifically addressed these factors in their respective post-hearing briefs.¹⁰ However, having found Trade Secret 11 not sufficiently defined, this Court is precluded from effectively assessing these factors. *See Mallet & Co.*, 16 F.4th at 381 (“We cannot evaluate whether a plaintiff is likely to succeed on any element of a trade secret misappropriation claim until the plaintiff has sufficiently described those trade secrets.”); *Porous Media Corp. v. Midland Brake Inc.*, 187 F.R.D. 598, 600 (D. Minn. 1999) (“Failure to identify the trade secrets with sufficient specificity renders the Court powerless to enforce any trade secret claim.”); *see also Synopsys, Inc v. Risk Based Sec., Inc.*, 70 F.4th 759, 769 (4th Cir. 2023) (failing to prove the existence of a trade secret dooms a misappropriation claim). Accordingly, I find that Trade Secret 11 is not a protectable trade secret.

D. Asserted Trade Secret No. 15

Trade Secret 15 is directed to [REDACTED]

[REDACTED]

[REDACTED]

1. Sufficient Particularity

The evidence shows that Trade Secret 15 is described with sufficient particularity.¹¹ Dr. Schweiger provided a narrative description of the trade secret. He explained: [REDACTED]

[REDACTED]

¹⁰ This is true for all the asserted trade secrets.

¹¹ Kingwills criticizes DuPont for “obfuscat[ing]” the scope of Trade Secret 15. RIB at 70. I disagree. DuPont has consistently asserted that Trade Secret 15 is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. The *Sausage Casing* factors

a) *Sausage Casing* factor (1)–(3)

As noted above, the first *Sausage Casing* factor concerns the extent to which information is known to others outside the complainant's business. The record evidence summarized above demonstrates that DuPont confidential information is known to others outside DuPont's business only when the recipient of that information agrees under contract not to disclose the information further. *See* Section III.B. In addition, DuPont discloses no more information than is necessary to accomplish its business purpose. *Id.*

The second *Sausage Casing* factor concerns the extent to which information is known by employees and others involved in the complainant's business. The record evidence demonstrates

that confidential information is segmented within DuPont on a need-to-know basis and that DuPont employees cannot take information with them when they separate from the company. *Id.*

The third *Sausage Casing* factor concerns the extent of measures taken by the complainant to guard the secrecy of the information. The record evidence demonstrates that DuPont employs numerous safeguards to protect its confidential information, including the asserted trade secrets, from unauthorized physical and digital transfer, unauthorized transfer by DuPont personnel, unauthorized transfer by outside persons, and from cyberattacks. *Id.*

I find that these facts weigh in favor of trade secret protection.

b) *Sausage Casing* factor (4)

The fourth *Sausage Casing* factor relates to the economic value of the information. “To have independent economic value, a trade secret must be sufficiently valuable and secret to afford an actual or potential economic advantage over others.” *Cisco Sys., Inc. v. Chung*, 462 F. Supp. 3d 1024, 1052 (N.D. Cal. 2020) (quoting *Calendar Rsch. LLC v. StubHub, Inc.*, 2017 WL 10378336, at *3 (C.D. Cal. Aug. 16, 2017)). “[T]he standard to show that trade secrets derive [independent] economic value is not a high standard.” *Id.*

The evidence shows that Trade Secret 15 has independent value due to its secrecy.¹² CX-3595C (Putnam WS) at Q/As 9, 46, 87, 94-96. [REDACTED]

¹² Kingwills disputes that the trade secret has value, arguing that [REDACTED] RIB at 77-78. For the reasons discussed in Section III.D.2.d below, I disagree.

¹³ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] see *Taylor v. Babbitt*, 760 F.Supp.2d 80, 88 (D.D.C. 2011) (“[Courts have routinely found that information that provides its owner an advantage over its competitors is commercially valuable.”). [REDACTED]
[REDACTED]

c) *Sausage Casing* factor (5)

The fifth *Sausage Casing* factor relates to the amount of effort or money expended by the complainant in developing the information. DuPont has spent decades and invested [REDACTED] [REDACTED] to develop and protect its asserted trade secrets. CX-3588C (Reichert WS) at Q/A 154 ([REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]). DuPont’s economic expert testified: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] I therefore find that this factor weighs in favor of trade secret protection. See *Roton Barrier, Inc. v. Stanley Works*, 79 F.3d 1112, 1118 (Fed. Cir. 1996) (finding trade secret information valuable because it was “the cumulative knowledge of 30 years in the business.”).

d) *Sausage Casing* factor (6)

There is no dispute that [REDACTED] are confidential DuPont documents that are neither generally known nor readily ascertainable. CIB at 49; SIB at 52; RIB at 74-78. The evidence also shows that DuPont's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kingwills nonetheless insists that Trade Secret 15 has been publicly disclosed.¹⁵ Kingwills first points to a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Next, Kingwills identifies several [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15

[REDACTED]

16

[REDACTED]

1

[REDACTED]

[REDACTED]

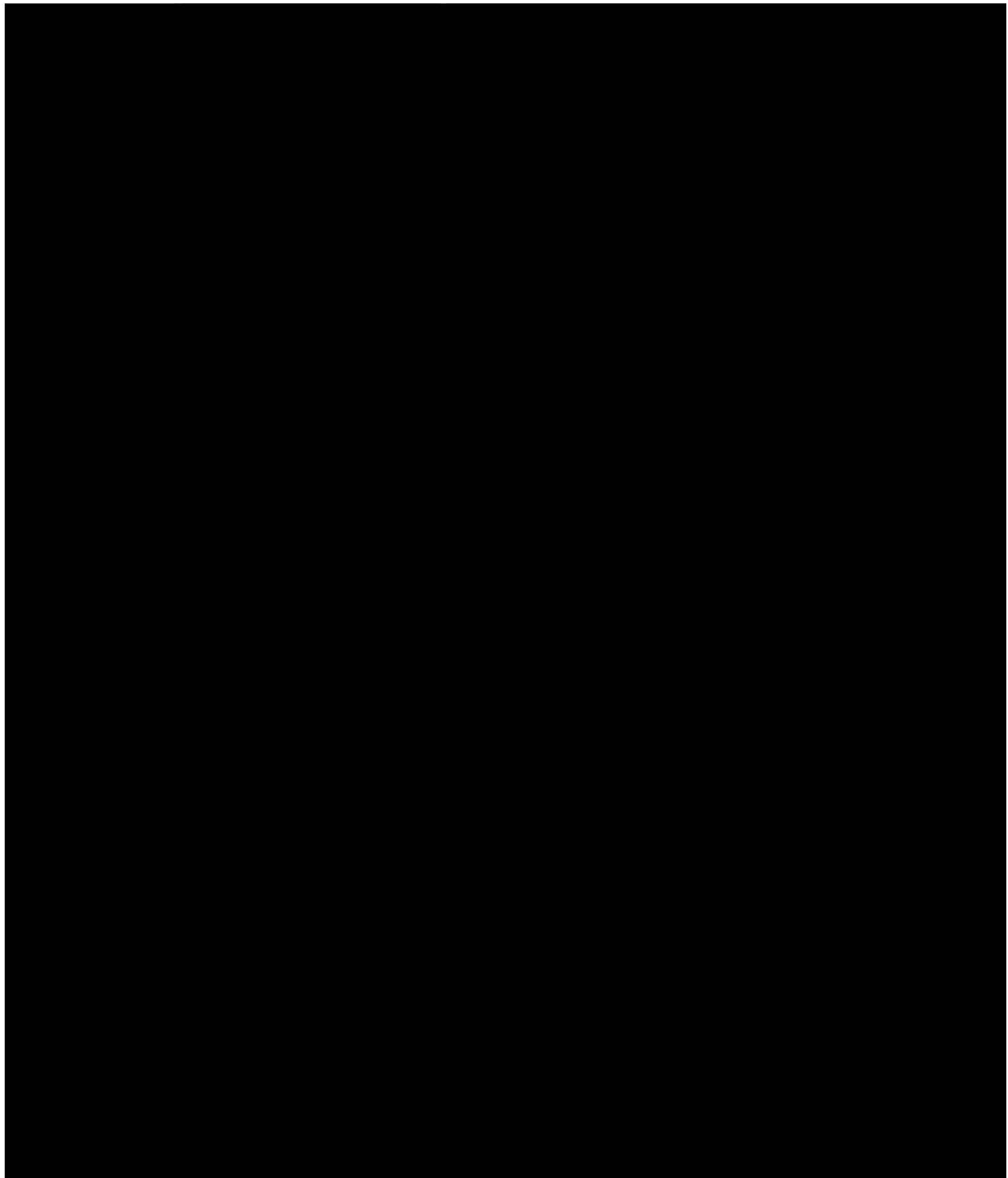
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

Lastly, Kingwills claims that [REDACTED]

[REDACTED]

[REDACTED] But the evidence does not substantiate Kingwills' allegation.¹⁸ There is no documentary evidence showing that Kingwills [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I agree.

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

For these reasons, I find that Trade Secret 15 is not generally known or readily ascertainable.

e) Conclusion

On balance, the *Sausage Casings* factors support a finding that Trade Secret 15 is a protectable trade secret. Accordingly, I find that Trade Secret 15 is a protectable trade secret.

E. Asserted Trade Secret No. 17

Trade Secret 17 is a

[REDACTED]

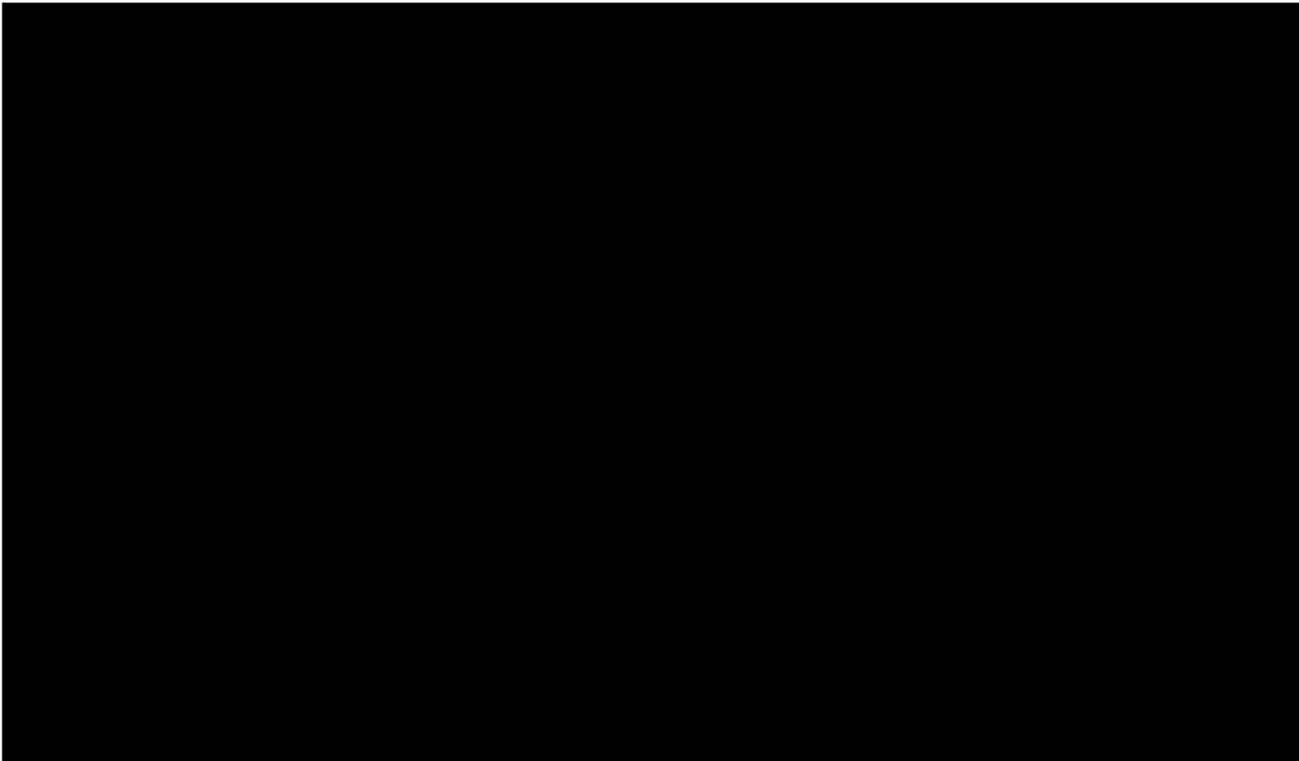
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



1. Sufficient Particularity

Because Trade Secret 17 is a 

 See, e.g., *MAI Sys. Corp. v. Peak Comput., Inc.*, 991 F.2d 511, 522 (9th Cir. 1993) (“[A] plaintiff who seeks relief for misappropriation of trade secrets must identify the trade secrets and carry the burden of showing that they exist.”). “The requirement of reasonable particularity matters here because a trade secret ‘described in general terms ... will usually be widely known’ or readily ascertainable by proper means and thus ‘not a trade secret.’ It matters, too, because, without particularity ... there is an inadequate basis for a fair adjudication of what information was actually used by the defendants.” *Olaplex, Inc. v. L’Oreal USA, Inc.*, 855 F.App’x 701, 712 (Fed. Cir. 2021);

see also Mallet & Co., 16 F.4th at 362 (“[T]he subject matter of the trade secret must be described with sufficient particularity to separate it from matters of general knowledge in the trade or of special knowledge of those persons who are skilled in the trade, and to permit the defendant to ascertain at least the boundaries within which the secret lies.”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The crux of the parties' dispute is what constitutes [REDACTED] and whether it has been sufficiently defined. DuPont alleges that it has described [REDACTED] with sufficient particularity. CIB at 34-35. Kingwills and Staff disagree. RIB at 30-31; SIB at 23-38.

Dr. Schweiger testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DuPont argues that [REDACTED]

[REDACTED] But, as Staff correctly noted, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As Dr. Parachuru testified, [REDACTED]

[REDACTED] RX-5965C (Parachuru RWS) at Q/A 168; *see also Coda Dev. s.r.o. v. Goodyear Tire & Rubber Co.*, 160 F.4th 1350, 1357 (Fed. Cir. 2025) (finding trade secret

[REDACTED]

[REDACTED]

was not sufficiently defined when listed functions were described in vague terms with no detail regarding how those functions are carried out); *A&P Tech., Inc. v. Lariviere*, No. 1:17-cv-534, 2017 WL 6606961, at *10 (S.D. Ohio Dec. 27, 2017) (“Terms such as ‘engineering,’ ‘research and development procedures and materials,’ and ‘marketing materials’ could be applied to almost any corporation in existence, and do not in any way allow Defendants to properly craft a defense around the alleged misappropriation of trade secrets.”). Even if a process is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Here, DuPont has not provided a sufficient basis by which to distinguish between what is generally known [REDACTED] and what it contends to be a protectable trade secret.²⁶ “Courts and juries require precision because, especially where a trade secrets claim involves a sophisticated and highly complex system [REDACTED], the ... trier of fact will not have the requisite expertise to define what the [complainant] leaves abstract.” *Olaplex*, 885 F’Appx at 712.

For these reasons, I find that DuPont has failed to define Trade Secret 17 with the requisite particularity.

²⁶ According to DuPont, “[i]f a party’s expert, or one ‘skilled in the trade,’ can understand the TS, that is enough.” CRB at 14. I disagree. It is the Court that must ultimately be able to differentiate between what is actually protectable from that which is not. *See, e.g., IDX Sys. Corp. v. Epic Sys. Corp.*, 285 F.3d 581, 583 (7th Cir. 2002) (“[U]nless the plaintiff engages in a serious effort to pin down the secrets a court cannot do its job.”).

2. The *Sausage Casing* factors

Having found Trade Secret 17 not sufficiently defined, this Court is precluded from effectively assessing these factors. *See Mallet & Co.*, 16 F.4th at 381 (“We cannot evaluate whether a plaintiff is likely to succeed on any element of a trade secret misappropriation claim until the plaintiff has sufficiently described those trade secrets.”); *Porous Media Corp.*, 187 F.R.D. at 600 (“Failure to identify the trade secrets with sufficient specificity renders the Court powerless to enforce any trade secret claim.”); *see also Synopsys*, 70 F.4th at 769 (failing to prove the existence of a trade secret dooms a misappropriation claim). Accordingly, I find that Trade Secret 17 is not a protectable trade secret.

F. Asserted Trade Secret No. 18

Trade Secret 18 comprises [REDACTED]

[REDACTED]

[REDACTED]

1. Sufficient Particularity

In addition to the narrative description set forth above, DuPont identifies [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

CIB at 56.

Kingwills argues that the narrative description of the trade secret is too broadly defined and as such, lacks the requisite specificity.^{27, 28} RIB at 89-90. I disagree. As Staff noted, “the fact a trade secret is broad does not mean it cannot be afforded protection.” SPHB at 38; *see also Crawler Cranes*, Comm’n Op. at 45-46 (Apr. 16, 2015) (“We disagree with the ID that Trade Secret No. 3 is too broad to be afforded protection as a trade secret”). Here, the substance of the trade secret was described in narrative form and by [REDACTED]. *See, e.g., Certain Carbon & Alloy Steel Prods.*, Inv. No. 337-TA-1002, Order No. 43 at 10 (Dec. 12, 2016) (instructing complainant to identify in its final identification of trade secrets “the relevant subsets of documents”). And contrary to Kingwills’ assertions, DuPont did identify [REDACTED] is a trade secret as I discuss below.

CX-2059C is a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²⁷ Kingwills’ argument is directed at all [REDACTED]. *See* RIB at 89-90. I find Kingwills’ argument just as unpersuasive for Trade Secrets 19 and 22 as I do for Trade Secret 18.

²⁸ Kingwills faults DuPont [REDACTED]. This is incorrect but even if true, it is not enough to render a trade-secret description insufficiently specific. *See, e.g., Motorola, Inc. v. Lemko Corp.*, 2012 WL 74319, at *15 (N.D. Ill. Jan. 10, 2012) (finding that the identification of over four million files had no bearing on whether the trade secret was sufficiently particularized).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CX-2655C is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

CX-2198C is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Based on the above, I find that Dupont has described Trade Secret 18 with sufficient particularity.

2. The *Sausage Casing* factors

a) *Sausage Casing* factors (1)-(3)

This is addressed in section III.B above. The evidence demonstrates that DuPont has taken appropriate steps to guard its confidential information relating to Trade Secret 18 from within and outside the company.

b) *Sausage Casing* factor (4)

The evidence shows that Trade Secret 18 has independent value due to its secrecy.³⁰ CX-3595C (Putnam WS) at Q/As 9, 46, 87, 98-99. Mr. Jackson testified that this trade secret holds

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁰ Kingwills does not meaningfully dispute the economic value of this trade secret. *See generally* RIB at 90-94. It does make a passing reference to CX-2655C [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) *Sausage Casing* factor (5)

For the reasons discussed above in section III.D.2.c, this factor weighs in favor of trade secret protection.

d) *Sausage Casing* factor (6)

The evidence shows that Trade Secret 18 is not generally known or readily ascertainable through proper means. CX-3590C (Jackson WS) at Q/As 120-122, 141, 174. These [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kingwills argues that information in at least CX-2596C and CX-2655C is not confidential. RIB at 90-92. For example, Kingwills claims that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e) Conclusion

On balance, the *Sausage Casings* factors support a finding that Trade Secret 18 is a protectable trade secret. Accordingly, I find that Trade Secret 18 is a protectable trade secret.

G. Asserted Trade Secret No. 19

Trade Secret 19 is [REDACTED]

1. Sufficient Particularity

The evidence supports a finding that DuPont identified Trade Secret 19 with sufficiently specificity. DuPont described the trade secret in narrative form, cited documents in support, and identified examples of the trade secret information contained within the documents. CIB at 66-67.

The cited documents are

³¹ Kingwills has not identified any evidence showing that [REDACTED] which comprises Trade Secret 18 is in the public domain.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CX-2587C is [REDACTED]

[REDACTED]

[REDACTED]

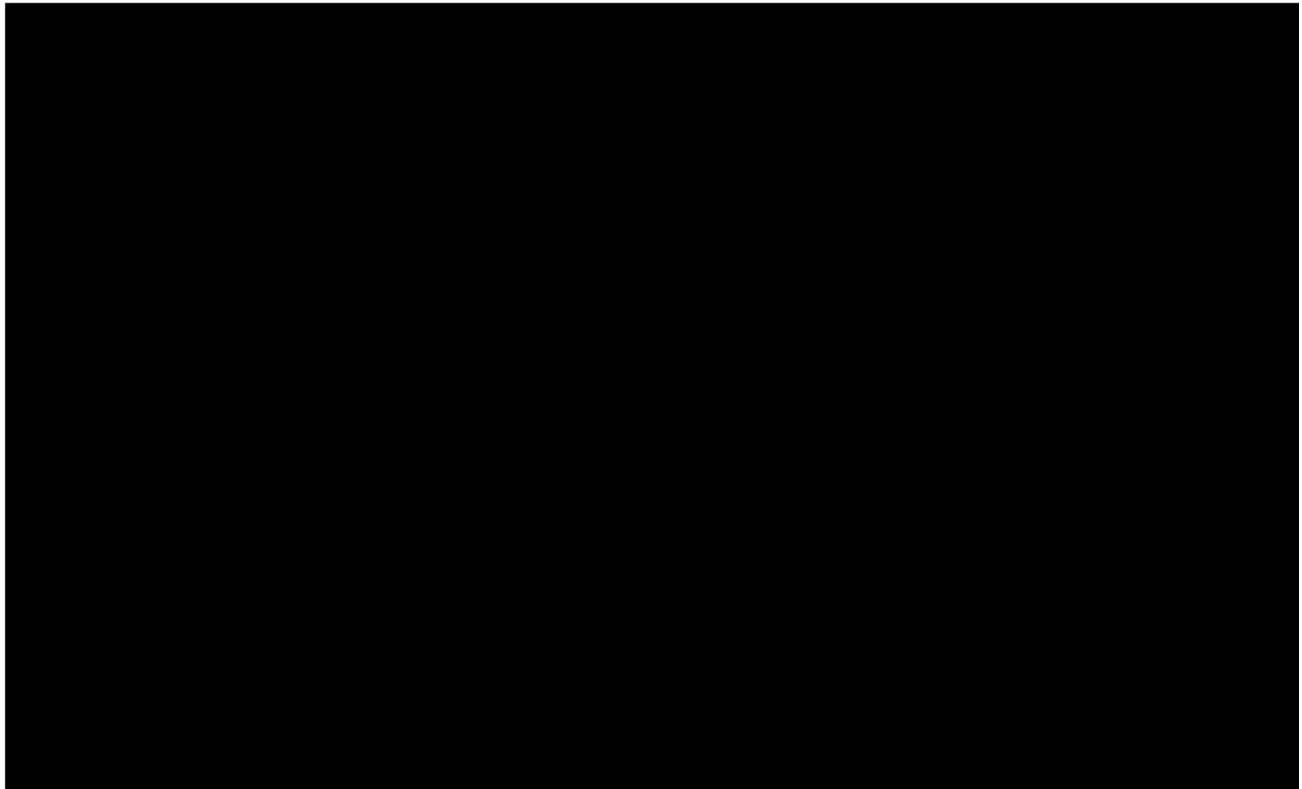
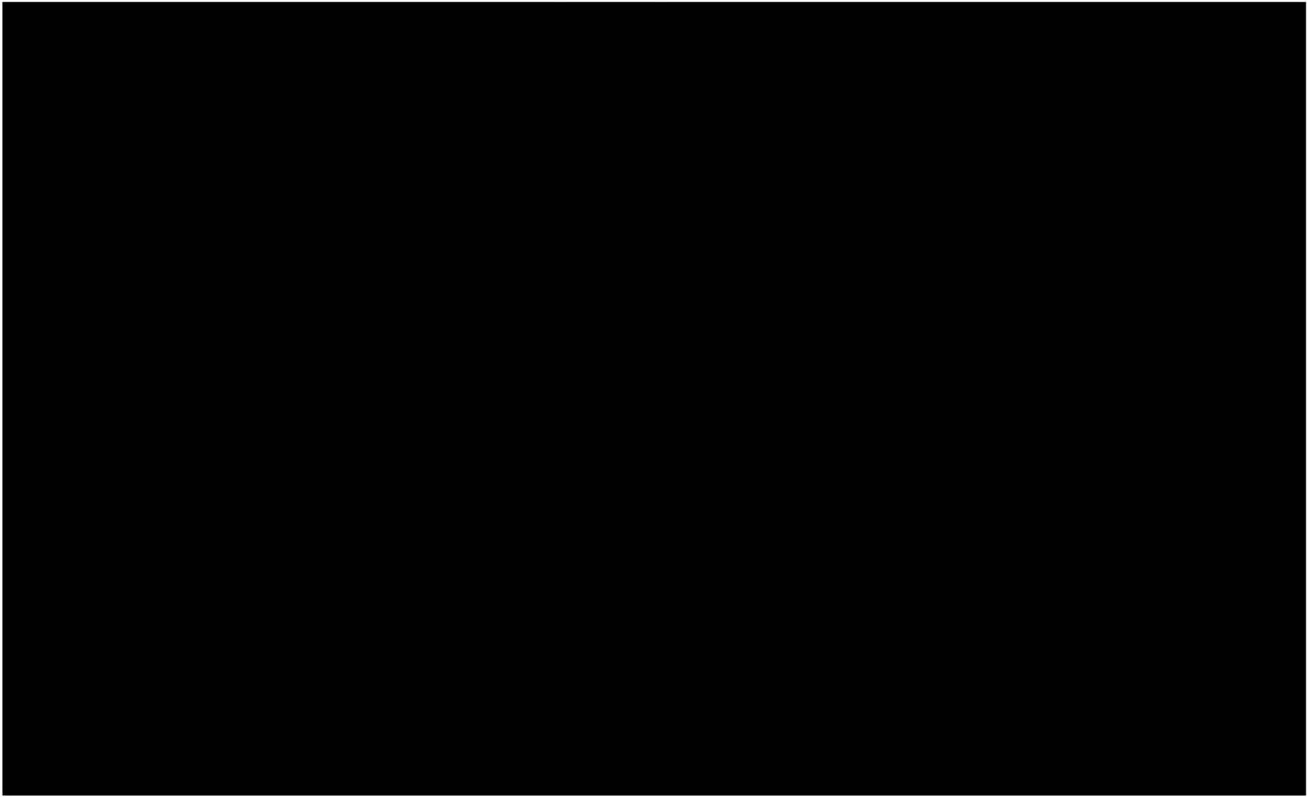
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³² CX-2666C, CX-2673C, and CX-2336C are copies of CX-2648C. CX-2654C, CX-2667C, CX-2674C, and CX-3411C are copies of CX-2650C. CX-2668C is a copy of CX-2652C. There are no relevant differences between these copies.



CX-2609C is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CX-2650C is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

2. The *Sauage Casing* factors

a) *Sausage Casing* factors (1)-(3)

This is addressed in section III.B above. The evidence demonstrates that DuPont has taken appropriate steps to guard its confidential information relating to Trade Secret 19 from within and outside the company.

b) *Sausage Casing* factor (4)

The evidence shows that Trade Secret 19 has independent value due to its secrecy.³³ CX-3595C (Putnam WS) at Q/As 9, 46, 87, 98-99. Trade Secret 19 allows [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) *Sausage Casing* factor (5)

For the reasons discussed above in section III.D.2.c, this factor weighs in favor of trade secret protection.

³³ Beyond a few cursory references to the lack of economic value, Kingwills does not substantively address the economic value of this trade secret. *See generally* RIB at 94-98; *see also* G.R. 14.2 (“Any contentions that are not set forth in detail in the post-hearing initial brief shall be deemed abandoned or withdrawn.”).

d) *Sausage Casing* factor (6)

The evidence shows that Trade Secret 19 is not generally known or readily ascertainable through proper means. CX-3590C (Jackson WS) at Q/As 220-222. These [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kingwills claims that much of the information in these [REDACTED] is publicly available. But, as discussed above, the fact that some information in these [REDACTED] may be in the public domain does not void trade secret status. *See 3M*, 259 F.3d at 595–96; *see also* CX-3590C (Jackson WS) at Q/As 303, 305, 310, 317 ([REDACTED])

[REDACTED].

Nor does the evidence support Kingwills’ assertion. For example, Kingwills cites several [REDACTED] allegedly showing the public availability of the [REDACTED]. *See* RIB at 94 (merely listing [REDACTED])

[REDACTED].

Kingwills also cites the testimony of Dr. Dorsey, but that testimony relates to an entirely different document. *See* RIB at 95 (citing [REDACTED])

[REDACTED]

[REDACTED] The same holds true for Kingwills’ criticisms of [REDACTED]. *See* RIB at 96. Here, Kingwills and Dr. Dorsey overlook the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

e) Conclusion

On balance, the *Sausage Casings* factors support a finding that Trade Secret 19 is a protectable trade secret. Accordingly, I find that Trade Secret 19 is a protectable trade secret.

H. Asserted Trade Secret No. 22

Trade Secret 22 is [REDACTED]

[REDACTED]

1. Sufficient Particularity

The evidence supports a finding that DuPont identified Trade Secret 22 with sufficient specificity. DuPont described the trade secret in narrative form, cited documents in support, and identified examples of the trade secret information contained within the documents. CIB at 72; *see also* CX-3590C (Jackson WS) at Q/As 329, 336. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

CX-2655C, which was discussed earlier for Trade Secret 18, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CX-2639C is a [REDACTED] [REDACTED]

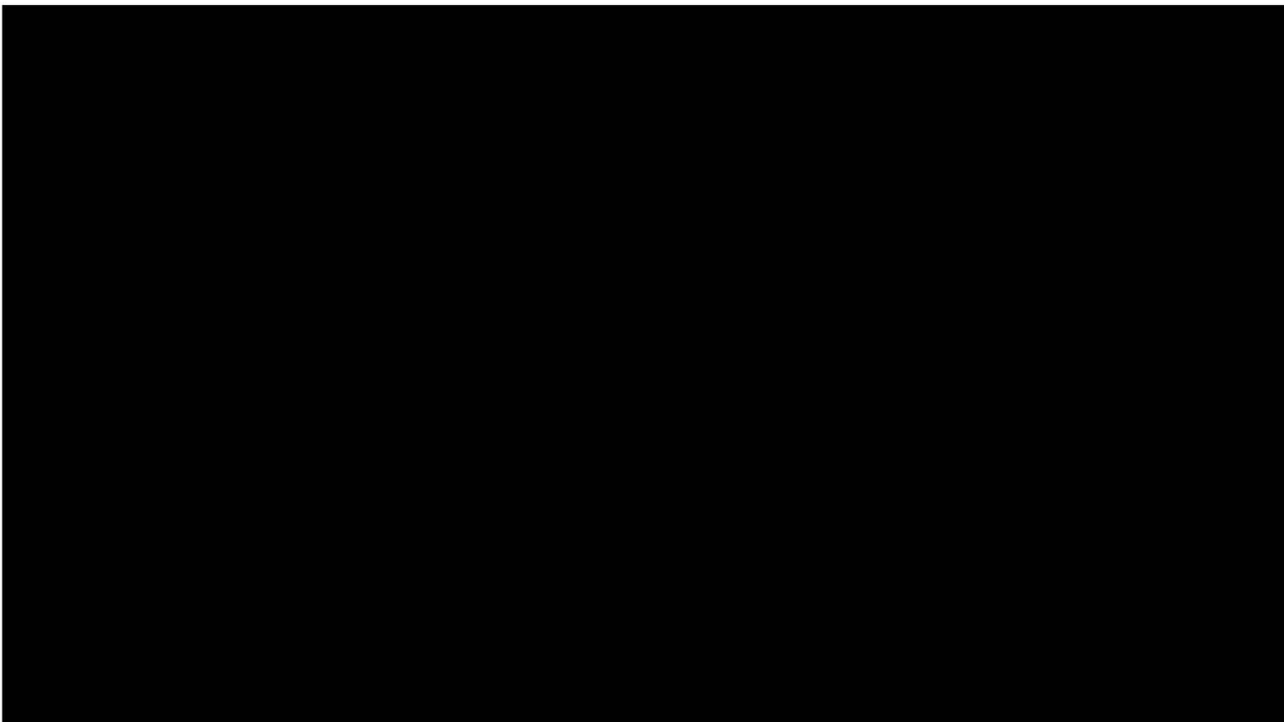
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁴ DuPont does not dispute that [REDACTED] was generally known. CIB at 72.



CX-2181 is an email chain dated October 25-26, 2023, with the subject line “Agriculture application in US between Kingwills and Harbourpoint.” The email is from Daniel Sun of Kingwills to Matthew Yuan of Harbourpoint and Meng (Raymond) Zhang of Kingwills. *Id.* The email discusses [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CX-2330C is [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

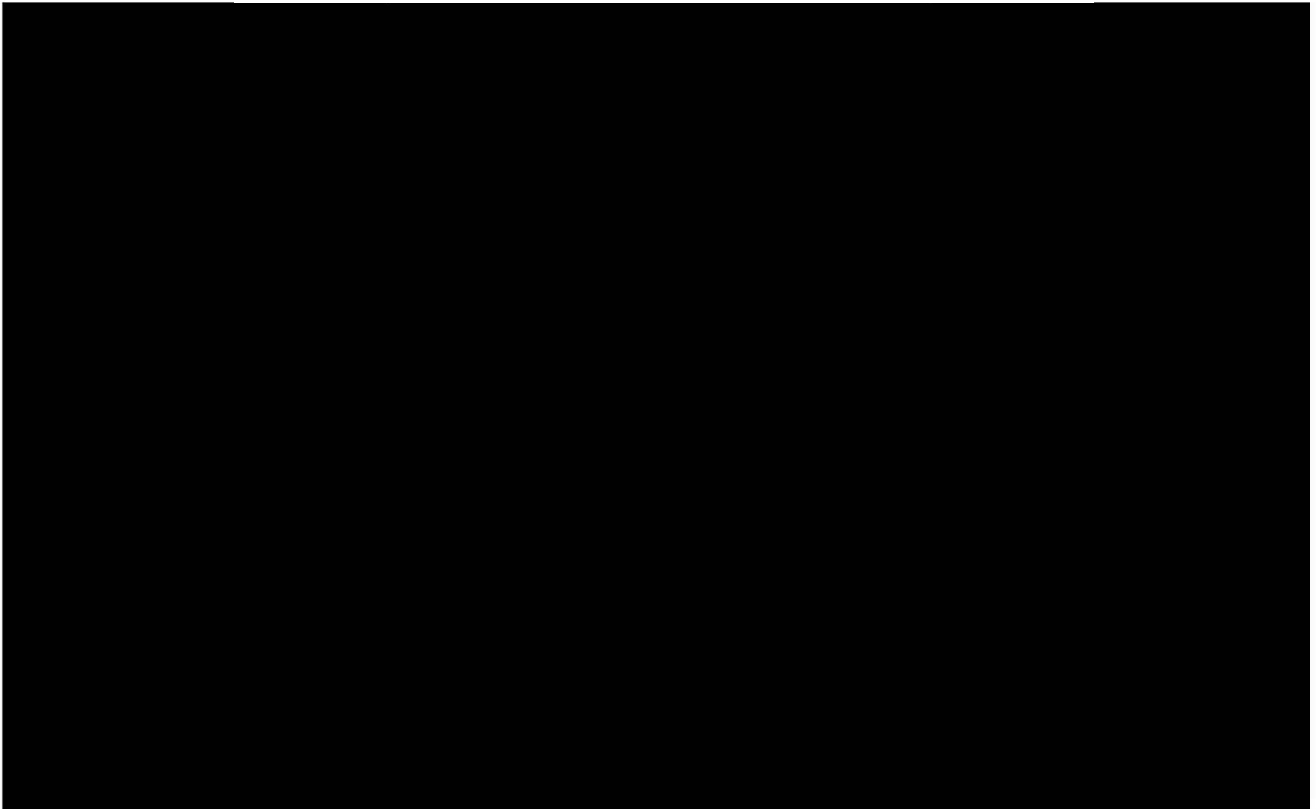
1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



2. The *Sausage Casing* factors

a) *Sausage Casing* factors (1)-(3)

This is addressed in section III.B above. The evidence demonstrates that DuPont has taken appropriate steps to guard its confidential information relating to Trade Secret 22 from within and outside the company.

b) *Sausage Casing* factor (4)

The evidence shows that Trade Secret 22 has independent value due to its secrecy.³⁵ CX-3595C (Putnam WS) at Q/As 9, 46, 87, 98-99. [REDACTED]

[REDACTED]

³⁵ Beyond some cursory references to the lack of economic value, Kingwills does not substantively address the economic value of this trade secret. *See generally* RIB at 94-98; *see also* G.R. 14.2 (“Any contentions that are not set forth in detail in the post-hearing initial brief shall be deemed abandoned or withdrawn.”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kingwills contends that much of the information in the cited documents contains [REDACTED]

[REDACTED] RIB at 98. As discussed previously, though, the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁶ Kingwills also claims that because it only sells roll goods, DuPont's application-specific information is not valuable to Kingwills. *See, e.g.*, RX-5962C (Wu RWS) at Q/A 94. Dr. Dorsey, however, concedes that both DuPont and Kingwills sell roll goods, that they are competitors, and that a company that makes [REDACTED] [REDACTED] Dorsey, Tr. at 1001:21-1002:21.

c) *Sausage Casing* factor (5)

For the reasons discussed above in section III.D.2.c, this factor weighs in favor of trade secret protection.

d) *Sausage Casing* factor (6)

The evidence shows that Trade Secret 22 is not generally known or readily ascertainable. CX-3590C (Jackson WS) at Q/As 323-325, 331, 338; CX-3591C (Schweiger WS) at Q/A 407. These [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

While Kingwills claims this information is readily ascertainable, it failed to identify any documents that disclose [REDACTED]³⁷ For example, according to Kingwills, the information in CX-2330C was generally known in the public so much so that Dr. Dorsey allegedly could have compiled it “in a matter of hours, or days at most.” RIB at 102 (citing RX-5966 (Dorsey RWS) at Q/As 277, 285). Yet Dr. Dorsey undertook no such endeavor despite working hundreds of hours on this matter and admitted that the only way she could have recreated anything similar was by uploading [REDACTED] into a generative AI

³⁷ [REDACTED]

database. Dorsey, Tr. at 1021:16-20 (“Q. Dr. Dorsey, you wouldn’t be able to recreate the [REDACTED] without having it in the first place; yes or no? A. Yes, you could not totally recreate that [REDACTED]”), 1022:7-1023:9 (“Well, as we talked about AI, I didn’t have the benefit of using AI to put all of the documents in, and to help me make [REDACTED] [REDACTED] So of course, it would take me much, much longer. The hundreds of hours that were taken.”).

e) Conclusion

On balance, the *Sausage Casings* factors support a finding that Trade Secret 22 is a protectable trade secret. Accordingly, I find that Trade Secret 22 is a protectable trade secret.

I. Asserted Trade Secret No. 25

Trade Secret 25 comprises [REDACTED]
[REDACTED]

1. Sufficient Particularity

DuPont defines Trade Secret 25 with reference to [REDACTED]
[REDACTED] DuPont did not identify exactly what portions of these documents qualify as trade secrets. *See Double Eagle Alloys, Inc. v. Hooper*, 134 F.4th 1078, 1091 (10th Cir. 2025) (“But Double Eagle left us to hunt through thousands of pages to determine which portions of the specification might qualify as trade secrets.”). Without more information, [REDACTED]
[REDACTED] *Id.*; *see also InteliClear, LLC v. ETC Glob. Holdings, Inc.*, 978 F.3d 653, 658 (9th Cir. 2020) (“Plaintiffs may not simply rely upon ‘catchall’ phrases or identify categories of trade secrets they intend to pursue at trial.”).

Additionally, the evidence shows that information in CX-2597C and CX-2599C [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Sun, a former employee of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38

[REDACTED]

39

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“[A] person claiming rights in a trade secret bears the burden on defining the information for which protection is sought with sufficient definiteness to permit a court to apply the criteria for protection.” *TLS Mgmt. & Mktg. Servs., LLC v. Rodriguez-Toledo*, 966 F.3d 46, 53 (1st Cir. 2020) (alterations in original) (quoting Restatement (Third) of Unfair Competition § 39 cmt. d (Am. Law Inst. 1995); *Givaudan Fragrances Corp. v. Krivda*, 639 F. App’x 840, 845 (3d Cir. 2016) (“It is patently obvious that trade secrets must be identified with enough specificity to put a defendant on notice of what is actually alleged to have been stolen.”). Here, DuPont has provided insufficient evidence showing what [REDACTED] information is a trade secret and what is readily ascertainable from [REDACTED]. See SIB at 76 (“It is not clear what information falling under [REDACTED] [REDACTED]; RIB at 103-104 (arguing that [REDACTED] do not constitute “a protectable trade secret” and are not “defined with specificity”).

For these reasons, I find that DuPont has failed to define Trade Secret 25 with the requisite particularity.

2. The Sausage Casing factors

Because Trade Secret 25 is not sufficiently defined, this Court is precluded from effectively assessing these factors. See *Mallet & Co.*, 16 F.4th at 381 (3d Cir. 2021) (“We cannot evaluate whether a plaintiff is likely to succeed on any element of a trade secret misappropriation claim until the plaintiff has sufficiently described those trade secrets.”); *Porous Media Corp.*, 187 F.R.D.

at 600 (“Failure to identify the trade secrets with sufficient specificity renders the Court powerless to enforce any trade secret claim.”); *see also Synopsys*, 70 F.4th at 769 (failing to prove the existence of a trade secret dooms a misappropriation claim). Accordingly, I find that Trade Secret 25 is not a protectable trade secret.

IV. MISAPPROPRIATION OF THE ASSERTED TRADE SECRETS

Having found protectable trade secrets, I next consider whether there has been misappropriation of them. *Crawler Cranes*, Comm’n Op. at 34. This involves consideration of ownership, confidential disclosure or wrongful acquisition, and use. *Rubber Resins*, Comm’n Op. at 10 (citing *Sausage Casings*, Inv. Nos. 337-TA-148/169, Initial Determination).

A. Legal Standard

Complainants bear the burden to establish a *prima facie* case of misappropriation but once they make that showing, the burden shifts to respondents to show independent development. *Certain Balanced Armature Devices, Prods. Containing Same, & Components Thereof*, Inv. No. 337-TA-1186, Comm’n Op. at 8 (Oct. 29, 2021) (“*Balanced Armature Devices*”). Proof of misappropriation can be “based on circumstantial evidence when the accused party denies the misappropriation.” *Certain Crawler Cranes & Components Thereof*, Inv. No. 337-TA-887, Comm’n Op. at 56 (May 6, 2015) (“*Crawler Cranes*”).

1. Ownership

“[O]ne ‘owns’ a trade secret when one knows of it, as long as it remains a secret.” *DTM Research, LLC v. AT&T Corp.*, 245 F.3d 327, 331 (4th Cir. 2001). A trade secret may be transferred; however, “its continuing secrecy provides the value, and any general disclosure destroys the value.” *Id.*

2. Wrongful Disclosure or Acquisition

Misappropriation requires evidence that the “complainant disclosed the trade secret to respondent while in a confidential relationship or that the respondent wrongfully took the trade secret by unfair means.” *Rubber Resins*, Comm’n Op. at 10. A taking is wrongful if, for instance, the respondent used a trade secret acquired by an employee under circumstances giving rise to a secrecy obligation. *See id.* at 41–42 (affirming reasoning in the ID that respondent “wrongfully took Complainant’s trade secrets by unfair means” through copying information obtained by the complainant’s former employees under confidentiality agreements).

3. Use of the Asserted Trade Secret

The final element of trade secret misappropriation is that “the respondent has used or disclosed the trade secret causing injury to the complainant.” *Certain Botulinum Toxin Prods., Processes for Mfg. or Relating to Same & Certain Prods. Containing Same*, Inv. No. 337-TA-1145, Comm’n Op. at 13 (Jan. 13, 2021) (citing UTSA, §1(4). “Use” of a trade secret occurs “when goods that embody a trade secret are marketed, the trade secret is employed in manufacturing or production, or is relied on to assist or accelerate research or development.” *Crawler Cranes*, Initial Determination at 26–27 (citing Restatement (Third) of Unfair Competition § 40, comment c.). “An actor is liable for using the trade secret with independently created improvements or modifications if the result is substantially derived from the trade secret.” *Id.*

B. The Kingwills Respondents

1. Asserted Trade Secret 15

a) Ownership

Kingwills disputes that DuPont owns Trade Secret 15. RIB at 74-75. Kingwills asserts that

PUBLIC VERSION

Staff asserts that this argument was not raised in Kingwills' prehearing brief and is therefore waived pursuant to Ground Rule 11.2. SIB at 52-53. DuPont also contends that this argument was not disclosed in Kingwills' prehearing brief. CRB at 21.

Kingwills does not dispute the argument was not raised but rather argues that it could not have included it in its prehearing brief. RRB at 40. According to Kingwills, the [REDACTED]

[REDACTED] Kingwills' explanation is not persuasive for several reasons.

First, the document that forms the basis of Kingwills'

_____ I therefore find that Kingwills has waived this argument, pursuant to Ground Rule 11.2. *See* G.R. 11.2 (“Any contentions not set forth in detail in the pre-hearing brief shall be deemed abandoned or withdrawn.”).

And, contrary to Kingwills' assertions, the evidence shows that DuPont owns Trade Secret

15. As Mr. Jackson and Dr. Schweiger both testified, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b) Wrongful Disclosure or Improper Acquisition

The evidence shows that Kingwills improperly acquired Trade Secret 15 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁰ Kingwills claims that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴¹ Certain differences [REDACTED] were not raised in Kingwills' prehearing brief (*see generally* RPHB at 127-131) and as such, are waived under Ground Rule 11.2.



[REDACTED]

Kingwills contends that CX-2659C does not disclose Trade Secret 15. RRB at 49-50. Even if true, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Leggett & Platt

[REDACTED]

Inc. v. Hickory Springs Mfg. Co., 285 F.3d 1353, 1361 (Fed. Cir. 2002) (“On the issue of access, direct evidence is rarely available, thus requiring a reliance on circumstantial evidence.”); *PepsiCo, Inc. v. Redmond*, 54 F.3d 1262, 1269 (7th Cir. 1995) (holding under the ITSA that “a plaintiff may prove a claim of trade secret misappropriation by demonstrating that defendant’s new employment will inevitably lead him to rely on the plaintiff’s trade secrets.”).

In addition, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c) Substantial Use or Disclosure

The evidence shows that [REDACTED]. “As a general rule the similarity standing alone is an adequate basis upon which to find misappropriation.” *Smith v. Dravo Corp.*, 203 F.2d 369, 377 (7th Cir. 1953); *see also Leggett & Platt*, 285 F.3d at 1361 (“These showings—access and similarity—may support a trade secret misappropriation claim.”); *Sokol Crystal Prods., Inc. v. DSC Commc’ns Corp.*, 15 F.3d 1427, 1429 (7th Cir. 1994) (“While there was no direct evidence that anyone at DSC used Sokol’s confidential information in the

making of its own VCXO, the jury apparently inferred from the fact that DSC had access to Sokol's confidential information and from the similarity between the two devices that DSC misappropriated Sokol's trade secret and that the AFD VCXO was derived from that trade secret."); *EEMSO, Inc. v. Compex Techs., Inc.*, No. 05-0897, 2006 WL 2583174, at *8 (N.D. Tex. Aug. 31, 2006) (holding that similarities between products was the "most compelling[]" evidence that the defendant obtained trade-secret information).

Here, Dr. Schweiger testified that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See

Crawler Cranes, Comm'n Op. at 52-53.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] “is sufficient to establish a ‘use’ of the trade secret under the Restatement.” *Crawler Cranes*, Comm’n Op. at 65.

d) Independent Development

A respondent bears “a heavy burden” in proving independent development. *Sausage Casings*, Initial Determination, 1984 WL 273789, at *95; *see also Pioneer Hi-Bred Int’l v. Holden Found. Seeds, Inc.*, 35 F.3d 1226, 1241 (8th Cir. 1994) (“[O]nce [plaintiff] produced convincing evidence of misappropriation, [defendant] was obligated to provide persuasive evidence of lawful derivation.”).

Kingwills contends that it independently developed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Considering the record evidence in total, I find there is insufficient evidence to support an affirmative defense of independent development regarding [REDACTED]
[REDACTED]. Staff agrees with this conclusion. SIB at 55.

e) Conclusion

Accordingly, I find that Kingwills misappropriated Trade Secret 15.

2. Asserted Trade Secret 18

a) Ownership

There is no dispute that DuPont owns Trade Secret 18. CIB at 58; SIB at 59. Kingwills does not contend otherwise. *See generally* RIB at 90-94.

b) Wrongful Disclosure or Improper Acquisition

i) CX-2596C and CX-2059C

The evidence shows that Kingwills improperly acquired CX-2596C. CX-2596C was [REDACTED]

[REDACTED] a former

DuPont employee. RX-5960C [REDACTED]

CX-2059C is the [REDACTED]

[REDACTED] While I agree, there is no evidence in the record as to [REDACTED]

[REDACTED] Jackson, Tr. at 387:17-388:3. As such, I find that there is insufficient evidence showing that Kingwills improperly acquired CX-2059C.

ii) CX-2655C

The evidence shows that [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Based on the above, I find that a preponderance of the evidence demonstrates that Kingwills improperly acquired CX-2655C.

iii) CX-2198C

As discussed above (*see* Section III.F.1), CX-2198C is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] DuPont's Shelter business includes the Tyvek HomeWrap products. *Id.* Mr. Palermo is also a former DuPont employee. *Id.* at Q/A 109. He worked at DuPont for 30 years, with 20 years in U.S. Tyvek sales for graphics and industrials. *Id.* "Mr. Palermo's last title at DuPont was Key Account Manager supporting all eastern states and Tyvek developmental projects and would have been privy to a broad range of Tyvek trade secrets

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As such, I find that [REDACTED] either improperly acquired or wrongfully disclosed DuPont confidential [REDACTED].

i) CX-2596C

“A cause of action for misappropriation of trade secrets accrues when the trade secret is actually used.” *See Gen. Universal Sys., Inc. v. HAL, Inc.*, 500 F.3d 444, 450 (5th Cir. 2007)

⁴³ Kingwills relies on Dr. Dorsey's testimony but notably, [REDACTED] nor does she cite anything to support her opinion that such information would circulate among market participants. RX-5966 (Dorsey RWS) at Q/A 160; Dorsey, Tr. at 1015:7-1017:8. Kingwills also failed to identify a single public source for [REDACTED] in CX-2198C. See RIB at 94.

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(quoting *Computer Assocs. Int'l v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996)). Here, there is no evidence in record showing that Kingwills used CX-2596C. Instead, DuPont claims that “[f]ormer Tyvek employees now at Kingwills would recognize the value and sensitivity of TS18 information.” *Id.* Even if true, it remains DuPont’s burden to provide evidence that Kingwills considered CX-2596C [REDACTED] Without such evidence, DuPont’s allegation is nothing more than self-serving speculation. *See Activity Tracking*, Initial Determination at 44 (“On this record, there is no factual support for Complainants’ strained arguments and speculation that the Jawbone vendor information somehow ‘saved Fitbit time in the development process.’”).

ii) CX-2655C

Circumstantial evidence shows that Kingwills used [REDACTED] CX-2655C. *See Stratienko v. Cordis Corp.*, 429 F.3d 592, 601 n.2 (6th Cir. 2005) (noting that circumstantial evidence is permissible in trade-secret cases); *SI Handling Sys., Inc. v. Heisley*, 753 F.2d 1244, 1261 (3d Cir. 1985) (“[M]isappropriation and misuse can rarely be proved by convincing direct evidence.”) (quotations omitted). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the reasonable inference is that Kingwills was using [REDACTED]

[REDACTED]

iii) CX-2198C

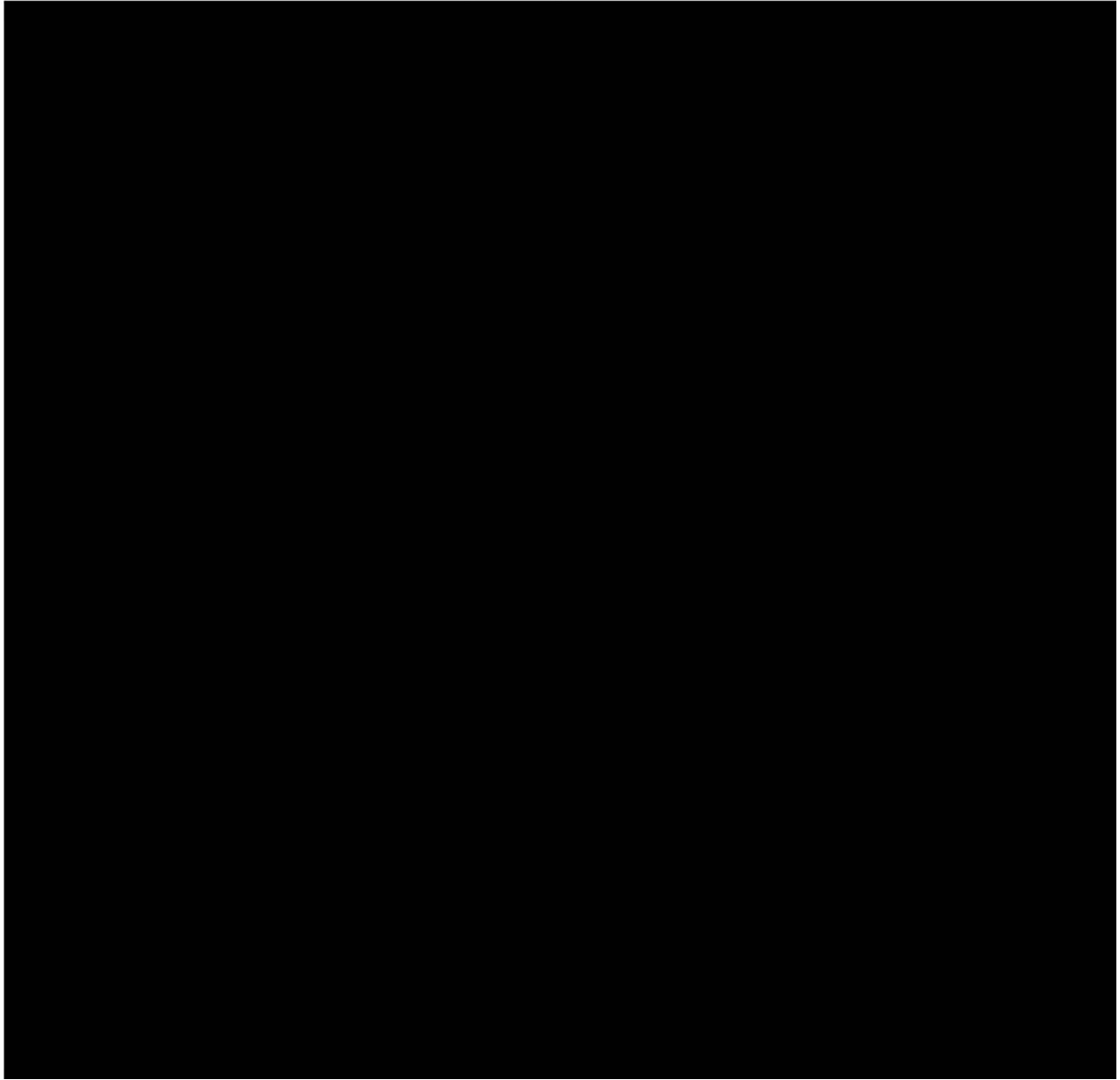
The evidence shows that Kingwills used CX-2198C [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁵ Kingwills claims that DuPont has waived any argument about CX-2199. RRB at 58. Because Staff addressed CX-2199 in its prehearing brief, I do not find arguments about this document waived.



CX-2199.1. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

d) Conclusion

DuPont adduced evidence showing the Kingwills acquired and made use of trade secret information in CX-2655C and CX-2198C. As such, DuPont has shown by a preponderance of the evidence that Trade Secret 18 was misappropriated.

3. Asserted Trade Secret 19

a) Ownership

There is no dispute that DuPont owns Trade Secret 19. CIB at 68; SIB at 64. Kingwills does not contend otherwise. *See generally* RIB at 94-98.

b) Wrongful Disclosure or Improper Acquisition

i) CX-2587C

The evidence shows that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RWS) at Q/As 104-110. But Kingwills presents no corroborating evidence showing that CX-2587C was disclosed without NDA restrictions, only self-serving testimony [REDACTED]

[REDACTED]

ii) CX-2648C / CX-2650C / CX-2652C

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I therefore find that DuPont has not shown by a preponderance of the evidence that [REDACTED]

[REDACTED]

[REDACTED]

iii) CX-2609C

The evidence shows that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

iv) CX-2168

CX-2168 is [REDACTED]

[REDACTED] DuPont offers this document as evidence that Kingwills sought to improperly acquire trade secret information related to [REDACTED]

[REDACTED] Staff agrees that CX-2168 constitutes “circumstantial evidence that Kingwills was seeking to improperly acquire DuPont’s Trade Secret 19 related to [REDACTED]” SIB at 66.

[REDACTED]

[REDACTED] CX-2168. I agree that CX-2168 constitutes circumstantial evidence that Kingwills sought to improperly acquire Trade Secret 19 information from Harbourpoint and in particular, Mr. Palermo, who was a 20-year DuPont sales veteran.

c) Substantial Use of Disclosure

i) CX-2587C

DuPont writes: “Here, the circumstances surrounding the value of TS19, targeted recruitment [REDACTED]

[REDACTED] and the implausibly fast timeline in which Kingwills developed and commercialized its Accused Products, support the conclusion that Kingwills used TS19.” CIB at 69-70. This argument fails for multiple reasons.

First, DuPont cites no evidence in support of this allegation nor is there any evidence in the record showing that Kingwills [REDACTED] using Trade Secret 19 information. *Hunter v. Fisons Corp.*, 776 F.2d 1, 1 (5th Cir. 1985) (“Whether or not Mr. Hunter’s device constituted a trade secret, and whether or not a confidential relationship existed between him and the appellee—issues also decided adversely to Hunter by the trial court—if appellee made no use of his device, it is patent that he has no claim against it.”). Second, DuPont claims that “the circumstances” suggest Kingwills was using CX-2587C but fails to articulate what exactly those circumstances are. Lastly, DuPont points to Kingwills’ “implausibly fast timeline” in developing Hypak as evidence of use. Yet again, though, DuPont fails to provide any explanation or evidentiary support for this assertion, and I am doubtful that [REDACTED]

[REDACTED] As Staff noted, “DuPont’s arguments regarding use of Trade Secret 19 amount to little more than speculation.” SIB at 67 (citing *Activity Tracking*, Initial Determination at 44).

I therefore find that DuPont has failed to show Kingwills used the trade secret information disclosed in CX-2587C.

ii) CX-2648C / CX-2650C / CX-2652C

DuPont's arguments for these presentations largely mirror those for CX-2587C, which were rejected hereinabove. CIB at 70-71. However, DuPont does present an additional argument.

[REDACTED]

[REDACTED]

[REDACTED] But, as previously discussed, modification does not constitute use. [REDACTED]

[REDACTED] I do not find this to be sufficient to establish use, let alone substantial use. *See, e.g., Penalty Kick Mgmt. Ltd. v. Coca Cola Co.*, 318 F.3d 1284, 1293 (11th Cir. 2003) (“[I]f the contribution made by the trade secret is so slight that the actor’s product or process can be said to derive from other sources of information or from independent creation, the trade secret has not been ‘used’ for purposes of imposing liability.”); *Hurst v. Hughes Tool Co.*, 634 F.2d 895, 899-900 (5th Cir. 1981) (finding defendant’s relatively insignificant “use” of trade secret information not enough to impose trade secret liability); *Bone Cements II*, Comm’n Op. at 20-21 (finding “insubstantial portion” or “slight” use or disclosure insufficient to demonstrate misappropriation).

As such, DuPont has not shown that Kingwills used the trade secret information in CX-2648, CX-2650C, or CX-2652C.

iii) CX-2609C

DuPont's arguments again mirror those made for CX-2587C. *See* CIB at 71. Thus, for the reasons set forth in Section IV.B.4.c.i above, I find that Dupont has failed to establish that Kingwills used the trade secret information in CX-2609C.

iv) CX-2168

DuPont claims that the fact [REDACTED] is evidence of “Kingwills’ means, motive, and opportunity to use TS19 materials it possesses.” CIB at 71. I disagree. As discussed above, the document [REDACTED] [REDACTED] is circumstantial evidence that Kingwills sought to improperly acquire trade secret information. Whether Kingwills used that information is a separate inquiry from improper acquisition. *See GE Betz, Inc. v. Moffitt-Johnston*, 885 F.3d 318, 327 (5th Cir. 2018) (declining to collapse the improper-acquisition prong and the use prong). In the instant matter, there is no evidence showing that Kingwills did indeed use Trade Secret 19 information [REDACTED] [REDACTED]

For this reason, DuPont has failed to show that Kingwills used Trade Secret 19 information.

d) Conclusion

DuPont has not shown by a preponderance of the evidence that Trade Secret 19 was misappropriated.

4. Asserted Trade Secret 22

a) Ownership

There is no dispute that DuPont owns Trade Secret 22. CIB at 73; SIB at 69. Kingwills does not contend otherwise. *See generally* RIB at 98-103.

b) Wrongful Disclosure or Acquisition

i) CX-2655C

For the reasons set forth in Section IV.B.3.b.ii, the evidence shows [REDACTED]
[REDACTED]
[REDACTED]

3590C (Jackson WS) at Q/A 334. DuPont has therefore shown by a preponderance of the evidence that Kingwills improperly acquired CX-2655C.

ii) CX-2665C and CX-2639C

CX-2639C

[REDACTED]

[REDACTED]

[REDACTED] As such, the evidence is ambiguous as to whether these presentations were improperly acquired by Kingwills.

I therefore find that DuPont has not shown by a preponderance of the evidence that Kingwills improperly acquired or wrongfully disclosed CX-2665C or CX-2639C.

iii) CX-2181

As discussed above, CX-2181 is

[REDACTED]

[REDACTED]

Thus, the most reasonable inference to be drawn from CX-2181 is that Mr. Palermo disclosed Trade Secret 22 information to Harbourpoint and Harbourpoint then disclosed that information to [REDACTED] Kingwills. See CX-2181.1.⁴⁶ I therefore find that Kingwills improperly acquired [REDACTED]

iv) CX-2330C

The evidence shows that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴⁶ Kingwills argues that [REDACTED] Whether he had actual knowledge is beside the point. The salient inquiry is whether information regarding [REDACTED] use was disclosed to Kingwills. Based on CX-2181, I find that it was.

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] CX-3591C (Schweiger
WS) at Q/A 399. His job titles included ‘ [REDACTED]

[REDACTED] ” *Id.* [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

As such, I find that Kingwills improperly acquired DuPont’s confidential [REDACTED]
information in CX-2330C.

c) Substantial use or Disclosure

i) CX-2655C

DuPont again avers nothing more than “the circumstances” show use by Kingwills. CIB at 76. DuPont does not articulate what those circumstances are, nor does it point to any evidence to substantiate its allegation. *Id.* This is insufficient to prove trade secret misappropriation.

Accordingly, DuPont has failed to show that Kingwills used any trade secret information contained in CX-2655C.

ii) CX-2665C and CX-2639C

DuPont's arguments for these presentations largely mirror those for CX-2655C, which were rejected hereinabove. However, DuPont does present an additional argument. [REDACTED]

[REDACTED] For the reasons set forth in Section IV.B.4.c.ii., I do not find this to be sufficient to establish use, let alone substantial use. *See, e.g., Penalty Kick*, 318 F.3d at 1293 (“[I]f the contribution made by the trade secret is so slight that the actor’s product or process can be said to derive from other sources of information or from independent creation, the trade secret has not been ‘used’ for purposes of imposing liability.”); *Hurst*, 634 F.2d at 899-900 (finding defendant’s relatively insignificant “use” of trade secret information not enough to impose trade secret liability); *Bone Cements II*, Comm’n Op. at 20-21 (finding “insubstantial portion” or “slight” use or disclosure insufficient to demonstrate misappropriation).

As such, DuPont has failed to show that Kingwills used the trade secret information in CX-2665C and CX-2639C.

iii) CX-2181

DuPont asserts that [REDACTED]

[REDACTED] While Kingwills may have [REDACTED] there is no evidence showing that such information was used by Kingwills [REDACTED] Nor is there any evidence in the record suggesting that Kingwills disclosed [REDACTED] Without such evidence, DuPont’s allegation is nothing more than speculation. *See Givaudan Fragrances*, 639 Fed.Appx.

at 846 (“Inferences drawn from circumstantial evidence cannot be used to substantiate bald assertions.”); *Activity Tracking*, Initial Determination at 73 (“[S]peculation is not evidence.”).

I therefore find that DuPont has failed to show Kingwills used or disclosed the trade secret information in CX-2181.

iv) CX-2330C

CX-2330C states:

[REDACTED]

[REDACTED] Based on this statement, a reasonable inference is that Kingwills used [REDACTED] and that its use extends to the trade secret information in CX-2330C. The evidence supports this conclusion. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

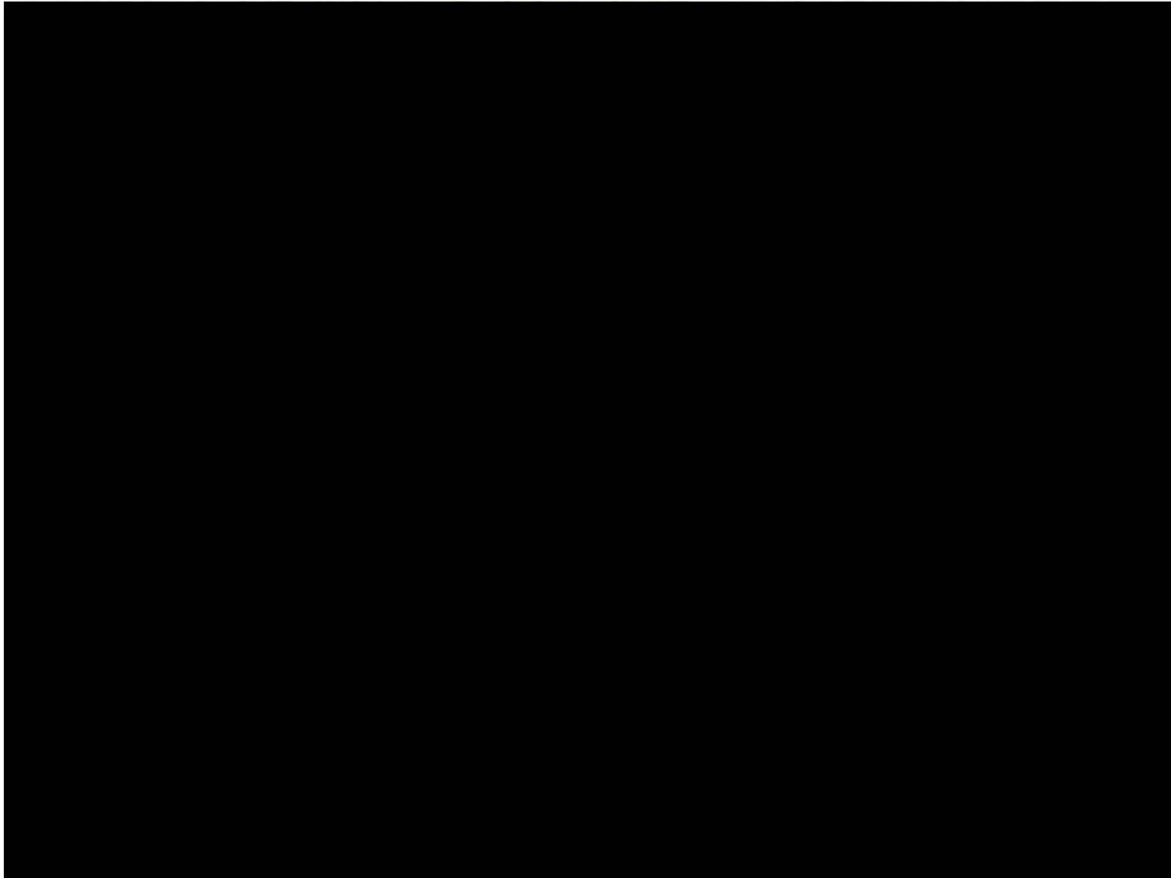
[REDACTED]

[REDACTED]

[REDACTED]

47

[REDACTED] I find little value in this “self-serving post-hoc” testimony (SIB at 73), especially since the circumstantial evidence shows [REDACTED]



Accordingly, the record evidence supports a finding that Kingwills used trade secret information in CX-2330C [REDACTED]

d) Conclusion

DuPont adduced evidence showing that Kingwills acquired and made use of trade secret information in CX-2330C. Accordingly, I find that Kingwills misappropriated Trade Secret 22.

C. Impak and Jiangsu Tubo / TOBO Group

DuPont accuses Impak, Jiangsu Tubo, and TOBO Group of misappropriation of trade secrets. CIB at 6. However, DuPont did not introduce any evidence showing how these respondents violated section 337 based on trade secret misappropriation. *See generally* CIB at 19-82. I therefore

find that DuPont has not met its burden to show that Impak, Jiangsu Tubo, or TOBO Group misappropriated the asserted trade secrets.

V. CONVERSION⁴⁸

DuPont alleges that Kingwills is liable for conversion of [REDACTED]

Type of Documents	
[REDACTED]	CX-2659C. <i>See</i> §IV.C.
[REDACTED]	CX-2596C; CX-2655C. <i>See</i> §IV.D.
[REDACTED]	CX-2587C; CX-2648C; CX-2666C; CX-2673C; CX-2336C; CX-2650C; CX-2654C; CX-2667C; CX-2674C; CX-3411C; CX-2652C; CX-2668C; CX-2609C. <i>See</i> §IV.E.
[REDACTED]	CX-2655C; CX-2639C; CX-2665C; CX-2330C. <i>See</i> §IV.F.
[REDACTED]	CX-2597C; CX-2599C; CX-2618C; CX-2628C; CX-2626C; CX-2629C; CX-2622C; CX-3413C; CX-2627C. <i>See</i> §IV.G.

CIB at 83. For the reasons set forth below, I find that DuPont has established a violation of section 337 based on conversion.

A. Legal Standard

“[W]here the question is whether particular conduct constitutes ‘unfair methods of competition’ and ‘unfair acts’ in importation, in violation of section 337[(a)(1)(A)], the issue is one of federal law and should be decided under a uniform federal standard, rather than by reference to a particular state’s tort law.” *See TianRui*, 661 F.3d at 1327. One source of law that the Commission has relied upon for determining the single federal standard for claims ordinarily

⁴⁸ Kingwills asserts that DuPont’s conversion claim is outside the scope of this investigation. RIB at 107. I disagree. The NOI, which governs the scope of the investigation, includes the “wrongful use and exploitation of stolen confidential and proprietary information.” 89 *Fed. Reg.* 92,159 (Nov. 21, 2004). Nor can Kingwills dispute that conversion has been litigated throughout this investigation. *See, e.g.*, RX-5380C.0235; RX-5381C.0017.

arising out of state law are the Restatements of Law. *See Sausage Casings*, Initial Determination, 1984 WL 273789, * 93-94 (relying on the Restatement of Torts for trade secret misappropriation claims).

The Restatement (Second) of Torts explains that “[c]onversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” Restatement (Second) of Torts § 222A.

“A claim of conversion requires the complainants to show: (1) “a possessory right (e.g., ownership) in property”; and (2) “the exercise of wrongful dominion over that property to the exclusion of those rights.” *Certain Botulinum Toxin Prods. & Processes for Mfg. or Relating to Same*, Inv. No. 337-TA-1313, Comm’n Op. at 9 (Nov. 1, 2024) (“*Botox II*”).

B. Possessory Right

There is no dispute [REDACTED].⁴⁹ CX-3590C (Jackson WS) at Q/As 127-128, 172, 230, 239, 254, 268, 279, 336-337, 389, 402, 413, 422; CX-3589C (Flattery WS) at Q/A 130; CX-4242C; CX-3683C.16; Chen, Tr. at 762:9-763:10; Sun, Tr. at 780:11-782:21. And DuPont clearly has a possessory right in its own documents, something Kingwills cannot reasonably dispute. CX-3590C (Jackson WS) at Q/As 106-107, 379; CX-3591C (Schweiger WS) at Q/A 53.

Nevertheless, Kingwills raises two arguments as to why DuPont “does not have a possessory right” in its documents. RIB at 107. First, Kingwills argues that because [REDACTED]

[REDACTED]

[REDACTED] it either never had a possessory right in the documents, or such a right was abandoned [REDACTED] *Id.* Kingwills cites no legal authority for this proposition, rendering it nothing more than attorney argument. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kingwills next argues that DuPont does not maintain possessory rights in Trade Secret 25 documents based on [REDACTED] RIB at 107. But DuPont owned the documents when they were drafted and owned them when the conversion occurred. CIB at 85; SIB at 84. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Wrongful Dominion

The evidence shows that [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

Trade Secret	Type of Document	Documents
Trade Secret 18		CX-2596C; CX-2655C
Trade Secret 19		CX-2587C; CX-2648C; CX-2666C; CX-2673C; CX-2336C; CX-2650C; CX-2654C; CX-2667C; CX-2674C; CX-3411C; CX-2652C; CX-2668C; CX-2609C
Trade Secret 22		CX-2655C; CX-2639C; CX-2665C; CX-2330C
Trade Secret 25		CX-2597C; CX-2599C; CX-2618C; CX-2628C; CX-2626C; CX-2629C; CX-2622C; CX-3413C; CX-2627C

SIB at 85; *see also* CIB at 83.

Kingwills’ primary argument that there is no wrongful dominion is because Kingwills only possesses copies of DuPont’s digital files. RIB at 108. The law holds otherwise. “Where, as here, the owner does not have the originals and the alleged converter has the originals *or the only known copies of the originals*, the retention of such property—to the exclusion of the owner—constitutes conversion.” *FMC Corp. v. Cap. Cities/ABC, Inc.*, 915 F.2d 300, 304 (Oct. 4, 1990) (emphasis added). “In such a case the copies become the functional equivalents of the originals.” *Id.*

Kingwills also argues that “copying electronic information does not constitute conversion because the owner is not deprived of the original.” RIB at 108. Kingwills is correct that some jurisdictions have declined to find conversion of electronic data. *Id.* (citing *Council on American-Islamic Relations Action Network, Inc. v. Gaubatz*, 793 F. Supp. 2d 311, 240 (D.D.C. 2011)). However, other courts have found that “there is ‘no distinction between hard copy and electronic data[,]’ as long as a document, either paper or digital, embodies the plaintiff’s right to the plaintiff’s intangible property.” *Thompson v. UBS Fin. Servs., Inc.*, 443 Md. 47, 59, 115 A.3d 125, 128 (2015)

(internal citations omitted); *see also Thyroff v. Nationwide Mut. Ins. Co.*, 8 N.Y.3d 283, 292, 864 N.E.2d 1272, 1278 (2007) (“We cannot conceive of any reason in law or logic why this process of virtual creation should be treated any differently from production by pen on paper or quill on parchment. A document stored on a computer hard drive has the same value as a paper document kept in a file cabinet.”); *Network Sys. Architects Corp. v. Dimitruk*, 2007 WL 4442349, *10 (Mass. Super. Ct. 2007) (“If paper documents can be converted, as they no doubt can, no reason appears that computer files cannot.”) (internal citations omitted). I find this approach to be the better one. “[I]t makes no sense to conclude that intangible property loses its protection simply because it appears in a copy of a document or on a CD. Indeed, the ease with which copies of documents can be made and with which information can be copied onto documents and CDs makes it easier for a wrongdoer to convert the intangible property of others. To hold that copied confidential information cannot be the subject of a conversion action would lead to more unauthorized copying and encourage conversion.” *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, No. 3:09CV58, 2011 WL 4625760, at *5 (E.D. Va. Oct. 3, 2011).

I therefore find that Kingwills has exercised wrongful dominion of [REDACTED]

D. Preemption

Kingwills argues that DuPont’s conversion claim is preempted by its trade secret allegations because they are directed at the same proprietary information. RIB at 109. DuPont and Staff disagree. CIB at 86-87; SIB at 88-90.

The Commission has previously considered whether a conversion claim may be preempted. In Inv. No. 337-TA-479, the ALJ granted summary determination based on the complainant’s conversion claim being preempted. *See Certain Coamoxiclav Prods., Potassium Clavulanate*

Prods., & Other Prods. Derived from Clavulanic Acid, 337-TA-479, Comm’n Op. at 2-3 (May 29, 2003). The Commission reversed the ALJ’s initial determination based on certain case law that showed “trade secret and conversion claims [could] be brought together” and remanded it to the ALJ to consider the case law. *Id.* at 17. On remand, the investigation settled before reaching the merits. 68 *Fed. Reg.* 47,930 (Aug. 12, 2003). In a more recent investigation, the Commission affirmed a finding that a conversion claim was not preempted by a trade secret claim because it was directed to specific converted property, like the situation here. *See Botox II*, Initial Determination at 47 (July 8, 2024), *aff’d* by Comm’n Op. (Oct. 10, 2024); *see also* 87 *Fed. Reg.* 26,782 (May 5, 2022) (instituting 1313 investigation to determine a violation of subsection(a)(1)(A) of section 337 by reason of theft and conversion and misappropriation of trade secrets).

Kingwills’ preemption defense is based on the premise that information (as opposed to tangible property) was converted. RIB at 109. This is incorrect, however. Just like in *Botox II*, DuPont’s claim for conversion is directed to physical property—*i.e.*, the DuPont documents found in Kingwills possession. As such, I find that DuPont’s claim is not preempted.

VI. TRADEMARK INFRINGEMENT

I must first address DuPont’s contention that “all allegations against the Defaulting Respondents should be presumed true.” CIB at 92 n.2. Contrary to DuPont’s assertion, the Commission does not apply a presumption that the facts of the complaint are true with respect to a defaulting party when a party seeks a general exclusion order (“GEO”).⁵⁰ *See Certain Footwear*

⁵⁰ *But see Certain Self-Anchoring Beverage Containers*, Inv. No. 337-TA-1092, Comm’n Op. at 4 n.2 (July 24, 2019) (“Although the Commission does not find a violation of section 337 as to defaulting respondent DevBattles by substantial, reliable, and probative evidence, it nonetheless finds a violation of section 337 as to DevBattles based on the presumption that the facts alleged in the complaint are true.”).

Prods., Inv. No. 337-TA-936 (Remand), Comm’n Op. at 101-102 (Sept. 24, 2020) (“Had Converse sought relief limited solely to the named respondents, the Commission would presume the facts alleged in the complaint to be true and issue relief limited to the Defaulting Respondents after considering the effect of a limited exclusion order upon the public interest factors. . . . However, because the remedy Converse seeks with respect to the ’753 trademark is a GEO, Converse bears the burden of proving a violation of section 337 by ‘reliable, probative, and substantial evidence.’”). The Commission, however, has found that information asserted in a complaint can constitute substantial, reliable, and probative evidence. *See id.* at 103-105 (basing its findings that Foreversun and Dioniso infringed the ’753 trademark solely based on the complaint (CX-1)).

A. Legal Standard

A complainant alleging infringement of a trademark must show: (1) the complainant owns the mark; (2) the respondent’s use of a similar mark to identify goods and services causes a likelihood of consumer confusion; and (3) the asserted mark is valid and legally protectable. *Converse, Inc. v. Int’l Trade Comm’n*, 909 F.3d 1110, 1116 (Fed. Cir. 2018).

To determine whether a likelihood of confusion exists, the Commission applies the factors set out in *In re E.I. DuPont DeNemours & Co.*: (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression; (2) the similarity or dissimilarity and nature of the goods or services; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which, and buyer to whom, sales are made; (5) the fame of the prior mark; (6) the number and nature of similar marks in use on similar goods; (7) the nature and extent of any actual confusion; (8) the length of time during, and conditions under, which there has been concurrent use without evidence of actual confusion; (9) the variety of goods on which a mark is or is not used; (10) the market interface between applicant

and owner of a prior mark; (11) the extent to which applicant has a right to exclude others from use of its marks on its goods; (12) the extent of potential confusion; and (13) any other established fact probative of the effect of use. *Swagway, LLC v. Int'l Trade Comm'n*, 934 F.3d 1332, 1338-39, n.2 (Fed. Cir. 2019) (citing *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973); *In re Guild Mortg. Co.*, 912 F.3d 1376, 1378-79 (Fed. Cir. 2019)); *Certain Motorized Vehicles & Components Thereof*, Inv. No. 337-TA-1132, Comm'n Op. at 10-11 (June 18, 2020) (“*Motorized Vehicles*”).

“[T]he likelihood-of-confusion analysis cannot be reduced to a simple tally of the factors. The factors are accorded different weights in different circumstances.” *Id.* at 1340 (citing *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 1382 (Fed. Cir. 2006) (noting that it is necessary to consider only the *DuPont* factors relevant to and of record in a specific case, and that any one factor may control a particular case)). All factors must be evaluated in the context of the ultimate question of likelihood of confusion as to the source or sponsorship of the product. *See Certain Footwear Prods.*, Inv. No. 337-TA-936, Comm'n Op. (Remand) at 57 (Sept. 24, 2020) (“No single factor is dispositive.”) (“*Footwear Prods.*”).

B. Validity

It is undisputed that DuPont's federal registrations for the Asserted Trademarks are *prima facie* evidence of “the validity of the registered mark(s)” and of DuPont's ownership of the Asserted Trademarks. *See* 15 U.S.C. § 1115(a). In addition, the TYVEK Word Marks have reached incontestable status under 15 U.S.C. § 1065. *See* JX-0010; JX-0011; JX-0012. As such, the federal registrations for these marks are “conclusive evidence” of DuPont's exclusive right to use the word marks in connection with the registered goods and services. 15 U.S.C. § 1115(b).

C. Infringement

“The Commission need not consider every *DuPont* factor. It is required to consider only those factors which are supported by evidence in the record.” *Swagway*, 934 F.3d at 1339 (citing *Shen Mfg. Co., Inc. v. Ritz Hotel, Ltd.*, 393 F.3d 1238, 1241 (Fed. Cir. 2004)). The *DuPont* factors at issue in this investigation are similarity of the marks and similarity of the goods.

1. The TYVEK Word Marks

a) Weifang Konzer

DuPont alleges that Weifang Konzer markets certain protective garments as “Tyvek Equivalence Coveralls” and offers them for sale online to U.S. customers. CIB at 97-98. DuPont argues that this unauthorized use of the TYVEK word mark “is likely to lead to consumer confusion.” *Id.* at 98. Additionally, DuPont asserts that nominative fair use is “unavailable” because Weifang Konzer is “trading on DuPont’s goodwill and creating confusion as to source, sponsorship, or approval of those products.”⁵¹ *Id.*

DuPont did not provide any evidence—surveys, expert testimony, or otherwise—of confusion. Nor has DuPont adduced any evidence showing that a consumer interpreted the “Tyvek Equivalence Coveralls” statement as suggesting this product was associated with DuPont.⁵² Indeed, there is nothing on Weifang Konzer’s website that implies its product is sourced from DuPont or made from DuPont flash-spun nonwoven material. Am. Compl., ¶ 139; *see also* Am.

⁵¹ A “nominative fair use” is a use of another’s trademark to identify the trademark owner’s goods or services. 1 McCarthy on Trademarks and Unfair Competition § 4:17 (5th ed 2025). This is not an infringement so long as there is no likelihood of confusion. *Id.* With respect to fair use, “[t]he central inquiry is whether the defendant is using the allegedly protected word or image descriptively, and not as a mark.” *Motorized Vehicles*, Inv. No. 337-TA-1132, Initial Determination at 74 (Nov. 21, 2019).

⁵² The use of “Equivalence” arguably signals to a consumer that Weifang Konzer’s product is distinct from DuPont’s Tyvek coveralls.

Compl., Ex. 26. Consequently, DuPont has failed to prove infringement by substantial, reliable, and probative evidence.

b) Impak

DuPont contends that Impak has marketed its products as “Teknapore Tyvek® Alternative” and offers them for sale online to U.S. customers. CIB at 97-98. DuPont argues that this unauthorized use of the TYVEK word mark “is likely to lead to consumer confusion.” *Id.* at 98. Additionally, DuPont asserts that nominative fair use is “unavailable” because Impak is “trading on DuPont’s goodwill and creating confusion as to source, sponsorship, or approval of those products.” *Id.*

In response to an order for show cause, Impak “reject[ed] the notion that TeknaPore is causing market confusion with Tyvek®.” EDIS Doc. ID 862470. It wrote:

IMPAK Corporation has been using the term TeknaPore (trademark applied) for a number of films used for desiccant and medical packaging applications - encompassing materials that are similar to Tyvek® in construction (like Teknapore 571), as well as others with completely different manufacturing/uses such as medical grade coated paper.

Since before the launch of the TeknaPore brand proper in early 2024, IMPAK Corporation has made efforts to distance itself from the initial internal 'TyePAK' branding. The initial branding was in line with other IMPAK Corporation branded materials such as PAKDRY7500, PAKVF4, SpoutPAK, DrinkPAK, etc. However the decision to change the name was made before anything was sold. There have continued to be updates to the line to help further emphasize Teknapore and Tyvek® as distinct separate materials.

EDIS Doc. ID 862470. DuPont has presented no evidence to the contrary. There is no evidence in the record—surveys, expert testimony, or otherwise—of confusion. Nor is there any evidence showing that a consumer interpreted the “Teknapore Tyvek® Alternative” statement as suggesting

the product was associated with DuPont.⁵³ I therefore find that DuPont has failed to prove infringement by substantial, reliable, and probative evidence.

c) Jiangsu Tobo / TOBO Group

DuPont asserts that Jiangsu Tobo and the TOBO Group have used the TYVEK Word Marks “by posting images of genuine TYVEK products on their websites while selling the Accused Products to U.S. consumers.” CIB at 96.

The evidence shows that Jiangsu Tobo and the TOBO Group advertise the accused products using the TYVEK Word Marks.

⁵³ Impak’s marketing material expressly distinguishes between “Teknapore” and “Tyvek.” See Am. Compl., Ex. 94. It states that “Tyvek® is made by DuPont™” and even notes that “Tyvek® is a registered trademark of DuPont™”. *Id.* It repeatedly refers to “Teknapore” as a Tyvek alternative, and in comparisons between the two materials, claims that “Teknapore” is the superior product. *Id.* This appears to constitute nominative use, wherein “the defendant uses the plaintiff’s trademark to identify the plaintiff’s own goods ... and makes [] clear to consumers that the plaintiff, not the defendant, is the source of the trademarked product or service.” *Rosetta Stone Ltd. v. Google, Inc.*, 676 F.3d 144, 154 (4th Cir. 2012) (citation and quotation marks omitted).



TUBO Paper(HDPE)

www.tubopla.com/TUBO-Paper.html 1/5

3/24/25, 11:09 AM

TUBO Paper - site name



Environmentally friendly carton, lighting technology, complete



Green paper fabric, green paper fabric wholesale, spot supply.



New environmentally friendly paper, can be made into lamps, bags,



Environmentally friendly paper made of high-density



DuPont paper Tyvek can be cut and printed with laminate 1025d DuPont



Nomex Unique materials1082D HDPE paper suitable for



Chinese paper supplier, can customize the finished luggage



New design of Slow Utopia Dupont Paper Award 2024

Am. Compl., Ex. 98. The Commission has previously found infringement where a respondent used the asserted mark in website advertising, even though the product itself did not bear the mark. *See Prods. Containing Tirzepatide & Prods. Purporting to Contain Tirzepatide*, Inv. No. 337-TA-1377, Order No. 26 at 28-39 (Dec. 19, 2024), *unreviewed in relevant part*, 90 *Fed. Reg.* 8299-8301 (Jan. 28, 2025); *see also id.*, Corrected General Exclusion Order at 2, EDIS Doc. ID 851098 (May 13, 2025) (excluding “[p]roducts containing tirzepatide and products purporting to contain tirzepatide ...that infringe the Asserted Trademark, for example, through use of the Asserted Trademark in internet advertising (irrespective of whether the products themselves bear the mark).”).

For these reasons, I find that substantial, reliable, and probative evidence shows a likelihood of consumer confusion due to Jiangsu Tubo and the TOBO Group’s unauthorized use of the TYVEK word mark. Accordingly, Jiangsu Tubo and the TOBO Group have infringed the asserted TYVEK Word Marks.

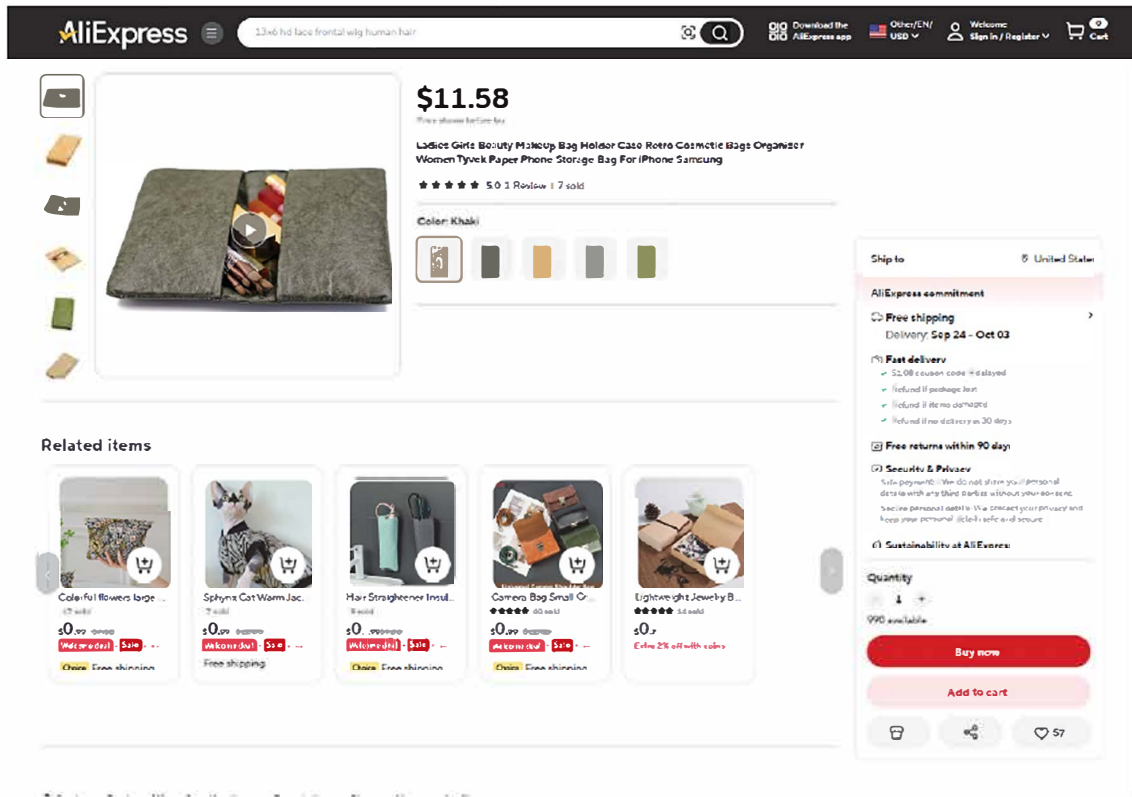
d) JGT Live

The evidence shows that JGT Live advertises its products as being made with “Tyvek Paper” on AliExpress. CX-0005C, ¶ 119.

PUBLIC VERSION

9/17/24, 5:18 PM

Ladies Girls Beauty Makeup Bag Holder Case Retro Cosmetic Bags Organizer Women Tyvek Paper Phone Storage Bag For iPhone...



Am. Compl., Ex. 70. As seen above, JGT Live has made unauthorized use of the TYVEK word mark in connection with the accused products, which are identical, overlapping, or highly related to the registered goods. I find this to be substantial, reliable, and probative evidence that use of “Tyvek” on the accused products is likely to confuse consumers. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369 (Fed. Cir. 2012) (“[L]ikelihood of confusion can be found if the respective products are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.”) (citation and quotation marks omitted). Accordingly, I find that JGT Live has infringed the asserted TYVEK Word Marks.

e) Quoko

The evidence shows that Quoko advertises its products as being made with “Tyvek Paper” on AliExpress. CX-0005C, ¶ 120.

9/17/24, 5:32 PM

Universal Tyvek Paper Bag Pocket Wallet Pouch Case For Samsung S22 For iPhone 14 Pro Max For Huawei P40 iPhone 12 13 Pr...

The screenshot displays the AliExpress product page for a 'Universal Tyvek Paper Bag Pocket Wallet Pouch Case'. The main product is a brown paper wallet case, priced at \$0.99, with a 'Save \$5.35' banner and an '84% off' discount. The product is described as being made with 'Tyvek Paper'. The page also features a 'Related items' section with various other products, including paper wallets and insulated coolers. The AliExpress logo and navigation bar are visible at the top.

Am. Compl., Ex. 71. As shown above, Quoko has made unauthorized use of the TYVEK word mark in connection with the accused products, which are identical, overlapping, or highly related to the registered goods. I find this to constitute substantial, reliable, and probative evidence that use of “Tyvek” on the accused products is likely to confuse consumers. *See Coach Servs.*, 668 F.3d at 1369. Accordingly, I find that Quoko has infringed the asserted TYVEK Word Marks.

2. The Blue Octagon Mark

DuPont alleges that infringement of the TYVEK Word Marks “encompass the TYVEK design mark because the word ‘TYVEK’ is the dominate element of that design.”⁵⁴ CRB at 52 n.6 (faulting Staff for distinguishing between the TYVEK word marks and design mark). Staff disagrees, stating: “DuPont has no evidence in support of this argument.” SRB at 28.

DuPont is correct that “the word portion of a word and design mark is usually viewed as the dominant element.” *In re: Halo Leathers Ltd.*, 735 Fed.Appx. 722, 726 (Fed. Cir. 2018). However, when the likelihood of confusion inquiry involves a composite mark (such as here), the test is the “overall impression,” not a “dissection of individual features.”⁵⁵ *Sun-Fun Prods., Inc. v. Sontan Rsch. & Dev. Inc.*, 656 F.2d 186, 189 (5th Cir. 1981); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 1007 (C.C.P.A. 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”) As the Supreme Court has observed: “The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety.” *Est. of P.D. Beckwith, Inc., v. Comm’r of Patents*, 252 U.S. 538, 545-46 (1920). This is because “[a]n average purchaser does not retain all

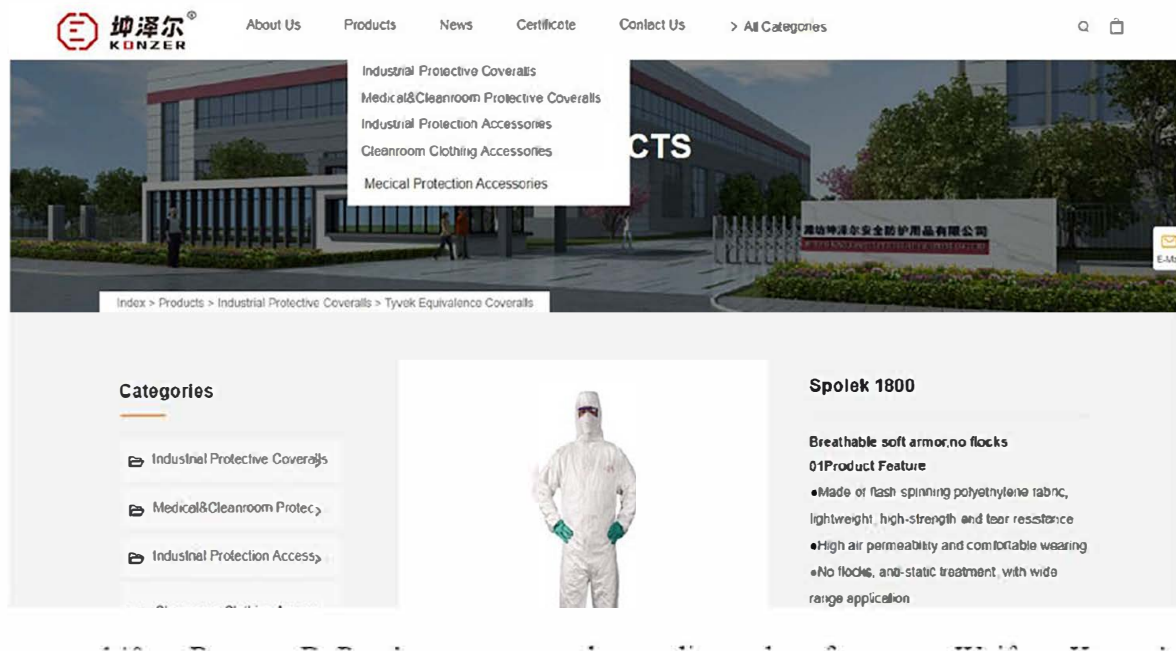
⁵⁴ DuPont cites *In re: Halo Leathers Ltd.*, 735 Fed.Appx. 722 (Fed. Cir. 2018), in support. CRB at 52 n.6. This case involved the likelihood of confusion between a registered mark and a mark for which an application had been filed. *Id.* The registrant’s mark contained the term “AQUAPEL” in standard character form, while the applicant’s mark contained the identical term with a design element. The Federal Circuit found the Board’s determination that the applicant’s mark and the registered mark were confusingly similar to be supported by substantial evidence. *Id.* at 726. DuPont has adduced no such evidence here.

⁵⁵ For example, in one case, plaintiff’s federal registration consisted of three elements: (1) the words BANK IN A BILLFOLD; (2) the house mark THE OMAHA NATIONAL BANK; and (3) a border design resembling that on paper currency. *Omaha Nat. Bank v. Citibank (S. Dakota), N.A.*, 633 F. Supp. 231 (D. Neb. 1986). The court held that the composite design was not infringed by defendant’s use of the words BANK IN A WALLET alone. *Id.* at 234. “Defendant’s designations are mere words while plaintiff’s composite mark is a combination of words and design.” *Id.*

the details of a mark, but rather the mental impression the mark creates in its totality.” *T & T Mfg. Co. v. A. T. Cross Co.*, 449 F. Supp. 813, 820 (D.R.I.), *aff’d* by 587 F.2d 533 (1st Cir. 1978). Courts have held it a violation of the anti-dissection rule to focus on the “prominent” feature of a mark and decide likelihood of confusion solely upon that feature, ignoring all other elements of the mark. *See, e.g., Massey Junior Coll., Inc. v. Fashion Inst. of Tech.*, 492 F.2d 1399, 1402 (C.C.P.A. 1974).

The Blue Octagon Mark is directed to “protective clothing, namely coveralls for protection against dust, aerosols, dangerous and non-dangerous liquid splash in industrial manufacturing and agricultural environments.” JX-0013. DuPont has presented no evidence, let alone substantial evidence, that any of the Downstream Respondents use the Blue Octagon Mark or a mark substantially similar to the Blue Octagon Mark.⁵⁶ *Vitek Sys., Inc. v. Abbott Labs., Inc.*, 675 F.2d

⁵⁶ The only “protective clothing” DuPont identified in its complaint are the coveralls imported by Weifang Konzer. Am. Compl., ¶ 139. However, the evidence cited does not show that those coveralls bear the Blue Octagon mark.



Id.

190, 192 (8th Cir. 1982) (“A showing of mere possibility of confusion is not enough; a substantial likelihood that the public will be confused must be shown.”)

I therefore find that DuPont has not met its burden to show that any of the Downstream Respondents infringe the Blue Octagon Mark.

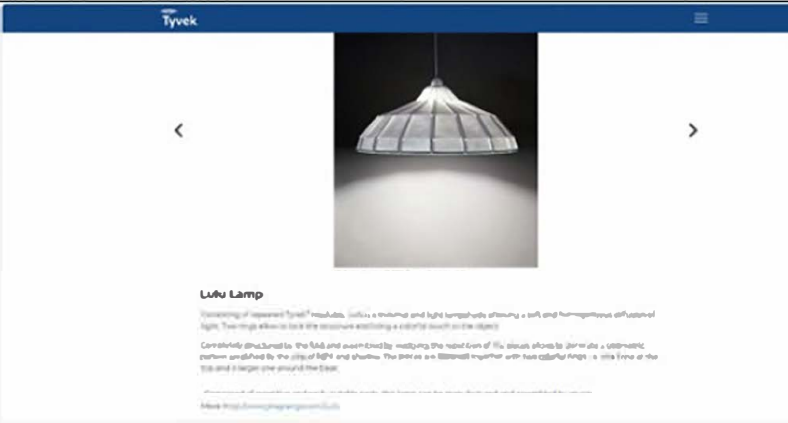
D. Technical Prong of the Domestic Industry Requirement

Where registered trademark rights are asserted, “[t]he test for determining whether the technical prong is met through the practice of a trademark is plain use of the trademark on products and packaging.” *Certain Protective Cases & Components Thereof*, Inv. No. 337-TA-780, Initial Determination at 90 (July 10, 2012); *see also Footwear Prods.*, Initial Determination at 129 (Dec. 17, 2015).

The evidence shows that DuPont places the Asserted Trademarks on products and packaging.⁵⁷ CX-0005C, ¶¶ 20-23. These products include wristbands, race bibs, wrappings such as envelopes, labels, household furnishings, and apparel such as protective clothing or PPE. *Id.*

Asserted Trademark	Examples of Use
U.S. Registration No. 817,194 (“Sheets and laminates of man-made fibers for general use in the industrial arts”)	

⁵⁷ Kingwills does not dispute that the technical prong is met. *See generally* RIB at 112-125.

Asserted Trademark	Examples of Use
U.S. Registration No. 818,688 (“Sheeting of man-made material suitable for use as printing paper, bookbinding, wrapping, and wall covering, and for other similar applications”)	
U.S. Registration No. 818,737 (“Fabrics of man-made fibers and filaments suitable for making into household furnishings and apparel and for industrial uses”)	
U.S. Registration No. 7,370,316 (“Protective clothing, namely coveralls for protection against dust, aerosols, dangerous and non-dangerous liquid splash in industrial, manufacturing and agricultural environments”)	

Id. at ¶¶ 16-23.

Accordingly, DuPont has satisfied the technical prong of the domestic industry requirement for the Asserted Trademarks.

VII. DOMESTIC INDUSTRY AND INJURY

A. Legal Standard

1. Trade Secret Misappropriation and Conversion Claims

Commission investigations involving trade secret misappropriation and wrongful use and exploitation of stolen confidential and proprietary information are governed by 19 U.S.C. § 1337(a)(1)(A), which declares unlawful—

Unfair methods of competition and unfair acts in the importation of articles . . . , into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is—

(i) to destroy or substantially injure an industry in the United States;

(ii) to prevent the establishment of such an industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

19 U.S.C. § 1337(a)(1)(A). DuPont must thus demonstrate that it has an “industry in the United States” that has suffered “actual substantial injury, or threat of substantial injury.” 19 U.S.C. § 1337(a)(1)(A)(i); *Rubber Resins*, Comm’n Op. at 10 (“Therefore, there is a requirement not only that the complainant demonstrate the existence of a domestic industry, but also that there be actual substantial injury or the threat of substantial injury to a domestic industry”).

a) Industry Requirement

To determine whether an “industry in the United States” exists under section 337(a)(1)(A)(i), the Commission considers the “nature and significance of complainants’ business activities in the United States that relate to complainants’ domestic industry products to determine

whether there are sufficient qualifying activities to constitute an industry in the United States.” *Bone Cements*, Comm’n Op. at 22. The domestic industry does not have to involve use of the asserted trade secrets, but the domestic industry must be the industry that is targeted by, or that directly competes with, the unfair imports. *TianRui*, 661 F.3d at 1337; *see also Certain Hand Dryers & Housing for Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 4 (Oct. 30, 2017) (explaining that “an industry in the United States” under section 337(a)(1)(A)(i) is not limited to the domestic industry definition for statutory IP rights under section 337(a)(2) and (a)(3)) (“*Hand Dryers*”).

b) Injury or Threat of Injury Requirement

Upon establishing the existence of an industry in the United States and unfair acts in the importation of articles, “a complainant must show that those unfair acts have substantially injured or threatened to injure the domestic industry.” *Bone Cements*, Comm’n Op. at 11. Such injury must be shown by a preponderance of the evidence. *Fischer & Porter Co., Inc. v. Int’l Trade Comm’n*, 831 F.2d 1574, 1581 (Fed. Cir. 1987). The statutory language requires “‘a link’ between the alleged injury and the domestic industry.” *Certain Foodservice Equip. & Components Thereof*, Inv. No. 337-TA-1166, Comm’n Remand Op. at 13 (Dec. 16, 2020). That is, the injury must be *to* the domestic industry.

In assessing actual injury, the Commission considers “a broad range of indicia, including: the volume of imports and their degree of penetration, complainant’s lost sales, underselling by respondents, reductions in complainants’ declining production, profitability and sales, and harm to complainant’s good will or reputation.” *Rubber Resins*, Comm’n Op. at 60-61.

To determine whether a threatened injury exists, the Commission considers the following non-exclusive list of exemplary indicia:

- substantial foreign manufacturing capacity;
- ability of imported product to undersell the domestic product;
- explicit intention to enter into the U.S. market;
- the inability of the domestic industry to compete with the foreign products because of vastly lower foreign costs of production and lower prices; and
- the significant negative impact this would have on the domestic industry.

Id. at 64.

In addition, “there must be a causal nexus between the unfair acts of the respondents and the injury.” *Id.* at 61. Similarly, when the complainant alleges a threatened injury, such injury must be “‘substantive and clearly foreseen,’ with a casual connection between the action of the respondents and the threatened injury.” *Id.* at 64. Nexus is not a stringent standard. *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Mfg. or Relating to Same, & Prods. Containing Same*, Inv. No. 337-TA-1352, Comm’n Op. at 69 (June 26, 2025) (“*Selective Thyroid Hormone Receptor-Beta Agonists*”).

2. Trademark Infringement Claims

A violation of section 337 can be found “only if an industry in the United States, relating to the articles protected by the . . . trademark . . . concerned, exists or is in the process of being established.” 19 U.S.C. § 1337(a)(2). Under Commission precedent, this “domestic industry requirement” of section 337 consists of an economic prong and a technical prong. *Certain Stringed Musical Instruments & Components Thereof*, Inv. No. 337-TA-586, Comm’n Op. at 13 (May 16, 2008) (“*Stringed Instruments*”).

To satisfy the technical prong of the domestic industry requirement, the complainant must establish that the articles relating to the domestic industry are protected by the intellectual property

at issue in the investigation. *See Certain Energy Drink Prods.*, Inv. No. 337-TA-678, Order No. 34 at 12 (Mar. 30, 2010), *unreviewed by* Comm’n Notice (May 14, 2010).

The “economic prong” requires, with respect to the products protected by a trademark, either: (A) “significant investment in plant and equipment”; (B) “significant employment of labor or capital”; or (C) “substantial investment in [the trademark’s] exploitation, including engineering, research and development, or licensing.” 19 U.S.C. § 1337(a)(3)(A)-(C). Thus, section 337(a)(3) requires that investments be either “significant” or “substantial.” The Federal Circuit has clarified that a quantitative analysis must be performed in order to make this determination. *Lelo Inc. v. Int’l Trade Comm’n*, 786 F.3d 879, 883 (Fed. Cir. 2015) (“The plain text of § 337 requires a quantitative analysis in determining whether a [complainant] has demonstrated a ‘significant investment in plant and equipment’ or ‘significant employment of labor or capital.’”). There is no threshold amount that a complainant must meet. *See Stringed Instruments*, Comm’n Op. at 25 (“We emphasize that there is no minimum monetary expenditure that a complainant must demonstrate to qualify as a domestic industry under the ‘substantial investment’ requirement of this section.”); *Certain Male Prophylactic Devices*, Inv. No. 337-TA-546, Comm’n Op. at 39 (Aug. 1, 2007) (“[T]here is no mathematical threshold test.”). Rather, the inquiry depends on “the facts in each investigation, the article of commerce, and the realities of the marketplace.” *Certain Printing & Imaging Devices & Components Thereof*, Inv. No. 337-TA-690, Comm’n Op. at 27 (Feb. 17, 2011). As such, “[t]he determination takes into account the nature of the investment and/or employment activities, the industry in question, and the complainant’s relative size.” *Id.*

B. Existence of a Domestic Industry

1. Trade Secret Misappropriation and Conversion Claims

a) Investments in and Expenditures on Qualifying Activities

DuPont asserts that it satisfies the economic prong of the domestic industry requirement under 19 U.S.C. § 1337(a)(1)(A). CIB at 117. Staff concurs. SIB at 93. Kingwills does not dispute that DuPont has a domestic industry, only that there has been an injury to the industry. *See* RIB at 112-125.

DuPont is an American company founded in 1802 and is recognized as global leader in science and technology. “Since 1967, DuPont [has] researched, developed, and commercialized the first of its kind . . . flash-spun, nonwoven material that DuPont has marketed under the “Tyvek” brand.” CX-0005C, ¶ 7; CX-3595C (Putnam WS) at Q/A 26 (“[T]he domestic industry includes DuPont’s flash-spun nonwoven materials, sold globally as Tyvek . . . and referred to in this investigation as the ‘DI Products.’). As discussed in Section I.F, there are different product applications for Tyvek, such as roll goods, finished PPE products, and building protection products. CX-3588C (Reichert WS) at Q/As 8, 13, 15. These products are manufactured in Richmond, Virginia at the Spruance facility and in Luxembourg at the Luxembourg facility. *Id.* at Q/A 14. For purposes of this investigation, the DI Products are those manufactured at the Spruance facility, “as well as downstream products that incorporate Spruance-manufactured Tyvek and that were exported from, then reimported into, the United States.” CX-3595C (Putnam WS) at Q/A 26.

The Spruance facility is located on 525 acres in Virginia. *Id.* at Q/A 63. Approximately [REDACTED] square feet of the facility is dedicated solely to the manufacturing of the DI Products and as of 2023, this space included flash-spinning lines with the capacity to produce [REDACTED] [REDACTED] Tyvek material a year. CX-0005C, ¶ 28; CX-3595C (Putnam) at Q/A 63. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

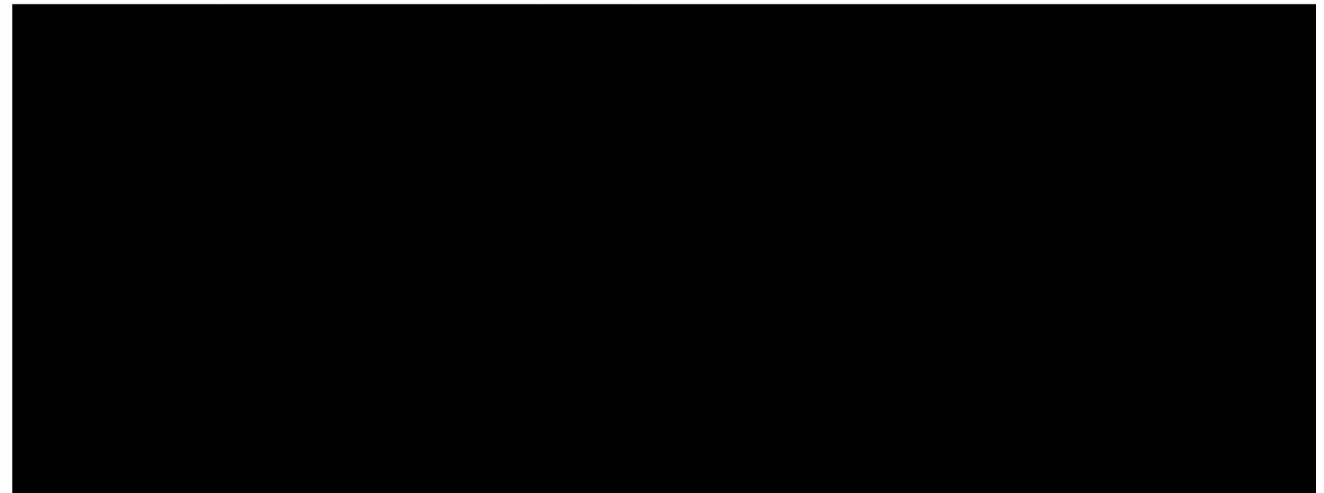
[REDACTED]

[REDACTED]

[REDACTED]

For the lookback period of 2021-2024, DuPont made investments of [REDACTED] in plant and [REDACTED] in equipment related to the production of Tyvek at the Spruance facility. *Id.* at Q/As 67, 71-72; *see also* CX-4155C; CX-4156C; CX-4153C. Taken together, DuPont invested a total of [REDACTED] in plant and equipment allocable to the DI Products. *Id.* at Q/A 72. For that same period, DuPont invested [REDACTED] in labor and [REDACTED] for capital. *Id.* at Q/As 74-75; *see also* CX-4158C; CX-4157C; CX-4153C. Thus, DuPont's labor and capital investments allocable to the DI Products totaled [REDACTED] *Id.* at Q/A 75.

[REDACTED]



CX-4153C.

b) Significance of Investments in and Expenditures on Qualifying Activities

The existence of a domestic industry is “not based on the amount of the investment divorced from the circumstances of a particular case.” *Certain Beverage Dispensing Sys. & Components Thereof*, Inv. No. 337-TA-1130, Comm’n Op. at 18 (Mar. 26, 2020). Instead, the significance or substantiality of domestic industry expenses are evaluated “based on a proper contextual analysis in the relevant timeframe such as in the context of the complainant’s or its licensee’s operations, the marketplace, or the industry in question.” *Id.* (internal quotations omitted).

In doing so, the Commission has looked to “several different contextual indicators,” including, in appropriate circumstances, “comparing complainant’s domestic expenditures to its foreign expenditures” or considering “the value added to the article in the United States by the domestic activities.” *Bone Cements*, Comm’n Op. at 22. Other contextual indicators may be appropriate given that determining the nature and significance of a complainant’s domestic activities is highly fact specific and can depend on the nature of the specific industry. *Id.* at 27.

Based on a holistic review of the record, I find that DuPont has shown that its investments in plant and equipment and labor and capital are significant.⁵⁹ See *Wuhan Healthgen Biotechnology Corp. v. Int'l Trade Comm'n*, 127 F.4th 1334, 1339 (Fed. Cir. 2025) (“A finding of domestic industry cannot hinge on a threshold dollar value or require a rigid formula; rather, the analysis requires a holistic review of all relevant considerations that is very context dependent.”). First, DuPont has shown that its activities in the United States are crucial to its business. Tyvek is the “first of its kind” flash-spun nonwoven material. CX-0005C, ¶ 7. DuPont considers Tyvek a “very valuable asset,” one that it has built “over a number of decades.” CX-3588C (Reichert WS) at Q/A 154. *Id.*

For the quantitative significance analysis, DuPont’s expert Dr. Putnam determined that DuPont’s investments constitute [REDACTED] of its global Tyvek plant and equipment investments and [REDACTED] of its global Tyvek labor and capital investments. CX-3595C (Putnam WS) at Q/A 80. “In other words, [REDACTED] DuPont’s global plant and equipment investments in Tyvek® were made in the United States.” *Id.* Likewise, “[REDACTED] DuPont’s global labor and capital investments in Tyvek® were made in the United States.” *Id.* He also determined that:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁵⁹ The extent of DuPont’s significance analysis was the following sentence: “These expenditures are significant and the sort routinely credited as establishing DI.” CIB at 100. Such a conclusory statement would normally result in waiver (*see* Ground Rule 14.2). However, because Staff analyzed significance in his post-hearing brief (*see* SIB at 94) and Kingwills does not contest that DuPont has a domestic industry, I do not find that DuPont has waived this issue.

██████████ *Id.* at Q/As 56-58, 80; *see also* CX-4243C; CX-4244C. Under these metrics, I find DuPont’s domestic investments in Tyvek “represent a major fraction of [DuPont’s] worldwide production of products.” *Certain Toner Supply Containers*, Inv. No. 337-TA-1259, Comm’n Op. at 11 (Aug. 19, 2022).

Additionally, as noted above, the vast majority of the DI Products are manufactured in the United States. CX-3595C (Putnam WS) at Q/A 26. In cases involving domestic manufacturing, the Commission has concluded that the fact that the majority of manufacturing occurs in the United States can demonstrate significance. *See, e.g., Certain Power Converter Modules & Computing Sys. Containing the Same*, Inv. No. 337-TA-1370, Comm’n Op. at 95-96 (Fed. 26, 2025) (“Moreover, the fact that all of Vicor’s manufacturing and ER&D takes place in the United States, provides an additional reason to affirm the FID’s finding that Vicor’s investments in plant and equipment and labor and capital are significant. This is consistent with the Commission’s approach in investigations involving domestic manufacturing.”); *Wuhan*, 127 F.4th at 1339 (“Comparing the cost of foreign to domestic manufacturing to determine the percentage of additional value created by domestic Optimumin operations in the final product yields a value added of 100%.”).

2. Trademark Infringement Claims

The investments and qualifying activities that were credited under section 337(a)(1)(A) are also cognizable investments under section 337(a)(3). *See Hand Dryers*, Comm’n Op. at 4-5 (“Although there is no requirement to analyze the domestic industry under the categories of section 337(a)(3), the Commission finds that the domestic industry evidence credited by the ALJ on pages 38-42 of the ID is sufficient to demonstrate ‘an industry in the United States’ under section 337(a)(1)(A)(i).”). Thus, for the reasons articulated in Section VII.B.1., I find that a domestic industry exists related to the articles protected by the Asserted Trademarks.

3. Conclusion

Based on the record evidence, DuPont has satisfied the domestic industry requirement under § 1337(a)(1)(A) and (a)(3).

C. Injury to a Domestic Injury

Whether there is a substantial threat of injury to DuPont's domestic industry is addressed first, followed by whether there is a causal nexus between the alleged unfair acts of Kingwills and the threat of injury to DuPont.

1. Threat of Injury

DuPont asserts that "Kingwills' [REDACTED] [REDACTED] its ability to [REDACTED] Tyvek, and its demonstrated intention to enter the U.S. market and capture a share of the Tyvek market comprise a choate, clearly foreseen threat to injure the Tyvek DI." CIB at 110. Staff concurs. SIB at 105. Kingwills disputes that DuPont has shown a threat of future substantial injury. RIB at 124-125.

a) [REDACTED]

DuPont contends that "Kingwills' [REDACTED] creates a foreseeable threat to cause substantial injury to DuPont's [domestic industry]." CIB at 111.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As such, I find that the evidence shows Kingwills has [REDACTED]

[REDACTED] that threatens to injure DuPont's industry.

b) Ability of Imported Products to [REDACTED] the Domestic Product

DuPont alleges that "Kingwills' ability to [REDACTED] Tyvek is a foreseeable threat of injury to the domestic industry." CIB at 112

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The evidence therefore shows that imported Hypak can [REDACTED] U.S. manufactured Tyvek.

c) Explicit Intention to Enter into the U.S. Market

DuPont argues that Kingwills has demonstrated an explicit intention to enter the U.S. market. CIB at 112-113. Kingwills disputes that it has such an intention; however, this is contradicted by the record evidence. RIB at 124. *See Selective Thyroid Hormone Receptor-Beta Agonists*, Comm’n Op. at 55 (“Moreover, although Respondents now claim, without evidentiary support, that they no longer intend to enter the U.S. market, this assertion is contradicted by the record in this investigation.”)

As an initial matter [REDACTED]
U.S. RX-2099C; JX-0026C, ¶ 2. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] This alone is sufficient to show that [REDACTED].
See Certain Portable Battery Jump Starters & Components Thereof (III), Inv. No. 337-TA-1360, Initial Determination at 168 (June 4, 2024).

Ms. Reichert described Kingwills’ [REDACTED] encroachment on North America. CX-3588C (Reichert WS) at Q/As 162-184; *see also Rubber Resins*, Initial Determination at 657 (Aug. 16, 2013) (respondent’s intention to “move forward with plans to enter the U.S. and European markets” was an indicator of injury), *aff’d by* Comm’n Op. at 64-66; *Certain Elec. Power Tools, Battery Cartridges, & Battery Chargers*, Inv. No. 337-TA-284, Initial Determination, 1990 WL 710470, at *125 (Feb. 20, 1990) (intent “to penetrate the U.S. market” is evidence of a threat of injury). [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Kingwills was aided by Harbourpoint, its U.S. distributor.⁶⁰ JX-0020C (Bivens Dep.) at 18:15-18, 32:6-14, 44:7-10, 62:4-23, 71:5-72:10; CX-2199.1; RX-5961C (Sun WS) at Q/As 63, 65; CX-3589C (Flattery WS) at Q/A 75.

“Second, agents for Kingwills such as Daniel Sun were at U.S. trade shows.” CX-3588C (Reichert WS) at Q/As 164, 173-179; *see also* CX-0078.2; CX-4196C (Sun Dep.) at 422:5-423:7; Reichert, Tr. at 608:10-16; CX-2199.2. It is undisputed that Kingwills had a booth promoting Hypak at the Printing United Expo in Las Vegas, Nevada. *Id.* at Q/As 173-174, 176; *see also* CX-0005C, ¶¶ 110, 117.

“Third, Kingwills [was] actively recruiting and trying to poach numerous Tyvek® employees from the United States.” *Id.* at Q/As 162-164, 180-184; *see also* CX-3589C (Flattery WS) at Q/A 75, 116, 120-121; CX-0005C, ¶¶ 68-69, 73-74. For example, Kingwills and Harbourpoint “enlist[ed] the help” of Anthony Palermo due to his “invaluable insights into pricing, marketing, and other essential aspects” of Tyvek to help “position[] [Kingwills’] product effectively” in the U.S. CX-2171; *see also* CX-2199.1; CX-3589C (Flattery WS) at Q/A 78.

[REDACTED]

[REDACTED] JX-0025C (Barnes Dep.) at 39:16-41:7, 48:10-22, 49:2-4, 54:19-55:10, 55:21-57:15, 78:13-

[REDACTED]

15; JX-0022C (Berlin Dep.) at 92:7-93:17. [REDACTED]

[REDACTED]

For these reasons, I find that the evidence shows Kingwills has the explicit intention to enter the U.S. market.

d) The [REDACTED] of the Domestic Industry to Compete with Foreign Products

DuPont writes: “Kingwills’ ability to [REDACTED] Tyvek products, and the consequent pressure on DuPont to [REDACTED], stem from the fundamental economic fact that [REDACTED] [REDACTED] CIB at 113.

Mr. Flattery explained that DuPont’s cost of manufacturing (“COM”) includes fixed costs (such as labor, overhead, and depreciation) and variable costs (such as raw materials and utilities). CX-3589C (Flattery WS) at Q/As 134-138. He further explained that the costs for the Spruance plant are the manufacturing costs for the U.S., [REDACTED] *Id.* at Q/A 135; *see also* CX-4213C; RX-5381C.26-.27. [REDACTED]

[REDACTED] COGS is always higher than COM because it includes costs for shipping and converting. *Id.* at Q/A 42.

Kingwills’ COGS is [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] CX-3595C (Putnam WS) at Q/A 136 (emphasis in original); *see also* CX-3683C.23-.24; RX-.5381C.26 [REDACTED]

e) Significant Negative Impact

Finally, DuPont asserts that “Kingwills efforts to directly target direct and indirect customers in the Tyvek value chain cause[s] harm and foreseeably threaten[s] to continue harming the Tyvek DI.” CIB at 114.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As such, I find there is sufficient evidence that Kingwills' in-kind competition would negatively affect DuPont's industry.

f) Conclusion

For the reasons set forth above, I find that DuPont has established that Kingwills presents a substantial threat to its domestic industry.⁶²

2. Nexus

DuPont must establish a nexus between Kingwills' unfair acts and the threatened injury. Such nexus requires establishing a "causal connection" between Kingwills' unfair acts and DuPont's injury, not that the unfair acts are the "sole reason" for the injury. *Genband US LLC v. Metaswitch Networks*, 861 F.3d 1378, 1384 (Fed. Cir. 2017).

a) Trade Secret Misappropriation Claims

As discussed above, Kingwills misappropriated Trade Secrets 15 and 18. *See* Sections IV.B.1-2. Kingwills' Hypak competes directly with DuPont's Tyvek in the roll goods market. RX-5960C (Chen RWS) at Q/A 15; CX-3588C (Reichert WS) at Q/As 8-9; CX-3595C (Putnam WS) at Q/A 28. DuPont and Kingwills also compete over indirect customers, who are the end-users of their respective flash-spun nonwoven materials.⁶³ *See, e.g.*, CX-3588C (Reichert WS) at Q/As 85-

⁶² Having found that Kingwills' unfair acts threaten to injure DuPont's domestic industry, I need not reach whether DuPont has suffered actual injury. *See Bone Cements*, Comm'n Op. at 11 (using disjunctive language to describe the injury requirement).

[REDACTED]

86; CX-3595C (Putnam WS) at Q/As 27-28, 128-129. In *TianRui*, the Federal Circuit agreed that such direct “type of competition . . . is sufficiently related to the investigation to constitute an injury to an ‘industry’ within the meaning of section 337(a)(1)(A).” 661 F.3d at 1337. The evidence also shows that Kingwills has an explicit intention to enter the U.S. market. Indeed, [REDACTED] [REDACTED] to sell Hypak in the United States through its U.S. distributor Harbourpoint *See* Section IV.B.2.

Additionally, the evidence demonstrates that [REDACTED]

[REDACTED] *See, e.g.*, CX-4245C (Schweiger RWS) at Q/As 78-79, 82-83, 95. [REDACTED]

[REDACTED] Based on the foregoing, I find that DuPont has established the requisite nexus between the threatened injury and the unfair acts as to Trade Secrets 15 and 18.

However, I do not find that the record evidence supports such a finding for Trade Secret 22. *See* Section IV.B.4 (finding Kingwills used trade secret information to [REDACTED] [REDACTED]). While nexus is not a stringent standard, DuPont must still carry its burden. Its initial post-hearing brief fails to address how [REDACTED] [REDACTED] resulting in waiver of those arguments.⁶⁴ *See* G.R. 14.2.

⁶⁴ [REDACTED]

b) Conversion Claim

In another investigation, I found that nexus in the context of conversion to be analogous to nexus in trade secret misappropriation cases. *Botox II*, Initial Determination at 48 (“I find that if the claimed conversion had occurred, it would have a sufficient nexus to importation. ... This is not significantly different from use of a trade secret to manufacture a product, which is within the scope of the Commission’s authority.”). Here, the converted documents are direct evidence of Kingwills’ misappropriation. *See* Sections IV, V. Thus, consistent with my previous decision and for the reasons discussed above, I find a sufficient nexus exists between the alleged unfair act and the importation of the accused products.

VIII. CONCLUSIONS OF LAW

1. The Commission has statutory authority to conduct this investigation.
2. The importation requirement of section 337 has been satisfied.
3. Trade Secrets 15, 18-19, and 22 are protectable trade secrets.
4. Kingwills has misappropriated Trade Secrets 15, 18, and 22.
5. DuPont has demonstrated that Kingwills committed conversion.
6. The Downstream Respondents do not infringe U.S. Trademark Registration No. 7,370,316.
7. JGT Live, Quoko, and Jiangsu Tubo/TOBO Group infringe U.S. Trademark Registration Nos. 817,194; 818,688; and 818,737.
8. DuPont has demonstrated that it has a domestic industry.
9. DuPont has demonstrated a threat of substantial injury to its domestic industry.
10. A violation of 19 U.S.C. § 1337 has been shown by the importation and sale of flash-spun nonwoven materials and products containing same.

IX. RECOMMENDED DETERMINATION ON REMEDY

The Commission's Rules provide that the administrative law judge shall issue a recommended determination concerning the appropriate remedy in the event the Commission finds a violation of section 337 and the amount of bond to be posted by respondents during the Presidential review of any Commission remedies. *See* 19 C.F.R. § 210.42(a)(1)(ii). The Commission has "broad discretion in selecting the form, scope, and extent of the remedy." *Viscofan, S.A. v. Int'l Trade Comm'n*, 787 F.2d 544, 548 (Fed. Cir. 1986).

A. General Exclusion Order⁶⁵

Section 337(d)(2) provides that "[t]he authority of the Commission to issue an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that— (A) a general exclusion order from entry of articles is necessary to prevent circumvention of an exclusion order limited to the products of named persons; or (B) there is a pattern of violation of this section and it is difficult to identify the source of the infringing products." 19 U.S.C. § 1337(d)(2); *see also* 19 C.F.R. § 210.50(c).

1. Misappropriation of Trade Secrets and Conversion Allegations

DuPont submits that a GEO is appropriate if a violation is found. CIB at 115-116. Staff concurs. SIB at 108. Kingwills does not believe a GEO is warranted. RIB at 125.

⁶⁵ DuPont may not seek a GEO under section 337(g)(2) because other respondents appeared to contest the investigation. *See Certain High-Density Fiber Optic Equip. & Components Thereof*, Inv. No. 337-TA-1194, Comm'n Op. at 86-87 (Aug. 23, 2021) (holding that when a GEO is sought and some respondents participate, the Commission evaluates exclusion against defaulting respondents under section 337(d)(2), not 337(g)(2)); *see also Certain Vaporizer Cartridges & Components Thereof*, Inv. No. 337-TA-1211, Comm'n Op. at 13 n.22 (Mar. 1, 2022) (same).

a) Section 337(d)(2)(A): Prevent Circumvention of an Exclusion Order Limited to Products of Named Persons

In determining whether conditions are ripe for circumvention, the Commission has considered “whether it is difficult to identify sellers or manufacturers, whether previous attempts to address infringement have been unsuccessful, and whether infringing options could be easily replicated.” *Certain Toner Cartridges, Components Thereof, & Sys. Containing Same*, Inv. No. 337-TA-1174, Comm’n Op. at 16 (Dec. 17, 2020); *see also Certain Pumping Bras*, Inv. No. 337-TA-988, Comm’n Op. at 11 (Apr. 7, 2017) (“*Pumping Bras*”). The Commission has previously recognized that violating sales conducted through websites can support the issuance of a GEO because “even if the exclusion order listed the website(s) through which the respondents were known to conduct their operations, it would be simple for those respondents to set up new website(s) and continue their operations.” *Certain Toner Cartridges, & Components Thereof*, Inv. No. 337-TA-918, Comm’n Op. at 7-8 (Oct. 1, 2015). Other relevant market conditions supporting a GEO include a strong demand for the violating products and high profit margins. *See, e.g., Certain Elec. Skin Care Devices, Brushes & Chargers Therefor, & Kits Containing the Same*, Inv. No. 337-TA-959, Comm’n Op. at 15-16 (Feb. 13, 2017). Additionally, “in determining whether a GEO is warranted, the Commission looks not only to the activities of active respondents, but also to those of respondents that have been terminated from an investigation as well as non-respondents.” *Toner Cartridges*, Inv. No. 337-TA-918, Comm’n Op. at 9.

The evidence shows that conditions are ripe for circumvention. The demand for Tyvek is high. *See* CX-3595C (Putnam WS) at Q/A 183 (“DuPont has sold Tyvek® in the U.S. for decades, cumulatively totaling [REDACTED]”); CX-0005C, ¶ 97. There are also widespread marketing and distribution networks in the United States (as well as abroad) for Tyvek and in-kind products. CX-3588C (Reichert WS) at Q/As 16-22; CX-3595C (Putnam WS) at Q/As

27-28; CX-4152C. Flash-spun nonwoven material may be sold as a roll good, sold after being processed by a converter, sold as packaging for a finished good (*e.g.*, medical packaging), or sold as a finished good (*e.g.*, home wrap, garments, mailing envelopes, wristbands). CX-3588C (Reichert WS) at Q/As 8-13, 15. For each product, there can be multiple intermediaries. *Id.* at Q/As 16-22; *see also* CX-3595C (Putnam WS) at Q/As 27-28; XC-4152C. These complex distribution networks make it ripe for circumvention of a limited exclusion order (“LEO”).⁶⁶

The ability of foreign distributors to sell directly to U.S. customers via the Internet also make it difficult to identify and locate manufacturers and sellers. Accused products were found on online distributor websites such as Alibaba and Amazon and sold by parties that appear unrelated to Kingwills or the Downstream Respondents. CX-3590C (Jackson WS) at Q/As 80-103; CPX-0016-0020, 0022, 0034. And there is evidence that respondents may change names to circumvent a LEO. For example, Jiangsu Tubo appears to have changed its name and shifted its operations to TOBO Group to avoid being served with the complaint in this investigation. *See* Order No. 25 at 4-5. This shows the difficulty of enforcing an LEO against specific sellers of infringing flash-spun nonwoven products. *See Pumping Bras*, Comm’n Op. at 12.

I therefore recommend issuance of a GEO based on the need to prevent circumvention of a LEO.

b) Section 337(d)(2)(B): Pattern of Violation

DuPont also argues that a general exclusion order is warranted under section 337(d)(2)(B). CIB at 118-121. Having found a GEO is warranted under section 337(d)(2)(A), I need not reach

⁶⁶ For example, Kingwills is comprised of multiple entities in China and Hong Kong with many overseas intermediaries and distributors. *See* RX-5960C (Chen RWS) at Q/As 18-28; CX-3589C (Flattery WS) at Q/A 101. This can make it difficult to identify the source of the infringing products as suppliers are able to hide their true identities. *See* RX-5960C (Chen RWS) at Q/As 5, 124-138; RX-5962C (Wu RWS) at Q/As 105-108, 112, 115-122; Wu, Tr. at 821:21-823:11.

whether a GEO is necessary under this section.⁶⁷ *See Certain Batteries & Prods. Containing Same*, Inv. No. 337-TA-1244, Comm’n Op. at 16 (Sept. 8, 2022) (“Satisfaction of either criterion is sufficient for imposition of a GEO, subject to consideration of the public interest.”) (“*Batteries & Prods.*”).

c) Duration of the Order

The Federal Circuit has stated that “the duration of relief in a case of misappropriation of trade secrets should be the period of time it would have taken respondent independently to develop the technology using lawful means.” *Viscofan*, 787 F.2d at 550. The Commission has interpreted this to mean that “[f]or a violation of section 337 involving trade secrets ... the duration of the exclusion order for the trade secrets is the length of time it would have taken the respondent to develop the complainant’s trade secrets.” *Crawler Cranes*, Comm’n Op. at 70; *see also Rubber Resins*, Comm’n Op. at 82-83 (“The duration of an [exclusion] order in a trade secret misappropriation case is set as the time it would have taken to independently develop the trade secrets.”). “[W]hen multiple trade secrets are at issue, the remedy may be determined by considering the trade secrets together.” *Crawler Cranes*, Comm’n Op. at 70.

DuPont submits that the GEO term should be at least 10 years. CIB at 121-122. Kingwills claims [REDACTED]

[REDACTED] RIB at 128-129. In Staff’s view, “it would take a year to independently develop [Trade Secret 18]” and four years for Trade Secret 15. SIB at 115-116.

⁶⁷ DuPont alleges that the downstream users of the accused products are indicative of a pattern of violation. CIB at 118-119. But DuPont has not shown that any such party has violated section 337, including the Downstream Respondents in this investigation. *See* Section IV.C.

i) Trade Secret 15

To support its request for a 10-year term, DuPont alleges [REDACTED]
[REDACTED] CIB at 123. However, DuPont did not raise this argument in its
prehearing brief and as such, the argument is waived per Ground Rule 11.2.

Nor does the evidence support Kingwills' argument [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Staff relies [REDACTED]
[REDACTED]. SIB at 116. [REDACTED]
[REDACTED]
[REDACTED]. RX-5965C (Parachuru RWS) at Q/A 107; Parachuru, Tr. at 962:10-
22. [REDACTED]
[REDACTED]
[REDACTED]. CX-3590C (Jackson WS at Q/A 71) [REDACTED]
[REDACTED] RX-5965C (Parachuru RWS) at Q/As 111-112, 114, 116; RX-3629; Parachuru, Tr. at
962:23-963:17; RX-5452C (Jackson Dep.) at 549:18-550:13 ([REDACTED]
[REDACTED].

Thus, of all the proposals, Staff's is the only one supported by the evidence. Accordingly, I find that the appropriate duration for the GEO is four years.

ii) Trade Secret 18

To justify its request for a 10-year GEO, DuPont claims [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Accordingly, a one-year exclusion order is appropriate.

iii) Conversion

“The Commission has never addressed the appropriate length of an exclusion order in a theft or conversion claim.” *Botox II*, Initial Determination at 69. In another investigation, I found that trade secret misappropriation is the closest analog to the conversion claims and will therefore apply that framework here. *Id.* Accordingly, the length of an exclusion order for the conversion claims should parallel the length of an exclusion order for the related misappropriated trade secrets.

Staff submits that any exclusion order should include a requirement that the converted property be returned before the importation of any covered goods. This is a reasonable request and one I recommend the Commission adopt. *See, e.g., Domain Prot., L.L.C. v. Sea Wasp, L.L.C.*, 23 F.4th 529, 537 (5th Cir. 2022) (“It is true that a plaintiff who establishes conversion is entitled to return of the property.”) (citations and quotation marks omitted).

iv) Conclusion

It is my recommendation that any remedial order have a length of four years and run from the issuance of the order, not the date of misappropriation.⁶⁸ *Balanced Armature Devices*, Comm’n Op. at 37 (“In addition, [t]he Commission has the discretion to begin that countdown at the effective date of the exclusion order rather than from the date of misappropriation, [and] the Commission ordinarily does so in trade secret misappropriation cases[.]”) (quotation marks omitted) (alterations in original).

However, I decline to recommend that the Commission include a provision requiring Kingwills to obtain a ruling (via an advisory opinion or a modification proceeding) prior to the importation of any accused products. The Commission has found such a requirement appropriate “where it is not readily apparent by inspection at the border whether an imported product is manufactured using the misappropriated trade secrets.” *Botox I*, Comm’n Op. at 62. Here, the evidence shows that Customs and Border Protection can visually identify the accused products.

[REDACTED]

[REDACTED]

[REDACTED]

⁶⁸ DuPont argues that when multiple trade secrets are at issue, the length of the exclusion order should be determined by stacking the remedies. CRB at 63. DuPont has failed to present sufficient evidence establishing that the misappropriated trade secrets could not have been developed concurrently. As such, the duration of any remedial order should be no more than the longest period it would have taken to independently develop the misappropriated trade secrets.

2. Trademark Infringement Allegations

a) Section 337(d)(2)(A): Prevent Circumvention of an Exclusion Order Limited to Products of Named Persons

As discussed above, there is a strong demand for Tyvek products, complex marketing and distribution networks exist both in the United States and abroad, and there is evidence that at least one respondent changed its name to avoid being served with the complaint. *See Certain Mobile Device Holders & Components Thereof*, Inv. No. 337-TA-1028, Comm’n Op. at 22 (Mar. 22, 2018) (finding a GEO was warranted because “respondents operate under different names.”).

The presence of defaulting respondents in this investigation also favors issuance of a GEO. Each of the Downstream Respondents failed to respond to the complaint and notice of investigation and failed to participate in the investigation, “suggesting that they are unlikely to abide by a Commission remedy.” *Certain Fish-Handling Pliers & Packaging Thereof*, Inv. No. 337-TA-1169, Comm’n Op. at 12-13 (Sept. 29, 2020).

I therefore recommend issuance of a GEO to prevent circumvention of a LEO.

b) Section 337(d)(2)(B): Pattern of Violation

DuPont also argues that a general exclusion order is warranted under section 337(d)(2)(B). CIB at 131-132. Having found a GEO is warranted under section 337(d)(2)(A), I need not reach whether a GEO is necessary under this section.⁶⁹ *See Batteries & Prods.*, Comm’n Op. at 16

⁶⁹ Should the Commission determine to evaluate the necessity of a GEO under this section, the evidence establishes that there is a pattern of violation and it is difficult to identify the source of the infringing products. *See, e.g.*, CX-0005C, ¶ 121; CX-0071C; CX-3589C (Flattery WS) at Q/As 99-100; CX-4228C.2 Many sales of the accused products are made through online marketplaces by entities whose location or true name may not be known. In fact, there are dozens of products being advertised as “Tyvek” on just the Alibaba website alone. CX-4260; CX-4261. The Commission has previously found that numerous online sales of infringing imported goods demonstrates a pattern of violation of section 337. *See, e.g.*, *Pumping Bras*, Comm’n Op. at 11-12 (finding a pattern of unauthorized use where the complainant could not identify seller identities on Amazon.com, the complainant struggled to serve the complaint on named respondents, and the

(“Satisfaction of either criterion is sufficient for imposition of a GEO, subject to consideration of the public interest.”).

B. Limited Exclusion Order

Section 337(d)(1) provides that “[i]f the Commission determines, as a result of an investigation ... that there is violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the [public interest], it finds that such articles should not be excluded from entry.” 19 U.S.C. § 1337(d)(1); *see also Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1358 (Fed. Cir. 2010) (“By statute, the Commission is required to issue an exclusion order upon the finding of a Section 337 violation absent a finding that the effects of one of the statutorily-enumerated public interest factors counsel otherwise.”) (citing 19 U.S.C. 1337(d)(1)).

Should the Commission not enter a GEO, DuPont requests that an LEO be entered. CIB at 115 n.3. Staff concurs. SIB at 112.

1. The Kingwills Respondents

Kingwills submits that any LEO should be narrowly tailored, impose a quarterly reporting requirement that obligates DuPont to describe its current domestic activities, and include a certification provision.⁷⁰ RIB at 127.

In the event a GEO is not entered, I recommend entry of an LEO with a certification provision. *See Certain Multiple Mode Outdoor Grills & Parts Thereof*, Inv. No. 337-TA-895,

infringing products were available from numerous vendors on the Internet); *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337- TA-923, Comm’n Op. at 14 (June 26, 2015) (“The Commission has found in other investigations that numerous online sales of infringing imported goods can constitute a pattern of violation of section 337.”).

⁷⁰ Kingwills did not adequately explain why a reporting requirement is necessary. *See* RIB at 127. I therefore decline to recommend that such a requirement be included.

Comm’n Op. at 56 (Feb. 20, 2015) (“[I]t has been Commission practice for the past several years to include certification provisions in all exclusion orders to aid Customs and Border Protection [] in enforcing the Commission’s remedial orders.”).

2. The Downstream Respondents

Should the Commission decline to enter a GEO, I recommend entry of an LEO against the accused products found to infringe the TYVEK Word Marks.

C. Cease and Desist Order

Section 337(f)(1) provides that in addition to, or in lieu of, the issuance of an LEO, the Commission may issue a CDO as a remedy for a violation of section 337. *See* 19 U.S.C. § 1337(f)(1). “Cease and desist orders are generally issued when, with respect to the imported infringing products, respondents maintain commercially significant inventories in the United States or have significant operations that could undercut the remedy provided by an exclusion order.” *Certain Table Saws Incorporating Active Injury Mitigation Tech. & Components Thereof*, Inv. No. 337-TA-965, Comm’n Op. at 4-5 (Feb. 1, 2017); *see also Certain Tobacco Heating Articles & Components Thereof*, Inv. No. 337-TA-1199, Comm’n Op. at 49 (Oct. 19, 2021) (same) (“*Tobacco Heating Articles*”). Complainant bears the burden on this issue. *Tobacco Heating Articles*, Comm’n Op. at 49; *see also Certain Pick-Up Truck Folding Bed Cover Sys. & Components Thereof (III)*, Inv. No. 337-TA-1353, Comm’n Op. at 13 (Oct. 2, 2024) (“A complainant seeking a cease and desist order must demonstrate, based on the record, that this remedy is necessary to address the violation found in the investigation so as to not undercut the relief provided by the exclusion order.”) (citations and quotation marks omitted).

1. The Kingwills Respondents

DuPont requests a permanent CDO as to Kingwills. CIB at 115. DuPont claims that Kingwills has significant domestic operations and inventory. *Id.* at 127. However, there is no evidence that Kingwills maintains commercially significant inventory in the U.S. While DuPont points to Kingwills' relationship with Harbourpoint [REDACTED], these are third parties that purchase Hypak. They are not subsidiaries or agents of Kingwills. RX-5961C (Sun RWS) at Q/As 63-64; CX-3589C (Flattery WS) at Q/A 101. And as noted above, Kingwills has terminated its relationship with Harbourpoint.⁷¹ JX-0025C (Barnes Dep.) at 89:5-14.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I therefore recommend that the Commission decline to issue a CDO against Kingwills.

2. Impak

DuPont seeks a CDO against Impak and its affiliates and related entities. CIB at 132. Staff supports DuPont's request. SIB at 125.

"In investigations in which a domestic respondent is found in default, the Commission presumes the presence of commercially significant inventories in the United States to warrant a cease and desist order." *Certain Stainless Steel Prods., Certain Processes for Mfg. or Relating to Same, & Certain Prods. Containing Same*, Inv. No. 337-TA-933, Comm'n Op. at 41 (June 9,

⁷¹ Harbourpoint has also executed a consent order agreeing to "not sell for importation, import or sell after importation" the accused products and to "cease ... from importing and distributing" the accused products in the U.S. EDIS Doc. ID 844078, ¶¶ 4-6.

2016). Because Impak has been found in default (*see* Section I.A.), the issuance of a CDO against Impak is appropriate.

D. Bonding

If the Commission enters an exclusion order or a CDO, a respondent may continue to import and sell its products during the 60-day period of Presidential review under a bond in an amount determined by the Commission to be “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 in the record, the Commission has often set bond in an amount that would eliminate the price differential between the domestic product and the imported, infringing product.” *Certain Elec. Devices, Including Streaming Players, Televisions, Set Top Boxes, Remote Controllers, & Components Thereof*, Inv. No. 337-TA-1200, Comm’n Op. at 41 (Dec 3, 2021). The Commission has also used a reasonable royalty rate to set the bond amount when a reasonable royalty rate could be ascertained from the evidence in the record. *Id.* at 42. Where the record establishes that the calculation of a price differential is impractical or there is insufficient evidence in the record to determine a reasonable royalty, the Commission has imposed a 100 percent bond. *Id.*; *see also Certain Automated Put Walls & Automated Storage & Retrieval Sys., Assoc. Vehicles, Assoc. Control Software, & Component Parts Thereof*, Inv. No. 337-TA-1293, Comm’n Op. at 46 (Aug. 17, 2023) (same).

1. The Kingwills Respondents

DuPont seeks a 100% bond because it is difficult to calculate a meaningful price differential and there is no evidence for comparable royalty rates. CIB at 64. Staff agrees that a 100% bond is appropriate. SIB at 120. Kingwills disputes that DuPont is entitled to a 100% bond. RIB at 130.

For the reasons set forth below, I recommend the Commission set a bond rate of 100% of the entered value of Kingwills' accused products. First, there are no licenses from which to infer a royalty rate. CX-3595C (Putnam WS) at Q/A 197. Second, there is competition between Hypak and the DI products, but sales data on Kingwills' accused products is limited, making a price differential analysis impractical and/or unreliable. *See* RX-2009C; RX-0356C. Lastly, internal sales data shows [REDACTED] [REDACTED], e.g., CX-3595C (Putnam WS) at Q/As 194-195; CX-4165C; RX-2009C; RX-0356C; CX-0413C. In similar circumstances, the Commission has set a 100% bond. *See, e.g., Balanced Armature Devices*, Comm'n Op. at 41 (setting 100% bond where price differential calculation was impractical because there were a large number of products with different features and prices).

2. The Downstream Respondents

DuPont requests "a bond equal to the full value (*i.e.*, 100% of all infringing goods entering the U.S. during the Presidential review period." CIB at 132. Staff supports DuPont's request. SIB at 126.

In this investigation, the Downstream Respondents provided no discovery. Thus, there is a lack of reliable pricing information. The Commission has set a bond in the amount of 100 percent of the entered value of the infringing goods in cases involving defaulting respondents like here. *See Certain Water Filters & Components Thereof*, Inv. No. 337-TA-1126, Comm'n Op at 16 (Nov. 15, 2019); *Vaporizer Cartridges*, Comm'n Op. at 21 (setting a bond of 100 percent when "[t]he Defaulting Respondents did not provide discovery in this investigation" and thus "there is a lack of reliable pricing information"); *Certain Digital Photo Frames & Image Display Devices & Components Thereof*, Inv. No. 337-TA-807, Comm'n Op. at 17 (July 2015) ("The Commission

finds that there is little or no evidence in the record of this investigation as to pricing of the defaulting respondents' products. . . . The Commission has traditionally set a bond of 100 percent of the entered value of the products under these circumstances.”).

Accordingly, I recommend the Commission set the bond in the amount of 100% during the period of Presidential review for those Downstream Respondents found in violation.

X. INITIAL DETERMINATION ON VIOLATION

For the reasons set forth above, it is my Initial Determination that a violation of section 337 of the Tariff Act, as amended, has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain flash-spun nonwoven materials and products containing same.

I hereby certify to the Commission this Initial Determination and the Recommended Determination.

The Secretary shall serve the confidential version of this Initial Determination upon counsel who are signatories to the Protective Order (Order No. 1) issued in this investigation. A public version will be served at a later date upon all parties of record.

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 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 therein.

XI. ORDER

Within seven days of the date of this document, the parties shall jointly submit a single proposed public version of this document with any proposed redactions indicated in red. If the parties submit excessive redactions, they may be required to provide declarations from individuals

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with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in 19 C.F.R. § 201.6(a). The proposed redactions should be made electronically, in a single PDF file using the “Redact Tool” within Adobe Acrobat. The proposed redactions should be submitted as “marked” but not yet “applied.” If the parties do not have any redactions to the order, they should so state. The proposed redactions or statement of no redactions should be submitted via email to Moore337@usitc.gov and not filed on EDIS.


Bryan F. Moore
Administrative Law Judge