

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN GLASS SUBSTRATES FOR
LIQUID CRYSTAL DISPLAYS, PRODUCTS
CONTAINING THE SAME, AND METHODS
FOR MANUFACTURING THE SAME**

Inv. No. 337-TA-1433

FINAL INITIAL DETERMINATION ON VIOLATION OF SECTION 337

Administrative Law Judge Monica Bhattacharyya

(July 23, 2026)

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Pursuant to the Notice of Investigation, ((EDIS Doc. ID 841335) (January 17, 2025)); 90 Fed. Reg. 8140 ((EDIS Doc. ID 841928) (January 24, 2025)), and Commission Rule 19 C.F.R. § 210.10, this is the administrative law judge's final initial determination on violation in the matter of *Certain Glass Substrates For Liquid Crystal Displays, Products Containing the Same, and Methods For Manufacturing the Same*, Inv. No. 337-TA-1433. 19 C.F.R. § 210.42.

It is the undersigned's initial determination that there has been a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States of certain glass substrates for liquid crystal displays, display panels containing the same, and electronic devices containing the same, which are TVs, monitors, notebook and laptop computers, and tablets, or in the sale of such products by the owner, importer, or consignee, by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States.

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The following abbreviations may be used in this Initial Determination:

Tr.	Hearing Transcript
Dep. Tr.	Deposition Transcript
JX	Joint Exhibit
CX	Complainant's exhibit
CPX	Complainant's physical exhibit
CDX	Complainant's demonstrative exhibit
RX	Respondents' exhibit
RPX	Respondents' physical exhibit
RDX	Respondents' demonstrative exhibit
CPHB	Complainant's pre-hearing brief (EDIS Doc. ID867060)
CIB	Complainant's initial post-hearing brief (EDIS Doc. ID876088)
CRB	Complainant's post-hearing reply brief (EDIS Doc. ID 877833)
RPHB	Respondents' pre-hearing brief (EDIS Doc. ID 867068)
RIB	Respondents' initial post-hearing brief (EDIS Doc. ID 874658)
RRB	Respondents' post-hearing reply brief (EDIS Doc. ID 876261)
Ex. 5 Disclosure	Mot. No. 1433-007, Ex. 5, Appendix C (EDIS Doc. ID 848338)

I. BACKGROUND

A. Procedural History

The Commission instituted this investigation in response to a complaint filed by Complainant Corning Incorporated (“Corning”) on December 18, 2024 (EDIS Doc. ID 839509, 839512). 90 Fed. Reg. 8140 ((EDIS Doc. ID 841928) (Jan. 24, 2025)). A supplement to the complaint was filed on January 7, 2025 (EDIS Doc. ID 840587). The Complaint, as supplemented, alleged violations of § 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, by nine proposed respondents “to prevent importation into the United States, sale for importation, and sale after importation of display glass that infringes Corning’s patents, and to prevent unfair methods of competition and unfair act in the importation and sale of display glass that is manufactured using Corning’s misappropriated trade secrets.” *See* Compl. ¶ 1 (EDIS Doc. ID 839509, 839512) (Dec.18, 2024); First Supplement to Compl. (EDIS Doc. ID 840587) (Jan. 7, 2025).

The Commission instituted this Investigation against nine Respondents on January 24, 2025. *See* 90 Fed. Reg. 8140 (Jan. 24, 2025) (“Notice of Investigation”). The Commission ordered institution of this investigation to determine (1) “whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain [glass substrates for LCDs, display panels containing the same, and electronic devices containing the same] by reason of infringement of one or more of claims 1, 5, 6, and 8-10 of [U.S. Patent No. 7,851,394 (“the ’394 patent”)]; claims 1, 2, 4, 7, and 10-12 of [U.S. Patent No. 8,627,684 (“the ’684 patent”)]; and claims 15-20 of [U.S. Patent No. 9,512,025 (“the ’025 patent”)], and whether an industry in the United States exists as required by subsection (a)(2) of section 337, and (2) “whether there is a

violation of subsection (a)(l)(A) of section 337 in the importation into the United States of certain [glass substrates for LCDs, display panels containing the same, and electronic devices containing the same], or in the sale of such products identified in paragraph (2) by the owner, importer, or consignee, by reason of misappropriation of trade secrets the threat or effect of which is to destroy or substantially injure an industry in the United States.” *Id.*

The Notice of Investigation named the following entities as Respondents: Caihong Display Devices Co., Ltd., d/b/a Irico Display Devices Co., Ltd. (“Caihong Display”); Hisense USA Corporation (“Hisense”); HKC Corporation Ltd. (“HKC”); HKC Overseas Ltd. (“HKC Overseas”); LG Electronics U.S.A., Inc. (“LG”); TCL China Star Optoelectronics, Technology Co., Ltd. (“CSOT”); TTE Technology, Inc., d/b/a TCL North America (“TCL”); VIZIO, Inc. (“VIZIO”); and Xianyang CaiHong Optoelectronics, Technology Co., Ltd. (“CHOT”). *Id.* The Office of Unfair Import Investigations (“Staff”) is also a party to the investigation. *Id.*

On February 13, 2025, the undersigned issued an initial determination setting an 18-month target date as July 24, 2026 and the final initial determination on violation due by March 24, 2026. *See* Order 5 (as amended) (EDIS Doc. ID 843380) (Feb. 13, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 844644) (Feb. 27, 2025).

On February 18, 2025, the undersigned issued an initial determination terminating the ’394 patent from the investigation. *See* Order 7 (EDIS Doc. ID 843776) (Feb. 18, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 844450) (Feb. 26, 2025). On July 1, 2025, the undersigned issued an initial determination terminating claims 18 and 19 of the ’025 patent from the investigation. *See* Order 38 (EDIS Doc. ID 855749) (July 1, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 858079) (July 30, 2025). On July 21, 2025, the undersigned issued an initial determination terminating the investigation as to Respondent HKC based on a settlement

agreement. *See* Order 44 (EDIS Doc. ID 857338) (July 21, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 859624) (Aug. 14, 2025). On August 26, 2025, the undersigned issued an initial determination terminating claims 1, 2, 4, and 12 of the ’684 patent and claim 20 of the ’025 patent from the investigation. *See* Order 51 (EDIS Doc. ID 860422) (Aug. 26, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 862518) (Sept. 22, 2025). On September 9, 2025, the undersigned issued an initial determination terminating the investigation as to Respondent VIZIO based on a settlement agreement. *See* Order 52 (EDIS Doc. ID 861467) (Sept. 9, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 862924) (Sept. 24, 2025). On September 24, 2025, the undersigned issued an initial determination terminating the investigation as to Respondent LG based on a settlement agreement. *See* Order 53 (EDIS Doc. ID 862864) (Sept. 24, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 865891) (Dec. 8, 2025). On November 18, 2025, the undersigned issued an initial determination terminating claims 15-17 of the ’025 patent from the investigation. *See* Order 54 (EDIS Doc. ID 864218) (Nov. 18, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 865784) (Dec. 5, 2025). On November 20, 2025, the undersigned issued an initial determination terminating claims 7, 10 and 11 of the ’684 patent from the investigation. *See* Order 55 (EDIS Doc. ID 864581) (Nov. 20, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 866533) (Dec. 15, 2025).

On November 20, 2025, the undersigned issued an initial determination extending the target date to October 13, 2026. *See* Order 56 (EDIS Doc. ID 864614) (Nov. 20, 2025), *unreviewed by* Comm’n Not. (EDIS Doc. ID 866533) (Dec. 15, 2025). The extension and a corresponding amended procedural schedule (including the evidentiary hearing) were necessitated by the lapse in government appropriations from October 1, 2025 through November 12, 2025. *See id.*

On January 9, 2026, the undersigned issued an initial determination granting Corning's motion for summary determination on importation. *See* Order 64 (EDIS Doc. ID 870458) (Jan. 9, 2026), *unreviewed by* Comm'n Not. (EDIS Doc. ID 874816) (Mar. 9, 2026).

An evidentiary hearing was held on February 11-13, 2026 and February 18-19, 2026. *See* Order No. 9 (EDIS Doc. ID 844708) (Feb. 28, 2025); Order No. 40 (EDIS Doc. ID 856280) (July 9, 2025); Order No. 56 (EDIS Doc. ID 864614) (Nov. 20, 2025).

On March 25, 2026, the undersigned issued an initial determination terminating the investigation as to Respondent Hisense based on a settlement agreement. *See* Order 85 (EDIS Doc. ID 876496) (Mar. 25, 2026), *unreviewed by* Comm'n Not. (EDIS Doc. ID 879574) (Apr. 20, 2026). There are four remaining respondents in the investigation: Caihong Display, CHOT, CSOT, and TCL (collectively, "Respondents").

The remaining Private Parties and Staff filed initial post-hearing briefs on March 6, 2026, and filed reply post-hearing briefs on March 20, 2026. *See* Order No. 56. The parties also filed certain post-hearing motions to strike, which are addressed in Part III *infra*.

B. The Private Parties

1. Complainant

Complainant Corning Incorporated ("Corning") is a New York corporation with its principal place of business and corporate headquarters at One Riverfront Plaza, Corning, New York 14831. CIB at 6; Compl. at ¶ 16. Corning is involved in, *inter alia*, the research and development, design, manufacture, sales, and marketing of glass substrates for LCD displays. *See* Compl. at ¶¶ 317-22.

2. Remaining Respondents

Respondent Caihong Display Devices Co., Ltd. (“Caihong Display” or “Caihong”) is organized under the laws of China and its principal place of business is at No. 9 Xinghuo Avenue, High tech Industrial Development Zone, Qindu District, Xianyang City, Shaanxi Province. Caihong Display Ans. at ¶ 18. Caihong Display manufactures LCD glass for use in the manufacturing of televisions. *Id.* In its briefing, Corning refers to Caihong Display and its predecessors, affiliates, and subsidiaries as “Irico” and to Caihong Display as “Irico Display.” *See* CIB at 6.¹ Respondents Caihong Display refers to itself, as well as to Shaanxi Caihong, as “Caihong.” *See* RIB at 5, 19, 32.²

Respondent Xianyang CaiHong Optoelectronics Technology Co., Ltd. (“CHOT”) is a subsidiary of Caihong Display. Caihong Display Ans. at ¶ 19; CHOT Ans. at ¶ 19 (EDIS Doc. ID 845341) (Mar. 7, 2025). CHOT is organized under the laws of China and has a principal place of business at No. 1, Gaoke Yilu, Qindu District, Xianyang City, Shaanxi Province, 71200, China. *Id.* CHOT manufactures and sells for importation LCD panels containing glass substrates to be incorporated into televisions. *Id.*

Respondent TCL China Star Optoelectronics Technology Co., Ltd. (“CSOT”) is organized under the laws of China and has a principal place of business at 9-2 Tangming Avenue, Guangming New District, Shenzhen City, Guangdong Province, 518132, China. CSOT

¹ Corning asserts that “Irico and Irico Display use those names in the ordinary course of business and have done so for years.” *Id.*, citing Tr. (Mulvenon) at 78:5-12; JX-0017C (Hudson Dep. Tr.) at 39:17-40:2, 309:8-19.

² The evidence shows that in 2009, Caihong Display acquired Shaanxi Caihong Electronic Glass Co. Ltd. (“Shaanxi Caihong”) from Caihong Group Co. Ltd. (“Caihong Group”) becoming Shaanxi Caihong’s controlling shareholder. *See* Tr. (Wang) at 881:3-5, 894:13-14; Tr. (Mulvenon) at 90:16-18. Respondents state that “Caihong Group was the controlling shareholder [of] Caihong Display [in 2012], but is not any longer.” RIB at 137 n.23. Shaanxi Caihong (or “Caihong”) is the entity that was involved with building the Gen 5 line at issue in this investigation. *See* RIB at 19, 32.

Ans. at ¶ 24 (EDIS Doc. ID 845327) (Mar. 7, 2025). CSOT manufactures LCD panels for incorporation into televisions. *Id.*

Respondent TTE Technology, Inc. d/b/a TCL North America (“TCL”) is a Delaware corporation having a principal place of business at 189 Technology Drive, Irvine, California 92618. TCL Ans. at ¶ 25 (EDIS Doc. ID 845336) (Mar. 7, 2025). TCL imports and sells televisions incorporating display panels, including those supplied by CSOT and CHOT. *See* TCL Ans. at ¶ 25; JX-2755C (TCL Stip.) at ¶¶ 11, 13.

C. The Products at Issue

The Accused Products at issue are “glass substrates for LCDs, display panels containing the same, and electronic devices containing the same, which are TVs, monitors, notebook and laptop computers, and tablets.” 90 Fed. Reg. 8141 ((EDIS Doc. ID 841928) (Jan. 24, 2025)); *see also* CIB at 18; RIB at 6, SIB at 9.

In the glass substrate industry, the term “generation” or “Gen” refers to the size of a panel maker’s platform (and the glass substrate). Tr. (Bocko) at 651:18-21, 721:21-25; Tr. (Flasck) at 1080:3-12; CIB at 11; RIB at 6. It does not necessarily correspond to the width of the fusion draw machine (FDM) used to make the substrate. Tr. (Bocko) at 651:16-652:8. The table below shows the approximate timeline of Corning’s introduction of each generation of glass as well as the glass substrate size for each generation.

Gen Size	Year Introduced or Announced	Substrate Size
1	1989	300 x 400 mm
2	1994	370 x 470 mm
3	1996	550 x 670 mm
4	2000	680 x 880 mm
5	2002	1100 x 1250 mm
6	2003	1500 x 1800 mm
7	2004	1870 x 2200 mm
8	2006	2200 x 2500 mm
10	2009	2880 x 3130 mm

CIB at 11; CDX-0008C.7; Tr. (Bocko) at 651:16-652:8.

Accused Products: Corning accuses Caihong Display of selling Gen 7.5 and 8.5+ LCD glass substrates manufactured that it manufactures using Corning’s trade secrets. CIB at 19; RIB at 6-7; SIB at 9. Certain of the trade secret allegations also involve earlier generations of Caihong Display glass. *See* CIB at 19, 59-62. The “Downstream Respondents” – CHOT, CSOT, and TCL – import, sell for importation, or sell after importation display panels or electronic devices containing LCD glass. CIB at 19; RIB at 7; SIB at 9. CHOT and CSOT use Caihong Display’s glass substrates to make certain panels for televisions, monitors, notebook and laptop computers, and tablets. *Id.* TCL uses certain LCD panels containing Caihong Display’s accused glass substrates to manufacture televisions. *Id.*

Corning EAGLE XG Glass: Corning introduced EAGLE XG Glass substrate in 2006. Tr. (Kudva) at 382:14-16. “EAGLE XG” is a shortened name for “Enhanced Attribute Glass for Large-Area Electronics eXtra Green.” RX-3891C; Tr. (Kudva) at 380:16-21. Corning uses the

fusion draw method (discussed *infra*) to manufacture EAGLE XG Glass. Tr. (Kudva) at 382:17-21. Corning's domestic industry and injury contentions are based on its EAGLE XG Glass. *See* CIB at 18, 143.

D. Witness Testimony

The parties presented testimonial evidence in this investigation in the form of live testimony and deposition designations.

1. Fact Witnesses

Complainant presented live testimony from Mr. Paul Burke, a retired senior managing counsel for digital and information technology at Corning (Tr. at 122:12-170:7). Complainant also presented Mr. Guorong (Roy) Zou, an attorney for Hogan Lovells (Tr. at 171:8-227:9). Complainant next presented Mr. Anthony Bartone, a director of intelligence and investigations at Corning (Tr. at 228:9-269:8). Complainant then presented Ms. Shawn Markham, a corporate fellow at Corning (Tr. at 298:3-376:18). Complainant also presented Dr. Gautam Kudva, a vice president of fusion technology and engineering at Corning (Tr. at 379:8-439:8). Complainant also presented Mr. Christopher Hudson, a vice president and general manager for life sciences business at Corning (Tr. at 728:8-795:4).

Respondents presented live remote testimony from Ms. Xiaochun Wang, a financial director for Caihong (Tr. at 872:9-902:17).

2. Expert Witnesses

Complainant's first expert witness, Dr. James Mulvenon, who was admitted as an expert in the field of Chinese industrial espionage (Tr. at 74:4-121:10). Complainant also called Dr. John Bravman who was admitted as an expert in materials science and engineering, in particular, the processing-structure-property relationships with solid phase materials (Tr. at 440:6-572:11,

586:4-636:13). Complainant next presented expert testimony from Dr. Peter Bocko, who was admitted as an expert in materials science and engineering pertaining to glass design and manufacturing for advanced displays (Tr. at 637:10-723:18). Complainant then presented Professor Daniel Fischel who was admitted as an expert in economic valuation and injury (Tr. at 796:9-852:25, 949:5-977:24). Complainant also presented Mr. Holden Triplett who was admitted as an expert in the field of corporate security programs, intellectual asset protection and protection of corporate intellectual assets from foreign actors (Tr. at 904:12-947:9).

Respondents' first expert witness, Mr. Christopher Bakewell, who was admitted as an expert in the field of financial and economic domestic industry (Tr. at 982:24-1026:24). Respondents also called Dr. Lisa Cameron who was admitted as an expert in the fields of financial and economic analysis relating to injury to a domestic industry (Tr. at 1028:10-1075:25). Respondents next presented Mr. Richard Flasck who was admitted as an expert in the design of liquid crystal display panels (Tr. at 1077:9-1098:22). Respondents then presented Mr. Michael Gordon who was admitted as an expert in the field of mechanical engineering, high-temperature materials, behavior of materials in high-temperature conditions, high temperature material-designs, the operation of equipment in high-temperature conditions, and processes using such equipment (Tr. 1133:4-1345:18).

3. Deposition Designations

Certain designated deposition transcripts were received into evidence: Anthony Bartone (JX-0002C), John Bayne (JX-0003C), Thomas Beall (JX-0004C), Bu Dong (JX-0005C), Joseph Bulkley (JX-0006C), Paul Burke (JX-0007C), Chen Jianguo (JX-0008C), Cui Boqin (JX-0010C), Liam Ruan de Paor (JX-0011C), Ahdi El-Kahlout (JX-0012C), Li Fang (JX-0013C), Vladislav Golyatin (JX-0014C), Han Jun (JX-0015C), Hou Hongrong (JX-0016C), Christopher

Hudson (JX-0017C), Gautam Kudva (JX-0018C and JX-0019C), Derek Law (JX-0020C), Liu Jin (JX-0022C), Shawn Markham (JX-0023C), Seong-Geun Park (CX-4991C), Qiao Pengcheng (JX-0025C), Tang Zhensai (JX-0026C), Wang Hui (JX-0027C), Wang Xiaochun (JX-0028C), Xu Jian (JX-0029C), Yang Qiongying (JX-0030C and JX-0031C), Yang Wei (JX-0032C), Yang Zhi (JX-0033C), Zhao Yang (JX-0035C), Zhou Yanhua (JX-0036C), and Zhu Jiong (JX-0037C).³

II. STATUTORY AUTHORITY, IMPORTATION, AND LEGAL STANDARDS

A. Statutory Authority

The Commission has statutory authority over the present investigation, which includes the authority to investigate accused articles that are imported into the United States or sold after importation, and the authority to investigate the importation into the United States or the sale of such articles. *See Certain Video Security Equipment and Sys., Related Software, Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-1281, Comm’n Op., EDIS Doc. ID 794569, at 9-10 (Apr. 19, 2023); *Certain Portable Battery Jump Starters and Components Thereof (III)*, Inv. No. 337-TA-1360, Comm’n Notice, EDIS Doc. ID 826741, at 3 (July 23, 2024). Respondents have appeared and participated in the investigation, and Respondents do not dispute the Commission’s statutory authority. *See* RIB at 7; RRB at 3.

B. Importation

As noted, on January 9, 2026, the undersigned issued an initial determination granting Corning’s motion for summary determination on importation. *See* Order 64 (EDIS Doc. ID 870458) (Jan. 9, 2026), *unreviewed by* Comm’n Not. (EDIS Doc. ID 874816) (Mar. 9, 2026).

³ Pursuant to Order No. 86, the parties filed a document cross-referencing deposition exhibit numbers with admitted exhibit numbers. *See* Joint Cross Reference of Deposition Exhibits and Trial Exhibits (EDIS Doc. ID 878440) (April 10, 2026).

C. Legal Standards

1. Trade Secrets

As applied at the Commission, misappropriation of trade secrets “is a method of unfair competition defined by the common law.” *Certain Rubber Resins and Processes for Manufacturing Same*, Inv. No. 337-TA-849, Comm’n Op., 2014 WL 7497801, at *4 (Feb. 26, 2014) (“*Certain 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 Group Co. Ltd. v. ITC*, 661 F.3d 1322, 1327 (Fed. Cir. 2011) (“*TianRui*”); *see also id.* (section 337 calls for “application of federal common law”). Sources of applicable guidance include the Restatement of Unfair Competition, the Uniform Trade Secrets Act, and federal common law as set forth in Commission decisions. *See id.* at 1327-28 (“Fortunately, trade secret law varies little from state to state and is generally governed by widely recognized authorities such as the Restatement of Unfair Competition and the Uniform Trade Secrets Act.”); *see also id.* (referring to the “generally understood law of trade secrets, as reflected in the Restatement, the Uniform Trade Secrets Act, and previous Commission decisions under section 337”).

The existence of protectable trade secrets is a prerequisite of a trade secret misappropriation claim. *Certain Rubber Resins*, 2014 WL 7497801, at * 5 (citing *Certain Sausage Casings*, Inv. No. 337-TA-148/169, Initial Determination (July 31, 1984)). It is the complainant’s burden to show “the existence of a process that is protectable as a trade secret.” *Id.* 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, Systems, and Components Thereof*, Inv. No.

337-TA-963, Final ID, 2016 WL 11596099, at *12 (Aug. 23, 2016) (“*Certain Activity Tracking Devices*”) (non-reviewed, EDIS Doc. ID 593177 (Oct. 20, 2016)) (quoting Restatement (Third) of Unfair Competition § 39 cmt. d.).

The Commission has looked to the following six factors—each of which relates to issues of value and/or secrecy—to help 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 and Resulting Product, Inv. No. 337-TA-148/169, Initial Determination, 1984 WL 273789, at *94 (July 31, 1984) (“*Sausage Casings*”) (citing Restatement of Torts § 757, comment b) (unreviewed, *Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product*, Inv. No. 337-TA-148/169, Comm’n Op., 1984 WL 273970, at *2 (Jan. 1, 1984)); *Certain Bone Cements, Components Thereof, and Prods. Containing the Same*, Inv. No. 337-TA-1153, Comm’n Op., USITC Pub. No. 5304, 2022 WL 22782263, at *6 (Mar. 1, 2022) (“*Bone Cements I*”) (each of the *Sausage Casings* factors “relates to issues of value and/or secrecy”). These factors are “instructive guidelines,” not a six-pronged test. See *Certain Crawler Cranes and Components Thereof*, Inv.

No. 337-TA-887, Final ID, at 24 (July 11, 2014) (EDIS Doc. ID 539295); *Certain Activity Tracking Devices*, 2016 WL 11596099, at *12 (same).⁴

The Uniform Trade Secrets Act similarly requires an evaluation of value and secrecy, defining a trade secret as information that “(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Uniform Trade Secrets Act (“UTSA”) §1(4); *see also Certain Activity Tracking Devices*, 2016 WL 11596099, at *12 (stating that the UTSA’s definition of a trade secret is “consistent with prior Commission decisions”).⁵ Commission decisions have relied on the UTSA’s “independent economic value” requirement in determining whether a protectable trade secret exists. *See Certain Rubber Resins*, 2014 WL 7497801, at *11, *13; *Certain Activity Tracking Devices*, 2016 WL 11596099, at *12.

The Commission has relied on the UTSA definition of misappropriation:

- (i) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (ii) disclosure or use of a trade secret of another without express or implied consent by a person who

⁴ The parties’ briefs analyze the existence of a trade secret under the rubrics of “economic value,” “generally known or readily ascertainable,” and “reasonable measures to maintain secrecy” and have raised arguments relating to the *Sausage Casings* factors under these categories. This ID follows the organization of the parties’ briefs.

⁵ While the UTSA sets forth two distinct elements in its definition of a trade secret, the Restatement (Third) of Unfair Competition indicates that the UTSA’s “reasonable precautions” requirement does not exist in isolation, but rather “should be evaluated in light of the other available evidence relating to the value and secrecy of the information.” Restatement (Third) of Unfair Competition § 39, cmt g; *cf. Certain Crawler Cranes and Components Thereof*, Inv. No. 337-TA-887, Comm’n Op. at 53 (May 6, 2015) (EDIS Doc. ID 556530) (“[T]he Federal Circuit did not limit the Commission to the application of the UTSA, and we believe that it was reasonable for the ID consider and rely on the Restatement”).

(A) used improper means to acquire knowledge of the trade secret; or
(B) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was (I) derived from or through a person who had utilized improper means to acquire it; (II) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
(C) before a material change of his [or her] position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.”

Raised Garden Beds and Components Thereof, Inv. No. 337-TA-1334, 2024 WL 1434222, at *12 (Apr. 1, 2024) (citing UTSA § 1.2); *see also* DTSA, 18 U.S.C. § 1839(5) (providing similar definition of misappropriation).

The Commission has also held that the elements of a misappropriation claim are: “(1) a protectable trade secret exists; (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 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.” *Certain Botulism Toxin Prods., Processes for Manufacturing or Relating to Same and Products Containing Same*, Inv. No. 337-TA-1145, USITC Pub. No. 5301, 2022 WL 22782262, at *29-30 (Mar. 1, 2022).

To show misappropriation through disclosure or use, a complainant must show that such disclosure or use was “substantial.” *See Certain Bone Cements and Bone Cement Accessories*, Inv. No. 337-TA-1175, Comm’n Op., USITC Pub. No. 5309, 2022 WL 23035704, at *13 (Mar. 1, 2002) (“*Bone Cements II*”) (“for both compilation and non-compilation trade secrets, the unauthorized use or disclosure of the trade secret must be ‘substantial’ to qualify as misappropriation”). 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.” *Raised Garden Beds*, 2024 WL 1434222, at *11.

2. Domestic Industry

a) Existence of a Domestic Industry

Trade secret misappropriation investigations at the Commission 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 (other than articles provided for in subparagraphs (B), (C), (D), and (E), 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). Thus, Corning must show an “industry in the United States,” as well as “actual substantial injury, or threat of substantial injury,” to that industry. *See, e.g., Rubber Resins*, Comm’n Op., 2014 WL 7497801, at *5 (“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.”). The assessment of whether an “industry . . . in the United States” exists under Section 337(a)(1)(A) requires a fact-specific inquiry into the “nature and significance” of the complainant’s domestic activities.⁶ *See Bone Cements I*, 2022 WL 22782263, at *10 (“the Commission will continue to follow

⁶ It is not necessary for the domestic activities to involve use the asserted trade secret in Section 337(a)(1)(A) investigations involving trade secret misappropriation. Rather, the domestic industry is the industry that is targeted, or which directly competes, with the unfair imports. *See TianRui*, 661 F.3d 1322, 1337 (Fed. Cir. 2011) (no statutory requirement that the domestic industry use the asserted trade secrets; the fact that the imported wheels directly competed with the complainant’s domestically manufactured wheels was sufficient); *see also Certain Airtight Cast-Iron Stoves*, Inv. No. 337-TA-69, EDIS Doc. ID 235399, USITC Pub. 1126, Comm’n Op. at 8 (Jan. 1981) (agreeing with the ALJ that “the domestic industry consists of that segment of the entire coal and wood-burning stove industry which was the target of the unfair acts and practices”); *Certain Apparatus for the Continuous of Copper Rod*, Inv. No. 337-TA-52, EDIS Doc. ID 217930, USITC Pub. No. 1017, Comm’n Op. at 55 (Nov. 1979) (scope of domestic industry determined by “realities of the marketplace” and including components that were part of the competing system).

Commission precedent, affirmed by the Federal Circuit, by analyzing the nature and significance of the complainant's domestic activities to determine if they are sufficient to constitute a domestic industry").

b) Substantial Injury to the Domestic Industry

In determining whether there has been a substantial injury to the asserted U.S. industry, the Commission has considered "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." *Certain Rubber Resins*, Comm'n Op., 2014 WL 7497801, at *30. There must be a "causal nexus" between "the unfair acts of the respondents and the injury." *Id.*; *Certain Bone Cements I*, 2022 WL 22782263, at *8.

In determining whether a "threat" to substantially injure the asserted U.S. industry exists, the "record must establish the existence of relevant conditions or circumstances from which probable future substantial injury can reasonably be inferred." *Corning Glass Works v. U.S. Intern'l Trade Comm'n*, 799 F.2d 1559, 1567-68 (Fed. Cir. 1986). The Commission may consider, *inter alia*, the following factors: "(1) substantial foreign manufacturing capacity; (2) ability of imported product to undersell the domestic product; (3) explicit intention to enter into the U.S. market; (4) the inability of the domestic industry to compete with the foreign products because of vastly lower foreign costs of production and lower prices; and (5) the significant negative impact this would have on the domestic industry." *Certain Rubber Resins*, Comm'n Op., 2014 WL 7497801, at *32. The threatened injury must be "substantive and clearly foreseen," and there must be "a causal connection between the action of the respondents and the threatened injury." *Id.* The Federal Circuit has rejected the proposition that "conceivable losses

of sales” establish the requisite injury to the domestic industry. *See Corning Glass Works*, 799 F.2d at 1568.

III. MOTIONS TO STRIKE

As discussed below, the parties seek to strike certain arguments and evidence pursuant to motions to strike filed after post-hearing briefs. In addition, Respondents raised certain objections to hearing testimony which the undersigned deferred to post-hearing briefing. These issues concern both Corning’s trade secret misappropriation claims as well as Respondents’ affirmative defenses.

A. Complainant’s Motion to Strike Untimely Contentions in Respondents’ Reply Post-Hearing Brief (Mot. 1433-060)

On March 27, 2026, Corning filed a motion to strike certain contentions in Respondents’ Reply Post-Hearing Brief (“Corning MTS1”) (EDIS Doc. ID 876877). On April 8, 2026, Respondents filed an opposition to the motion (“Resp. MTS1 Opp.”) (EDIS Doc. ID 878326) and Staff filed a response in support of the motion (“Staff MTS1 Resp.”) (EDIS Doc. ID 878291). Corning filed a reply on April 14, 2026 (“Corning MTS1 Reply”) (EDIS Doc. ID 878799).

Corning’s motion seeks to strike arguments in Respondents’ reply brief relating to Corning’s trade secret misappropriation claims (in particular, comparing certain “External Documents” to Caihong Display-produced Gen 5 documents and to argue that these drawings materially differ). *See* Corning MTS1 at 2-4. Corning argues that these affirmative arguments inappropriately go beyond the failure of proof arguments previously set forth by Respondents. *See* Corning MTS1 at 2-4; Corning MTS1 Reply at 2-6. Corning also seeks to strike certain arguments relating to Respondents’ equitable estoppel arguments. *See* Corning MTS1 at 5-9; Corning MTS1 Reply at 7-10.

Respondents argue, in opposition, that Respondents have always disputed the authenticity of the “External Documents.” MTS1 Opp. at 1-2. Respondents further argue that, even if these were new contentions, they were necessitated by Corning’s decision not to bring its forensic expert to trial and to rely on testimony from Mr. Zou and an argument that “comparing the External Documents it received from Mr. Gao to Caihong G5 documents demonstrated reliability.” *Id.* at 3 (emphasis omitted). Respondents argue that Caihong “produced all the G5 schematics it could locate,” and that there is no prejudice from setting forth observations regarding these documents. *Id.* at 3-4. With respect to equitable estoppel, Respondents argue that their reply arguments were “a product of responding to the many new arguments in Corning’s initial post-hearing brief.” *Id.* Respondents also argue that they have “long advanced the arguments Corning seeks to strike.” *Id.* at 5.

Staff supports Corning’s motion. With respect to the Gao-provided External Documents, Staff argues that Respondents argued failure of proof in their prehearing brief and initial post-hearing brief and only raised affirmative arguments for the first time in their reply brief. See Staff MTS1 Resp. at 2. Accordingly, Staff submits that these arguments are untimely and should be deemed waived. With respect to arguments relating to equitable estoppel, Staff likewise argues that the asserted “new contentions regarding a ‘tacit understanding’ between the parties,” regarding “Respondents’ reliance on Corning’s representations,” and “regarding evidentiary and economic prejudice” are untimely and should be deemed waived. *Id.* at 3.

The issues raised in Corning’s motion to strike are addressed in the context of the evidence as a whole in the relevant sections of this ID. In particular, the issues regarding the “External Documents” are addressed in Part IV.A.1.c *infra*. The arguments relating to equitable estoppel are addressed in Part VI.A *infra*.

B. Respondents' Motion to Strike Untimely Arguments in Complainant's Post-Hearing Briefing (Mot. 1433-061)

On April 2, 2026, Respondents filed a motion to strike certain contentions in Corning's post-hearing briefs ("Resp. MTS2") (EDIS Doc. ID 877757). On April 13, 2026, Corning filed an opposition to the motion ("Corning MTS2 Opp.") (EDIS Doc. ID 878754) and Staff filed a response in support of the motion ("Staff MTS2 Resp.") (EDIS Doc. ID 878655). Respondents filed a reply on April 16, 2026 ("Resp. MTS2 Reply") (EDIS Doc. ID 879303).

Respondents contend that the following contentions in Corning's post-hearing briefs are improper and should be stricken under Ground Rule 9.2.

- Corning's reply argument, relating to the isopipe trough, regarding "a line in Corning's G5 document" (Resp. MTS2 at 2-3). *See* Part IV.A.5 (TS 17.1).
- Corning's argument regarding the isopipe "dam-to-dam width" (Resp. MTS2 at 3, 5-6). *See* Part IV.A.5 (TS 17.1).
- Corning's argument regarding the edge directors (Resp. MTS2 at 4). *See* Part IV.A.6 (TS 20.1).
- Corning's argument regarding the term "outside steel" in relation to a document concerning the muffle (Resp. MTS2 at 4). *See* Part IV.A.3 (TS 15.1).
- Corning's lack of public availability reply argument relating to TS 16.1 (doghouse) (Resp. MTS2 at 5). *See* Part IV.A.4 (TS 16.1).
- Corning's lack of public availability argument relating to the diameter of the compression shaft (Resp. MTS2 at 6). *See* Part IV.A.7 (TS 22.1).
- Corning's argument, with respect to TS 17.1 (isopipe), that "weir and negative angles cannot be derived from other isopipe dimensions" (Resp. MTS2 at 6). *See* Part IV.A.17.1.
- Corning's arguments regarding Respondents' equitable estoppel defense, including that "Caihong failed to 'show that it would have sued Corning in 2010'"; that "Caihong requested release of any trade secret misappropriation issues as part of later agreements, and that Corning refused these requests"; and "new arguments" that "Caihong has suffered no prejudice due to Corning's failure to bring suit back in 2008." Resp. MTS 2 at 6-8. *See* Part VI.A.1.

Corning opposes Respondents' motion, arguing that the contentions at issue arose and/or are based on based on testimony at trial, were appropriately disclosed, responded to new arguments from Respondents, and/or are appropriate failure of proof arguments. Corning also argues that Respondents' motion is untimely to the extent it addresses arguments in Corning's initial post-hearing brief. Staff also opposes the motion, contending that Respondents' motion should be denied to the extent it seeks to strike portions of Corning's initial post-hearing brief and that Respondents fail to identify any improper arguments in Corning's reply brief. *See* Staff MTS2 Resp. at 2-3.

Respondents' motion is DENIED as to the arguments relating to the Design Trade Secrets. The undersigned agrees with Corning and Staff that Respondents fail to identify any improper arguments. Moreover, Respondents failed to move promptly with respect to multiple of these issues. In addition, the holdings of this ID do not depend on the resolution of this portion of Respondents' motion.

With respect to arguments regarding equitable estoppel, these arguments are addressed in the context of the equitable estoppel discussion, Part VI.A.2 *infra*.

C. Respondents' Motions to Strike Allegedly Improper Hearing Testimony of Dr. Bravman, Mr. Hudson, Ms. Markham, and Dr. Kudva

During the hearing, the undersigned granted permission for Respondents to move to strike certain testimony from Corning witnesses and for Corning to move to strike certain cross-examination testimony from Mr. Hudson. The issues relating to Dr. Bravman and Mr. Hudson were addressed in Order No. 82. The undersigned instructed that other issues relating to the hearing testimony of Ms. Markham and Dr. Kudva should be addressed in post-hearing briefs. *See* Tr. at 981:9-15.

In its initial post-hearing brief, Respondents identified the following hearing testimony as inappropriate based on testimony associating certain documents relating to Corning's asserted Operational Trade Secrets with particular trade secrets "and explain[ing] Corning's practice of them" (RIB at 99): Tr. (Markham) at 317:7-324:9, 330:11-338:10, 338:20-342:20, 344:18-348:13, 349:1-350:10, 350:24-351:17; Tr. (Kudva) at 391:16-398:25, 401:20-403:8, 404:20-405:4, 405:16-24, 406:8-14, 409:2-24, 411:21-412:9, 413:8-414:9, 415:5-417:8, 418:3-419:3, 419:18-420:18, 421:7-24. Respondents argue that this testimony is inappropriate because Corning did not previously associate any content of the SCP documents (*i.e.*, the documents on which the Operational Trade Secrets are based, *see* Part IV.B *infra*) with the asserted trade secrets and "tried to remedy this deficiency during the hearing." RIB at 99.

Corning argues that Ms. Markham and Dr. Kudva described "the information contained in the same specific pages of the SCP documents Corning previously identified" based on their personal knowledge, that Corning had identified them as knowledgeable about the operational trade secrets in interrogatory responses and designated them as corporate representatives, and that fact witness testimony that supports disclosed contentions is admissible. CRB at 4-5. Staff argues, *inter alia*, that Ms. Markham is a fact witness with knowledge concerning the documents and "doesn't believe that there's any reason to exclude this line of questioning," that "Respondents will have an opportunity to cross-examine her," Tr. at 323:1-11, and that "it's proper to allow this testimony," *id.* at 332:9-19. *See also id.* at 333:2-14 (same), 394:15-396:1 (same concerning Kudva testimony).

The motion is DENIED as to the following testimony, which Respondents have not shown is outside the scope of appropriate fact testimony and do not even relate to the Operational Trade Secrets: Tr. (Kudva) at 391:16-398:25 (testimony concerning [REDACTED])

scaling and attorney argument), 401:20-403:8 (TS 15.1, JX-0554C, CX-3384C), 404:20-405:4 (TS 16.1 (doghouse)), 405:16-24, 406:8-14 (TS 22.1 (isopipe compression system)); Tr. (Markham) at 317:7-324:9 (TS 19, JX-2260C and attorney argument).

The motion is also DENIED as to the following testimony, which Respondents have not shown is outside the scope of appropriate fact testimony and which does not unfairly link the documents discussed to the Operational Trade Secret documents in light of Corning's previous disclosures and the documents themselves⁷: Tr. (Kudva) at 409:2-24 (TS 59 (discussing [REDACTED])), 411:21-412:9 (TS 68 (general response to cracks and Rubicons)), 418:3-419:3 (TS 68, JX-2679C), 419:18-420:18 (TS 68, JX-2672C); Tr. (Markham) at 330:11-338:10 (TS 62, JX-2662C), 338:20-342:20 (TSs 62, 61, 68, JX-2651C), 344:18-348:13 (TSs 61, 62, 64, 68, JX-2652C), 349:1-350:10 (TSs 61, 62, 64, JX-2650C), 350:24-351:17 (TS 61, JX-2656C).

The motion is GRANTED as to the following testimony, which links the documents relied upon for an Operational Trade Secret to specific content of the document in a manner not fairly disclosed before the hearing⁸: Tr. (Kudva) at 413:8-414:9 (TS 59, JX-2673C (significance of individual "critical component" in document not fairly disclosed)), 415:5-417:8 (TS 59 and TS 68, JX-2660, significance of individual item in large page of data not fairly disclosed), 421:7-24 (TS 68, JX-2652C, significance of individual item in pages of voluminous instructions not fairly disclosed). Although Corning argues that that this testimony could have been elicited during Dr. Kudva's and Ms. Markham's depositions during fact discovery, it was Corning's responsibility to fairly disclose its trade secrets in its Identification of Trade Secrets (and related

⁷ See RX-6749C (Complainant's Fourth Amended Identification of Trade Secrets); Ex. 5 Disclosure (Mot. No. 1433-007, Ex. 5, Appendix C (EDIS Doc. ID 848338)).

⁸ See RX-6749C; Ex. 5 Disclosure.

Ex. 5 Disclosure). *See* Order No. 22; RX-6749C; Ex. 5 Disclosure. Although some elaboration is permitted through fact testimony or expert disclosures, and although the narrative description of the trade secret can itself provide guidance, in these instances the linkage of specific portions of documents to the asserted trade secrets was not fairly disclosed by Corning.

IV. TRADE SECRET MISAPPROPRIATION

Each of the asserted trade secrets are directed to the design and/or use of a “FDM” (fusion draw machine), which is “equipment used in the forming process” (part of the “hot-end process”) of the glass substrates at issue. *See* generally CIB at xviii, 8-9.

An exemplary fusion draw machine is shown in Corning’s U.S. Patent No. 8,627, 684 (“the ‘684 patent”). *See* Complaint Ex. 2. As stated in the ‘684 patent, Corning “developed a process known as the fusion process (e.g., overflow downdraw process) to form high quality thin glass sheets that can be used in a variety of devices like flat panel displays.” ‘684 patent at col. 1:12-15. Figure 1 of the ‘684 patent provides an example of a “glass manufacturing system 100 that implements the fusion process”:

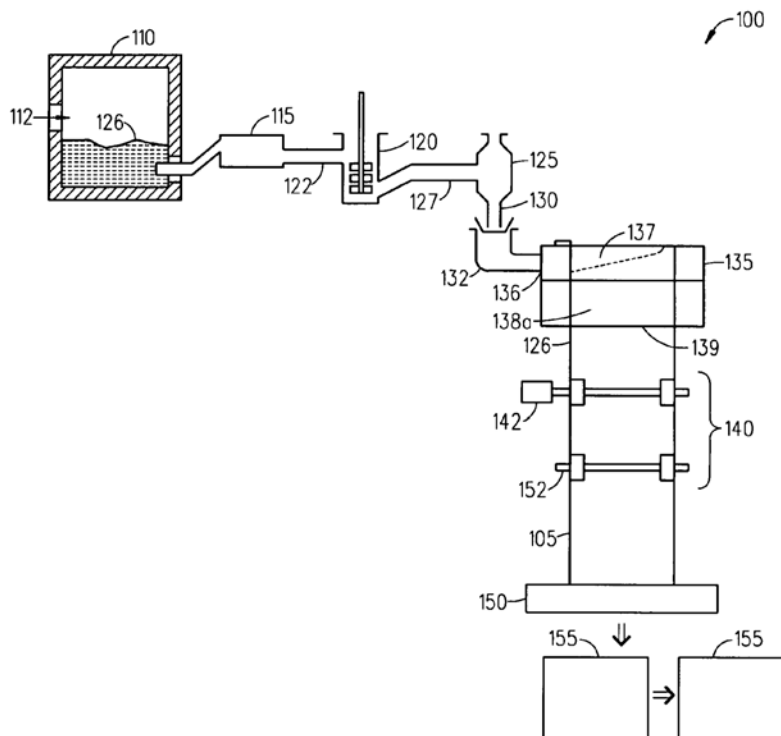


FIG. 1 (PRIOR ART)

Id. at Fig. 1, col. 1:22-43. Referring to Figure 1, the patent describes the fusion draw technology as follows:

The glass manufacturing system 100 includes a melting vessel 110, a fining vessel 115, a mixing vessel 120 (e.g., stir chamber 120), a delivery vessel 125 (e.g., bowl 125), a forming vessel 135 (e.g., isopipe 135), a pull roll apparatus 140 and a traveling anvil machine (TAM) 150.

The melting vessel 110 is where the glass batch materials are introduced as shown by arrow 112 and melted to form molten glass 126. The fining vessel 115 (e.g., finer tube 115) has a high temperature processing area that receives the molten glass 126 (not shown at this point) from the melting vessel 110 and in which bubbles are removed from the molten glass 126. The fining vessel 115 is connected to the mixing vessel 120 (e.g., stir chamber 120) by a finer to stir chamber connecting tube 122. And, the mixing vessel 120 is connected to the delivery vessel 125 by a stir chamber to bowl connecting tube 127. The delivery vessel 125 delivers the molten glass 126 through a downcorner 130 to an inlet 132 and into the forming vessel 135 (e.g., isopipe 135).

Complaint, Ex. 2 ('684 patent) at col. 1:22-43. The forming vessel, shown in the figure below, is an isopipe that is V-shaped at the bottom such that molten glass overflows the vessel, running down two sides and fusing at a point called the root to form sheets of glass. *See id.* at Fig. 2, col. 1:44-54.

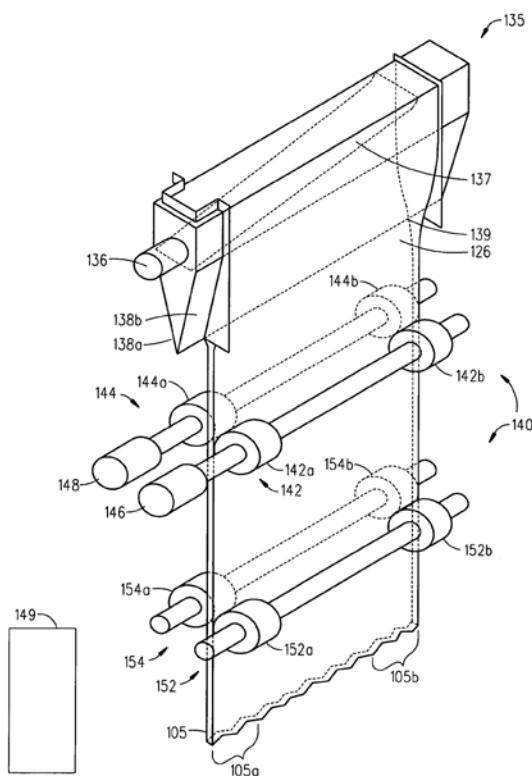


FIG. 2 (PRIOR ART)

Id. at Fig. 2; *see generally* SIB at 6-8.

Corning's trade secret misappropriation allegations address three categories of trade secrets: (1) the Design Trade Secrets, which Corning alleges were acquired by Caihong Display through the "PicVue" pathway (*see* CIB at 32-39) and which relate to the design of the FDM; (2) the Operational Trade Secrets, which Corning alleges were acquired by Caihong Display through the "SCP Pathway" (*id.* at 39-47) and which relate to operation of the FDM; and (3) the Isopipe Trade Secret (TS 19), which Corning alleges was acquired by Caihong Display through

the “HLT Pathway” (*id.* at 47-51) and which relate to “scaling up” an FDM to produce larger sized panels. *See* CIB at 18.

With respect to the first two categories, Corning asserts in this investigation that Caihong, in the 2007-2008 timeframe, misappropriated Corning’s proprietary information and trade secret designs relating to an FDM to produce “Generation 5” glass (“Gen 5”), and that Caihong then continued to use these trade secrets in the 2010’s and to the present when developing and using their FDMs for later generations of glass, including Gen 7.5 and Gen 8.5. *See* CIB at 37-47. With respect to the Isopipe Trade Secret (TS 19), Corning alleges that this trade secret was acquired by a former Corning employee, HLT, who then provided that information to Caihong Display for use in scaling up their FDM to make Gen 8.5 glass. *See* CIB at 47-49.

The other remaining Respondents in this investigation (CHOT, CSOT, and TCL) either use glass substrates to make panels for devices such as TVs, monitors, and computers (CHOT and CSOT), or use the panels to produce TVs (TCL). Corning’s allegations against these Downstream Respondents are based on their use of Caihong Display glass substrates in their products.

A. The Design Trade Secrets

The asserted Design Trade Secrets in this investigation are TS 12.1, TS 15.1, TS 16.1, TS 17.1, TS 20.1, TS 22.1, TS 24.1, TS 30.1, TS 35.1, TS 35.2, TS 41.1, TS 51, and TS 52.2. *See* CIB at 14.

Part IV.A.1 below discusses certain general issues common to the analysis for all the Design Trade Secrets, including evidence relating to the asserted “PicVue Pathway” of misappropriation. Parts III.A.2-14 discuss the asserted Design Trade Secrets on an individual

basis. For the reasons discussed, the evidence shows misappropriation, by Caihong⁹, by a preponderance of the evidence of TS 15.1, TS 16.1, TS 17.1, TS 22.1, TS 24.1, TS 30.1, TS 35.1, TS 35.2, TS 41.1, and TS 51. The evidence does not show misappropriation by a preponderance of the evidence as to TS 12.1, TS 20.1, and TS 52.2.

1. General Issues Relating to the Design Trade Secrets

a) Background: The Asserted PicVue Pathway

Corning asserts that Caihong Display acquired the asserted Design Trade Secrets relating to the design of Corning's Gen 5 FDM through the "PicVue pathway." *See* CIB at 32. According to Corning's allegations, PicVue¹⁰ was a Taiwanese company that, in or around 1999, purchased confidential engineering drawings and parts lists of Corning's FDM from Corning employee Jonathan Sanders (who had taken these drawings without authorization) through certain intermediaries (Lin and Price), and who "tried to enter the LCD glass industry in the late 1990's and early 2000s." *Id.* at 32-33. PicVue's alleged misappropriation of Corning's designs resulted in a lawsuit by Corning against PicVue and a German company, Eglasstrek GmbH (accused of helping PicVue design LCD manufacturing machines) in the Western District of New York. *See id.* at 33; CX-2719C (W.D.N.Y. Complaint). That litigation settled in 2005, "with PicVue and Eglasstrek agreeing to [REDACTED] and [REDACTED] [REDACTED]." *Id.* at 33-34; CX-2723C; CX-2724C; CX-3035C. In late 2005, the U.S. Department of Justice

⁹ The Downstream Respondents are addressed in Part IV.D *infra*.

¹⁰ "PicVue" refers to PicVue Electronics, Ltd., PicVue OptoElectronics Int'l, Inc. and their affiliates. CIB at 32 n.8.

prosecuted Sanders, Lin, and Price. All three individuals pleaded guilty. *See* CIB at 34; CX-0503; CX-0504; CX-0505; Tr. (Burke) at 134:12-135:21.

Corning asserts that in 2007, Irico¹¹ was able to purchase the Design Trade Secrets through payment to a Mr. Liang Zhaojin (“Liang”), who worked for Hebei Dongxu Machinery Equipment Co., Ltd. (“Dongxu”) at the Shaanxi Factory” and that Dongxu “close[d] the deal.” CIB at 37. Dongxu is a Chinese company that assisted Caihong with at least some parts of its Gen 5 production equipment in the 2007-2008 timeframe at the factory in Shaanxi (the “Shaanxi Factory,” *see* CIB at xxi).¹² Corning alleges that Caihong then used the Design Trade Secrets to design its first fusion production line and continues to use those trade secrets for its current products. *See* CIB at 1-2, 34.

Corning’s allegations rest on certain documents and information obtained from three sources at the Shaanxi Factory—Gao Chao (“Gao”), Sun Yue (“Sun”), and Seung-Geun Park (“Park”)—all of whom are alleged to have worked for Dongxu or Irico. *See* CIB at 34 (Gao was a Dongxu engineer, Sun “was [REDACTED],” Gao and Sun are “[REDACTED] [REDACTED] who worked at the Shaanxi Factory”); *id.* at 36 (Gao and Park worked for Dongxu); *id.* at 40 (Park was Dongxu employee). Corning’s source for its information about the alleged payment to Liang was [REDACTED] [REDACTED], and thereafter provided Corning with certain electronic files that purportedly showed Caihong Display’s FDM designs. *See* CIB at 34, 37. Corning contends that

¹¹ As discussed in Part I.B.2 *supra*, Corning refers to Caihong Display or Caihong as “Irico.”

¹² The parties disagree as to whether Dongxu assisted with only the cold-end process or with both the hot-end and cold-end processes. *See* CIB at 37, 43, 52; RIB at 19 (Dongxu “only supplied Caihong with the cold-end/post-processing equipment for its Gen 5 line”). The FDM design at issue relates to hot-end processing. *See also* RX-0996C.0001 ([REDACTED] indicating that Dongxu is a Chinese company).

the electronic files provided by Gao to Corning included various PicVue and Irico drawings. *See* CIB at 34-35. These Gao-provided drawings are key evidence in this investigation and will be referenced herein as the “Gao PicVue” and “Gao Caihong” drawings or, occasionally, as the “External Documents” (Caihong Display’s terminology). Park provided information to Corning in or around 2009 that Corning alleges supports the PicVue pathway allegations. *See* CIB at 36-37; CX-4991C (Park Dep. Tr.) at 194:20-23.¹³

The record shows criminal and civil actions in Korea and China in the 2009-2013 time period relating to misappropriation of certain Corning FDM-related trade secret information. Gao provided testimony in certain of the Korean proceedings. *See* CIB at 35 (stating that Gao testified in the Daejeon District Court in connection with Corning’s lawsuit against Dongxu); CX-2742C, at 30 (Korean District Court decision referring to “Kao Chao” testimony). These actions led to a 2009 criminal conviction of Mr. Park and SCP employee Mr. Choi¹⁴ in Korea for trade secret misappropriation¹⁵; a related civil case against Park and others in Korea¹⁶; a 2012 civil case brought by Corning and SCP against Dongxu¹⁷; and a civil case brought by Corning against

¹³ As set forth by Corning, [REDACTED] discussed below. CIB at 36.

¹⁴ As set forth by Corning, “SCP was an equity venture between Samsung and Corning that was licensed to use Corning’s trade secrets and made LCD glass in Korea.” *Id.* at 39.

¹⁵ Documents relating to the criminal investigation include two prosecutor’s investigative reports, CX-2667C (9/17/2008, Seoul Southern District Prosecutor’s Office, Report of Investigation (“Confirmation of Materials that were Leaked by Suspect Jae-Young Choi to Suspect Geong-Geun Park”) and CX-2696C (9/25/2008 Seoul Southern District Prosecutor’s Office, Report of Investigation (“Confirmed Use of Trade Secrets by Suspect Seong-Geun Park)). The court judgement is at CX-2734 (Jan. 22, 2009 judgment by the Seoul Southern District Court sentencing the defendants Mr. Choi and Mr. Park to one year, six months imprisonment). The criminal conviction of Park and Choi concerned certain of the Operational Trade Secrets documents, discussed in Part IV.B below.

¹⁶ The court judgment in the civil case against Park and others is at CX-2810C (Feb. 8, 2012 Judgment of Daejeon District Court). The parties in the civil action stipulated to certain facts and the court ordered the defendants to refrain some certain activities. *See* CX-2810C at 10.

¹⁷ The Korean District Court judgment in the 2012 case by Corning and SCP against Dongxu, finding trade secret misappropriation, is at CX-2742C (June 26, 2013). Corning and Dongxu later settled this

Dongxu in China.¹⁸ Corning's civil cases against Dongxu were ultimately settled, with [REDACTED]

[REDACTED] in connection with certain flat panel display glass products.¹⁹

b) General Evidentiary Issues Regarding Witness Statements and Testimony

(1) The Parties Positions

The parties dispute whether and the extent to which certain evidence received from the Corning "informants" discussed above (Gao, Sun, and Park) can be relied upon for purposes of Corning's misappropriation claims here. This evidence includes various statements and declarations provided in or around the time of the legal proceedings discussed above.

Gao and Sun were not deposed in this investigation, but certain statements made by them [REDACTED] were admitted into the record (with issues regarding their proper weight reserved) pursuant to Order No. 76. *See* Order No. 76. Mr. Park was deposed in this investigation and his deposition testimony was admitted pursuant to Order No. 71. Certain of Mr. Park's declarations were also admitted as context for his deposition testimony, also with any issues regarding their proper weight reserved. *See* Order No. 76 at 7-8. Mr. Zou, Corning's counsel who had [REDACTED]

litigation. *See* CX-2660C (or RX-0996C), CX-2803C, CX-3589C; CX-2659C; Tr. (Burke) at 144:1-145:25.

¹⁸ *See* Compl. ¶¶ 140-142; RRB at 90. It also appears that there were also related criminal proceedings against Dongxu in China. *See* CX-2660C, at 20.

¹⁹ *See* RX-0996C.0019-.0020 [REDACTED]

[REDACTED] (indicating that [REDACTED]
[REDACTED]; *id.* (indicating that [REDACTED]
[REDACTED]; RX-0996C.0005 (indicating [REDACTED]
[REDACTED]; CIB at 72 ([REDACTED])).

[REDACTED], provided testimony at the hearing in this investigation.

Respondents contend that Corning's misappropriation claims are unfounded and argues that the evidence relied upon by Corning is unreliable and improper. Respondents argue that Corning's case "rests entirely on statements taken in foreign jurisdictions from compensated and untrustworthy 'informers,' sometimes at Corning's outside counsel's office rather than in connection with any legal proceedings and associated oversight." RIB at 10-11. Respondents argue that the statements and testimony of Mr. Zou and Mr. Gao should be given little or no weight, that Mr. Gao is not credible, and that Corning's evidence is contradicted by testimony from Caihong witnesses. *Id.*

Respondents further take issue with expert testimony that relies upon allegedly improper fact testimony. Respondents argue that Corning's technical expert, Dr. Bravman, "admitted that he did not consider any Caihong G5 documents for his past use opinions" and "solely relied on External Documents he attributed (based on counsel's representations) to Mr. Gao." *Id.* at 12. Respondents question the authenticity of the documents analyzed by Dr. Bravman, and assert that "Corning has not shown that any External Document came from Gao or originated with Shaanxi Caihong." RIB at 13-14; RRB at 7. Respondents further argue that there is no evidence that Caihong Display knew or should have known that any of the documents (including the "PicVue" designated documents) contained trade secrets. *Id.* at 13. Respondents argue that there is also no evidence that the "PicVue" files relied upon came from Corning. Respondents argue that Mr.

Park 's testimony should be given little, if any weight, because he “is admitted thief and liar” and that Corning “helped him draft” certain versions of events. RIB at 13-14.

Corning argues that Zou and Gao are credible witnesses. *See* CRB at 6. Corning argues that the ALJ had the opportunity to observe Zou’s demeanor at the hearing and that he did not lie with respect to [REDACTED]. *Id.* at 6-7. Corning argues, *inter alia*, that Gao’s statements are corroborated by the Gao PicVue and Gao Caihong drawings, as well as by Zou’s testimony. *Id.* at 7-9. Corning further argues that the evidence establishes the authenticity of the Gao PicVue and the Gao Caihong documents and supports Dr. Bravman’s reliance on them. *Id.* at 9-10.

Staff argues that Corning has met its burden to show misappropriation and use of the PicVue documents based on “Dr. Bravman’s analysis of the PicVue and Caihong Display drawings provided by Gao as compared to Corning’s own proprietary engineering drawings.” SIB at 20. Staff also relies on the testimony of Mr. Zou, and on the testimony of Mr. Mulvenon, Corning’s expert on China and industrial espionage, to support a finding of misappropriation. SIB at 35.

(2) Evidentiary Issues: Discussion

For the reasons discussed below, the undersigned has determined that the fact witness statements of Gao or Sun, as to which Respondents did not have an opportunity to cross-examine Gao or Sun, should be provided no weight for purposes of proving the truth of the matters therein. The undersigned has relied upon the testimony of Mr. Zou as to how Corning obtained the Gao PicVue and Gao Caihong documents, but not on his evaluation of whether Gao’s and

Sun's statements are truthful. Also discussed below is the extent to which expert testimony referencing these sources has been relied upon.

Gao and Sun Statements and Interview Transcripts

With respect to the content of the witness statements and interview transcripts of Gao and Sun, two Dongxu employees, the undersigned has determined that no weight should be provided to this evidence for purposes of proving the truth of the matters contained therein. *See* CX-2740C ([REDACTED]); CX-2738C ([REDACTED]); CX-2743C ([REDACTED]); CX-2735C ([REDACTED] [REDACTED]). These individuals [REDACTED] indicating that Dongxu provided technical assistance to Caihong's front and rear processes, that PicVue design drawings were converted to Caihong drawings through, for example, changing letterheads and that Caihong had purchased the PicVue drawings through Liang. Although Order No. 76 granted Respondents' motion to preclude admission of most of the declarations, statements, and transcripts of many witnesses relating to the Korean litigation, it did not preclude admission of Gao's and Sun's statements at the motion *in limine* stage, given the timing of their statements, Corning's attempt to obtain deposition testimony from them, the fact that their statements may potentially have been admissions against interest, and that a witness would appear at trial (Mr. Zou, a lawyer for Corning) who could testify about the circumstances under which Gao and Sun provided their statements. *See* Order No. 76. Order No. 76 expressly reserved, however, any determination as to the proper weight that should be accorded this evidence. *See* Order No. 76 at 7 n.8.

Having reviewed and considered the full evidentiary record, the undersigned has determined that no weight should be provided to Gao and Sun's statements and interview

transcripts. Declarations or similar evidence from persons not present at the hearing and never available for cross-examination by the other parties are commonly precluded. *See, e.g., Certain Botulinum Toxin Prods. & Processes for Mfg. or Relating to Same*, USITC Inv. No. 337-TA-1313, Order No. 47, 2024 WL 841059, at *3 (Feb. 16, 2024) (“The declarations and witness statements [from a prior case] are not admissible.”); *Certain Replacement Auto. Lamps*, USITC Inv. No. 337-TA-1291, Order No. 32, 2022 WL 3336093, at *1 (Aug. 10, 2022) (“If Complainants intended to rely on the [declaration] of Mr. Yoon, they should have identified him as a fact witness for the hearing.”); *Certain Elec. Devices, Including Smartphones, Computs., Tablet Computs., & Components Thereof*, Inv. 337-TA-1373, Order No. 53 at 6–7 (Aug. 26, 2024) (noting “the principle that critical witnesses should appear in-person in a trial so that they may be subject to cross-examination and their knowledge (and credibility) tested consistent with Fed. R. Evid. 602 and 702 and, Commission Rules 210.37(a) and (b). ... Until and unless Mr. Hong and Mr. Wan can be cross-examined on the testimony they attempted to provide through their Declarations, the Hong and Wan Declarations ... are precluded from admission into evidence.”).

While, under appropriate circumstances, declarations or similar evidence can potentially be accepted, the circumstances considered as a whole do not support providing weight to the Gao and Sun statements and interview transcripts here. The nature of the allegations in this investigation, together with the evidence regarding, *inter alia*, the relationship between Gao and Dongxu at the time Gao provided the statements,²⁰ presents a significant unfairness issue in according weight to Gao’s and Sun’s statements. *See supra*; 5 U.S.C. § 556(d) (“A party is

²⁰ *See* Tr. (Zou) at 218:11-16 ([REDACTED]). In addition, it appears [REDACTED]. *See* Tr. (Zou) at 216:14-23.

entitled to . . . conduct such cross-examination as may be required for a full and true disclosure of the facts.”). Accordingly, no weight has been provided to Gao’s and Sun’s written statements and interview transcripts for purposes of establishing the truth of the matters therein.

Testimony of Mr. Zou

Corning relies on Mr. Zou to attest to the truthfulness of Gao’s and Sun’s statements, as well as to testify regarding the documents provided to Corning through [REDACTED]. See CIB at 35.

The undersigned has determined that no weight should be provided to Mr. Zou’s views regarding the veracity of information provided by Gao and Sun in their interview transcripts and written statements. As discussed above, the statements and interview transcripts of Gao and Sun are not reliable and appropriate evidence for purposes of this investigation of Caihong Display. It would be similarly improper, under the circumstances here, to accord weight to Mr. Zou (Corning’s lawyer)’s views of those statements.

The undersigned does, however, provide weight to Mr. Zou’s testimony that [REDACTED] and that this material was preserved by Corning’s counsel. See Tr. (Zou) at 171:18-172:7, 177:13-16, 177:24-178:20, 179:2-24, 224:3-225:18; CIB at 35.

Testimony of Mr. Park

Corning relies upon certain deposition testimony of Mr. Park (from this investigation) and declarations (made in 2009) to support its claim that Caihong Display purchased and used the Design Trade Secrets. See CIB at 36-37.²¹ Corning states that [REDACTED]

²¹ Mr. Park’s earlier declarations were admitted in this investigation as context for the admitted deposition testimony. The undersigned expressly reserved the weight to be provided to the substantive content of any of the declarations. See Order No. 76 at 8 n.9.

[REDACTED]

[REDACTED] *Id.*

Respondents argue that Mr. Park is an unreliable witness and that his testimony should be given “little, if any, weight.” RIB at 14. Respondents argue that he did not testify at the hearing and that “Corning asks the ALJ to ignore that he is a liar and to just believe the version of events Corning helped him draft.” *Id.*

Here, the undersigned provides little to no weight regarding Mr. Park’s declaration stating that the Shaanxi Caihong Gen 5 FDM design was based on the PicVue documents and that Irico obtained PicVue documents through Liang. *See* CX-2741C, para. 4 (Park deposition Exhibit 15); CX-4991C (Park Dep. Tr.) at 53:22-54:13. Although Mr. Park’s 2009 declaration includes highly specific information regarding PicVue, at the time of his recent deposition in this investigation, Mr. Park stated that he had no recollection of the name “PicVue.” *See* CX-4991C (Park Dep. Tr.) at 173:6-9.²² Thus, Caihong Display was not provided a fair opportunity to cross-examine him on these assertions.

Other aspects of Mr. Park’s deposition testimony, where sufficiently corroborated, have been given weight and are referenced in the discussion of individual trade secrets below.

²² Mr. Park also testified that he was not an expert in LCD glass and that he is not able to “understand the drawing” when looking at it overall, also undermining the persuasive weight of his declarations. CX-4991C at 194:20-195:18.

Testimony of Mr. Mulvenon

Dr. Mulvenon, Corning’s expert on China and industrial policy, testified partly in reliance on the Gao, Sun, and Park materials. Tr. (Mulvenon) at 92:21-93:3, 97:13-18, 98:3-6, 107:7-11.²³

Under the circumstances here, the undersigned accords Dr. Mulvenon’s testimony no weight as to establishing the truth of the statements by Gao, Sun, and Park. *Cf. Certain RF Capable Integrated Circuits & Prods. Containing the Same*, Inv. No. 337-982, Order No. 23, 2017 WL 1161024, at *3 (Mar. 9, 2017) (precluding expert from characterizing third-party declarations as “that would simply amount to bringing the information in the declarations in through the back door when they were denied entrance at the front”); *Certain Vaporizer Devices, Cartridges Used Therewith, & Components Thereof*, Inv. No. 337-TA-1372, 2024 WL 3220195, at *7 (May 29, 2024) (precluding reliance by expert on inadmissible deposition transcript from a different litigation where “NJOY cannot cross-examine Mr. Wang or rebut his testimony”). While Mr. Mulvenon’s view that Corning’s allegations are “consistent with” Chinese industrial espionage cases (Tr. at 101:5-14) has been taken into account and is credible and consistent with Dr. Bravman’s testimony, Mr. Mulvenon’s testimony is not relied upon to establish the truth of statements by Gao, Sun, and Park.

Testimony of Dr. Bravman

Dr. Bravman, Corning’s technical expert, testified that similarities between the PicVue and Caihong Gen 5 documents provided by Gao supported a finding of misappropriation and

²³ Order No. 76 did not preclude Mr. Mulvenon from relying on inadmissible evidence but did not address any issues as to the weight of this evidence. For the reasons discussed above, the undersigned has determined that this testimony should not be accorded any significant weight as to the truth of the Gao, Sun, and Park materials.

substantial use. Dr. Bravman also testified as to certain similarities he observed between these documents and Caihong Display's Gen 7.5 and Gen 8.5 designs..

As discussed below, Dr. Bravman's analysis has been relied upon and, when assessed and combined with the other evidence of record, is persuasive evidence of misappropriation as to certain of the Design Trade Secrets.

c) The Gao PicVue and Gao Caihong Documents as Evidence of Caihong's Misappropriation

The parties dispute, as a general matter, whether the Gao PicVue and Gao Caihong documents are reliable evidence of misappropriation. As will be shown in the discussion of individual trade secrets, Dr. Bravman's analysis shows clear and substantial similarities between certain of Corning's FDM designs (as shown by Corning design documents) and the Gao PicVue and Gao Caihong documents provided by Gao [REDACTED]. *See* Part IV.A.1.b *supra* (discussing Gao and provision of documents). Dr. Bravman relies upon these similarities to show substantial use by Caihong of Corning trade secret information in their Gen 5 FDM and subsequent generation FDMs.

Respondents contend that this evidence is unreliable because Mr. Zou did not confirm that any of these documents came from the devices provided by Gao and that the [REDACTED] [REDACTED] and there is no evidence of whether the devices were [REDACTED] [REDACTED]. *See* RIB at 12-13 (citing Tr. (Zou) at 177:13-178:20, CX-3600C); *see also* RRB at 4-5, 7, 8-9. Respondents further contend that there is no evidence that Caihong knew or should have known that these documents contained Corning's trade secrets and that Corning's reliance on public knowledge of the PicVue legal proceedings in the United States is insufficient. *See id.* at 13. In their reply post-hearing brief, Respondents argue that the fact that the Gao documents contain "PicVue" and "Shaanxi Caihong" title blocks is unpersuasive

because Corning produced these documents. *See* RRB at 5-6. Respondents also argue that “[c]ounsel for Caihong requested access to the physical devices after (belatedly) being informed of their existence and Corning refused” (RRB at 7). Respondents then argue, at length, that a comparison of the Gao-provided documents to Gen 5 documents produced by Caihong shows that “they describe entirely different FDMs,” and identify certain comparisons that Respondents contend show a “different FDM design.” RRB at 9-13.

Corning argues that Respondents’ objections are unfounded. Corning contends that under Ground Rule 9.5.6, “[a]ll documents that appear to be regular on their face shall be deemed authentic, unless it is shown by particularized evidence that the document is a forgery or is not what it purports to be” and that Respondents have provided no such evidence. CRB at 9-10. Corning argues that Corning established the documents’ authenticity through the testimony of Zou. *Id.* Corning argues that other evidence corroborates that “the drawings relied on by Bravman were authentic copies of Irico and PicVue drawings provided by Gao” including the title blocks on the drawings, the numbering format on the Irico drawings, the fact that the drawings reflect Corning’s designs, and that the drawings provided by Gao reflect Gen 5 technology (the same generation size that Shaanxi Irico was designing when Gao worked there). CRB at 10-11. Corning further argues that there is “ample evidence” that Irico knew the PicVue drawings contained Corning’s trade secrets, including the fact that Gao [REDACTED] [REDACTED] Irico’s “deceptive actions in replacing the PicVue logo with Irico’s,” and other evidence of “guilty knowledge.” CRB at 11-12. Further, “Irico’s conduct matched the methods and tradecraft of Chinese companies engaged in corporate espionage.” CRB at 12; CIB at 52.

As discussed in Part III.A *supra*, Corning also moved to strike Respondents’ comparison of the Gao PicVue and Gao Caihong documents with the Caihong-produced Gen 5 documents

(RRB at 9-13) as new affirmative arguments, made for the first time on reply, that inappropriately go beyond the failure of proof arguments set forth by Respondents. *See* Corning MTS1 at 2-4.

Staff agrees with Corning that Dr. Bravman's analysis, including Dr. Bravman's comparison of the Gao-provided documents to "Corning's own proprietary engineering drawings" shows that "Corning's improperly acquired engineering drawings were used in the design of Caihong Display's Gen 5 FDM." SRB at 5. Staff also agrees with Corning that Respondents' affirmative arguments regarding differences in design drawings should be stricken. *See* Staff Resp. MTS1 at 2.

Upon review of the submissions and evidence of record, the undersigned agrees with Corning and Staff that the Gao PicVue and Gao Caihong drawings are reliable evidence that, combined with the other evidence of record, supports a finding of misappropriation as to certain of the Design Trade Secrets.

There is significant circumstantial evidence that the Gao-produced documents were used to advance Caihong's development of its Gen 5 FDM. It is undisputed that Gao was a Dongxu employee working at the Shaanxi Caihong Factory and Zou testified based on personal knowledge regarding the receipt of documents from Gao. *See* Part IV.A.1.b *supra* (discussing Zou testimony); JX-0029C (Xu Dep. Tr.) at 129:16-136:18 (Caihong Display witness testifying that Gao was a Dongxu employee who worked with the Caihong forming group for 2-3 months in 2007).²⁴ Given the lack of any credible indication that Corning tampered with the documents, the record is sufficient to show that the documents analyzed by Dr. Bravman are documents

²⁴ Gao and Xu were also co-inventors on a Shaanxi Caihong patent. *See* CX-3310; CRB at 7; JX-0029C (Xu) at 152:2-157:11.

received from Gao. *See* CRB at 9-11.²⁵ The evidence also shows that Dongxu assisted with the Shaanxi Caihong Factory’s Gen 5 line. While Respondents contend that Dongxu only assisted with cold-end processing equipment (RIB at 19), a preponderance of the evidence indicates that Dongxu’s involvement was more extensive and included hot-end processing assistance. *See* CX-4991C (Park Dep. Tr.) at 29:9-23 (“I provided engineering services for the front-end process. And I provided answers to questions posed by Irico employees regarding production.”).²⁶

The undersigned also finds persuasive the additional circumstantial evidence of use identified by Corning, including that the title blocks on the Gao-provided drawings reflect the names PicVue and Shaanxi Caihong; that the Gao Caihong drawings use the “DN-DB” numbering format characteristic of Caihong’s design drawings and reference a particular “DN-DB” drawing number referenced in Caihong’s production (*see* CRB at 10, CIB at 35-36, Tr. (Gordon) at 1303:2-1305:3); that the drawings reflect Gen 5 fusion draw technology (*see* CRB at 11); and the lack of persuasive evidence of independent development. *See* Part IV.A.1.d *infra*; *see generally Certain Crawler Cranes*, Inv. No. 337-TA-887, Comm’n Op. at 56 (May 6, 2015) (EDIS Doc. ID 556530) (citing *Greenberg* for proposition that trade secret misappropriation may be based on circumstantial evidence); *Greenberg v. Croydon Plastics Co.*, 378 F. Supp. 806, 814 (E.D. Pa. 1974) (trade secret misappropriation cases “in most cases” involve a “delicate construct of circumstantial evidence”); *UniRAM Tech., Inc. v. Taiwan Semiconductor Mfg. Co.*, 617 F.

²⁵ Respondents’ arguments on reply that they were refused access to the devices (RRB at 7) should have been raised during discovery if this was a concern.

²⁶ As discussed below regarding the Operational Trade Secrets, the evidence shows that Park, another Dongxu employee working at the Caihong plant, improperly obtained certain documents relating to Corning’s hot-end processing from SCP. *See* IV.B.1 *infra*. In light of Park’s corroborated testimony on this matter, Xu’s suggestion that Dongxu was not involved with hot-end processing (apart from Gao’s purported limited involvement) casts doubt on the credibility of Xu’s testimony. *See* JX-0029C (Xu Dep. Tr.) at 137:5-138:1. The undersigned also credits Mr. Park’s testimony regarding certain photographs discussed at his deposition. *See, e.g.,* CX-4991C at 25:12-29:7, 33:3-37:16.

Supp. 2d 938, 944 (N.D. Cal. 2007) (“Circumstantial evidence is particularly appropriate in trade secret cases.”).

Further, given that the Gao PicVue and Gao Caihong documents contained drawings with “PicVue” title blocks (which Dr. Bravman shows were largely just replaced with Shaanxi Caihong title blocks), the public knowledge about PicVue’s misappropriation of Corning’s trade secrets, and the evidence that the Gao PicVue and Gao Caihong documents contain Corning’s trade secrets (as will be discussed for the individual trade secrets), the evidence indicates by a preponderance that Dongxu and Caihong knew the Gao-provided documents contained Corning trade secrets.²⁷ See CIB at 38; *PPG Indus. Inc. v. Jiangsu Tie Mao Glass Co.*, 2020 WL 1526940, at *12, *22 (W.D. Pa. Mar. 31, 2020) (finding, in trade secrets case, that removal of logo “demonstrates intentionality” and “malice”); Tr. (Burke) at 136:9-137:10; CX-3499-CX-3502, CX-3504-CX-3506. Knowledge is also shown by the fact that [REDACTED] [REDACTED].²⁸ Moreover, the evidence shows that Caihong was well aware of Corning as the industry leader. See Tr. (Mulvenon) at 88:5-17; CDX-0002C (discussing CX-3259C); CX-3259C at 7, 9 (2008 keynote speech by Caihong Group representative on “The State of the Art of TFT-LCD Glass Substrates”) (stating that “[t]here are only five TFT-LCD

²⁷ Respondents have not argued that Caihong was somehow unaware of Dongxu’s activities at the Shaanxi Caihong plant. Such a contention would be implausible given, *inter alia*, the evidence of substantial interactions between Dongxu and Caihong, including Dongxu’s investment in Caihong. See, e.g., JX-0029C (Xu) at 139:1-140:16, 143:15-144:7, 144:18-145:15, 146:16-22 (Dongxu “had a little shares in it”).

²⁸ See CRB at 11; CX-3197C, at 1 ([REDACTED]) stating that parts of Caihong Electronic Glass Co. Ltd’s production line were based on “the design and manufacturing drawings of Picvue (the source of such blueprints is Corning Incorporation).” Moreover, the evidence shows that Caihong was specifically informed by Corning in 2011 of Corning’s trade secret misappropriation claims against Dongxu. See JX-2388C (Aug. 24, 2011 letter). Thus, Caihong had knowledge after 2011 of Dongxu-related misappropriation issues but continued to use the Gen 5 equipment.

glass substrate manufacturers in the world at present,” and referring to Corning as “the industry leader”).

With respect to Corning’s motion to strike (MTS1), the undersigned agrees with Corning and Staff that Respondents’ arguments on reply regarding differences between the Gen 5 design shown in the Gao Caihong documents and the Gen 5 design shown in Caihong’s own produced documents, such that they show a “different FDM design” (RRB at 9-12), are untimely and these arguments are therefore stricken.²⁹ Even if considered, however, they are pure attorney argument and do not persuasively controvert the evidence of record regarding use. *See generally* CRB at 17-18; *Certain Crawler Cranes and Components Thereof*, Inv. No. 337-TA-887, Comm’n Op. at 52-53 (May 6, 2015) (EDIS Doc. ID 556530) (“The Restatement . . . defines ‘use’ to include the marketing of goods that embody a trade secret, the trade secret is employed in manufacturing or production, ***or is relied on to assist or accelerate research or development.***”) (emphasis added). Respondents failed to present any testimony or argument in its prehearing brief, at trial, or in its initial post-hearing brief regarding significant differences between the Gao Caihong documents and Caihong’s Gen 5 documents showing a “different FDM design,” asserting only failure of proof. *See* RIB at 12; Staff MTS1 Resp. at 2.

The conclusions above are applied to the analysis of the specific asserted trade secrets in Part IV.A.2 *et seq.*

²⁹ Respondents’ argument that these new affirmative arguments were appropriate because of new Corning arguments is unpersuasive. *See* Corning MTS1 Reply.

d) Independent Development

The parties dispute whether Respondents have provided persuasive evidence that Caihong independently developed its Gen 5 FDM and later generation FDMs.

Gen 5 FDM

Respondents argue that “Caihong and its predecessors “independently developed or lawfully acquired all the technology used to develop its LCD glass manufacturing lines.” RIB at 33. Respondents argue that “[b]eginning in 2003, Caihong Group spent over four years developing a pilot production line for G5 glass substrate.” *Id.* (citing testimony from Xu and Hou). Respondents argue that Caihong enlisted the assistance of, *inter alia*, Eglass³⁰, suppliers, and academics and also “leveraged physical modeling . . . computer simulations, and publications and patents on the overflow downdraw process that had become ubiquitous by the early 2000’s.” *Id.* at 34; *see also* RRB at 27-28.

Corning argues that Caihong Display “has not come forward with evidence that it independently developed the Trade Secrets.” CIB at 57. Corning notes that Respondents’ technical expert, Mr. Gordon, expressed no opinion about independent development. *Id.* (citing Tr. (Gordon) at 1263:8-16). Corning argues that Respondents’ most knowledgeable witness, Xu, did not testify at the hearing. *Id.* Corning argues that the “design history” documents produced by Respondents “purport to summarize a design history for some FDM components” but that there was inadequate testimonial support. *Id.* at 58. Corning also argues that the documentation produced show no “trial and error” or other problem-solving documentation, or documents showing “give and take with a customer.” *Id.*

³⁰ No evidence was introduced in this investigation that the “Eglass” communicating with Caihong is related to the “EglassTrek GmbH” that worked with PicVue. *See* Part IV.A.1.a *supra*.

Corning further argues that “[t]he evidence undermines the claim that, starting in 2003, Irico spent four years developing a pilot line for G5 glass substrate,” that “[e]ven if Irico had started its efforts in 2003, it could not plausibly have developed advanced FDM technology in just four years,” that “Irico’s CRT experience, [REDACTED] does not “explain its fast development,” that “[a]lthough Respondents claim (at 41, 53, 80), without any supporting witness testimony, that the EGLASS materials had information about a few Trade Secrets, no evidence suggests that Irico actually used those materials in its design,” and that “[t]o the contrary, Irico’s witnesses disavowed using those materials to design the FDM.” CRB at 22, CIB at 56.

Staff argues that “[t]he documents and evidence relied upon by Caihong Display . . . do not show independent development of the trade secrets at issue.” SIB at 29. Staff argues that the Eglass documentation does not show acquisition of its designs, and notes that Mr. Gordon offered no opinion on independent development. *Id.*

The evidence of record fails to show that Caihong independently developed its Gen 5 FDM in the manner asserted. Corning’s expert Mr. Bocko persuasively testified that the evidence presented by Respondents, in the context of the development timeline, was implausible. *See* Tr. (Bocko) at 678:13-680:12; CDX-0008C.28.³¹ In opposition, Respondents offered no expert testimony as to whether Caihong Display received or used the Gao-provided documents, whether Caihong Display “independently developed its fusion draw machine,” or how Caihong

³¹ Although Respondents contend that development work started in 2003, [REDACTED]

[REDACTED] *See id.* at 67:6-86:11; CIB at 56. None of these efforts were shown to be closely linked to creating engineering drawings for an FDM, including the EGLASS materials. *See* CIB at 56; CX-0126C; CX-0129C; JX-0025C (Qiao Dep. Tr.) at 103:22-104:2.

Display developed its FDM. *See* Tr. (Gordon) at 1160:19-23; *id.* at 1263:8-1265:11. Respondents also failed to persuasively show how the Eglass documentation that Caihong purportedly relied upon provide any pathway to detailed design drawings within the timeframe at issue. *See* JX-0029C (Xu Dep. Tr.) at 72:3-73:1. With respect to the design development documents cited by Respondents (RIB at 34, citing JX-0117C through JX-0121C), no testimony was presented as to who created the documents or whether they were complete. *See* JX-0029C (Xu Dep. Tr.) at 89:1-11 (testifying about Xu Dep. Tr. Ex. 404, JX-0117C); *id.* at 91:2-21 (testifying about Xu Dep. Ex. 405, JX-0119C); *id.* at 92:1-3. Moreover, the evidence shows that production of LCD glass substrate is technically demanding. *See* Tr. (Mulvenon) at 86:19-87:3; CDX-0002C.15; CX-0510, at 5 (Irico Group Electronics Co. Ltd. Interim Report 2007) (“since glass substrate calls for very high workmanship, no domestic manufacturer in China has yet been able to supply it”).

For at least these reasons, the evidence of record fails to persuasively show independent development of Caihong’s Gen 5 FDM in the manner asserted. The evidence relating to acquisition and use of specific asserted trade secrets is discussed in Sections IV.A.2 *et seq.*

Later-Generation FDMs

With respect to use of the asserted trade secrets for later-generation FDMs, the parties dispute the relationship between the Gen 5 FDM and the later-generation FDMs.

Respondents argue that “Caihong [] independently developed its larger generation equipment,” that “Caihong’s G5 equipment was not simply reused in its G6, 7.5, and 8.5 equipment—each generation incorporates new designs specifically to address the challenges with manufacturing increasingly larger glass sizes,” that “[t]he significantly larger glass volume places greater demands on the equipment, but requires consistent glass quality, which is increasingly difficult with a larger glass ribbon,” that “[t]hese challenges required design and

process changes in the melting, homogenization, fining, cooling, stirring, and forming systems of Caihong’s manufacturing equipment—including all the equipment that Corning now accuses of misappropriation,” and that “[REDACTED]” RIB at 34 (citations omitted).

Respondents argue that “[d]ue to the immense challenges in developing larger generation glass substrates, [REDACTED]”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 34-35 (citations omitted).

Corning argues that Caihong Display’s development of its later-generation FDMs was significantly based on the earlier generations. *See* CIB at 61-62 (citing evidence). Corning argues that the evidence regarding individual trade secrets also shows continued use of the trade secrets misappropriated for Caihong’s Gen 5 FDM. *Id.*

Staff contends that, for individual trade secrets, the Caihong Display Gen 7.5 and Gen 8.5 technologies continue to use the same design. *See, e.g.,* SIB at 35.

The record shows that Caihong Display’s development of its later-generation FDMs was significantly based on the earlier generations. *See* CX-3259C, at 19 (May 2008 speech by

representative of Caihong Group stating that its 5G production line lays “the foundation for the construction of 6G and above TFT-LCD glass substrate production lines”); CX-0534 (Oct. 2015 Irco Display securities filing), at 5 (noting research on 8.5 Gen glass using the existing Gen 5 and Gen 6 production lines); JX-0029C (Xu) at 196:8-197:4 [REDACTED] 263:3-21 [REDACTED] JX-0025C (Qiao) at 132:25-133:20, 135:1-9, 143:24-145:8 (Figure 1 in Caihong patent shows basic structure and principles for all equipment after Gen 6), 148:13-149:1, 152:23-153:1, 155:19-156:14; JX-0016C (Hou) at 124:3-20 ([REDACTED] 126:6-10 (referencing Gen 7 and Gen 8.5 as “technical upgrade to the production line of the sixth generation”); JX-0118C at 18 (stating that “wealth of practical experience was accumulated in the design, manufacturing, installation, thermal expansion, docking, and trial production” of the Gen 5 equipment, and that “partial scheme optimization” was carried out in the 6th generation technology); JX-0120 at 26 (characterizing Gen 6 as “structural optimization”). The evidence also shows that this type of development process is common in the industry. *See* Tr. (Bravman) at 461:3-11; Tr. (Kudva) at 406:18-21.

Accordingly, the evidence shows that to the extent Corning’s trade secrets were incorporated into Caihong’s Gen 5 FDM, and absent specific countervailing evidence, the record supports an inference of continued use and no independent development for later generation Caihong FDMs.

e) Reasonable Measures to Maintain Secrecy of the Design Trade Secrets

An issue common to all the Design Trade Secrets is whether Corning took reasonable measures to maintain their secrecy.

Corning argues that it took reasonable measures to protect its trade secrets, including its Design Trade Secrets, relying in part on the testimony of its expert in corporate security measures, Holden Triplett, and the testimony of Mr. Bartone, Corning's Director for Intelligence and Investigations. *See* CIB at 26-28. Corning contends that in 1999 and 2000 (when Corning alleges that its Design Trade Secrets were stolen by Jonathan Sanders from the Harrodsburg, Kentucky plant as part of the PicVue pathway), Corning instituted security policies, including

[REDACTED]
[REDACTED] *Id.* at 26-27. Corning argues that it [REDACTED], including additional security measures regarding inter alia, [REDACTED]. Corning argues that it continues to protect its trade secrets with "best-in-industry security measures." *Id.* at 28 (citing evidence).

Respondents argue, in opposition, that Corning produced [REDACTED] [REDACTED] (the time of the alleged misappropriation). *See* RIB at 29. Respondents argue that Mr. Bartone did not work at the Harrodsburg plant when the original theft occurred in 1999 and could not provide any details regarding security measures taken at that time. *See id.* Respondents also argue that the [REDACTED], "indicating measures taken at the time of the incident were inadequate." *Id.*

Respondents further argue that "Corning failed to exercise reasonable measures due to its failure to timely pursue its purported trade secret claims against Caihong," and that "one who claims that he has a trade secret must exercise eternal vigilance." *Id.* at 30 (internal quotation omitted). Respondents contend that Corning alleges it knew of its claims as early as 2008, but "knew Caihong was free to use and disclose the alleged trade secrets for over 15 years without any oversight or control by Corning . . . To the extent Caihong's technology embodied any of

Corning's alleged trade secrets, those are now known by countless individuals in the industry.”

Id. at 31.

In reply, Corning argues that contrary to Respondents' contentions, Mr. Triplett “evaluated numerous policies where the ‘effective date’ on the face of the policy is earlier [than 2007].” CRB at 5 (citing Triplett testimony). Corning also states that Mr. Triplett interviewed Anthony Bartone regarding Corning's security measures in the 1990's, and that Bartone was “the document custodian for many of the policies Triplett considered.” *Id.* at 6 (citing Tr. (Triplett) at 913:1-6). With respect to the argument that Respondents failed to take reasonable measures by not pursuing an earlier claim, Corning argues that this argument is “incorrect as a factual matter and does not defeat relief. CIB at 178 n.23 (citing *Raised Garden Beds*, Comm'n Op. at 53 n.34). Corning also argues that it had “limited legal options available . . . when Irico's misappropriation occurred.” CRB at 65 (citing CIB at 178). Corning argues that any Section 337 action was not ripe, that no DTSA action was available until 2022, and that “it was reasonable for Corning to decide against suing earlier in China.” CIB at 178; *see also id.* at 172 (arguing that there were difficulties for a U.S. company operating in China to manage IP litigation in China).

Staff submits that, “[i]n light of the unrebutted expert testimony of Mr. Triplett, the evidence shows that Corning took reasonable measures to maintain the secrecy of the information contained in the documents that are alleged to contain trade secrets.” SIB at 19.

Upon review of the record, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets prior to the alleged misappropriation. Corning presented unrebutted expert testimony, supported by Corning documentation, that its security measures were reasonable. Moreover, Mr. Triplett relied in part on Mr. Bartone, who was aware of the security protocols in place as of 2000 and was generally

aware of Corning's security procedures prior to 2000. *See* Tr. (Bartone) at 249:8-15; *see also* JX-0002C (Bartone Dep. Tr.) at 189-193 (testifying generally about Corning security procedures after 2002, including [REDACTED]

[REDACTED]).³² Respondents' arguments regarding Corning's failure to pursue an earlier misappropriation claim do not address whether the asserted Design Trade Secrets were reasonably protected at the time of the misappropriation (and thus were trade secrets at the time of misappropriation). *Cf. Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op., 2024 WL 1434222, at *16 (noting that "a protectable trade secret can exist when it is kept secret before the publication of a patent application").³³

Taken as a whole, the evidence shows by a preponderance that Corning took reasonable measures to protect the Design Trade Secret documents at issue in this investigation.³⁴

2. Trade Secret 12.1 (Overall Assembly of FDM)

a) Identification of Trade Secret 12.1

Corning identifies Trade Secret 12.1 as:

The overall assembly of the fusion draw machine and the geometry of its construction. Corning documents that reflect this trade secret

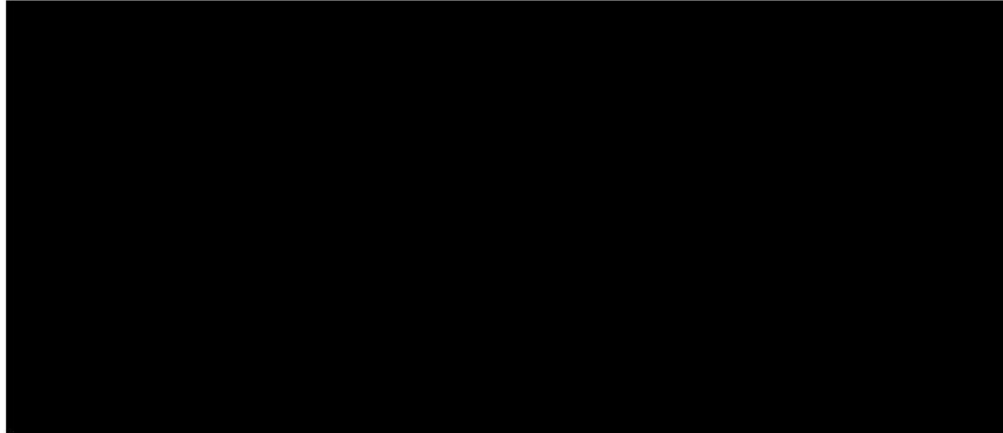
³² Corning also took prompt legal action in June 2002 when evidence concerning PicVue's misappropriation of trade secrets was discovered, also indicating reasonable measures to protect Corning's trade secrets. *See* Part IV.A.1.a *supra*; CIB at 33; CX-2727 (Affidavit from FBI agent regarding underlying investigation and discovery of misappropriation in 2001); CX-2719C (Corning complaint against PicVue and EglassTrek GmbH); Mr. Burke, a former Corning employee who investigated the PicVue misappropriation issue, testified that "Mr. Sanders got access to a [REDACTED] [REDACTED] and sold them to PicVue. Tr. (Burke) at 122:19-124:21. Respondents' argument that improvements in security should be a basis for inferring unreasonable prior measures (RIB at 29) is unpersuasive.

³³ However, the failure to pursue an earlier claim against Caihong—in contrast to Corning's legal actions against Dongxu, both in China and in Korea—indicates that Corning did not continue to make reasonable efforts during the years that elapsed before Corning pursued any legal claim. This issue is discussed further in Part VI.D. *infra*.

³⁴ The facts and circumstances are different for the Operational Trade Secrets, discussed in Part IV.B *infra*.

include: [REDACTED]
[REDACTED] (Appendix A), and the file
named “[REDACTED]” (CORNING-LCD-00012487).

CIB at 71³⁵; RX-6749C at ¶ 12.1; RIB at xvi; SIB at 22. Dr. Bravman identified the overall assembly of Corning’s FDM as follows:



CDX-0006C.99; Tr. (Bravman) at 527:14-20. Dr. Bravman testified that this drawing shows an overall structure that includes the major components addressed in the more specific trade secrets. *See* Tr. (Bravman) at 527:16-23. Corning contends that “the geometries of the FDM are reflected in other Corning drawings identified for the design trade secrets . . . TS 15.1, 16.1, 17.1, 20.1, 22.1, 24.1, 30.1, 35.1, 41.1, 51, and 52.2.” CIB at 72.

³⁵ While Corning’s post-hearing brief only refers to the initial narrative portion of the trade secret (i.e., “[t]he overall assembly of the fusion draw machine and the geometry of its construction”), it cites RX-6749C for support, and thus the undersigned understands Corning’s identification as shorthand for the description provided in RX-6749C and as discussed by Dr. Bravman. *See* CIB at 71 (citing RX-6749C). To the extent Corning seeks to define the trade secret without reference to any documents, this trade secret is not adequately defined, as the narrative portion of the trade secret contains no description of the fusion draw machine’s assembly or geometry. *See generally Coda Dev. s.r.o. v. Goodyear Tire & Rubber Co.*, 160 F. 4th 1350, 1357 (Fed. Cir. 2025) (finding trade secret that “merely describes the functions” of the product did not sufficiently articulate the trade secret); *Insulet Corp. v. EOFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024) (plaintiff “satisfies its burden of specifically defining a trade secret” when it refers to dimensions and tolerances or other details in engineering drawings and blueprints) (internal citations omitted), *reversed on other grounds*, 176 F. 4th 1347 (Fed. Cir. 2026). This same issue applies to all the asserted Design Trade Secrets.

Respondents argue that TS 12.1 is insufficiently defined because the “single document” referenced by Dr. Bravman “to show Corning’s complete G5 stack” does not show many details of the FDM, including all dimensions. To the extent Dr. Bravman relies on his analysis of the other asserted trade secrets, Respondents argue that this contention is inadequate because those trade secrets are inadequately defined and the remaining trade secrets do not encompass the complete machine. RIB at 20-21.

Staff contends that the evidence show that Corning has described TS 12.1 with reasonable particularity, including because Dr. Bravman testified that TS 12.1 is depicted in a [REDACTED] (JX-2107C) and that this drawing clearly shows portions of the overall assembly of Corning’s FDM, as well as the [REDACTED]

Upon review of the evidence, the undersigned finds that TS 12.1 was identified with sufficient particularity through reference to the subject matter of the trade secret and documents showing that subject matter, including JX-2107C. *See* SIB at 23.³⁶

b) Corning’s Ownership of Trade Secret 12.1

Corning contends that its ownership of TS 12.1 is shown by its development of the FDM over decades and through “possession (with secrecy) of engineering drawings that reflect TS 12.1.” CIB at 72. Respondents contend that Corning “advanced no evidence that it owns each alleged trade secret, particularly not as those trade secrets were applied by Dr. Bravman in his

³⁶ As a general matter, Respondents repeatedly object to the identification of Corning’s Design Trade Secrets through documents discussed by Dr. Bravman on the grounds that these documents do not show every aspect of what could be encompassed by the trade secret’s narrative description. *See, e.g.*, RIB at 21-22, 35-36, 41. However, the documents cited are a part of the trade secret definition and Respondents were aware of Dr. Bravman’s reliance on certain subsets of the documents. *See, e.g.*, RX-6749C at ¶ 15.1. Accordingly, so long as the documents relied upon by Corning and Dr. Bravman reasonably correlate to the trade secret description, Respondents’ arguments in this respect are unpersuasive. *See* CRB at 3-4.

use analysis” and that Dr. Bockó’s opinions were conclusory and did not provide specific times and dates for individual trade secrets. RIB at 22-23. Staff contends that “the evidence shows that Corning designed and developed the subject matter of TS 12.1 and is the owner of that trade secret.” SIB at 24.

The evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, that Corning owned the trade secret at the time of the alleged misappropriation. Ownership is shown by possession, with secrecy, of the trade secret. *See Certain Raised Garden Beds and Components Thereof*, Inv. No. 337-TA-1334, Comm’n Op., 2024 WL 1434222 n.23 (“Ownership of a trade secret is based on possession (via secrecy), not formal ownership.”). Respondents do not dispute that Corning possesses the documents relied upon for this trade secret. Accordingly, to the extent the secrecy element is met (see discussion *infra*), Corning has shown ownership of TS 12.1.³⁷

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning argues that TS 12.1 “encapsulates the core technology at issue in this Investigation” and that “[t]he FDM is best considered as a system, because one component affects all others and all components work together.” CIB at 72. Corning states that it has [REDACTED]. Corning further states that the economic value of TS 12.1 “is confirmed by Corning’s substantial and continuous investments in developing the

³⁷ Respondents’ cited case, *Ruby Slipper Café* (see RIB at 22), is inapposite as to ownership. The issue there concerned whether the Defendants were entitled to certain discovery and whether the plaintiff had identified its trade secrets with specificity. *See* 2020 WL 4905796, at *9. Those issues are addressed with respect to identification and general knowledge regarding the trade secret.

FDM,” by “PicVue’s and Irico’s payments for drawings that reflect TS 12.1,” and “by [REDACTED]
[REDACTED].” *Id.*

Respondents argue that Dr. Bravman’s testimony regarding economic value was high-level and conclusory, and that there is no evidence that “any alleged value conferred is due to the information being secret.” RIB at 23. Respondents argue that Corning does not link specific payments to the asserted trade secrets, and that Corning “has not presented persuasive evidence to suggest other companies struggled to develop fusion draw—just that fusion draw was not economically viable until well after Corning developed it.” RIB at 24. Respondents argue that Dr. Bocko’s opinion did not address any alleged trade secret individually and that Dr. Bravman tied to tie benefits “to the aspects of the technology that are not publicly known.” *Id.* Respondents argue that none of the benefits analysis is tied to precise dimensions. *Id.*

Staff contends that the evidence shows that TS 12.1 derives independent economic value from not being generally known because “it allows Corning to manufacture a superior product at a lower cost,” “[REDACTED]
[REDACTED]
[REDACTED].” SIB at 25 (citing Bravman testimony). Staff argues that the value of TS 12.1 is also shown by Corning’s investments in research and development. *Id.*

Here, the evidence shows by a preponderance that asserted TS 12.1 has independent economic value. Corning has presented evidence that its FDM design was the result of substantial investments (*see* CIB at 72 and cited evidence) and that the FDM design has value. *See* Tr. (Bocko) at 657:10-13, 658:20-25; SIB at 25. In addition, the evidence (including the evidence for individual component trade secrets) shows that the documents relied upon for this trade secret provide specific design information for the Corning FDM. *See* Parts III.3-14 *infra*;

Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434) (“The standard to show that trade secrets derive independent economic value is not a high standard.”), *aff’d in rel. part*, Comm’n Op. at 1-2 (May 29, 2025) (EDIS Doc. ID 855245); *cf. Insulet Corp. v. EOfFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024) (“It is well settled that detailed manufacturing drawings . . . are *prima facie* trade secrets.”) (internal citation omitted), *reversed on other grounds*, 176 F. 4th 1347 (Fed. Cir. 2026).

(2) Generally Known or Readily Ascertainable

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 73 (citing Tr. (Bravman) at 452:18-455:15). Corning argues that the references Mr. Gordon cites “contain only high-level schematics and omit components of the FDM assembly” and “do not disclose details about the assembly of the FDM’s subassemblies, the geometric details of the components, or their spatial relationships that could enable reverse-engineering of a working FDM.” *Id.* at 73 (citing Tr. (Bravman) at 452:18-455:15). In addition, Corning argues that each patent identified post-dates the misappropriation. *Id.*³⁸

Respondents argue that Corning’s analysis of this factor is deficient because “Corning made no effort to distinguish its alleged trade secrets from that which was generally known or readily ascertainable in the field.” RIB at 25. Respondents argue that the evidence shows that Corning’s competitors use fusion draw [REDACTED]

[REDACTED]

[REDACTED] and that Corning determined this through

³⁸ Respondents’ argument that the date of the public references is waived and should be ignored is rejected. *See* RIB at 16. In general, the multiple waiver arguments raised by the parties and not specifically addressed in this ID are rejected and/or immaterial.

[REDACTED]

[REDACTED] RIB at 25 (citing RX-3895C and Tr. (Markham) at 360:24-369:6). Respondents further argue that the alleged trade secrets are generally known by operation of the Daejeon District Court’s June 26, 2013 judgment which Respondents state “ruled that all of the documents and information at issue in that case could be acquired, used and disclosed to third parties after 10 years.” *Id.* at 26-27.

Respondents further argue that TS 12.1 was generally known and readily ascertainable in view of several patents and publications, including (1) CN2223317911U (Li791) (JX-0327) (filed Feb. 29, 2024, issued Jan. 10, 2025, patentee Hebei Guangxing Semiconductor Tech. Co.); (2) CN117125879A (Li879) (JX-0243) (filed Apr. 28, 2023, published Nov. 28, 2023, applicant Wuhu Tunghsu); (3) CN119774856A (Su856) (JX-0251) (published Apr. 8, 2025, applicant Caihong Group); (4) an online publication (RX-1735), and the references discussed for the other asserted trade secrets. RIB at 27.

Staff contends that TS 12.1 is not generally known or readily ascertainable, including because the references relied upon by Mr. Gordon post-date the alleged misappropriation and thus are not relevant to whether a trade secret existed at the time of the alleged misappropriation. SIB at 26. Further, Staff argues that none of the references provide detailed schematics. *Id.*

Based on the evidence of record, and for the reasons set forth by Staff and discussed below for trade secrets regarding individual FDM components, the evidence shows by a preponderance that TS 12.1 was not generally known or readily ascertainable at the time of the alleged misappropriation.³⁹ *See also* Tr. (Bocko) at 653:24-654:2 (discussing value of full-scale

³⁹ A complainant may “recover for misappropriation before the publication of a patent application containing the trade secret.” *Crawler Cranes*, Inv. No. 337-TA-887, Comm’n Op. at 60. Respondents’ waiver argument as to the dates of alleged public references (*see* RIB at 16) is rejected.

manufacturing equipment and requirement of engineering trials for component technology); *id.* at 657:10-13 (FDM is “extremely complex piece of equipment with interrelationships between each piece”); 658:20-25 (all parts interrelated and iteration is required in development process); *cf. Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 541 (7th Cir. 2021) (affirming finding that trade secret protection not obviated by patent disclosure where “ample evidence supports the district court’s finding the Life Spine’s patent did not disclose the precise specifications of the ProLift” and the precise specifications are “not easily derived” from patent materials).⁴⁰

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1.e, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 12.1 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

Corning argues that “Irico improperly acquired PicVue’s drawings of the FDM subassemblies (which together assemble the full FDM) through Liang,” and that “[t]he drawings obtained contained granular detail about the assembly and geometry of the FDM’s components.” CIB at 73. Corning argues that “Bravman therefore reasonably concluded that Irico acquired TS

⁴⁰ For the reasons set forth in Corning’s Reply Brief, Respondents’ argument that the Daejeon District Court’s 2013 Judgment rendered the trade secrets “generally known” is unpersuasive *See* CRB at 30, 32-33.

12.1 by acquiring PicVue’s engineering drawings for the FDM’s subassemblies.” CIB at 73 (citing Tr. (Bravman) at 527:9-529:2); *see also* CRB at 33.

Respondents argue that Corning’s and Dr. Bravman’s analysis of use for TS 12.1 is deficient because Dr. Bravman did not consider evidence of any “PicVue” or “Irico” complete FDM design, or Corning’s complete design. RIB at 32. Respondents argue that TS 12.1 “includes components that are not implicated by the Design Trade Secrets” such as the “ [REDACTED] [REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, “[REDACTED]”, and others. *See id.* at 32, 20-22. Staff similarly argues that the PicVue drawings “do not depict the full stack assembly” and that “Dr. Bravman does not show that Caihong Display acquired TS 12.1 through any of the three pathways.” SIB at 28.

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files. However, the evidence fails to show, by a preponderance, that TS 12.1 was provided through the asserted PicVue pathway. As argued by Respondents and Staff, the evidence fails to show that the PicVue drawings are sufficiently correlated to the design of the overall assembly. Further, as discussed below regarding TS 52.2, the evidence fails to show that Corning’s pulling machines (TS 52.2) design were improperly acquired and used by Caihong Display.⁴¹ Accordingly, the evidence fails to show by a preponderance that TS 12.1 was improperly acquired and used.

⁴¹ Dr. Bravman’s depiction of the overall system indicates that the pulling rolls [REDACTED]. *See* CDX-0006C.100. Moreover, the evidence shows that the mere concept of using pulling rolls as part of the overall fusion draw process was generally known in the art. *See* SIB at 6-8 (discussing prior art fusion draw process from Corning 1964 and 1969 referencing “pull roll apparatus”).

e) Use or Disclosure of Trade Secret 12.1

For the reasons the evidence fails to show acquisition by improper means, it also fails to show substantial use.

f) Independent Development of Trade Secret 12.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets. However, the evidence fails to show by a preponderance that TS 12.1 was misappropriated by Respondents.

For these reasons, the evidence does not show by a preponderance that Caihong Display misappropriated TS 12.1 in its Gen 5 and later-generation FDMs.

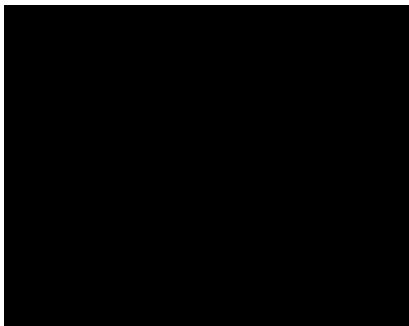
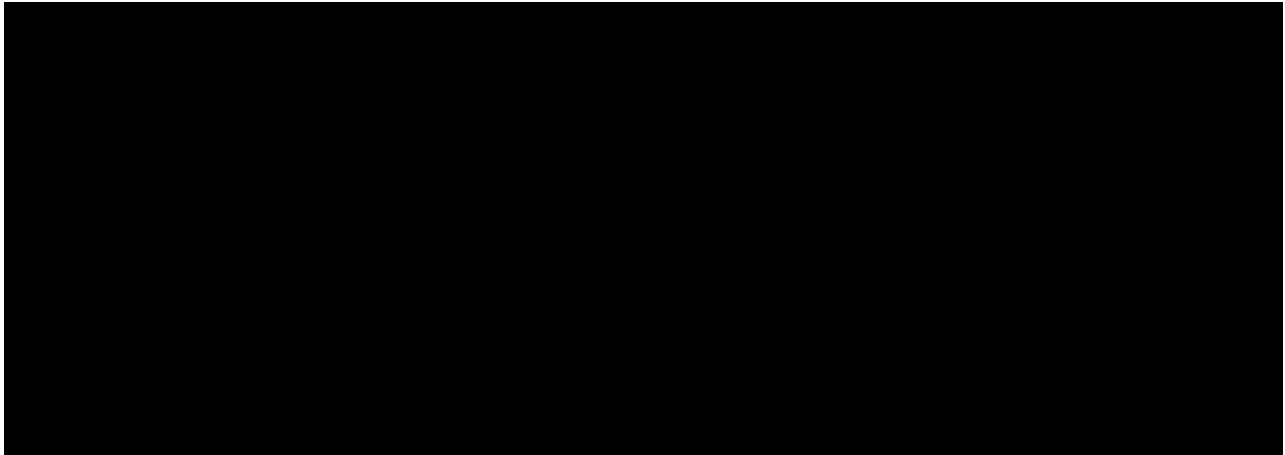
3. Trade Secret 15.1 (Muffle)

a) Identification of Trade Secret 15.1

Corning identifies Trade Secret 15.1 as:

The overall assembly of the muffle and the geometry of its construction. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00010478), [REDACTED] (CORNING-LCD-00012221), [REDACTED] (CORNING-LCD-00012222), [REDACTED] (CORNING-LCD-00012223), [REDACTED] (CORNING-LCD-00012224), [REDACTED] (CORNING-LCD-00012225), [REDACTED] (CORNING-LCD-00012226), [REDACTED] (CORNING-LCD-00012227), and [REDACTED] (CORNING-LCD-00012228), [REDACTED] (CORNING-LCD-00010306 - CORNING-LCD-00010311), and other [REDACTED] (Appendix A).

CIB at 75; RX-6749C at ¶ 15.1; RIB at xvi; SIB at 31. Dr. Bravman illustrated certain parts of Corning's Gen 5 muffle in one of his demonstratives as follows:



CDX-0006C.20; Tr. (Bravman) at 468:21-470:4 (explaining that these drawings show the same device from two different angles). Dr. Bravman testified that the muffle is a structure that houses *inter alia* [REDACTED]

[REDACTED]. Tr. (Bravman) at 468:21-469:13; CDX-0006C.20.⁴²

Corning argues that the Design Trade Secrets are adequately defined, referencing Order No. 22. Corning also argues that Dr. Bravman’s use of “one to three engineering drawings” reflecting the details of each trade secret is consistent with “how he defined Corning’s trade secrets in his expert report,” and that Respondents have waived any objections to Dr. Bravman’s “discussion of exemplary drawings and details” based on its lack of objection following expert reports. CRB at 3. Corning argues that Respondents “fail to show that the drawings highlighted

⁴² These subcomponents are themselves the subject of certain asserted trade secrets discussed below.

by Bravman do not depict the trade secrets as defined” and that JX-554C, for example, “shows the overall assembly of this component with dimensions and geometries.” Although “other drawings may also reflect TS 15.1 . . . that does not mean this drawing insufficiently reflects the trade secret.” *Id.* at 4

Respondents contend that Corning’s identification of this trade secret is deficient because this trade secret encompasses the dimensions of the muffle and all its various components, but that the two schematics used by Dr. Bravman for this trade secret contains [REDACTED]
[REDACTED]. RIB at 36.

Respondents also argue inconsistency between Dr. Bravman’s use analysis and public availability analysis.

Staff argues that the documents referenced by Dr. Bravman “clearly show the design of Corning’s muffle assembly, and demonstrate that Corning has described TS 15.1 with reasonable particularity.” SIB at 32.

The evidence shows that TS 15.1 is sufficiently identified through reference to specific Corning drawings which show the overall assembly and geometry of the muffle assembly.⁴³ *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

⁴³ In addition, as shown below through TS 17.1 (isopipe) and 20.1 (edge directors), the documents cited by Corning with reference to defining TS 15.1 include drawings providing design information for the isopipe and edge directors.

b) Corning's Ownership of Trade Secret 15.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning argues that the “overall assembly and geometry of the muffle is . . . critical to producing commercially viable LCD glass.” CIB at 76. Corning argues that it [REDACTED]. Corning argues that the economic value of TS 15.1 is shown by Corning’s substantial and continuous investments in developing the FDM (including the muffle), by PicVue’s and Irico’s payments for drawings that reflect TS 15.1, and by [REDACTED]. *Id.*

Respondents argue that Corning has not shown that each of its asserted trade secrets “derives independent economic value by virtue of not being generally known or readily ascertainable.” RIB at 23. Respondents argue that Dr. Bravman’s testimony was high-level and conclusory, “generically stating that complete components were valuable to Corning.” *Id.* Respondents argue that Dr. Bocko’s opinions are inadequate, and that none of his purported benefits are tied to “precise dimensions” or other information he contends is necessary to create a functioning fusion draw machine. *Id.* at 24.

Staff contends that TS 15.1 has independent economic value as demonstrated by Corning’s investments in research and development of its muffle design and by virtue of not being generally known or readily ascertainable. SIB at 33.

The evidence shows by a preponderance that TS 15.1 has independent economic value based on Corning's investments in developing its muffle design, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable (discussed *infra*). See Tr. (Bocko) at 653:5-655:1; *id.* at 659:3-20. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 muffle. See JX-0554C; JX-0563C; Tr. (Bravman) at 468:21-470:4; CDX-0006C.20; *cf.* *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOfFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. See CIB at 77 (citing Tr. (Bravman) at 452:18-455:15). Respondents rely on their arguments with respect to TS 12.1, as well as the following references, to argue that TS 15.1 was generally known and/or readily ascertainable: (1) US20130255321A1 ("Kocatulum") (RX-6317) (published Oct. 3, 2013); (2) US10202297B2 ("Delia297") (RX-0589) (PCT publication date April 7, 2016, applicant Corning); (3) CN209077349U ("Wang") (JX-0289) (filed Oct. 10, 2018, issued July 9, 2019, patentees include Tunghsu Group); (4) CN114524605B ("Peng") (JX-0240) (filed Mar. 14, 2022 issued Sept. 12, 2023, patentees include Tunghsu Group); (5) CN119774856A ("Su856") (JX-0251) (published Apr. 8, 2025, applicant Caihong Group); (6) US6889526B2 ("Pitbladdo526") (RX-6298) (published Feb. 13, 2003, issued May 10, 2005); (7) US9416039B2 ("Filippov") (RX-6302) (published June 2, 2016, issued Aug. 16, 2016, assigned to Corning); (8) CN109114971A ("Miao") (JX-0225) (filed July 13, 2018,

published Jan. 1, 2019, applicant Tunghsu Optoelectronic Tech. Co.); (8) CN1066305571 (“He557”) (JX-0215) (filed Nov. 16, 2016, published May 10, 2017, applicant Wuhu Tunghsu) as well as the additional references identified for subcomponents that are the subject of TS 16.1, 17.1, 20.1, 22.1, and 24.1. *See* RIB at 37; RDX-0004C.50-51. Respondents argue that each of the aspects of Corning’s muffle assembly that Dr. Bravman relies upon is present in Kocatulum, Delia297, and Wang and that the “same configuration” is also shown in “numerous publications,” including Pitbladdo526, Figs. 11A-11B. RIB at 38 (citing Tr. (Gordon) at 1168:2-12).

Corning argues that none of the references “reveals the details of the assembly of the muffle and its components or the geometric details of the muffle assembly (such as the dimensions) reflected in Corning’s drawings.” CIB at 77. Corning argues that, in addition, three of the patents (JX-0240, JX-0251, and JX-0215) are “Chinese patents filed by Irico or Donxu” and all but one of the public references (RX-6298) post-dates the misappropriation. *Id.* Staff contends that the evidence shows that TS 15.1 was not generally known or readily ascertainable. SIB at 34.

The evidence shows that certain general aspects of Corning’s muffle design, as identified by Dr. Bravman, are present in the references identified by Mr. Gordon (including in Pitbladdo526) but that none of these references provides the design details provided by Corning’s engineering drawings. Accordingly, the evidence shows that this trade secret was not generally known or readily ascertainable at the time of the alleged misappropriation *See Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 541 (7th Cir. 2021).⁴⁴

⁴⁴ However, public disclosures of part of the trade secret could narrow the scope of the trade secret and thus the lead time, which may be relevant to remedy. *Cf. Certain Crawler Cranes and Components Thereof*, Inv. No. 337-TA-887, Comm’n Op., 2015 WL 13817116, at *45 (taking into account a “shorter

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1.e, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 15.1 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

e) Use or Disclosure of Trade Secret 15.1

Corning argues that the PicVue and Irico muffle assembly drawings show that Irico used TS 15.1 in developing its Gen 5 technology. CIB at 77. Corning argues that Dr. Bravman compared exemplary muffle assembly drawings and explained that “enormous similarities” between them could not be the resulting of happenstance, as well as pointing to evidence such as a [REDACTED] as compared with Corning’s drawing and the use of the English term “outside steel.” *Id.* (citing Tr. (Bravman) at 471:1-18). Corning argues that the evidence shows that Caihong Display’s Gen 7.5 and Gen 8.5 technology still substantially uses TS 15.1 as reflected in an exemplary Gen 8.5 drawing and photo. *Id.* at 78.

lead time” for one of the asserted trade secrets, based on the fact that the trade secret “became public approximately 18 months after Sany hired Mr. Lanning”).

Respondents argue that Dr. Bravman relies upon unidentified “enormous similarities” but mentions just five components of the muffle and a comparison of a single dimension. RIB at 39. Respondents argue that Dr. Bravman’s “conclusory testimony” cannot meet Corning’s burden of proof. Respondents further argue that there are differences between the dimensions and/or geometries of the External Documents as compared with Corning’s own Gen 5 documents, including the design of the inlet tube flow into the isopipe. *Id.* (citing Tr. (Gordon) at 1163:15-1164:17; RDX-0004C.44).

Staff contends that the evidence shows that Caihong Display has used TS 15.1 and credits Dr. Bravman’s testimony regarding similarities between Corning’s design and the PicVue drawings. SIB at 35. Staff states that Caihong Display’s Gen 7.5 and Gen 8.5 technology “continue to use substantially the same muffle assembly design.” *Id.* (citing, *inter alia*, Bravman).

The evidence shows by a preponderance that Caihong Display made substantial use of TS 15.1 in developing its Gen 5 FDM. Dr. Bravman’s testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao PicVue and Gao Caihong designs, is persuasive and corroborated by the documents he cites. *See* Tr. (Bravman) at 475:19-473:4; CDX-0006C.21-24; JX-0554C; CX-3902C; CX-4108C. Dr. Bravman’s testimony comparing the “Outside Steel” measurement further evidences substantial use. *See* Tr. (Bravman) at 475:19-476:6; CDX-0006C.25. JX-0563C; CX-0398C. In addition, Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See* Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents’ arguments

regarding certain design differences are insufficient to controvert the strong circumstantial evidence of substantial use.⁴⁵ *See generally* CRB at 19-20, 25-26.⁴⁶

The evidence, including the evidence presented by Dr. Bravman, also shows by a preponderance that Caihong Display made substantial use of TS 15.1 for development of its later-generation FDMs, including its Gen 8.5 FDM design. As discussed in Part IV.A.1 *supra*, the evidence shows that Caihong Display's later-generation FDMs were significantly based on the design of the Gen 5 FDM) and no persuasive evidence was presented controverting this continuity as to the subject matter of TS 15.1.

f) Independent Development of Trade Secret 15.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 15.1 in its Gen 5 and later-generation FDMs.

⁴⁵ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman's testimony regarding "remarkable similarities" in design. *See* Tr. (Bravman) at 459:1-10. *Compare, e.g.*, JX-0554C at 2 (showing a [REDACTED] with CX-3902C at 3 (showing corresponding [REDACTED]) and CX-4108C at 4 (showing corresponding [REDACTED]); JX-0554C at 2 (showing a [REDACTED] with CX-3902C at 3 (showing corresponding [REDACTED]) and CX-4108C at 4 (showing corresponding [REDACTED]); JX-0554C at 2 (showing [REDACTED] with CX-4108C at 4 (showing corresponding [REDACTED])). The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm'n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

⁴⁶ Similarly, the fact that the edge director trade secret (TS 20.1) was not shown to be acquired or used does not negate the evidence of substantial use for the muffle assembly as a whole.

4. Trade Secret 16.1 (Doghouse)

a) Identification of Trade Secret 16.1

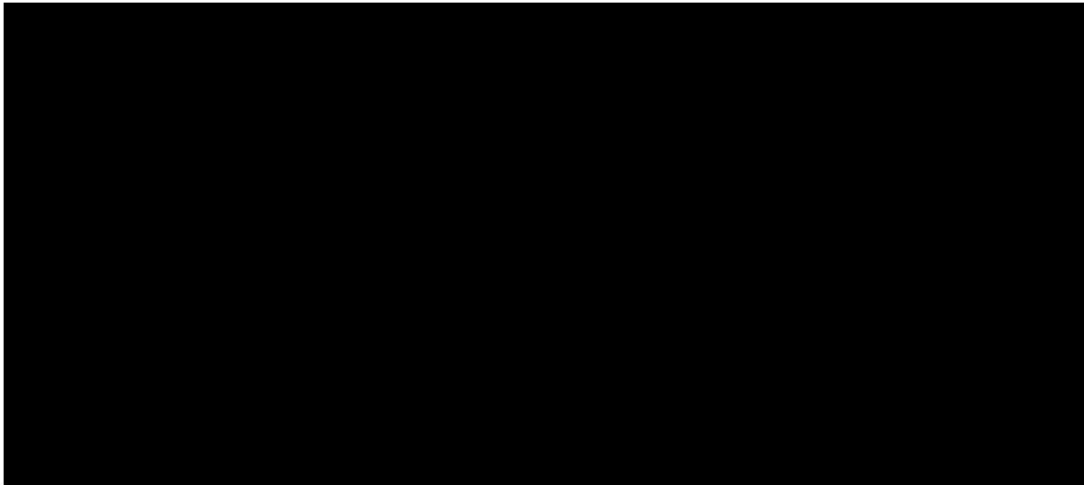
Corning identifies Trade Secret 16.1 as:

The overall assembly of the doghouse and the geometry of its construction.

Corning documents that reflect this trade secret include:

[REDACTED] (CORNING-LCD-00010433),
[REDACTED] (CORNING-LCD-00010305), and
[REDACTED] (Appendix A).

CIB at 80; RX-6749C at ¶ 16.1; RIB at xvi; SIB at 37. Dr. Bravman depicted the location of the doghouse in a demonstrative as follows:



CDX-0006C.32; Tr. (Bravman) at 481:20-482:3. Dr. Bravman testified that the doghouse structure, which is [REDACTED]

[REDACTED] Tr. (Bravman) at 482:1-3.

The parties dispute whether TS 16.1 is sufficiently identified. Corning and Staff argue that it is, including through JX-0509C ([REDACTED]). See CIB at 81; SIB at 43. Respondents argue that it is not, including because they contend that the identification of the trade secret is inconsistent with Corning's position on public availability and economic value. RIB at 41-42.

The evidence shows that TS 16.1 is sufficiently identified through reference to specific Corning drawings which show the design of the doghouse. *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning's Ownership of Trade Secret 16.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

With respect to economic value, Corning argues that TS 16.1 is valuable because the doghouse protects the isopipe from impurities and notes that [REDACTED] [REDACTED]. CIB at 81. Corning argues that Corning's doghouse design, "which includes [REDACTED] [REDACTED]." *Id.* (citing Tr. (Kudva) at 404:20-405:4). Corning states that it [REDACTED]. *Id.* Corning argues that the economic value of TS 16.1 is confirmed by Corning's development time for the doghouse and more generally by Corning's investments in its FDM, by "PicVue and Irico's payments for drawings that reflect TS 16.1 . . . and by [REDACTED] [REDACTED] *Id.*

Respondents make similar arguments to that for TS 15.1, arguing that Corning's case suffers from a failure of proof and that the testimony is inadequate to tie economic value to the particular dimensions relied upon. RIB at 42.

Staff contends that TS 16.1 has independent economic value as demonstrated by Corning's investments in research and development of its doghouse and by virtue of not being generally known or readily ascertainable. SIB at 38-39.

The evidence shows by a preponderance that TS 16.1 has independent economic value based on Corning's investments in developing its doghouse design, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 659:22-660:6. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 doghouse design. *See* JX-0509C; Tr. (Bravman) at 482:18-483:1; CDX-0006C.34; *cf.* *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOfFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

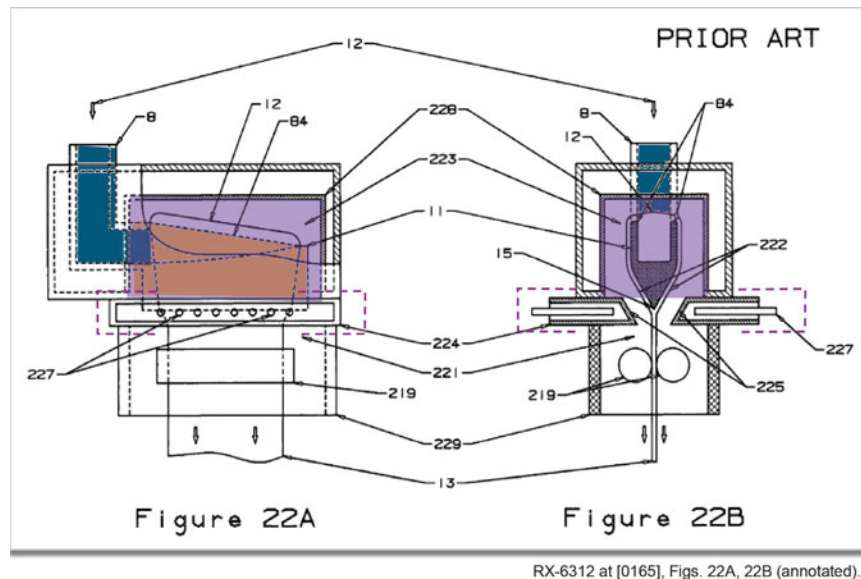
Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 82 (citing Tr. (Bravman) at 452:18-455:15). Respondents rely on their arguments with respect to TS 12.1, as well as the following references, to argue that TS 16.1 was generally known and/or readily ascertainable: (1) US20060016219A1 ("Pitbladdo219") (RX-6312) (published Jan. 26, 2006)⁴⁷, (2) US5410567A ("Brundage") (RX-0959) (issued Apr. 25, 1995, assigned to Corning); (3) EP22353598B1 ("Delia598") (RX-6292) (published May 14, 2014, assigned to Corning); (4) Corning's deposit to the copyright Office (VAU 531-311) (RX-0179C)⁴⁸; and/or (5) WO2015026615A1 ("Dahake") (RX-6323) (published Feb. 26, 2015)

⁴⁷ Mr. Gordon testified that Pitbladdo219 is currently assigned to Corning. *See* Tr. (Gordon) at 1178:3-9.

⁴⁸ Although RX-0179C carries a confidentiality designation, the evidence shows that Corning recognized that this material would be available to the public. JX-0007C (Burke) at 87:18-88:4.

(applicant Corning). RIB at 42; *see* Tr. (Gordon) at 1177:18-1180:12; RDX-0004.76. Staff contends that the evidence shows that TS 16.1 was not generally known or readily ascertainable. SIB at 40.

Three of these references pre-date the alleged misappropriation: RX-0959 (“Brundage”), RX-6312 (Pitbladdo219), and the 2003 Copyright submission. Mr. Gordon provided testimony that Pitbladdo219 (which he states is currently assigned to Corning) generally describes a doghouse structure. *See* RX-6312 at [0165], Figs. 22A, 22B; Tr. (Gordon) at 1178:3-9; RDX-0004C.77:



RDX-0004C.77 (annotated by Mr. Gordon); Tr. (Gordon) at 1178:3-9 (silicon carbide enclosure of Pitbladdo219 is “describing the doghouse”); RX-6312 (entitled “Overflow Downdraw Glass Forming Method and Apparatus”). Mr. Gordon testified that Brundage teaches a thermal enclosure with tongue and groove arrangement of plates. *See* Tr. (Gordon) at 1178:18-1179:4. He further testified that Corning’s copyright deposit shows parallelogram structures, and that the “only difference” between the copyright deposit and the TS 16.1 drawings is that the [REDACTED], but that the material is described in the copyright deposit. *See*

Tr. (Gordon) at 1180:13-1181:7 (copyright deposit also shows the angles and tongue-and-groove features).

Upon review of the evidence of record, including Mr. Gordon's unrebutted expert testimony, the undersigned finds that the references that pre-date the alleged misappropriation do not disclose the alleged trade secret, including dimensional information, but do include relevant information relating to the structure of Corning's doghouse. Corning has sufficiently shown that the specific design of its doghouse was not generally known or readily ascertainable. *Cf. Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 541 (7th Cir. 2021).⁴⁹

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1.e, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 17.1 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

e) Use or Disclosure of Trade Secret 16.1

Corning argues that "PicVue and Irico drawings show that Irico used TS 16.1 in developing its Gen 5 technology," that "[c]omparing Corning, PicVue, and Irico drawings shows

⁴⁹ The generally available disclosures, however, may affect the appropriate remedy.

that the design and geometry of PicVue’s and Irico’s doghouses follow Corning’s design,” and that “[f]or example, [REDACTED] [REDACTED] [REDACTED].” CIB at 82-83 (citations omitted). Corning argues that “Irico’s doghouse design in its Gen 8.5 technology continues to substantially use TS 16.1,” that “[f]or instance, [REDACTED] [REDACTED],” and that “[REDACTED] [REDACTED]” *Id.* at 83 (citations omitted).

Respondents argue, *inter alia*, that “Dr. Bravman’s conclusory testimony based on just two dimensions” for past use and “Dr. Bravman’s conclusory testimony based on the [REDACTED] [REDACTED]” for current use are “facially deficient and cannot meet Corning’s burden of proof.” RIB at 46-47 (citations omitted). Respondents also argue that for past use, certain “aspects of the External Documents differ significantly from Corning’s G5 drawing: [REDACTED] [REDACTED] in the External Documents) and the panels have a smaller [REDACTED] in Corning’s G5 versus [REDACTED] in the External Documents),” and that for current use, “[REDACTED] and Caihong’s G8.5 uses [REDACTED]—given G8.5 glass is twice as large as G5, one would expect a [REDACTED] [REDACTED].” *Id.*

Staff agrees with Corning that “the evidence shows that Caihong Display has used TS 16.1” for developing its doghouse for Gen 5, 7.5 and 8.5. SIB at 41 (citations omitted).

Regarding use for the Gen 5 equipment, Dr. Bravman’s testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao Caihong

design, is persuasive, particularly upon review of the documents. *See* Tr. (Bravman) at 483:2484:1; CDX-0006C.35-36; JX-0509C; CX-3823C; CX-3972C. Dr. Bravman's testimony comparing a specific dimension for this component further evidences substantial use. *See id.* In addition, Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See* Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents' arguments regarding certain differences in design is insufficient to controvert the strong circumstantial evidence of substantial use.⁵⁰ *See generally* CRB at 19-20, 25-26.

The evidence also shows by a preponderance that Caihong Display made substantial use of TS 16.1 for development of its later-generation FDMs, including its Gen 7.5 and Gen 8.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation FDMs were significantly based on the design of the Gen 5 FDM. In addition, continued use is supported by the additional testimony provided by Dr. Bravman and was not persuasively controverted by Mr. Gordon. *See* Tr. (Bravman) at 484:2-16, CDX-0006C.37.

⁵⁰ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman's testimony regarding "remarkable similarities" in design. *See* Tr. (Bravman) at 459:1-10. *Compare, e.g.*, JX-0509C at 2 (showing a [REDACTED]) with CX-3823C at 3 and CX-3972C at 3 (showing corresponding [REDACTED]); JX-0509C at 2 (showing a [REDACTED]) with CX-3823C at 3 and CX-3972C at 3 (showing corresponding [REDACTED]); JX-0509C at 2 (showing a [REDACTED]) with CX-3823C at 3 and CX-3972C at 3 (showing a corresponding [REDACTED]). The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm'n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

f) Independent Development of Trade Secret 16.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 16.1 in its Gen 5 and later-generation FDMs.

5. Trade Secret 17.1 (Isopipe)

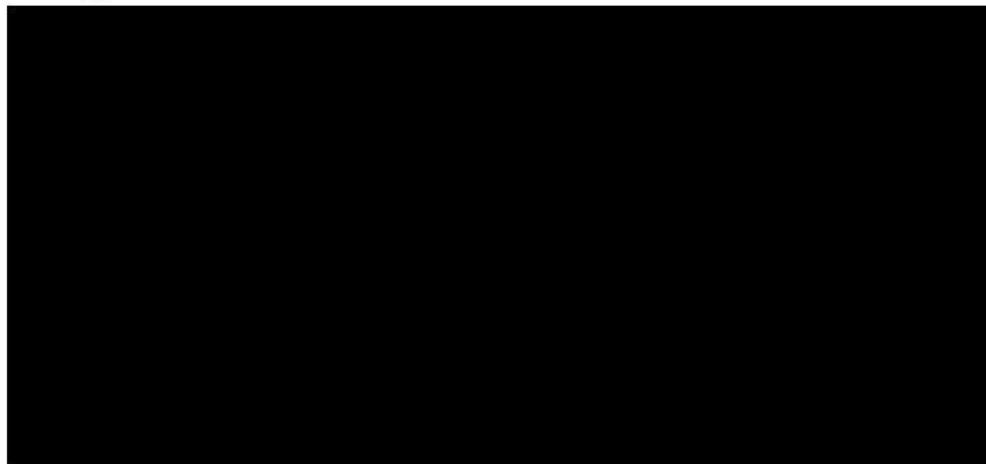
a) Identification of Trade Secret 17.1

Corning identifies Trade Secret 17.1 as:

The geometric details, such as specifications, dimensions, and structure, of the isopipe, [REDACTED]

[REDACTED]. Corning documents that reflect this trade secret include: Corning Drawing Nos. [REDACTED] (CORNING-LCD-00012126), [REDACTED] (CORNING-LCD-00012135), [REDACTED] (CORNING-LCD-00010478), and [REDACTED] (CORNING-LCD-00012224), and [REDACTED] (Appendix A).

CIB at 83; RX-6749C at ¶ 17.1; RIB at xvi; SIB at 43. Dr. Bravman identified the location of the isopipe in Corning's Gen 5 FDM as follows:



CDX-0006C.38; Tr. (Bravman) at 484:17-485:11. Dr. Bravman testified that this structure is “perhaps the most important structure within this overall system” and that the function of the isopipe is “to receive molten glass, let the glass flow from just one end down its length with a design of the isopipe that [REDACTED]

[REDACTED] . . . that’s required to get the machine to produce glass that’s as uniform thickness as possible.” Tr. (Bravman) at 484:19-21, 486:1-12. The isopipe includes an [REDACTED]
[REDACTED] *Id.* at 485:2-9.

The parties dispute whether TS 17.1 is sufficiently identified. Corning and Staff argue that it is, including through JX-0479C, JX-2094C, and JX-2010C ([REDACTED]
[REDACTED], [REDACTED], and [REDACTED]). *See* CIB at 84-85; SIB at 43. Respondents argue that it is not, including because they contend that the identification of the trade secret is inconsistent with Corning’s position on public availability and economic value. RIB at 47-48.

The evidence shows that TS 20.1 is sufficiently identified through reference to specific Corning drawings which show the design of the isopipe. *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning’s Ownership of Trade Secret 17.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning argues that TS 17.1 has economic value because the isopipe’s “dimensions are essential to ensure a uniform glass sheet when the glass overflows the two sides of the isopipe.”

CIB at 84. [REDACTED] *Id.* Corning states that the economic value of TS 17.1 “is also shown by Corning’s substantial and continuous investments in developing the FDM (including the isopipe).” *Id.*

Respondents argue that Corning has failed to show economic value for the same reasons discussed in relation to Corning’s other asserted trade secrets and that Corning and Dr. Bravman have failed to tie any purported economic value to the dimensions called out in the use analysis. RIB at 49.

Staff contends that TS 17.1 does not have independent economic value because the evidence shows that it is generally known or readily ascertainable. SIB at 45.

The evidence shows by a preponderance that TS 17.1 has independent economic value based on Corning’s investments in developing its isopipe design, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 660:7-663:23. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 isopipe. *See* JX-0479C; Tr. (Bravman) at 486:18-24; CDX-0006C.40; *cf. Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Respondents argue, *inter alia*, that “Mr. Gordon demonstrated that TS 17.1 was generally known and/or readily ascertainable in view of the following patents and publications: (1) US 20060236722A1 (‘Delia722’) (RX-0587) (published Oct. 26, 2006, Corning correspondence

address); (2) US20060016219A1 (“Pitbladdo219”) (RX-6312) (published Jan. 26, 2006)⁵¹; (3) US20190092673A1 (“Feenaughty”) (RX-0586) (published Mar. 28, 2019) (applicant Corning); and (4) WO2024191679A1 (“Abdul-Rahman679”) (RX-6326) (published Sept. 19, 2024) (applicant Corning).” RIB at 49, citing Tr. (Gordon), 1155:20-25.

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 85. Corning argues, *inter alia*, that none of the four patents “discloses crucial geometric details of Corning’s isopipe that comprise TS 17.1, such as the [REDACTED],” that while Mr. Gordon testified that “these four patents disclose Corning’s [REDACTED], and Delia722 and Abdul-Rahman679 disclose the [REDACTED],” “Kudva offered uncontested testimony that [REDACTED]

[REDACTED]

[REDACTED].” *Id.* (citing Tr. (Kudva) at 403:16-404:4). Corning argues that two of the patents (RX-0586 (Feenaughty) and RX-6326 (Abdul-Rahman679)) postdate the misappropriation. *Id.*

Staff argues that Delia722 and Pitbladdo219 “are Corning patents that pre-date the alleged misappropriation and [REDACTED], including information sufficient to [REDACTED],” and “[t]he evidence thus shows that TS 17.1 was generally known or readily ascertainable at the time of the alleged misappropriation.” SIB at 45, citing Tr. (Gordon) at 1152:12-1160:23; RPB at 71-72; RX-0587 (Delia722); RX-6312 (Pitbladdo219).

⁵¹ Mr. Gordon testified that Pitbladdo219 is currently assigned to Corning. *See* Tr. (Gordon) at 1178:3-9.

Upon review of the evidence and submissions of record, the undersigned finds that the evidence shows that TS 17.1 was not generally known or readily ascertainable at the time of the alleged misappropriation. The evidence suggests that the Corning patents pre-dating the alleged misappropriation do disclose a [REDACTED]

[REDACTED], and Corning has not shown otherwise. *See* Tr. (Gordon) at 1155:20-1156:21; RDX-0004C.35-36. However, TS 17.1 encompasses additional geometric details and dimensions shown in the drawing relied upon by Corning for this trade secret. *See* JX-0479C (showing multiple dimensions); Tr.

(Markham) at 403:22-404:4 (identifying [REDACTED] [REDACTED]). Accordingly, the evidence shows that TS 17.1 was not generally known or readily ascertainable at the time of the alleged misappropriation. *Cf. Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 541 (7th Cir. 2021).⁵²

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1.e, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 17.1 was a protectable trade secret at the time of the alleged misappropriation.

⁵² As Respondents point out, the Feenaughty reference (applicant Corning) states that the “dimensions of the forming body, including the length, trough depth and width, and wedge height and width, to name a few, can vary depending on the desired application” and that “[i]t is within the ability of one skilled in the art to select these dimensions as appropriate for a particular manufacturing process or system.” RDX-0004C.39. This evidence may affect the remedy determination.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong documents.

e) Use or Disclosure of Trade Secret 17.1

Corning argues that “PicVue and Irico drawings show that Irico used TS 17.1 in developing its Gen 5 technology,” that “[t]he PicVue and Irico isopipe drawings substantially resemble Corning’s,” and that “[f]or example, [REDACTED]

[REDACTED].” CIB at

85. Corning argues that “[REDACTED]

[REDACTED],” that “[REDACTED]

[REDACTED],” that “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],” and that “[REDACTED]

[REDACTED]

[REDACTED].”

Id. at 86 (citations omitted).

Respondents argue, *inter alia*, that “Dr. Bravman’s conclusory testimony based on a single dimension” for past use and “Dr. Bravman’s conclusory testimony based on three dimensions” for current use are “facially deficient and cannot meet Corning’s burden of proof.” RIB at 52-53 (citations omitted). Respondents also argue that “the [REDACTED] (specifically recited in Corning’s description of TS 17.1) between Corning’s G5 document and

the External Documents are different” and that “Mr. Gordon explained Corning’s G5 document depicts a different [REDACTED] than Caihong’s G7.5.” *Id.* Respondents argue that, as to current use, Dr. Bravman offered no opinion regarding Caihong Display’s Gen 8.5 requirement and that Dr. Bravman’s analysis of Caihong Display’s Gen 7.5 equipment depends on dimensions that were not shown to be contained in Corning’s documents.

Staff credits Respondents’ expert Mr. Gordon’s testimony that “Caihong Display’s design is different than TS 17.1, [REDACTED],” and that “the design used by Caihong Display appears to be consistent with the generally known and/or readily ascertainable designs shown in in RX-0587 (Delia722) and RX-6312 (Pitbladdo219),” and thus “the evidence does not show that Caihong Display has used TS 17.1.” SIB at 46-47 (citations omitted).

Regarding use for the Gen 5 equipment, Dr. Bravman’s testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao PicVue and Gao Cahong designs, is persuasive, particularly upon review of the documents. *See* Tr. (Bravman) at 487:25-490:3; CDX-0006C.41; JX-2094C; CX-3902C; CX-4107C. Dr. Bravman’s testimony comparing a width measurement for this component further evidences substantial use. *See id.* In addition, Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See* Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Mr. Gordon’s testimony regarding certain differences in design is insufficient to

controvert the strong circumstantial evidence of substantial use.⁵³ *See generally* CRB at 19-20, 25-26.

The evidence also shows by a preponderance that Caihong Display made substantial use of TS 17.1 for development of its later-generation FDMs, including its Gen 7.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation FDMs were significantly based on the design of the Gen 5 FDM. In addition, continued use is consistent with the additional testimony provided by Dr. Bravman and was not persuasively controverted by Mr. Gordon. *See* Tr. (Bravman) at 488:25-489:3, CDX-0006C.52; *see also* CRB at 37 (discussing Caihong Display's Gen 8.5 equipment, citing Tr. (Gordon) at 1310:23-1311:10, Tr. (Markham) at 324:11-24).

f) Independent Development of Trade Secret 17.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 17.1 in its Gen 5 and later-generation FDMs.

⁵³ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman's testimony regarding "remarkable similarities" in design. *See* Tr. (Bravman) at 459:1-10. *Compare, e.g.*, JX-2094C at 2 (showing a [REDACTED]) with CX-3902C at 3 and CX-4107C at 3 (showing corresponding [REDACTED]); JX-2094C at 2 (showing a [REDACTED]) with CX-3902C at 3 and CX-4107C at 3 (showing corresponding [REDACTED]); JX-2094C at 2 (showing a [REDACTED]) with CX-3902C at 3 and CX-4107C at 3 (showing a corresponding [REDACTED]). The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm'n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

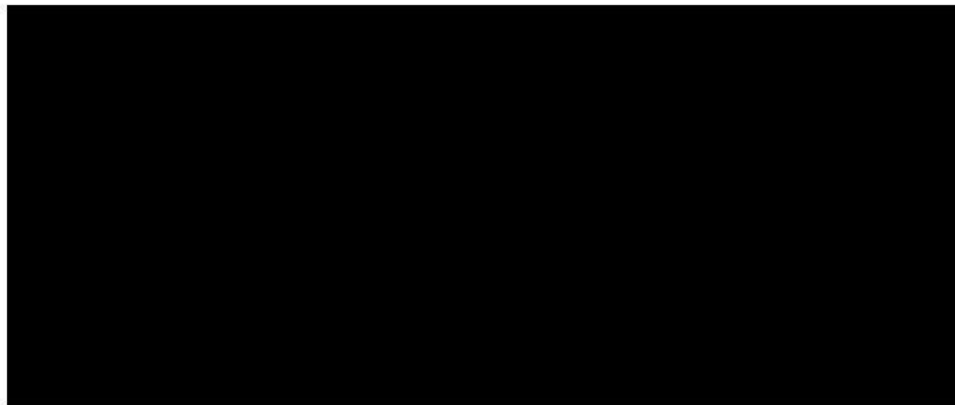
6. Trade Secret 20.1 (Edge Directors)

a) Identification of Trade Secret 20.1

Corning identifies Trade Secret 20.1 as:

The geometric details of the edge directors, including specifications, dimensions, and structure. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00013506), [REDACTED] (CORNING-LCD-00012140), [REDACTED] (CORNING-LCD-00010401), [REDACTED] (CORNING-LCD-00012127), [REDACTED] (CORNING-LCD-00010411), [REDACTED] (CORNING-LCD-00010414), [REDACTED] (CORNING-LCD-00010416), [REDACTED] (CORNING-LCD-00010478), [REDACTED] (CORNING-LCD-00012223), and [REDACTED] (CORNING-LCD-00012224), [REDACTED] (CORNING-LCD-00010294 - CORNING-LCD-00010304), and [REDACTED] (Appendix A).

CIB at 89; RX-6749C at ¶ 20.1; RIB at xvi; SIB at 53. Dr. Bravman depicted the location of the edge directors in Corning's Gen 5 FDM as follows:



CDX-0006C.43; Tr. (Bravman) at 490:4-13. Dr. Bravman testified that these are [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tr. (Bravman) at 490:6-13. They are made “ [REDACTED]

[REDACTED].” Tr. (Bravman) at 491:1-4.

The parties dispute whether TS 20.1 is sufficiently identified. Corning and Staff argue that it is, including through JX-2007C and JX-2260C ([REDACTED] and [REDACTED]). *See* CIB at 89; SIB at 53. Respondents argue that it is not, including because they contend that the identification of the trade secret is inconsistent with Corning’s position on public availability and economic value. RIB at 58.

The evidence shows that TS 20.1 is sufficiently identified through reference to specific Corning drawings (JX-2007C) which show the design of the edge directors. *See also* Part IV.A.2.a *supra*.

b) Corning’s Ownership of Trade Secret 20.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning contends that the economic value of this trade secret is shown by its function to “keep the glass from attenuating while also guarding against crystallization.” CIB at 89. Corning states that it has “[REDACTED].” *Id.* at 90. Corning contends that the economic value of TS 20.1 is shown by Corning’s substantial and continuous investments in developing the FDM, PicVue’s and Irico’s payments for drawings that reflect TS 22.1, and by [REDACTED] [REDACTED]. *Id.*

Respondents argue that Corning has failed to show economic value for the same reasons discussed in relation to Corning's other asserted trade secrets and that Corning and Dr. Bravman have failed to tie any purported economic value to the angles called out in the use analysis. RIB at 59.

Staff contends that TS 20.1 has independent economic value as demonstrated by Corning's investments in research and development of its edge director and by virtue of not being generally known or readily ascertainable. SIB at 54-55.

The evidence shows by a preponderance that TS 20.1 has independent economic value based on Corning's investments in developing its edge director design, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 663:13-664:12. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 edge director design. *See* JX-2007C; Tr. (Bravman) at 490:23-491:12; CDX-0006C.45; *cf. Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOfFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 90-91. Respondents rely on their arguments with respect to TS 12.1, as well as the following references, to argue that TS 20.1 was generally known and/or readily ascertainable: (1) US3451798A ("Simon") (RX-6296) ("Sheet Glass Edge Control Device, issued June 24, 1969, assigned to Corning); (2) WO2010099278A2 ("Bisson") (RX-6744) (published Sept. 2, 2010, applicant Corning); and (3) US11702355B2 ("Boratav355")

(RX-0585) (PCT publication date May 31, 2019, issued July 18, 2023, assigned to Corning). RIB at 57. In addition, Ms. Markham testified that Corning's patent U.S. 9, 512,025 (RX-0058) (published Nov. 19, 2015, assigned to Corning) discloses edge directors. *See* RIB at 60 n.11; Tr. (Markham) at 355:25-356:23; RX-0058. Staff contends that TS 20.1 was not generally known or readily ascertainable. SIB at 56.

Of the references discussed by Mr. Gordon, RX-6296 ("Simon") (issued June 24, 1969) pre-dates the alleged misappropriation. *See* SIB at 55. The evidence shows that Simon discloses edge directors used in the "overflow-downdraw process." RX-6296, Abstract. Dr. Gordon provided testimony showing that Simon's edge directors involve [REDACTED], which is [REDACTED].

However, the evidence fails to show that Simon discloses the precise design and dimensions of the Corning Gen 5 edge directors as set forth in the Corning drawings relied upon for this trade secret and the evidence of record, including Respondents' own arguments, indicate that such details are important. *See* RIB at 62 (noting the fine-tuning of edge directors and that "the precise angles of these components . . . are important"). Accordingly, the evidence shows by a preponderance that TS 20.1 was not generally known at the time of the alleged misappropriation. *Cf. Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 541 (7th Cir. 2021).⁵⁴

⁵⁴ However, the evidence indicates that Boratav355 discloses a [REDACTED] as shown in JX-0490C and thus could affect the remedy if a violation is found based on this trade secret. *See* RDX-0004C.97.

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1.e, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 20.1 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files. However, the evidence fails to show that TS 20.1 was acquired through the asserted PicVue pathway. The only document in the PicVue pathway (*i.e.*, the Gao-provided documents) shown to include any information about the edge directors is CX-4234. *See* CDX-0006C.47. However, this document only appears to include a cross-sectional view of the edge detectors, provides no [REDACTED], and thus has not been shown to substantially disclose this trade secret. This is insufficient, particularly given Dr. Bravman’s testimony regarding the importance of an [REDACTED]. *See* Tr. (Bravman) at 491:1-9; CDX-0006C.45 (discussing JX-2007C); Tr. (Bravman) at 490:14-17 (“[REDACTED]”).

[REDACTED]

[REDACTED]”).

[REDACTED] also does not disclose dimensions and, as discussed in connection with TS 19, the evidence fails to show by a preponderance that Caihong Display acquired [REDACTED] through either the PicVue or HLT pathway.

e) Use or Disclosure of Trade Secret 20.1

Corning contends that the evidence shows use of TS 20.1 in developing edge directors for its Gen 5 technology. Corning contends that a Gao-provided “Irico” document shows “the same views and cross sections and following the same design and geometry as Corning’s.” CIB at 91 (citing Tr. (Bravman) at 496:13-24, CDX-0006C.47) (comparing JX-0554C and CX-4234C).

Corning also cites an [REDACTED]

[REDACTED]

[REDACTED] *Id.* Corning argues that [REDACTED]

[REDACTED]

[REDACTED]. Corning argues that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. CIB at 92 (citing JX-0114C).

Caihong Display, in opposition, argues that Dr. Bravman’s Gen 5 use opinion “does not discuss a single specification, dimension, or structure of the edge directors.” RIB at 61. Caihong Display argues that, although Dr. Bravman opined that [REDACTED] [REDACTED] are encompassed within TS 20.1, he does not address any of these components in his testimony. *Id.* Respondents also argue that Mr. Gordon identified differences between Corning’s G5 document and Gao’s External Document. With respect to Gen 7.5 and Gen 8.5, Respondents

argue that Dr. Bravman's testimony is conclusory and relies on [REDACTED]

[REDACTED], and that the "precise angles of these components . . . are important." *Id.* at 62.

Staff credits Dr. Bravman's testimony that "drawings provided by Gao show that the edge directors shown in the PicVue drawings and used in Caihong Display's Gen 5 FDM are essentially the same as Corning's design." SIB at 57. Staff also credits Dr. Bravman's testimony that Caihong Display's Gen 7.5 and Gen 8.5 technology use substantially the same edge director design. *Id.*

The undersigned finds that Corning has not shown substantial use of TS 20.1 by a preponderance of the evidence. As discussed above, the evidence does not show acquisition by Caihong of the trade secret through the PicVue pathway. Dr. Bravman's analysis does not provide any comparison of the dimensions of Corning's Gen 5 edge director to the Gao PicVue or Gao Caihong documents, instead relying upon a single cross-sectional drawing with no dimensional information about the edge directors. *See* discussion *supra* (regarding acquisition).

In addition, Dr. Bravman's analysis of Gen 7.5 and Gen 8.5 rely solely on an angle that Mr. Gordon showed, without specific rebuttal from Dr. Bravman, was disclosed in Corning's 1969 patent (RX-6296). Corning's additional arguments regarding [REDACTED] are unpersuasive and do not carry Corning's burden of proof, including because [REDACTED] does not show any actual dimensions of the edge directors.

For at least these reasons, Corning has not shown substantial use of TS 20.1 by a preponderance of the evidence.

f) Independent Development of Trade Secret 20.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets. However, the evidence fails to show by a preponderance that TS 20.1 was misappropriated by Respondents.

For these reasons, the evidence does not show by a preponderance that Caihong Display misappropriated TS 20.1 in its Gen 5 and later-generation FDMs.

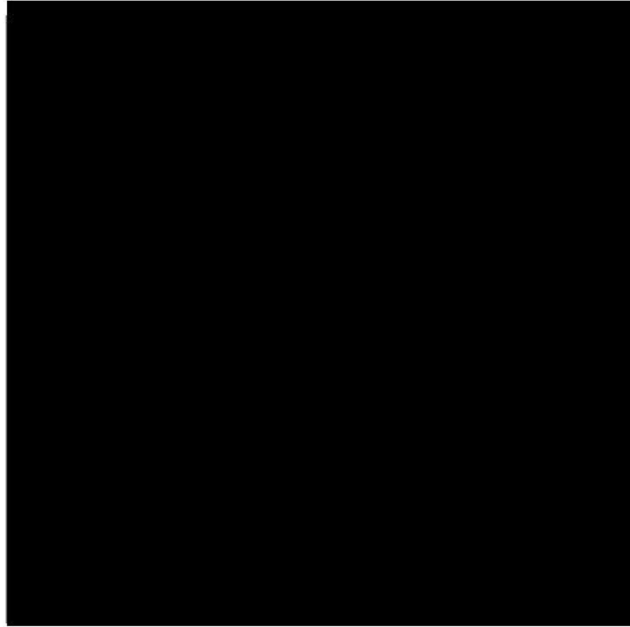
7. Trade Secret 22.1 (Isopipe Compression System)

a) Identification of Trade Secret 22.1

Corning identifies Trade Secret 22.1 as:

The geometric details, such as specifications, dimensions, and structure, of the isopipe compression system. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00010622), [REDACTED] (CORNING-LCD-00010628), [REDACTED] (CORNING-LCD-00010514), [REDACTED] (CORNING-LCD-00010534), [REDACTED] (CORNING-LCD-00010537), [REDACTED] (CORNING-LCD-00011570), [REDACTED] (CORNING-LCD-00011572), [REDACTED] (CORNING-LCD-00011574), [REDACTED] (CORNING-LCD-00011575), [REDACTED] (CORNING-LCD-00011576), [REDACTED] (CORNING-LCD-00011578), [REDACTED] (CORNING-LCD-00011580), [REDACTED] (CORNING-LCD-00011581), [REDACTED] (CORNING-LCD-00011582), [REDACTED] (CORNING-LCD-00011583), and [REDACTED] (CORNING-LCD-00010478), [REDACTED] (CORNING-LCD-00010257), [REDACTED] (Appendix A), and [REDACTED] (CORNING-LCD-00012426) and [REDACTED] [REDACTED] [REDACTED] (CORNING-LCD-00012424).

CIB at 93; RX-6749C at ¶ 22.1; RIB at xvi; SIB at 58. Dr. Bravman highlighted the location of the isopipe compression system in the following demonstrative:



CDX-0006C.50; Tr. (Bravman) at 499:1-18. Dr. Bravman explained that the purpose of the isopipe compression system is to “[REDACTED]” Tr. (Bravman) at 499:3-18.

The parties dispute whether TS 22.1 is sufficiently identified. Corning and Staff argue that it is, including through JX-0695C and JX-0594 ([REDACTED]). *See* CIB at 93; SIB at 59. Respondents argue that it is not, including because including because they contend that the identification of the trade secret is inconsistent with Corning’s position on public availability and economic value. *See* RIB at 63.

The evidence shows that TS 22.1 is sufficiently identified through reference to specific Corning drawings which show the design of the isopipe compression system. *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning’s Ownership of Trade Secret 22.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning contends that the economic value of this trade secret is shown by its function in preventing the isopipe from sagging over time. *See* CIB at 93 (citing Tr. (Kudva) at 405:8-15, Tr. (Bocko) at 662:24-663:12, and Tr. (Bravman) at 499:1-18. Corning states that it has [REDACTED]

[REDACTED]. CIB at 93. Corning contends that the economic value of TS 22.1 is shown by Corning's substantial and continuous investments in developing the FDM, PicVue's and Irico's payments for drawings that reflect TS 22.1, and by [REDACTED]

Respondents argue that Corning has failed to show economic value for the same reasons discussed in relation to Corning's other asserted trade secrets and that Corning and Dr. Bravman have failed to tie any purported economic value" to the specific dimensions called out in the use analysis. RIB at 64.

Staff contends that TS 22.1 has independent economic value as demonstrated by Corning's investments in research and development of its isopipe compression system and by virtue of not being generally known or readily ascertainable. SIB at 60.

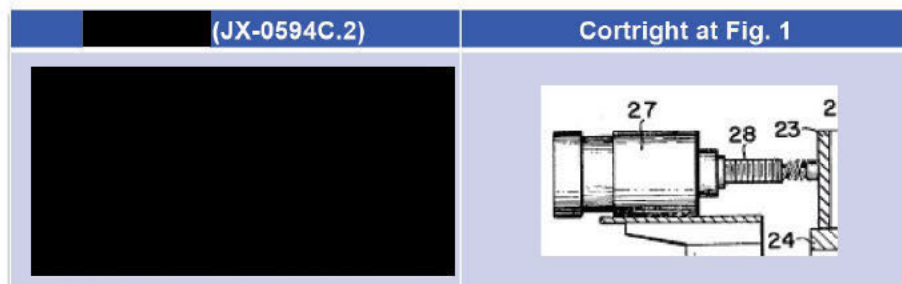
The evidence shows by a preponderance that TS 22.1 has independent economic value based on Corning's investments in developing its isopipe compression system, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 662:24-663:6. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 isopipe compression system design. *See* JX-0594C; Tr. (Bravman) at 499:24-500:6; CDX-

0006C.52; *cf. Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOfFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 94. Respondents rely on their arguments with respect to TS 12.1, as well as the following references, to argue that TS 22.1 was generally known and/or readily ascertainable: (1) US 3519411A (“Cortright”) (JX-2798) (issued July 7, 1970, assigned to Corning); and (2) CN113415977A (“Li977”) (JX-0236) issued Sept. 21, 2021, filed May 19, 2021, applicant Tunghsu). Of these, Cortright (JX-2798) pre-dates the alleged misappropriation. *See* RIB at 64; SIB at 61. Staff contends that TS 22.1 was not generally known or readily ascertainable. SIB at 61.

The evidence shows that this Corning patent discloses the use of an isopipe compression system. *See* RIB at 64-65; Tr. (Gordon) at 1190:13-21 and RDX-0004C.107 (Cortright describes “an air cylinder that will provide the force that’s necessary to overcome that sagging”). Mr. Gordon testified that the figure in Cortright appears similar to Corning’s drawing (JX-0594) of the isopipe compression system. *See* Tr. (Gordon) at 1190:13-21; RDX-0004C.107, as shown below:



RDX-0004C.107. Corning argues, in opposition, that the references discussed by Mr. Gordon do not disclose “the geometric details of Corning’s isopipe compression system, [REDACTED] [REDACTED].” CIB at 94.

Upon review of the evidence, the undersigned finds that that Corning’s specific design drawings for the isopipe compression pipe, including the dimensional information contained in JX-594C (*see* CDX-0006C.54), is not disclosed in Cortright. *Cf. Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 541 (7th Cir. 2021). However, given the disclosures of a highly similar structure in Cortright, the scope of the trade secret information is narrow.⁵⁵

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1.e, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 22.1 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

e) Use or Disclosure of Trade Secret 22.1

Corning argues that the evidence shows that Caihong Display used TS 22.1 in developing its Gen 5 technology. CIB at 94. Corning argues that Caihong Display’s drawings are

⁵⁵ This factor may have implications for an appropriate remedy.

substantially similar to Corning's and states that, as an example, [REDACTED]

[REDACTED]. *See id.* at 94-95 (citing Tr. (Bravman) at 500:24-501:20, CDX-0006C.55). Corning argues that the current Gen 7.5 and Gen 8.5 technology continues to substantially use this trade secret, relying on testimony from Qiao and drawings of Caihong Display's Gen 7.5 and Gen 8.5 equipment. *See id.* at 95 (citing JX-0025C (Qiao Dep. Tr. at 129:12-16, Tr. (Bravman) at 502:19-23, CDX-0006C.56).

Respondents argue, in opposition, that Dr. Bravman's past use analysis is inadequate because he relies upon the length of only one component [REDACTED] and fails to address other components that he did not analyze. See RIB at 65. Respondents argue that the current use allegations for Gen 7.5 are inadequate as they are based solely on a single dimension. *Id.* at 66. Regarding Gen 8.5, Respondents argue that Dr. Bravman relies solely on a photograph and that the dimensions and other information is not discernible from the photo alone. *See id.*

Staff contends that the evidence shows that Caihong Display has used TS 24.1 and credits Dr. Bravman's testimony regarding similarities between Corning's design and the PicVue drawings. SIB at 62-63. Staff states that Caihong Display's Gen 7.5 and Gen 8.5 technology "continue to use substantially the same isopipe compression system design." *Id.* (citing, *inter alia*, Bravman).

Dr. Bravman's testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao Caihong design, is persuasive, particularly upon review of the documents. *See* Tr. (Bravman) at 500:24-501:20; CDX-0006C.55; JX-0594C; CX-3992C. Dr. Bravman's testimony comparing a distance measurement for this component further

evidences substantial use. *See id.*⁵⁶ In addition, Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See* Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents' argument that Dr. Bravman did not analyze every aspect of the muffle door design is insufficient to controvert the strong circumstantial evidence of substantial use. *See generally* CRB at 19-20, 25-26.

The evidence also shows by a preponderance that Caihong Display made substantial use of TS 22.1 for development of its later-generation FDMs, including its Gen 8.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation FDMs were significantly based on the design of the Gen 5 FDM. In addition, continued use is consistent with the additional testimony provided by Dr. Bravman and was not persuasively controverted by Mr. Gordon. *See* Tr. (Bravman) at 502:19-23, CDX-0006C.56.

f) Independent Development of Trade Secret 22.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

⁵⁶ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman's testimony regarding "remarkable similarities" in design. *See* Tr. (Bravman) at 459:1-10. *See, e.g.*, JX-0590C at 2 (showing [REDACTED]) with CX-3995C at 3 (showing corresponding [REDACTED]); JX-0590C at 2 (showing a [REDACTED]) with CX-3995C at 3 (showing corresponding [REDACTED]); JX-0590C at 2 (showing a [REDACTED]) with CX-3995C at 3 (showing corresponding [REDACTED]). The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm'n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 22.1 in its Gen 5 and later-generation FDMs.

8. Trade Secret 24.1 (Muffle Steel)

a) Identification of Trade Secret 24.1

Corning identifies Trade Secret 24.1 as:

The geometric details, such as specifications, dimensions, and structure, of the muffle steel. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00010594), [REDACTED] (CORNING-LCD-00010597), [REDACTED] (CORNING-LCD-00011571), [REDACTED] (CORNING-LCD-00010611), and [REDACTED] (CORNING-LCD-00011583), [REDACTED] (CORNING-LCD-00010257), and [REDACTED] (Appendix A).

CIB at 96; RX-6749C at ¶ 24.1; RIB at xvi; SIB at 64. Dr. Bravman testified that the muffle steel is “kind of the outer skeleton that holds the muffle all together” and was “[REDACTED] [REDACTED].” Tr. (Bravman) at 474:10-16; CDX-0006C.27.

[REDACTED]

CDX-0006C.27.

The parties dispute whether TS 24.1 is sufficiently identified. Corning and Staff argue that it is, including through JX-0594C and JX-0596C ([REDACTED] [REDACTED]). See CIB at 96; SIB at 59. Respondents argue that it is not, including because

they contend that the identification of the trade secret is inconsistent with Corning's position on public availability and economic value. *See* RIB at 67.

The evidence shows that TS 24.1 is sufficiently identified through reference to specific Corning drawings which show the design of the muffle steel. *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning's Ownership of Trade Secret 24.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning argues that the design of the muffle steel is valuable because it maximizes the utility, efficiency, and reliability of the FDM. CIB at 97 (citing Tr. (Bravman) at 474:22-475:4; *see also id.* (“nothing is superfluous or happenstance in a machine of this complexity. It all is designed to maximize the utility, the efficiency, and the productivity, as well as the reliability of such a machine”). Corning argues that [REDACTED] [REDACTED]. *See* Tr. (Bocko) at 664:17-665:4 (testifying that it [REDACTED] to develop muffle steel that “essentially supports mechanically and [REDACTED] [REDACTED]). Corning also argues economic value based on evidence relating to the FDM generally, including [REDACTED]. *See id.*

Respondents argue that Corning has failed to show economic value for the same reasons discussed in relation to Corning's other asserted trade secrets and that Corning and Dr. Bravman

have failed to tie any purported economic value” to the specific dimensions called out in the use analysis. RIB at 68.

Staff contends that TS 24.1 has independent economic value as demonstrated by Corning’s investments in research and development of its muffle steel and by virtue of not being generally known or readily ascertainable. SIB at 66.

The evidence shows by a preponderance that TS 24.1 has independent economic value based on Corning’s investments in developing its muffle steel design, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 664:13-665:17. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 muffle steel design. *See* JX-0596C; JX-0594C; Tr. (Bravman) at 474:22-475:10; CDX-0006C.29; *cf. Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOfFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Respondents argue that TS 24.1 was generally known and/or readily ascertainable in view of five references: (1) U.S. Patent No. 10,202,297B2 (“Delia297”) (RX-0589) (PCT publication date April 7, 2016, applicant Corning); (2) CN105645738A (“Li738”) (JX-0213) (published June 8, 2016, filed Dec. 29, 2015, applicant Wuhu Tunghsu); (3) CN211977543U (“Zheng”) (JX-0298C) (published Nov. 20, 2020, patentee Irico); (4) CN112159078A (“Su078”) (JX-0232) (published Jan. 1, 2021, applicant Caihong Group); (5) CN119774856A (“Su856”) (JX-0251) (published Apr. 8, 2025, applicant Caihong Group), and/or (6) CN106630557A

(“He557”) (JX-0215) (filed Nov. 16, 2016, published May 10, 2017, applicant Wuhu Tunghsu). RIB at 68-69 (citing Tr. (Gordon) at 1172:16-25, 1173:24-1174:6).

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 97. Corning argues that all six references identified by Dr. Gordon post-date the alleged misappropriation and that five are Chinese patents filed by Irico or Dongxu. *Id.* at 97; *see also* SIB at 66-67. Corning argues that none of these references “discloses the geometric details of the muffle steel, as Corning’s engineering drawings do,” and that the Corning patent (RX-0589) “shows only partial views that are different from the stolen designs and does not reveal any dimensions.” CIB at 97.

At least because these references all post-date the alleged misappropriation, they do not show that the asserted muffle steel trade secret was generally known or ascertainable at the time of the alleged misappropriation.⁵⁷

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 30.1 was a protectable trade secret at the time of the alleged misappropriation.

⁵⁷ However, Mr. Gordon’s testimony, unrebutted in any specific manner by Dr. Bravman, indicates that Corning disclosed multiple aspects of its muffle steel design in Delia297 (RX-0589). This may be relevant to an appropriate remedy.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

e) Use or Disclosure of Trade Secret 24.1

With respect to Caihong Display's Gen 5 machinery, Dr. Bravman testified that Corning's Gen 5 drawings, the PicVue drawings provided by Gao, and the Caihong Gen 5 documents provided by Gao were substantially similar, calling out in particular the [REDACTED] dimension. CIB at 98 (citing Tr. (Bravman) at 475:19-476:6, CDX-0006C.30). With respect to Gen 7.5 and Gen 8.5, Dr. Bravman testified that "the continuity of design and layout immediately jumps off the page to me." Tr. (Bravman) at 480:21-481:1.

Respondents argue, in opposition, that the documents Dr. Bravman rely upon do not show the complete muffle steel and that the lower muffle steel is missing. RIB at 70 (citing Tr. (Gordon) at 1170:3-9, RDX-4C.56). Respondents further argue that Corning's case suffers from a failure of proof. RIB at 70. In addition, Respondents argue that the muffle steel shown in the Corning documents differs from the muffle steel shown in Gao's PicVue and Irco documents. *Id.* With respect to the Gen 7.5 and Gen 8.5 designs, Respondents argue that Dr. Bravman's analysis is insufficient and that he "failed to conduct any substantive substantial use analysis." *Id.* at 71.

Staff contends that the evidence shows that Caihong Display has used TS 24.1 and credits Dr. Bravman's testimony regarding similarities between Corning's design and the PicVue drawings. SIB at 68. Staff states that Caihong Display's Gen 7.5 and Gen 8.5 technology

“continue to use substantially the same muffler assembly design.” *Id.* (citing, *inter alia*, Bravman).

The evidence shows by a preponderance that Caihong Display made substantial use of TS 30.1 in developing its Gen 5 FDM. Dr. Bravman’s testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao PicVue and Gao Caihong designs, is persuasive, particularly upon review of the documents. *See* Tr. (Bravman) at 475:19-476:6; CDX-0006C.30; JX-0596C; CX-3827C; CX-2958C. Dr. Bravman’s testimony comparing the upper steel width measurement further evidences substantial use. *See* Tr. (Bravman) at 475:19-476:6; CDX-0006C.30. 506:5-506:13; CDX-0006C.63.⁵⁸ In addition, Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See* Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents’ argument that Dr. Bravman did not show the lower muffler steel, and their arguments regarding differences in

⁵⁸ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman’s testimony regarding “remarkable similarities” in design. *See* Tr. (Bravman) at 459:1-10. *Compare, e.g.*, JX-0596C at 2 (showing a [REDACTED]) with CX-3827C at 2 and CX-3985C at 2 (showing corresponding [REDACTED]); JX-0596C at 2 (showing a [REDACTED]) with CX-3827C at 2 and CX-3985C at 2 (showing corresponding [REDACTED]); JX-0596C at 2 (showing a [REDACTED]) with CX-3827C at 2 and CX-3985C at 2 (showing a corresponding [REDACTED]). The documents also show other circumstantial evidence of copying from the Corning design document. *Compare* JX-0596C at 2 [REDACTED] with CX-3827C at 2 and CX-3985C at 2 [REDACTED]. The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm’n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

suspension systems, is insufficient to controvert the strong circumstantial evidence of substantial use. *See generally* CRB at 19-20, 25-26.

The evidence, including the evidence cited by Dr. Bravman, also shows by a preponderance that Caihong Display made substantial use of TS 24.1 for development of its later-generation FDMs, including its Gen 8.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation FDMs were significantly based on the design of the Gen 5 FDM) and no persuasive evidence was presented controverting this continuity as to the subject matter of TS 24.1.

f) Independent Development of Trade Secret 24.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 24.1 in its Gen 5 and later-generation FDMs.

9. Trade Secret 30.1 (Muffle Door Assembly)

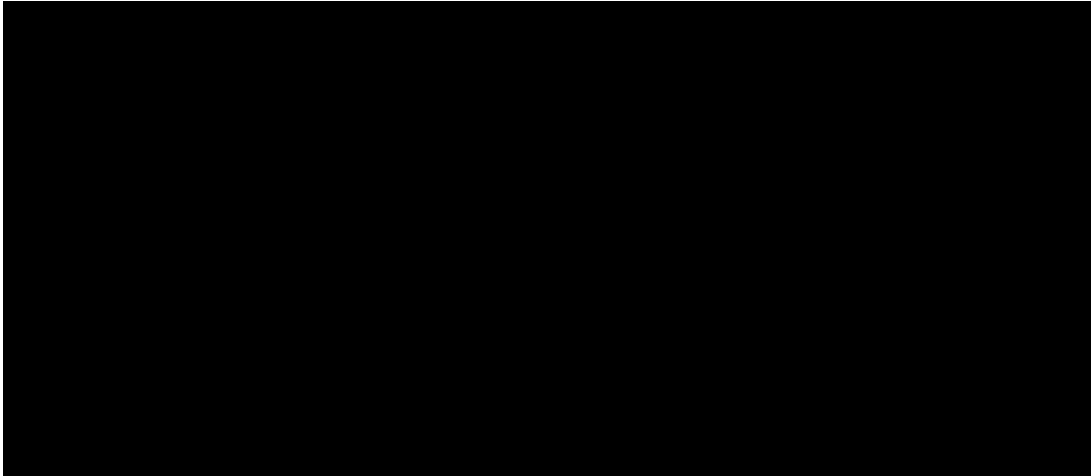
a) Identification of Trade Secret 30.1

Corning identifies Trade Secret 30.1 as:

The overall assembly of the muffle doors and the geometry and sequence of their construction. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00010783), [REDACTED] (CORNING-LCD-00010802), [REDACTED] (CORNING-LCD-00010815), [REDACTED] (CORNING-LCD-00010840), [REDACTED] (CORNING-LCD-00010846), [REDACTED] (CORNING-LCD-00012232), and [REDACTED] (CORNING-LCD-00012233), [REDACTED] (CORNING-LCD-00010258), [REDACTED] (CORNING-

LCD-00013759), and [REDACTED]
[REDACTED] (Appendix A).

CIB at 99; RX-6749C at ¶ 30.1; RIB at xvi; SIB at 70. Dr. Bravman depicted the location of the muffle doors in Corning's Gen 5 FDM as follows:



CDX-0006C.58. Dr. Bravman testified that the design of the muffle doors is important because it “helps maintain the overall environment, thermal environment and atmospheric environment, isolates one section of the machine from the other to a certain degree, and so it’s an important part of the functioning.” Tr. (Bravman) at 503:19-22.

The parties dispute whether TS 30.1 is sufficiently identified. Corning and Staff argue that it is, including through JX-0859C ([REDACTED]). *See* CIB at 99; SIB at 70. Respondents argue that it is not, including because they contend that the identification of the trade secret is inconsistent with Corning’s position on public availability and economic value. *See* RIB at 71-72.

The evidence shows that TS 30.1 is sufficiently identified through reference to specific Corning drawings which show the design of the muffle doors. *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning's Ownership of Trade Secret 30.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

With respect to economic value, Corning argues that the muffle doors help maintain the terminal environment inside the muffle, that [REDACTED], but that Corning learned [REDACTED] CIB at 100 (citing Tr. (Bocko) at 665:8-17. Corning notes [REDACTED] as well, and states this Corning has [REDACTED].” Corning argues that the economic value of TS 30.1 is also shown by Corning general investments in the FDM. *See id.*

Respondents argue, in opposition, that “[t]o the extent TS 30.1 is understood as Dr. Bravman applied it in his use analysis . . . Corning and Dr. Bravman have failed to tie any purported economic value” to the specific dimensions called out in the use analysis. RIB at 72.

Staff contends that TS 30.1 has independent economic value as demonstrated by Corning’s investments in research and development of its muffle door design and by virtue of not being generally known or readily ascertainable. SIB at 71-72.

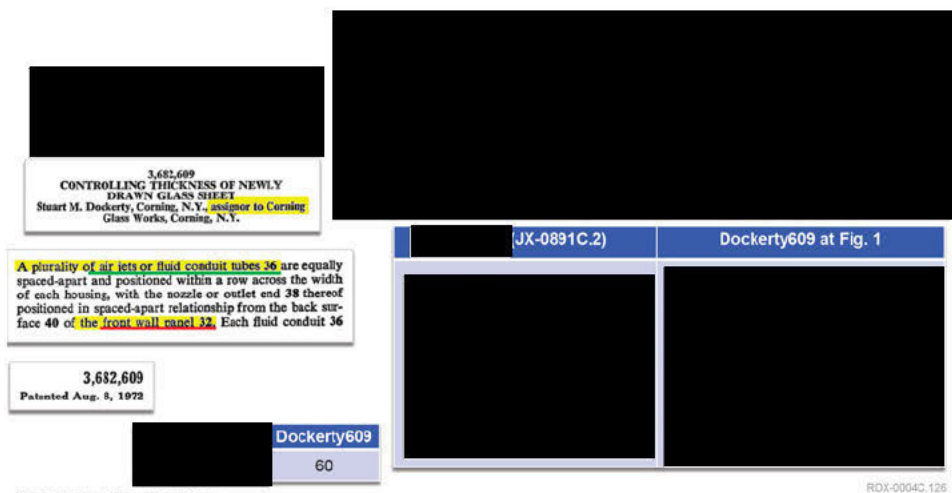
The evidence shows by a preponderance that TS 30.1 has independent economic value based on Corning’s investments in developing its muffle door design, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 665:9-17. In addition, the evidence shows that the documents relied upon

for this trade secret provide specific design information for the Corning Gen 5 muffle door design. See JX-0859C; Tr. (Bravman) at 504:5-23; CDX-0006C.60; cf. *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Respondents argue that this trade secret is generally known or readily ascertainable in view of: (1) U.S. Patent No. 3,682,609 (Dockerty609) (RX-6297) (issued Aug. 8, 1972, assigned to Corning); (2) EP2253598B1 (“Delia598”) (RX-6292) (published May 14, 2014, assigned to Corning); and (3) CN119822609A (“Cao”) (JX-0252) (published Apr. 15, 2025, application date Feb. 20, 2025, applicant Tunghsu Group). Of these, Dockerty609 pre-dates the alleged misappropriation. See CIB at 101.

Respondents argue *inter alia* that Dockerty609 (RX-6297), assigned to Corning, discloses [REDACTED], as well as a [REDACTED] including [REDACTED] that appears to correspond to [REDACTED]. RIB at 73 (citing Tr. (Gordon) at 1197:9-16). Mr. Gordon illustrated this as follows:



RDX-0004C.126. Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 101. Corning argues that none of these references identified by Dr. Gordon, including RX-6297, “shows the dimensions of the muffler door assembly (e.g., [REDACTED]) or how all of the components combine in one assembly.” CIB at 101 (citing Tr. (Bravman) at 452:18-455:15.

Staff similarly argues that the Dockerty reference “does not show the dimensions of the muffler door assembly, [REDACTED]
[REDACTED], as reflected in JX-0859C ([REDACTED]
[REDACTED]).” SIB at 72. In support, Staff cites testimony of Dr. Bravman that the disclosures in references identified by Mr. Gordon did not include documents “that would allow workers of skill in the hundreds to produce such a machine.” Tr. (Bravman) at 453:13-455:3.

The evidence of record shows that multiple important aspects of Corning’s muffler door assembly were disclosed in Corning’s RX-6297 patent from 1972 (e.g., [REDACTED]
[REDACTED]). *See* Tr. (Gordon) at 1197:9-16. However, this reference did not disclose the details set forth in the design documents relied upon by Corning. Accordingly, the evidence shows that TS 30.1 was not generally known or readily ascertainable at the time of the alleged misappropriation. *Cf. Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 541 (7th Cir. 2021).⁵⁹

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1.e, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

⁵⁹ The disclosures in RX-6297, however, may affect the appropriate remedy.

Based on the considerations above, the evidence shows by a preponderance that TS 30.1 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means/Use or Disclosure

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

e) Use or Disclosure of Trade Secret 30.1

With respect to past use, Corning argues that that the PicVue and Irico drawings show “muffle doors with the same design as Corning’s muffle doors, using the same components and assembling them in the same sequence, and even display the same three projection views as Corning.” CIB at 101 (citing Tr. (Bravman) at 505:22-506:4, CDX-0006C.62). Corning also points to [REDACTED]. *Id.* at 101 (citing Tr. (Bravman) at 506:5-13, CDX-0006C.63). Corning argues that the Caihong Display Gen 7.5 and Gen 8.5 FDMs continue to be substantially derived from TS 30.1, and this is confirmed by design drawings. *See* CIB at 102 (citing Tr. (Bravman) at 507:9-25, CDX-0006C.65).

Respondents argue that Dr. Bravman does not address the geometry of any part or the order in which they were put together, and that his analysis is based only on [REDACTED]. RIB at 75. Respondents argue that the Park photo provides no means to conduct a meaningful comparison and that Dr. Bravman’s analysis cannot meet Corning’s burden of proof. *Id.* at 75-76. Respondents also argue that there are material differences between the Corning Gen 5 drawing and the Gao-provided documents. *Id.* Respondents argue that Dr. Bravman’s analysis of the Gen 7.5 and 8.5 designs failed to conduct any substantive analysis, and that even at a high

level of generality, there are differences between Caihong's muffle doors and Corning's. *See id.* at 77.

Staff contends that the evidence shows that Caihong Display has used TS 35.1 and credits Dr. Bravman's testimony regarding similarities between Corning's design and the PicVue drawings. SIB at 79. Staff states that Caihong Display's Gen 7.5 and Gen 8.5 technology "continue to use substantially the same edge roll main assembly design." *Id.* (citing, *inter alia*, Bravman).

The evidence shows by a preponderance that Caihong Display made substantial use of TS 30.1 in developing its Gen 5 FDM. Dr. Bravman's testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao PicVue and Gao Caihong designs, is persuasive, particularly upon review of the documents. *See* Tr. (Bravman) at 505:22-506:4; CDX-0006C.62; JX-0859C; CX-4264C; CX-4005C. Dr. Bravman's testimony comparing a distance measurement for this component further evidences substantial use. *See* Tr. (Bravman) at 506:5-506:13; CDX-0006C.63.⁶⁰ In addition, Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See*

⁶⁰ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman's testimony regarding "remarkable similarities" in design. *See* Tr. (Bravman) at 459:1-10. *Compare, e.g.,* JX-0859C at 2 (showing a [REDACTED]) with CX-4264C at 2 and CX-4005C at 4 (showing corresponding [REDACTED]); JX-0859C at 2 (showing a [REDACTED]) with CX-4264C at 2 and CX-4005C at 4 (showing corresponding [REDACTED]). The documents also show other circumstantial evidence of copying from the Corning design document. *Compare* JX-0859C at 2 ([REDACTED])

[REDACTED] with CX-4264C at 2 [REDACTED]

[REDACTED]. The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm'n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents' argument that Dr. Bravman did not analyze every aspect of the muffle door design is insufficient to controvert the strong circumstantial evidence of substantial use. *See generally* CRB at 19-20, 25-26.

The evidence also shows by a preponderance that Caihong Display made substantial use of TS 35.2 for development of its later-generation FDMs, including its Gen 8.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation FDMs were significantly based on the design of the Gen 5 FDM. This evidence is consistent with the Gen 7.5 and Gen 8.5 documents. *See* Tr. (Bravman) at 507:9-25; CDX-0006C.65.

f) Independent Development of Trade Secret 30.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 30.1 in its Gen 5 and later-generation FDMs.

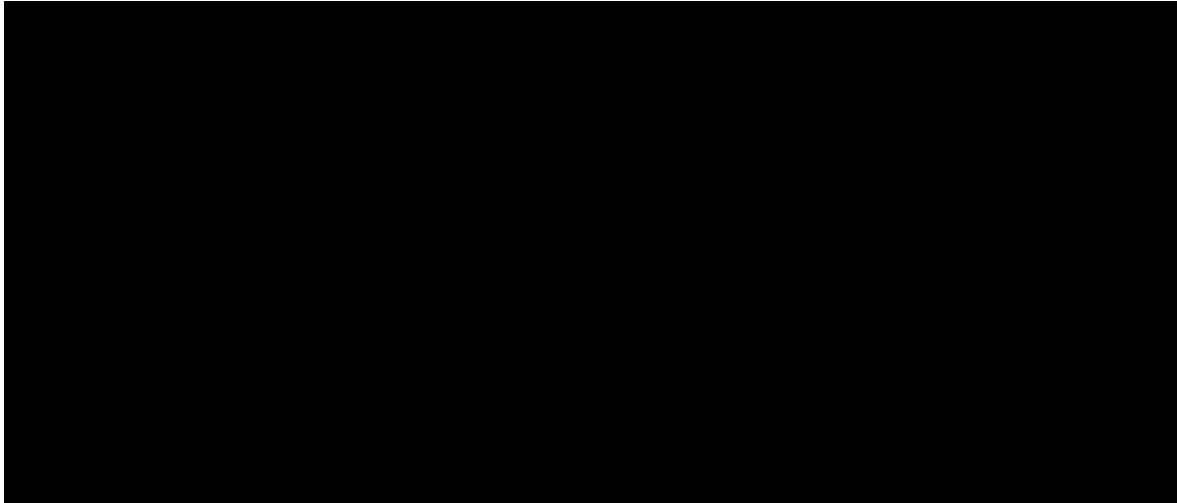
10. Trade Secret 35.1 (Edge Roll Main Assembly)

a) Identification of Trade Secret 35.1

Corning identifies Trade Secret 35.1 as:

The edge roll main assembly and the geometric details of its construction. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00010935) and [REDACTED] (CORNING-LCD-00011738), [REDACTED] (CORNING-LCD-00010267), and [REDACTED] (Appendix A).

CIB at 103; RX-6749C at ¶ 35.1; RIB at xvi; SIB at 75. Dr. Bravman identified the location of the edge roll main assembly in Corning’s Gen 5 FDM as follows:



CDX-0006C.66. Dr. Bravman testified that the “edge roll main assembly” comprise rollers that “touch the . . . fused piece of glass” and that they “help draw it down, and they help pull it apart, left to right. So the width of the glass is controlled in some fashion.” Tr. (Bravman) at 509:5-21.

The parties dispute whether TS 35.1 is sufficiently identified. Corning and Staff argue that it is, including through JX-1011C ([REDACTED]). *See* CIB at 103; SIB at 75-76. Respondents argue that it is not, including because they contend that the identification of the trade secret is inconsistent with Corning’s position on public availability and economic value. *See* RIB at 77-78.

The evidence shows that TS 35.1 is sufficiently identified through reference to specific Corning drawings which show the design of the edge roll main assembly. *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning’s Ownership of Trade Secret 35.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning contends that the edge roll main assembly is a critical component of the FDM and that “[REDACTED]” CIB at 104. Corning states that it [REDACTED], and that its economic value is also shown by Corning’s “substantial and continuous investments in developing the FDM (including the edge rolls) and by other FDM-related evidence. *See id.* (citing *inter alia* Tr. (Bocko) at 650:14-22, 665:18-666:6, CDX-0008C.20) (“the development of the materials and the mechanical design was trial and error over a long period of time”).

Respondents argue that Corning failed to meet its burden to show the economic value of the edge rollers and did not tie “any purported economic value to” specific item relied upon for the use analysis. RIB at 78.

Staff contends that TS 35.1 has independent economic value as demonstrated by Corning’s investments in research and development of its edge roll design and by virtue of not being generally known or readily ascertainable. SIB at 77.

The evidence shows by a preponderance that TS 35.1 has independent economic value based on Corning’s investments in developing its edge roll design, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 665:22-666:6. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 spindle assembly. *See* JX-1011C; Tr. (Bravman) at 510:1-12; CDX-0006C.68; *cf. Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same,*

and Products Containing Same, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Respondents contend that TS 35.1 and TS 35.2 were generally known and/or readily ascertainable in view of U.S. Patent No. 11,485,566B2 (“Anderson”) (JX-2805) (published Mar. 24, 2022, assigned to Corning) and CN101838102B (“Zhang”) (JX-0207) (filed June 10, 2009, issued May 2, 2012, patentee Tunghsu Group). Respondents argue, relying on the testimony of Mr. Gordon, that Anderson and Zhang “teach the aspects of Corning’s edge roll assemblies shown in the few engineering drawings Dr. Bravman cites to define TS 35.1 and 35.2, including many aspects that Dr. Bravman ignored in his misappropriation analysis.” RIB at 81 (citing Tr. (Gordon) at 1206:20-25).

Respondents further argue that Corning’s U.S. Patent No. 9,512,025 (RX-0058, published Nov. 19, 2015) also discloses edge rollers that actively cooled. *See* RIB at 82 n.12 (citing Tr. (Markham) at 357:24-359:6, 355:25-356:23).

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 104. Corning contends that neither of these references “discloses the geometric details of Corning’s edge roll assembly,” that both were filed after the misappropriation, and that Zhang is a Dongxu patent filed in 2009, “also after the misappropriation.” CIB at 104; *see also* SIB at 77.

The evidence shows by a preponderance that TS 35.1 and 35.2 were not generally known or readily ascertainable at the time of the alleged misappropriation, including because the references relied upon by Respondents post-date the alleged misappropriation.⁶¹

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1.e, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 35.1 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

f) Use or Disclosure

With respect to past use, Corning argues that that the “PicVue and Irico drawings have the same overall design and cross-section views of the edge roll main assembly as in Corning’s drawings.” CIB at 105 (citing Tr. (Bravman) at 510:13-23, CDX-0006C.69-70). Corning argues that the Caihong Display Gen 7.5 and Gen 8.5 FDMs continue to be substantially derived from TS 35.2, and this this is confirmed “Irico internal training materials” which state that Irico’s

⁶¹ However, the evidence shows that Corning’s patent (RX-0058, published Nov. 19, 2015) discloses an edge roller design with circulation within the edge roller shaft. *See* RIB at 82 n.12; *see* Tr. (Bravman) at 616:2-8 (testifying that the [REDACTED]). This disclosure may have implications for an appropriate remedy.

current edge roll assembly “follow the first generation design form.” CIB at 106 (citing JX-0117C at 9). Corning argues that this continued use is also confirmed by an “exemplary Gen 7.5 drawing and photograph of Irico’s Gen 8.5 machine.” *Id.* (citing Tr. (Bravman) at 511:8-14, CDX-0006C.71). Corning argues that the only purported differences identified by Respondents have never been raised before and are waived, and in any case the evidence shows continued use. CRB at 40-41.⁶²

Respondents argue that Dr. Bravman’s analysis is insufficient because it relies upon a single dimension and he fails to address attributes of the edge roll main assembly such as “the [REDACTED] [REDACTED]” despite evidence that these are implicated by TS 35.1. RIB at 79. Respondents argue that the underlying documents “demonstrate material differences” such as “[REDACTED] [REDACTED]” in the Corning drawing that is absent in the Gao-provided drawings. *Id.* Respondents further argue that Dr. Bravman’s conclusion regarding “deep similarities” as to the Gen 7.5 and Gen 8.5 FDMs is “facially deficient.” *Id.* at 79-80.

Staff contends that the evidence shows that Caihong Display has used TS 35.1 and credits Dr. Bravman’s testimony regarding similarities between Corning’s design and the PicVue drawings. SIB at 79. Staff states that Caihong Display’s Gen 7.5 and Gen 8.5 technology “continue to use substantially the same edge roll main assembly design.” *Id.* (citing, *inter alia*, Bravman).

⁶² Regardless of any waiver arguments, the evidence shows substantial use by a preponderance of the evidence. However, given that Dr. Bravman relies upon information clear upon the face of the documents, Respondents are not precluded from pointing to details on the face of those same documents.

The evidence shows by a preponderance that Caihong Display made substantial use of TS 35.2 in developing its Gen 5 FDM. Dr. Bravman's testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao PicVue and Gao Caihong designs, is persuasive, particularly upon review of the documents. *See* Tr. (Bravman) at 510:13-511:7; CDX-0006C.69-70; JX-1011C; CX-3876C; CX-3519C. Dr. Bravman's testimony comparing a distance measurement for this component further evidences substantial use. *See id.*⁶³ In addition, Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See* Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents' argument that Dr. Bravman did not analyze every aspect of the edge roll main assembly is insufficient to controvert the strong circumstantial evidence of substantial use. *See generally* CRB at 19-20, 25-26.

The evidence discussed above also shows by a preponderance that Caihong Display made substantial use of TS 35.2 for development of its later-generation FDMs, including its Gen 8.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation

⁶³ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman's testimony regarding "remarkable similarities" in design. *See* Tr. (Bravman) at 459:1-10. *Compare, e.g.*, JX-1011C at 2 (showing a [REDACTED]) with CX-3876C at 3 and CX-3519C at 4 (showing corresponding [REDACTED]); JX-1011C at 2 (showing a [REDACTED]) with CX-3876C at 3 and CX-3519C at 4 (showing corresponding [REDACTED]); JX-1011C at 2 (showing a [REDACTED]) with CX-3876C at 3 and CX-3519C at 4 (showing corresponding [REDACTED]). The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm'n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

FDMs were significantly based on the design of the Gen 5 FDM. *See also* CIB at 206 (citing evidence from JX-0117C⁶⁴ and Bravman testimony).

g) Independent Development of Trade Secret 35.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 35.1 in its Gen 5 and later-generation FDMs.

11. Trade Secret 35.2 (Edge Roll Spindle Assembly)

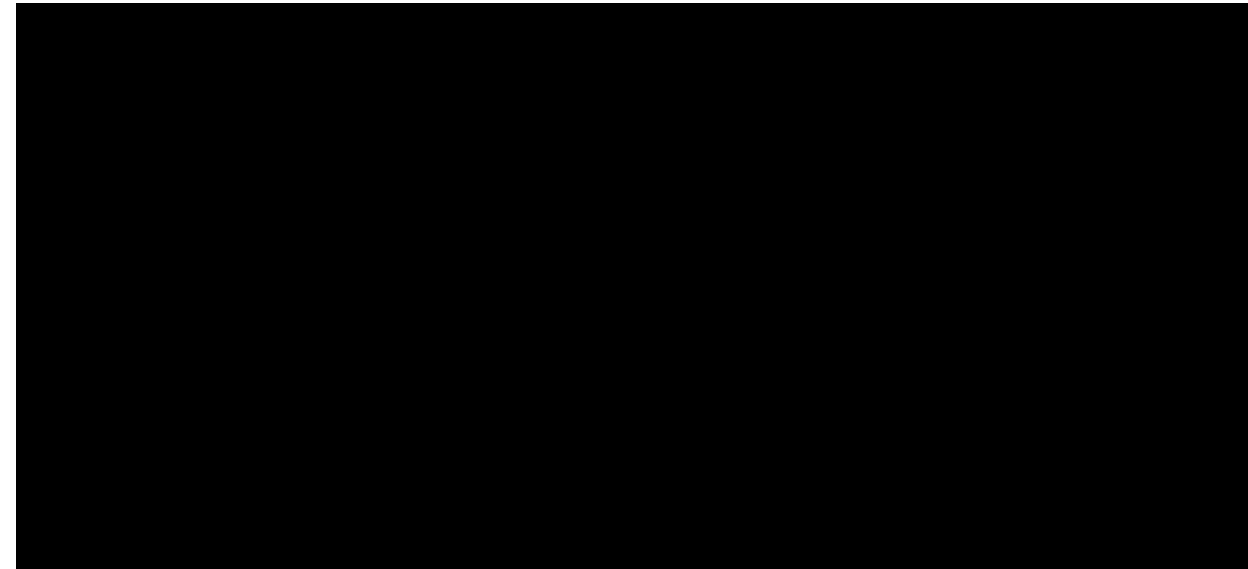
a) Identification of Trade Secret 35.2

Corning identifies Trade Secret 35.2 as:

The edge roll spindle assembly and the geometric details of its construction. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00011032), [REDACTED] (CORNING-LCD-00011033), [REDACTED] (CORNING-LCD-00011034), [REDACTED] (CORNING-LCD-00011035), [REDACTED] (CORNING-LCD-00013751), [REDACTED] (CORNING-LCD-00011037), [REDACTED] (CORNING-LCD-00011038), and [REDACTED] (CORNING-LCD-00011039), [REDACTED] (CORNING-LCD-00010268), and [REDACTED] (Appendix A).

CIB at 106; RX-6749C at ¶ 35.2; RIB at xvi; SIB at 81. Dr. Bravman identified the location of the edge roll spindle assembly as follows:

⁶⁴ Although Corning's brief cites JX-0117C at 9, it appears the correct citation is JX-0117C at 10.



CDX-0006C.72; Tr. (Bravman) at 512:3-6. Dr. Bravman testified that the edge roll spindle assembly is composed of the edge roller and the edge roll shaft. See CDX-0006C.74; Tr. (Bravman) at 513:1-10 (describing [REDACTED] [REDACTED]).

The parties dispute whether TS 35.2 is sufficiently identified. Corning and Staff argue that it is, including through JX-1108C ([REDACTED]). See CIB at 106; SIB at 81. Respondents argue that it is not, including because they contend that the identification of the trade secret is inconsistent with Corning's position on public availability and economic value. See RIB at 80-81.

The evidence shows that TS 35.2 is sufficiently identified through reference to specific Corning drawings which show the design of the edge roll spindle assembly. See also Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning's Ownership of Trade Secret 35.2

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning contends that “[m]uch like the edge roll main assembly, the spindle assembly is critical because the edge rolls prevent attenuation of the glass sheet.” CIB at 107. “The design of the edge rollers also prevents ‘glass sticking to the edge roll’ and causing defects in the glass ribbon.” *Id.* Corning states that it [REDACTED], and that its economic value is also shown by Corning’s “substantial and continuous investments in developing the FDM (including the edge rolls)” and by other FDM-related evidence. *See id.* (citing *inter alia* Tr. (Bocko) at 650:14-22, 665:18-666:6, CDX-0008C.20) (“the development of the materials and the mechanical design was trial and error over a long period of time”).

Respondents argue that Corning failed to meet its burden to show the economic value of the edge roll spindle assembly and did not tie “any purported economic value specifically to the [REDACTED].” RIB at 81.

Staff contends that TS 35.2 has independent economic value as demonstrated by the importance of the dimensions of the shaft and by virtue of not being generally known or readily ascertainable. SIB at 82-83.

The evidence shows by a preponderance that TS 35.2 has independent economic value based on Corning’s investments in developing its edge roll spindle assembly, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 665:22-666:6. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 spindle assembly. *See* JX-1108C; Tr. (Bravman) at 513:2-13; CDX-0006C.74; *cf. Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to*

Same, and Products Containing Same, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOfFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

The parties' arguments with respect to whether TS 35.2 was generally known or readily ascertainable are essentially the same as those set forth for TS 35.1. *See* RIB at 78, 81-83; CIB at 104, 107; SIB at 77-78, 83. For the reasons discussed regarding TS 35.1, the evidence shows that this trade secret was not generally known or readily ascertainable at the time of the alleged misappropriation.

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 35.2 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

e) Use or Disclosure of Trade Secret 35.2

With respect to past use, Corning argues that that the "design and geometry of Irico's edge roll spindle assembly follows Corning's" CIB at 108 (citing Tr. (Bravman at 513:14-25, 514:1-25, CDX-0006C.76-77)). Corning argues that the Caihong Display Gen 7.5 and Gen 8.5

FDMs continue to be substantially derived from TS 35.2, and this is confirmed by an “exemplary drawing and photograph produced by Irico.” CIB at 108-109. With respect to Respondents’ argument regarding differences in design, Corning argues that this contention is waived and that, in any case, “other dimensions and the overall design of Irico’s spindle assembly remain substantially derived from TS 35.2.” CRB at 41.

Respondents argue that there are “material differences between Corning’s G5 document and the External Documents. *See* RIB at 84 (distinguishing between JX-1108C and CX-4039C and citing Tr. (Gordon) at 1203:4-1204:22, RDX-4C.144-45). Respondents also argue that Dr. Bravman does not address “all of the geometric details of the edge roller and the edge roller shaft, or the [REDACTED] in his analysis.” *Id.* (citing Tr. (Gordon) at 1203:4-1204:22). Regarding current use, Respondents argue that Dr. Bravman provided no testimony regarding Gen 7.5 and that a comparison with Caihong’s Gen 8.5 design “shows distinctions in geometry and construction.” RIB at 85 (citing Tr. (Gordon) at 1203:24-1205:11, 1236:15-1238:3).

Staff contends that the evidence shows that Caihong Display has used TS 35.2, and credits Dr. Bravman’s testimony regarding similarities between Corning’s design and the PicVue drawings. SIB at 84. Staff states that Caihong Display’s Gen 7.5 and Gen 8.5 technology “continue to use substantially the edge roll spindle assembly design.” *Id.* (citing, *inter alia*, Bravman).

The evidence shows by a preponderance that Caihong Display made substantial use of TS 35.2 in developing its Gen 5 FDM. Dr. Bravman’s testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao PicVue and Gao Caihong designs, is persuasive, particularly upon review of the documents. *See* Tr. (Bravman) at 513:14-

25; CDX-0006C.75; JX-1108C; CX-3864C; CX-4039C. Dr. Bravman's testimony comparing certain dimensional length measurements further evidences substantial use. *See* Tr. (Bravman) at 514:10-25; CDX-0006C.76-77.⁶⁵ In addition, Respondents provided no expert testimony that there was no substantial use. *See* Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents' argument that Dr. Bravman did not analyze every aspect of the edge roll spindle assembly is insufficient to controvert the strong circumstantial evidence of substantial use or controverting the evidence of no independent development. *See generally* CRB at 19-20, 25-26. While Respondents, relying on Mr. Gordon, show certain differences in thermal protection mechanisms, this argument is insufficient to show lack of substantial use given the other evidence of record. *See also* CRB at 41.

The evidence also shows by a preponderance that Caihong Display made substantial use of TS 35.2 for development of its later-generation FDMs, including its Gen 8.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation FDMs were

⁶⁵ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman's testimony regarding "remarkable similarities" in design. *See* Tr. (Bravman) at 459:1-10. *Compare, e.g.*, JX-1108C at 2 (showing a [REDACTED]) with CX-3864C at 2 and CX-4039C at 3 (showing corresponding [REDACTED]). The Corning and Gao-provided PicVue documents also include similar notes. *Compare, e.g.*, JX-1108C at 2 ([REDACTED])

and

) with CX-3864C at 2

and

[REDACTED]). The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm'n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

significantly based on the design of the Gen 5 FDM. While Respondents, relying on Mr. Gordon, show certain differences, the evidence fails to show that these differences controvert the other evidence of record indicating substantial use. *See also* CRB at 41.

f) Independent Development of Trade Secret 35.2

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 35.2 in its Gen 5 and later-generation FDMs.

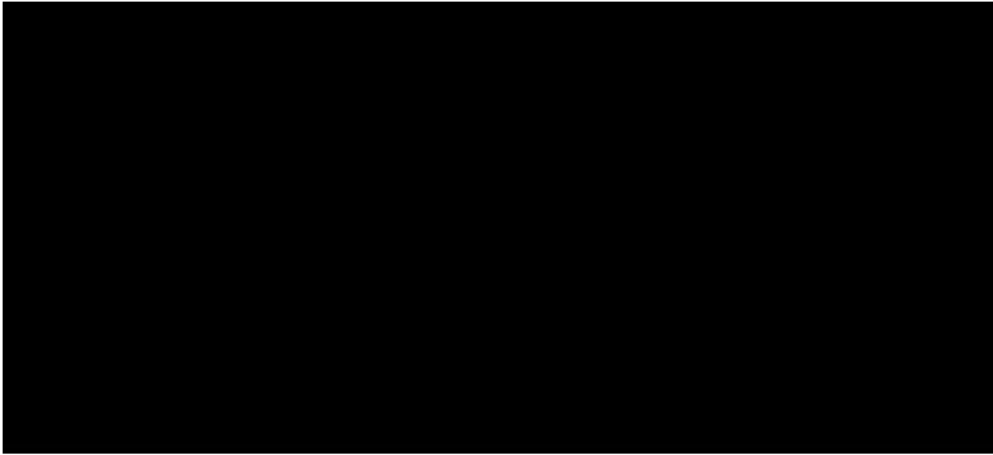
12. Trade Secret 41.1 (Transition)

a) Identification of Trade Secret 41.1

Corning identifies Trade Secret 41.1 as:

The overall assembly of the transition and geometric details of its construction and component parts. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00011530), [REDACTED] (CORNING-LCD-00011563), [REDACTED] (CORNING-LCD-00011564), [REDACTED] (CORNING-LCD-00011561), and [REDACTED] (CORNING-LCD-00011562), the [REDACTED] (CORNING-LCD-00010256), and [REDACTED] (Appendix A).

CIB at 109; RX-6749C at ¶ 41.1; RIB at xvi; SIB at 86. Dr. Bravman identified the location of the transition in Corning's Gen 5 FDM as follows:



CDX-0006C.79; Tr. (Bravman) at 515:25-516:6. Dr. Bravman testified that the transition is “just below the muffle, and it is just below where the glass is first emerging as a fused structure. And it is starting its downward journey to the very bottom of the machine. And that’s referred to as the transition.” Tr. (Bravman) at 516:2-6.

The parties dispute whether TS 41.1 is sufficiently identified. Corning and Staff argue that it is, including through JX-1438C ([REDACTED]). *See* CIB at 109; SIB at 86-87. Respondents argue that it is not, including because they contend that the identification of the trade secret is inconsistent with Corning’s position on public availability and economic value. *See* RIB at 85-86.

The evidence shows that TS 41.1 is sufficiently identified through reference to specific Corning drawings which show the design of the transition. *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning’s Ownership of Trade Secret 41.1

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning argues that the transition design is “essential for controlling the rate of thermal cooling of the glass sheet as it descends from the muffle, as well as thickness uniformity.”

Corning argues that it [REDACTED], and that the economic value of TS 41.1 is shown by Corning’s “substantial and continuous investments in developing the FDM (including the transition).” CIB at 110 (citing *inter alia* Tr. (Bocko) at 650:14-22, 666:7-21) (“[REDACTED]”).

Respondents argue that Corning failed to meet its burden of proof with respect to showing economic value. *See* RIB at 86. Respondents argue that Dr. Bravman “testified to the importance generally of thermal control without attributing any aspect of thermal control to the transition.” *Id.* Respondents further argue that, if the trade secret is understood in view of Dr. Bravman’s use analysis, then “Corning failed to tie any purported economic value to [REDACTED].” *Id.*

Staff contends that TS 41.1 has independent economic value as demonstrated by Corning’s investments in research and development of its transition frame assembly, and by virtue of not being generally known or readily ascertainable. SIB at 88.

The evidence shows by a preponderance that TS 41.1 has independent economic value based on Corning’s investments in developing its transition, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 666:7-24. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 transition. *See* JX-1438C;

Tr. (Bravman) at 518:16-19; CDX-0006C.84; *cf. Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOfFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Respondents argue that TS 41.1 is generally known and/or readily ascertainable in view of Mr. Gordon's analysis of TS 51 (frame). See RIB at 89-92. With respect to TS 41.1 and 51, Respondents contend that they were generally known or readily ascertainable in view of (1) U.S. Patent No. 11,485,667 B2 ("Anderson") (JX-2805) (PCT publication date Jul. 30, 2020, publication date Mar. 24, 2022, applicant Corning Inc.); (2) WO201818232159A2 ("Aburada") (RX-6325) (published Dec. 20, 2018, applicant Corning); (3) CN220393539U ("Li539") (JX-0319) (issued Jan. 26, 2024, application filed Jul. 14, 2023, patentee Wuhu Tunghsu); (4) CN208545294U ("Hu294") (JX-0284) (issued Feb. 26, 2019, patentee Caihong Group); (5) U.S. Patent Application Publ. 20120318020A1 ("Delia020") (RX-6316) (published Dec. 20, 2012); (6) CN117800573A ("Tong573") (JX-0325) (issued July 23, 2024, patentee Shaanxi Caihong); and/or (7) CN221397656U ("Tong 656") (JX-2811) (published Apr. 2, 2024, applicant Shaanxi Caihong). RIB at 89-91 (citing Tr. (Gordon) at 1210:21-12:11:11, 1214:7-12). Mr. Gordon also relied on an eighth reference, U.S. Patent Application Pub. No. 20180370836A1 ("Aniolek") (RX-0596) (published Dec. 27, 2018, applicant Corning). See CIB at 92.

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. See CIB at 110. Corning contends that none of the eight references "discloses the assembly or geometric details of Corning's overall transition assembly, as

reflected in Corning's engineering drawings." CIB at 110. Corning contends that the figures in the patent filings do not indicate that they are drawn to scale, and that all patents were "filed after the misappropriation and four were from Irico entities or Dongxu." *Id.* at 110; *see also* SIB at 88.

The evidence of record indicates that the design of the Corning Gen 5 transition was not generally known or readily ascertainable at the time of the alleged misappropriation, including because each of the references identified by Respondents post-dates the alleged misappropriation.⁶⁶

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 41.1 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

⁶⁶ However, the evidence also shows that multiple design aspects relating to the transition were disclosed in Corning's JX-2805 (Anderson), Corning's RX-6325 (Aburada), and RX-6316 (Delia020). See Tr. (Gordon) at 1214:8-1216:22; RDX-0004C.172-175. These disclosures may have implications for an appropriate remedy.

e) Use or Disclosure of Trade Secret 41.1

Corning argues that the PicVue and Gao-provided Irico drawings “show that Irico used TS 41.1 in developing its Gen 5 technology.” CIB at 111. Corning argues that Irico’s transition assembly “has essentially the same dimensions as the PicVue and Corning transition assemblies,” pointing as an example to the [REDACTED] and that “[REDACTED] [REDACTED].” *Id.* (citing Tr. (Bravman) at 518:16-25, CDX-0006C.84). Corning argues that [REDACTED] [REDACTED] *Id.* at 111-112 (citing Tr. Bravman) at 517:19-518:7, 523:5-524:5, CDX-0006C.82). Corning argues that Irico’s current Gen 8.5 technology continues to substantially use TS 41.1, as shown by photographs produced by Irico, and that “while Irico’s Gen 8.5 drawing omits dimensions, it still reflects the same overall design, including the use of bayonets and flappers.” *Id.* Corning argues that Qiao confirmed at his deposition that Irico uses the “basic structure and principles” of the design in CN212334999 U (“Hu999”) (published Jan. 12, 2021, patentee Irico Group), and that this patent “shows a transition assembly substantially derived from Corning’s design, including [REDACTED] [REDACTED]” *Id.* at 112 (citing JX-0025C and CX-3129).

Respondents argue that, with respect to past use, Dr. Bravman’s analysis is faulty and that he “identified components on an alleged image of Caihong’s G5 FDM that he admitted didn’t match the Corning drawing he was trying to compare it to.” RIB at 87 (citing Tr. (Bravman) at 523:6-524:5). Respondents argue that Dr. Bravman did not address multiple aspects of TS 41.1 in rendering his opinion and that his analysis “based on two dimensions is facially deficient.” *Id.* at 87. With respect to current use, Corning argues that Dr. Bravman’s analysis is based on a photograph that does not show the complete transition or its dimensions,

and that certain schematics he relies on “are not comparable and his annotations thereof suggest different designs.” *Id.* at 88 (citing section III.O.5.b, RIB at 92-93).

Staff contends that the evidence shows that Caihong Display has used TS 41.1, and credits Dr. Bravman’s testimony regarding similarities between Corning’s design and the PicVue drawings. SIB at 95. Staff states that Caihong Display’s Gen 7.5 and Gen 8.5 technology “continue to use substantially the same transition frame assembly design.” *Id.* (citing, *inter alia*, Bravman).

The evidence shows by a preponderance that Caihong Display made substantial use of TS 41.1 in developing its Gen 5 FDM. Dr. Bravman’s testimony regarding the similarities in design shown in the Corning design document, in comparison to the Gao PicVue and Gao Caihong designs, is persuasive, particularly upon review of the documents themselves (including the [REDACTED] drawing identified by Dr. Bravman). *See* Tr. (Bravman) at 517:2-518:25; CDX-0006C.81-84; JX-1438C; CX-3943C; CX-4081C. Dr. Bravman’s testimony regarding a “nearly identical” dimensional measurement further evidences substantial use, as does the use of [REDACTED] shown for a certain structure. *See id.*⁶⁷ In addition,

⁶⁷ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman’s testimony regarding “remarkable similarities” in design. *See* Tr. (Bravman) at 459:1-10. *Compare, e.g.*, JX-1438C at 2 (showing a [REDACTED]) with CX-3943C at 3 and CX-4081C at 4 (showing corresponding [REDACTED]); JX-1438C at 2 (showing a [REDACTED]) with CX-3943C at 3 and CX-4081C at 4 (showing corresponding [REDACTED]). The documents also show other circumstantial evidence of copying from the Corning design document. *Compare* JX-1438C at 2 (requiring [REDACTED]) with CX-3943C at 2-3 (requiring [REDACTED]) and CX-4081C at 4 (requiring [REDACTED]). The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm’n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See* Tr. (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents' argument that Dr. Bravman did not analyze every aspect of the transition assembly is insufficient to controvert the strong circumstantial evidence of substantial use. *See generally* CRB at 19-20, 25-26.

The evidence also shows by a preponderance that Caihong Display made substantial use of TS 41.1 for development of its later-generation FDMs, including its Gen 8.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation FDMs were significantly based on the design of the Gen 5 FDM. While Respondents argue that Dr. Bravman's annotations "suggest different designs," this attorney argument is insufficient to controvert the other evidence of record. *See also* CRB at 41.

f) Independent Development of Trade Secret 41.1

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 41.1 in its Gen 5 and later-generation FDMs.

13. Trade Secret 51 (Frame)

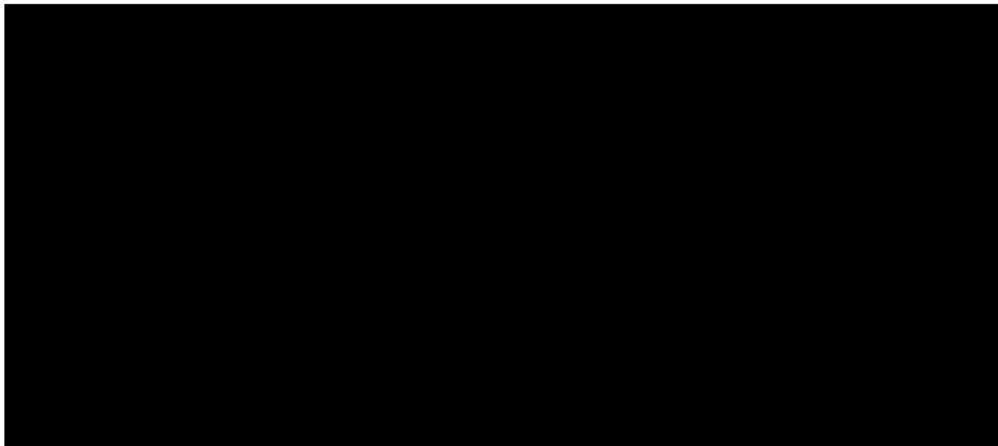
a) Identification of Trade Secret 51

Corning identifies Trade Secret 51 as:

The design, shape, dimensions, and materials of the frame and the attachment method to adjacent components. Corning documents

that reflect this trade secret include: [REDACTED]
[REDACTED] (CORNING-LCD-00011324), [REDACTED] (CORNING-
LCD-00011329), [REDACTED] (CORNING-LCD-00011355),
[REDACTED] (CORNING-LCD-00011361), [REDACTED]
(CORNING-LCD-00011375), [REDACTED] (CORNING-LCD-
00011440), [REDACTED] (CORNING-LCD-00011442), [REDACTED]
[REDACTED] (CORNING-LCD-00011445), [REDACTED] (CORNING-
LCD-00011462), [REDACTED] (CORNING-LCD-00011465), and
[REDACTED] (CORNING-LCD-00011490), and [REDACTED]
[REDACTED] (Appendix A).

CIB at 113; RX-6749C at ¶ 51; RIB at xvi; SIB at 91. Dr. Bravman identified the location of the frame in Corning's Gen 5 FDM as follows:



CDX-0006C.86; Tr. (Bravman) at 520:18-22. Dr. Bravman testified that the transition frame is “the structural elements which hold the frame together and from the outside give it, in part, its visual identity.” Tr. (Bravman) at 520:20-22. Dr. Bravman also testified that the transition frame’s “job is to hold this [multiple parts] together rigidly, despite the aggressive environments in which it is found.” *Id.* at 521:5-13. Mr. Bocko testified that the frame is a part within the transition. *See* Tr. (Bocko) at 666:22-24.

The parties dispute whether TS 51 is sufficiently identified. Corning and Staff argue that it is, including through JX-1438C and JX-1221C ([REDACTED] and [REDACTED]). *See* CIB at 113; SIB at 92. Respondents argue that it is not, including because

they contend that the identification of the trade secret is inconsistent with Corning's position on public availability and economic value. *See* RIB at 88-89.

The evidence shows that TS 51 is sufficiently identified through reference to specific Corning drawings which show the design of the frame. *See also* Part IV.A.2.a *supra*; CRB at 24-26 (discussing public disclosure and use analyses).

b) Corning's Ownership of Trade Secret 51

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning argues that TS 51 is valuable "because the transition frame provides structural integrity (a rigid assembly), ensuring that the components of the transition and overall FDM do not deform due to the extreme thermal conditions, and [REDACTED]

[REDACTED] CIB at 113. Corning argues that [REDACTED], and that the economic value of TS 51 is shown by Corning's substantial and continuous investments in developing the FDM (including the transition frame). *Id.*

Respondents argue that Corning has failed to meet its burden of proof, including because it was based on "generic[]" testimony that "complete components were valuable to Corning." *See* RIB at 89; RIB at 23-24. Respondents argue that the evidence fails to show economic value tied to this specific trade secret. *See id.*

Staff contends that TS 51 has independent economic value as demonstrated by Corning's investments in research and development of its transition frame assembly, and by virtue of not being generally known or readily ascertainable. SIB at 93.

The evidence shows by a preponderance that TS 51 has independent economic value based on Corning's investments in developing its transition frame, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 666:7-24. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 transition frame. *See* JX-1221C; Tr. (Bravman) at 521:14-20; CDX-0006C.88; JX-1438C; Tr. (Bravman) at 518:16-19; CDX-0006C.84; *cf.* *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

The parties' arguments with respect to whether this trade secret is generally known or readily ascertainable refer to the same arguments discussed above for TS 41.1. *See* RIB at 89; CIB at 114; SIB at 93-94. For the reasons discussed above regarding TS 41.1, the evidence shows by a preponderance that TS 51 was not generally known or readily ascertainable at the time of the alleged misappropriation.

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

Based on the considerations above, the evidence shows by a preponderance that TS 51 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

e) Use or Disclosure of Trade Secret 51

With respect to use in Caihong Display's Gen 5 equipment, Corning argues that a comparison of the Irico and PicVue Gen 5 transition frame drawings to Corning's shows "that their transition steel frames have the same design, shape, and dimensions as Corning's, even though there are 'many ways to build a frame structure.'" CIB at 114 (citing Tr. (Bravman) at 522:2-14, 523:1-4, CDX-0006C.89). Corning argues that "Irico's transition frame also has materially identical geometric dimensions, citing a [REDACTED] dimension discussed by Dr. Bravman. CIB at 114 (citing Tr. (Bravman) at 522:17-25, CDX-0006C.90). Corning argues that [REDACTED] [REDACTED]. Id. at 115. Corning further argues that [REDACTED] [REDACTED] Id. at 115 (citing Tr. (Bravman) at 524:6-23, CDX-0006C.92).

Respondents argue that Dr. Bravman's analysis of past use was conclusory and insufficient, including because they compared only a single dimension and did not address the "[REDACTED]" or "[REDACTED]". RIB at 92 (citing Bravman testimony). Respondents argue that Dr. Bravman did not offer any opinion regarding current use by Caihong's Gen 7.5 technology and

that Dr. Bravman’s opinion regarding Gen 8.5 relies on an identification of three components without comparison to any Corning Gen 5 document. Respondents argue that such a comparison shows different designs. *See id.* at 93.

Staff contends that the evidence shows that Caihong Display has used TS 51, and credits Dr. Bravman’s testimony regarding similarities between Corning’s design and the PicVue drawings. SIB at 95. Staff states that Caihong Display’s Gen 7.5 and Gen 8.5 technology “continue to use substantially the same transition frame assembly design.” *Id.* (citing, *inter alia*, Bravman and Qiao testimony).

The evidence shows by a preponderance that Caihong Display made substantial use of TS 51 in developing its Gen 5 FDM. Dr. Bravman’s testimony regarding the “enormously similar” design shown in the Corning design document, in comparison to the Gao PicVue and Gao Caihong designs, is persuasive, particularly upon review of the documents themselves. *See Tr.* (Bravman) at 521:15-524:2; CDX-0006C.89-90; JX-1221C; CX-3946C; CX-4084C. Dr. Bravman’s testimony regarding an “exemplary” similar dimensional measurement further evidences substantial use. *See id.*⁶⁸ In addition, Respondents provided no expert testimony that there was no substantial use or controverting the evidence of no independent development. *See Tr.* (Gordon) at 1160:19-23 (no opinion on the merits of use); *id.* at 1263:8-1265:11 (no opinion on independent development). Respondents’ argument that Dr. Bravman did not analyze every

⁶⁸ The underlying documents, including other measurements provided on the face of the documents, corroborate Dr. Bravman’s testimony regarding “remarkable similarities” in design. *See Tr.* (Bravman) at 459:1-10. *Compare, e.g.*, JX-1221C at 2 (showing a [REDACTED]) with CX-3946C at 3 (showing corresponding [REDACTED]) and CX-4084C at 4 (showing corresponding [REDACTED]); JX-1221C at 2 (showing a [REDACTED]) with CX-3946C at 3 (showing corresponding [REDACTED]) and CX-4084C at 4 (showing corresponding [REDACTED]). The Commission may inspect underlying evidence, where appropriate, to confirm expert opinion. *See Certain Electronic Computing Devices and Components Thereof*, Inv. No. 337-TA-1382, Comm’n Op., at 19-20 (July 8, 2025) (EDIS Doc. No. 856222).

aspect of the transition frame is insufficient to controvert the strong circumstantial evidence of substantial use. *See generally* CRB at 19-20, 25-26.

The evidence also shows by a preponderance that Caihong Display made substantial use of TS 51 for development of its later-generation FDMs, including its Gen 8.5 FDM design. As discussed *supra*, the evidence shows that Caihong Display's later-generation FDMs were significantly based on the design of the Gen 5 FDM. While Respondents argue that Dr. Bravman's annotations "actually suggest[] different designs," this attorney argument is insufficient to controvert the other evidence of record. *See also* CRB at 41-42.

f) Independent Development of Trade Secret 51

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets, and Respondents have not introduced evidence persuasively controverting this conclusion for this trade secret.

For these reasons, the evidence shows by a preponderance that Caihong Display misappropriated TS 51 in its Gen 5 and later-generation FDMs.

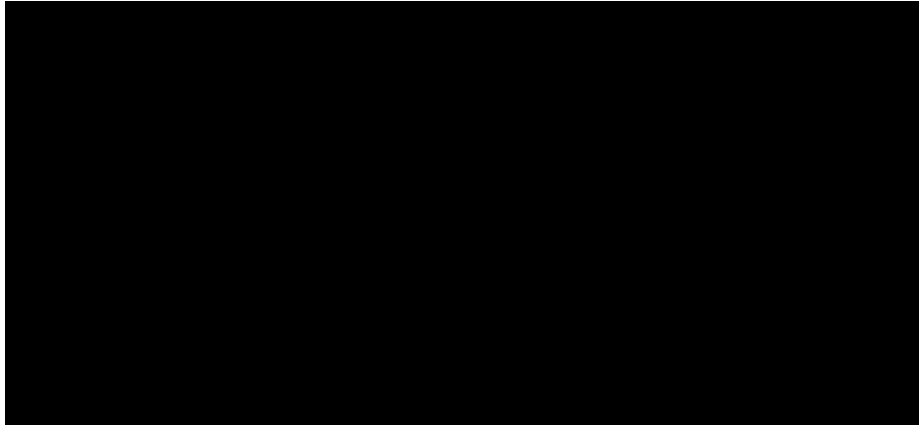
14. Trade Secret 52.2 (Pulling Machines)

a) Identification of Trade Secret 52.2

Corning identifies Trade Secret 52.2 as:

The assembly, structure, and relative position of the subcomponents and instrumentation of the pulling machines. Corning documents that reflect this trade secret include: [REDACTED] (CORNING-LCD-00011689) and [REDACTED] (CORNING-LCD-00013747), [REDACTED] (CORNING-LCD-00010261; CORNING-LCD-00010262), and [REDACTED] (Appendix A).

CIB at 116; RX-6749C at ¶ 52.2; RIB at xvi; SIB at 97. Dr. Bravman identified the location of the pulling machines in Corning's Gen 5 FDM as follows:



CDX-0006C.93; Tr. (Bravman) at 524:24-525:6. Dr. Bravman testified that this “comprises these pulling rolls that additionally move the glass downward” and whose operation is “important for establishing the ultimate qualities of the glass, including its final thickness.” *Id.* at 525:7-12.

The parties dispute whether TS 52.2 is sufficiently identified. Corning and Staff argue that it is, including through JX-1564C ([REDACTED]). *See* CIB at 116; SIB at 97. Respondents argue that it is not, including because they contend that the identification of the trade secret is inconsistent with Corning's position on public availability and economic value. *See* RIB at 94.

The evidence shows that TS 52.2 is sufficiently identified through reference to specific Corning drawings which show the design of the pulling machines. *See also* Part IV.A.2.a *supra*.

b) Corning's Ownership of Trade Secret 52.2

For the reasons discussed above regarding TS 12.1, the evidence shows that, to the extent this trade secret otherwise qualifies as a protectable trade secret, Corning owns the trade secret.

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning argues that TS 52.2 is valuable because “[t]he pulling machines and pulling rolls

contribute to controlling the ultimate thickness of the glass as well as stress within the sheet as it descends the FDM,” and “improperly designed pulling rolls can compromise the surface quality of the glass.” CIB at 116 (citing Tr. (Bravman) at 524:24-525:12 and Tr. (Coko) at 666:25-667:17). Corning states that it has [REDACTED]. *Id.* Corning further states that the economic value of TS 52.2 is shown by Corning’s substantial and continuous investments in developing the FDM (including the pulling machines). *Id.*

Respondents argue that Corning failed to meet its burden on this issue because “[t]o the extent TS 52.2 is understood as Dr. Bravman applied it in his use analysis . . . Corning has failed to tie any economic value to the three components addressed by Dr. Bravman’s opinions, including the counterbalance system.” RIB at 94.

Staff contends that TS 52.2 has independent economic value as demonstrated by Corning’s investments in research and development of its pulling machines, and by virtue of not being generally known or readily ascertainable. SIB at 98-99.

The evidence shows by a preponderance that TS 52.2 has independent economic value based on Corning’s investments in developing its pulling machines, as well as the evidence indicating that this trade secret was not generally known or readily ascertainable. *See* Tr. (Bocko) at 653:5-655:1; *id.* at 666:25-667:15. In addition, the evidence shows that the documents relied upon for this trade secret provide specific design information for the Corning Gen 5 transition frame. *See* JX-1564C; Tr. (Bravman) at 525:18-25; CDX-0006C.95; *cf.* *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434); *Insulet Corp. v. EOFlow Co.*, 755 F. Supp. 3d 70, 90 (D. Mass. 2024).

(2) Generally Known or Readily Ascertainable

Respondents argue that this asserted trade secret is generally known and/or readily ascertainable in view of: (1) *Introduction to the Annealing Furnace in the Forming Process of LCD Glass Substrates* (RX-1245) (obtained from the Baidu Wenku website)⁶⁹; (2) CN207793038U (“Liu038”) (RX-0606) (issued Aug. 31, 2018, patentee Wuhu Tunghsu, filed Jan. 9, 2018); (3) KR102015480B1 (“Suh”) (RX-0609) (issued Aug. 22, 2019, patentee Corning Inc.); (4) CN218718497U (“Tong497”) (JX-0314) (issued Mar. 24, 2023, patentee Shaanxi Rainbow); (5) CN108383366A (“Hus366”) (JX-0218) (published Aug. 10, 2018, applicant Caihong Group); and (6) CN108726860A (“Hu860”) (JX-0220) (published Nov. 2, 2018, applicant Caihong Group). RIB at 95-97 (citing Tr. (Gordon) at 1221:8-15).

Respondents also argue that Corning’s witness, Ms. Markham, “confirmed that Corning’s patent, US8627684 (RX-0066), similarly discloses Corning’s pulling machines, including ‘full-length pulling rolls’ and ‘stub rolls.’” RIB at 96 n.15 (citing Tr. (Markham) at 356:24-357:23, RX-0066); *see* RX-0066 (U.S. Patent No. 8,627,684, “Pull Roll Apparatus and Method for Controlling Glass Sheet Tension”) (issued Jan. 14, 2014, published Apr. 30, 2009, assignee Corning Inc.).⁷⁰

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 117. Corning argues that 4 of the 6 references Mr. Gordon relies upon “were filed by Irico or Dongxu entities many years after the misappropriation” and

⁶⁹ Respondents argue that the website indicates that this material was uploaded in 2019, and that Baidu Wenku “is a repository for academic literature similar to the English language website Scribd.” RIB at 28 n.8 (citing Tr. (Gordon) at 1221:16-1222:1, 1230:7-22, CX-0355, RX-0635, Tr. (Gordon) at 1294:20-1295:8).

⁷⁰ The ‘684 patent was originally asserted in this investigation. The patent infringement claims were later withdrawn by Corning. *See* Part I.A *supra*.

do not discuss “Corning’s pulling machine assembly or the dimensions of its components.” CIB at 117. Corning states that “Suh,” a Corning disclosure, was published in 2019, also after the misappropriation. *Id.* Corning argues that the Baidu Wenku article “does not contain the geometric details of Corning’s pulling machines or sufficient information to reverse-engineer the assembly of Corning’s pulling machines or their subcomponents.” CIB at 117 (citing Tr. (Bravman) at 452:18-455:15).

Staff argues that all the references relied upon by Mr. Gordon post-date the alleged misappropriation. SIB at 99.

The evidence of record indicates that the design of the Corning Gen 5 pulling machines was not generally known or readily ascertainable at the time of the alleged misappropriation, including because each of the references referenced by Respondents post-date the alleged misappropriation. *See* CIB at 37, 53.^{71 72}

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.A.1, the evidence shows by a preponderance that Corning took reasonable security measures to protect its Design Trade Secrets at and prior to the time of alleged misappropriation.

⁷¹ However, the evidence does show that Corning’s own patent (RX-0066), entitled “Pull Roll apparatus and Method for Controlling Glass Sheet Tension,” which application was published on April 30, 2009 disclosed pulling roll systems that have certain benefits discussed by Dr. Bravman. *See* RX-0066 at 2:14-21 (discussing how pull roll apparatus of current invention works to “draw the glass sheet . . . to the desired thickness” and, in addition, “can improve the flatness of the glass sheet and also reduce the residual stress within the glass sheet.”). This disclosure may have implications for remedy if a violation is found.

⁷² The evidence also shows that Liu038 (RX-0606), issued in August 2018, discloses pulling roll structures very similar to those asserted by Corning in arguing substantial use, including stub rollers and a counterbalance system. *See* Tr. (Gordon) at 1224:2-9. While Corning argues that Dongxu patents should be disregarded, this argument is unpersuasive as to patents applied for [REDACTED]. *See* RX-0996C. This disclosure may have implications for remedy if a violation is found.

Based on the considerations above, the evidence shows by a preponderance that TS 52.2 was a protectable trade secret at the time of the alleged misappropriation.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.A.1 *supra* and below (regarding use), the evidence shows by a preponderance that Caihong Display improperly acquired the Corning trade secrets set forth in the Gao PicVue and Gao Caihong files.

However, a review of the evidence shows a failure of proof by Corning as to Caihong Display's acquisition of TS 52.2. Although Corning argues that the PicVue files included TS 52.2 (CIB at 117), Corning has not pointed to any PicVue document in relation to this trade secret. Dr. Bravman testified about this trade secret using a Corning-produced Gen 5 document and a Caihong Display-produced Gen 6 document (as well as Gen 5 and Gen 8.5 photos provided by Park), none of which are documents indicating the asserted PicVue pathway. *See* Tr. (Bravman) at 526:15-527:8; CDX-0006C.96; Tr. (Gordon) at 1218:10-12 (testifying that Dr. Bravman provided no consideration of the PicVue drawings); RIB at 97. Nor does the Gen 6 document relied upon by Dr. Bravman show the same clear and evident similarities to the Corning Gen 5 document as are present for many of the other asserted trade secrets. Given the lack of sufficient evidence regarding the pulling machines and the asserted PicVue pathway, Corning has not met its burden to show acquisition by improper means.

e) Use or Disclosure of Trade Secret 52.2

With respect to use, Corning argues that "[REDACTED]

[REDACTED],” and that these photographs show that Irico's Gen 5 technology used Corning's

designs “for the assembly, structure, and relative position of the subcomponents and instrumentation of the pulling machines, including the design for the pulling roll counterbalance system.” CIB at 117-18 (citing Tr. (Bravman) at 526:15-527:4, CDX-0006.97 (comparing JX-1564C and CX-4207C)). Corning argues that Irico’s Gen 6 drawing also shows Corning’s design, including the counterbalance system. Corning further argues that Irico’s current technology continues to substantially use TS 52.2, including the counterbalance system, citing to “an exemplary photograph of Irico’s Gen 8.5 FDM.” CIB at 118.

Respondents argue that Corning has not met its burden of proof through a comparison to a photo attributed to Mr. Park and Caihong’s Gen 6 schematic. Respondents argue that neither these documents show the entirety of the pulling machines and in fact show different designs. RIB at 97-98. With respect to current use, Respondents argue that the testimony is conclusory and that there are “enormous design differences between Corning’s G5 schematic and Caihong’s Gen 7.5 and 8.5 equipment,” including [REDACTED] in Caihong’s equipment. *Id.*

Staff contends that “Dr. Bravman testified that the pulling machine design provided by Gao was reflected in the PicVue drawings and used in Caihong’s Gen 5 FDM, and that [REDACTED] Gen 7.5 and Gen 8.5 technology. SIB at 100.

The evidence fails to show by a preponderance past or current use of this trade secret. As discussed above, there is insufficient evidence that Caihong Display improperly acquired this trade secret because, *inter alia*, Corning has not identified any Gao PicVue or Gao Caihong document with this information. In addition, the Corning document (JX-1564C) and Gen 6 document (JX-0151C) relied upon by Dr. Bravman do not show clearly evident copying or use.

Dr. Bravman's focus on a particular similarity (the counterbalance assembly) and his use of external photos focusing on one component part of the pulling machines is also insufficient to show substantial use.⁷³

Accordingly, the evidence fails to show, by a preponderance, substantial use of TS 52.2 by Caihong Display in relation to its past or current FDM equipment.

f) Independent Development of Trade Secret 52.2

For the reasons discussed above in Part IV.A.1, the evidence fails to show independent development without certain Corning trade secrets. However, the evidence fails to show by a preponderance that TS 52.2 was misappropriated. *See* discussion *supra*.

For these reasons, the evidence does not show by a preponderance that Caihong Display misappropriated TS 52.2 in its Gen 5 and later-generation FDMs.

⁷³ In addition, Respondents point to design differences between the Corning Gen 5 design for the pulling rolls and Respondents' Gen 7.5 and Gen 8.5 equipment. *See* RIB at 98; Tr. (Gordon) at 1219:19-24; RDX-0004C.183. Corning argues that Respondents' argument regarding "design differences" is waived because it was not in their Pre-Hearing Brief. *See* CRB at 42. However, Mr. Gordon provided testimony on this issue without objection. *See* Tr. (Gordon) at 1219:19-24. In any event, the evidence fails to show misappropriation regardless of whether this evidence is considered.

B. Operational Trade Secrets

The asserted “Operational Trade Secrets”—asserted TS 59, TS 61, TS 62, TS 64, and TS 68—relate to “know-how” for operating an FDM. *See* CIB at 17. Corning has defined each of these asserted trade secrets according to the general subject matter of the trade secret, and with reference to varying subsets of 14 specific documents.⁷⁴

The misappropriation allegations with respect to the Operational Trade Secrets are based on the “SCP Pathway.” CIB at 39. As set forth by Corning, “SCP was an equity venture between Samsung and Corning that was licensed to use Corning’s trade secrets and made LCD glass in Korea.” *Id.* Corning alleges that Caihong Display acquired the Operational Trade Secrets through Mr. Park, an employee of Dongxu (and former employee at SCP). *See* Part IV.A.1.a *supra* (discussing Dongxu). Corning alleges that Mr. Park received the Operational Trade Secret documents at SCP through a friend and former colleague at SCP, Mr. Jae-Young Choi (an employee of SCP). CIB at 43.

The evidence shows that there were criminal and civil actions based on the alleged misappropriation of Corning’s trade secrets by Mr. Park, Mr. Choi, another Dongxu employee (Mr. Kang), and Dongxu itself. *See* Part IV.A.1.a *supra*. In conjunction with these proceedings, Corning and Mr. Park [REDACTED]

[REDACTED]

[REDACTED]. CX-3702C; CX-4911C (Park Dep. Tr.) at 49:3-50:20. Mr. Park, a Korean citizen who currently resides in Vietnam, was deposed in this

⁷⁴ In addition, Corning identified relevant portions of these documents, with respect to individual trade secrets, in its “Exhibit 5 Disclosure.” *See* Table of Abbreviations, *supra*.

investigation. *See* CX-4991C at 11:1-8.⁷⁵

The table below identifies the 14 documents relied upon by Corning for the Operational Trade Secrets and indicates the asserted Operational Trade Secrets for which they are relevant.

Exhibit No.	Document Title	TS No(s).
JX-2655C	[REDACTED]	59
JX-2656C	[REDACTED]	61
JX-2660C	[REDACTED]	59, 61, 64, 68
JX-2662C	[REDACTED] [REDACTED]	61, 62
JX-2664C	[REDACTED]	64
JX-2671C	[REDACTED]	59, 64
JX-2672C	[REDACTED] [REDACTED]	64, 68
JX-2673C	[REDACTED]	59
JX-2675C	[REDACTED]	62
JX-2679C	[REDACTED]	59, 68
JX-2678C	[REDACTED]	61
JX-2651C	[REDACTED]	62
JX-2650C	[REDACTED] [REDACTED] [REDACTED]	61, 62, 64

⁷⁵ Mr. Park addressed certain prior declarations he had signed during his deposition. The declarations discussed during Mr. Park's deposition were admitted as context for Mr. Park's deposition testimony. *See* Order No. 76, at 8 n.9. However, as discussed below, the proper weight to be afforded the content of these declarations is still at issue.

JX-2652C	(JX-2652C)	61, 62, 64, 68
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See CIB at 121, 125, 128, 131, 135.

1. General Issues Relating to the Operational Trade Secrets

Two issues that cut across multiple Operational Trade Secrets are usefully addressed first. These are: (1) evidence regarding the alleged wrongful acquisition of the Operational Trade Secrets by Caihong; and (2) evidence regarding whether reasonable measures were taken to protect the secrecy of the Operational Trade Secret documents. These issues are discussed below. Additional trade secret-specific issues are discussed in Parts IV.B.2-IV.B.6 *infra*.

a) Acquisition of the Operational Trade Secrets by Caihong Display

With respect to proving that Mr. Park received the 14 operational trade secret documents from Mr. Choi, Corning relies upon an Appendix to a March 6, 2009 declaration from Mr. Park and on investigative reports from the Korean prosecutors' office. See CIB at 44 (citing CX-2667C and CX-2696C); *id.* at 45 n.9 (citing CX-2737C App. A and CX-3242C). Corning further cites findings from the Seoul Southern District Court (CX-2734C) and from the Daejeon District Court (CX-2742C) regarding misappropriation of 8 of these 14 documents by Dongxu, and translation by Park of 3 documents. See CIB at 46.

Respondents argue, in opposition to finding that Caihong Display acquired any of the documents, that Mr. Park's testimony is unreliable and that he initially stated to Korean police that the materials he obtained were for his own personal study and that he had not shared them with Caihong Display. RIB at 13 (citing RX-0166.6-7). Respondents contend that Mr. Park

[REDACTED] and that he is an “admitted thief and liar.” *Id.* at 13-14.

Staff contends that the evidence “shows that Caihong Display acquired the referenced documents by improper means.” SIB at 107.

The undersigned finds that the evidence of record is sufficient to show that 8 of the Operational Trade Secret documents were transmitted by Mr. Choi to Mr. Park. In particular, this finding is supported by the 2008 investigative report in the Korean criminal case (CX-2667C), which identified materials found on Mr. Park’s computer, including the 8 documents identified by the Daejeon District Court’s decision in one of the civil matters. *See* CIB at 46 (identifying eight documents found by the Korean court to have been misappropriated by Dongxu, citing CX-2742). These eight documents are: JX-2656C [REDACTED], JX-2660C [REDACTED], JX-2671C [REDACTED], JX-2673C [REDACTED], JX-2679C [REDACTED], JX-2678C [REDACTED] [REDACTED] JX-2650C [REDACTED], and JX-2652C [REDACTED]. *See* CX-2667C at 4 (rows 5, 6, 9, 10, 11, 36, 37, 74) (English), at 16 (rows 5, 6, 9, 10, 11, 36, 37, 74) (Korean); *cf.* F.R.E. 803(8)(iii) (Exceptions to Hearsay) (a record or statement of a public office in a civil case from a legally authorized investigation is not hearsay).⁷⁶

⁷⁶ The Seoul Southern District Prosecutor’s Office document dated September 17, 2008, and titled “Report of Investigation (Confirmation of Materials that were Leaked by Suspect Jae-Young Choi to Suspect Seong-Geun Park),” states that [REDACTED] in accordance with the seizure and search warrant issued by the Seoul Southern District Court. [REDACTED] CX-2667C at 2 (English), 14 (Korean). Attachment 2 of the Report, titled “List of Files Leaked by Jae-Young Choi (List of Files Handed Over to Seong-Geun Park),” shows 8 of the 14 documents at issue. CX-2667C at 4 (rows 5, 6, 9, 10, 11, 36, 37, 74) (English), at 16 (rows 5, 6, 9, 10, 11, 36, 37, 74) (Korean). As a general matter, the findings of the Korean courts have not been considered

However, the evidence is insufficient to show that Mr. Park acquired the other 6 (of 14) documents that are alleged to contain Corning's trade secrets from Mr. Choi. The only source cited by Corning for transmission of these additional documents is Mr. Park's March 6, 2009 declaration (CX-2737C App. A and CX-3242C), which includes an extensive list of documents in the Appendix. *See* CIB at 45. According to this declaration, the basis for the listing of the documents in his Appendix was Mr. Park's review of [REDACTED]

[REDACTED] CX-2737C ¶ 4. Given the large number of documents listed in the Appendix, the apparent absence of these documents on the Korean prosecutor's investigative report, and issues concerning Mr. Park's reliability (*see* CX-4991C, at 151:6-9), the undersigned does not find Mr. Park's 2009 declaration sufficiently reliable as [REDACTED].⁷⁷

Further, with respect to documents shown to have been acquired by Mr. Park, the evidence is only sufficient to show that three of them were provided to Caihong. [REDACTED]
[REDACTED]. *See* CX-2737C at ¶ 3 ("[REDACTED]
[REDACTED]
[REDACTED]."); CX-4991C at 56:17-57:13. Accordingly,

evidence in themselves and have been adopted here only to the extent there is sufficient supporting reliable and admitted evidence (such as from an investigative report). To the extent the Korean courts relied on witness statements and testimony that were not admitted into evidence in this investigation and in connection with which Caihong Display did not have an adequate cross-examination opportunity, the conclusions are not appropriately relied upon here. *See generally* Order No. 76, at 8; *cf. Nipper v. Snipes*, 7 F.3d 415, 417 (4th Cir. 1993) (state court findings of fact not admissible under F.R.E. 803(8)(C)'s provision for "factual findings resulting from an investigation made pursuant to authority granted by law"). The investigative reports, however, are reliable and have been considered. *See* CX-2667C; CX-2734C.

⁷⁷ Similarly, the evidence connecting CX-3242C (an asserted continuation of Appendix A to Mr. Park's declaration) is also insufficient to carry any weight. *See* CX-4991C at 59:14-60:13.

the fact that Mr. Park may have received documents from Mr. Choi is insufficient to show that they were provided to and acquired by Caihong. However, the undersigned credits the finding of the investigative report (CX-2696C, cited by the Seoul Southern District Court) that three of the eight files (JX-2679C [REDACTED]; JX-2671C [REDACTED]; and JX-2673C

[REDACTED] were translated into Chinese, and finds this sufficient corroborative evidence (together with the other evidence of record) that these three documents were provided by Mr. Park to Caihong. *See* CX-2734C at 6-7 (English), 55-56 (Korean) (“Around late May 2008, at the IRICO office in Xianyang City . . . the defendant translated into Chinese the following files:

(1) [REDACTED], (2) [REDACTED], [REDACTED], and (3) [REDACTED], among the above-noted files received from Jae-young Choi, and then distributed them to the employees of the Hebei Dongxu Machinery Equipment Co., Ltd.”); CX-2696C, at 2 (English), 4 (Korean) (investigative report identifying these Chinese-translated files); CX-4991C (Park Dep. Tr.) at 43:21-44:4 (testifying that [REDACTED] [REDACTED]).⁷⁸

Accordingly, while the undersigned agrees with Respondents that Mr. Park’s testimony and declarations should not be uncritically accepted, there is sufficient corroborating evidence

⁷⁸ The Appendix to Mr. Park’s March 6, 2009 Declaration [REDACTED]. *See* CX-2737C App. A. The undersigned finds this attachment to Mr. Park’s declaration insufficiently reliable to carry Corning’s burden of proof as to documents other than the 3 mentioned in the investigative report (CX-2696C). Mr. Park did not persuasively explain if and how he recollected this knowledge, particularly given his admissions of previous lying. *See* CX-4991C, at 151:6-9 (stating, in relation to statements to Korean prosecutors, “[REDACTED]”).

that Mr. Park obtained certain of the Operational Trade Secret documents from Mr. Choi relating to the hot-end process of fusion draw technology and translated three of these documents for use by Caihong, as discussed above. Further, and in view of the undersigned's review of both Mr. Park's and Mr. Xu's videotaped deposition testimony, the undersigned finds Mr. Park's deposition testimony that he transmitted some of these documents for use by Caihong more credible than the deposition testimony on this topic from Respondents' witness Xu Jian, who testified that Caihong Display never received any Corning or SCP proprietary information or technology secrets. *See* CX-4991C (Park Dep. Tr.) at 29:13-23, 39:23-40:9, 41:22-44:2; JX-0029C (Xu Dep. Tr.) at 241:3-20, 242:1-7.⁷⁹

Thus, the undersigned finds that the evidence shows by a preponderance that the following three documents were acquired by Caihong by improper means: (JX-2679C [REDACTED]; JX-2671C [REDACTED]; and JX-2673C [REDACTED]).⁸⁰ These documents are implicated with respect to asserted TS 59, 64, and 68. *See* table, *supra*.

However, the evidence is insufficient to show that any of the other Operational Trade Secret documents were acquired by Caihong, and thus the evidence is insufficient to find a violation as to asserted TS 61 and 62 based at least on a failure of proof as to acquisition of any of the relied-upon documents for these trade secrets.

⁷⁹ Mr. Park's earlier statements that he acquired these documents for his own personal study, rather than for use by Caihong Display, appear improbable (including in light of the evidence that he had certain documents translated into Chinese), and Mr. Park credibly explained during his deposition that he had lied to protect Mr. Choi.

⁸⁰ As noted *supra*, these are the same three documents that Corning states were found by the Seoul Southern District Court to have been translated by Park. *See* CIB at 46.

b) Security Measures for the Operational Trade Secret Documents

As discussed *supra*, Corning alleges that the Operational Trade Secret documents were transmitted to Mr. Park from SCP through SCP employee Mr. Choi during the 2007-2008 time period. *See* CIB at 28. Accordingly (and in contrast with the Design Trade Secrets), the security measures at SCP are relevant to the “extent of measures taken by complainant to guard the secrecy of the information,” and thus the existence of a protectable trade secret. *See* Part II.C.1 *supra*.

Corning argues that before the alleged taking of documents from SCP in late 2007 to 2008 by SCP employee Mr. Choi, that SCP “had implemented tight security measures, including [REDACTED] [REDACTED].” CIB at 28 (citing in support the testimony of Mr. Triplett and a Korean court’s findings (CX-2742C)). Corning argues, again relying on the Korean court’s findings, that “[REDACTED] [REDACTED].” CIB at 28 (citing CX-2742C). Corning further states that it was “[REDACTED] [REDACTED].” *Id.* (citing Tr. (Kudva) at 412:15-413:7).

Respondents argue, in opposition, that Corning failed to meet its burden to show reasonable measures to protect secrecy. *See* RIB at 104, 29-31. Respondents argue that Mr. Triplett’s testimony about SCP was based on “just a one-hour long interview with a Corning employee about policies he claimed to remember being in place nearly 20 years ago and a decision from a foreign court applying foreign law regarding Corning’s purported reasonable measures.” RIB at 30.

Staff argues that, for the same reasons discussed as to TS 12.1, “the evidence shows Corning has taken reasonable measures to maintain secrecy, but only to the extent that the Operational Trade Secrets are reflected in the referenced documents.” SIB at 106.

Based on a review of the record, there is limited evidence that SCP took reasonable precautions to protect its trade secrets. Corning relies on the testimony of Mr. Triplett, its expert witness, as well as the factual findings of the Korean court. *See* CIB at 28 (relying on Triplett testimony and CX-2742C). Mr. Triplett’s testimony, in turn, relies on an hour-long interview with Mr. Lee, who he states “was legal counsel at SCP” and on review of the Daejeon District Court’s decision. *See* Tr. (Triplett) at 920:14-921:1; *id.* at 940:21-941:3; CDX-0010C.15. Based on these sources, Mr. Triplett testified that [REDACTED]. Tr. (Triplett) at 919:19-920:6. Corning further relies on testimony from Dr. Kudva that [REDACTED] CIB at 28 (citing Tr. (Kudva) at 412:15-413:7).

The evidence presented by Corning includes no documentation at all as to SCP security policies, including during the 2007-2008 time period. And while Corning relies on Dr. Kudva’s testimony regarding [REDACTED], numerous Operational Trade Secret documents do not appear to have “Restricted” or “Confidential” designations (including one of the three documents, JX-2671, that has been shown to be acquired by Caihong Display), nor did Corning attempt to point to any such marking.⁸¹ Further, the undersigned finds the Korean court’s findings of fact on security

⁸¹ In particular, JX-2655C, JX-2660C, JX-2662C, JX-2664C, JX-2673C, JX-2679C appear to be marked confidential or restricted on all or most pages. JX-2656C, JX-2671C, JX-2672C, JX-2675C, JX-2678C,

measures should carry little weight, particularly given that they appear based on testimony from Mr. Choi—testimony with respect to which Caihong Display had no opportunity for cross-examination and which was not deemed admissible here. *See* CX-2742C, at 26;⁸² Order No. 76; RIB at 30; *cf. Nipper v. Snipes*, 7 F.3d 415, 417 (4th Cir. 1993) (state court findings of fact not admissible under F.R.E. 803(8)(C)’s provision for “factual findings resulting from an investigation made pursuant to authority granted by law”). Mr. Triplett also relies upon a conversation with Mr. Lee. While this testimony is somewhat probative, given the lack of any corroborative SCP documentation, it does not sufficiently address the issues posed by the following documents that appear to lack the confidentiality markings referenced by Dr. Kudva as part of Corning’s standard procedure: JX-2656C, JX-2671C, JX-2672C, JX-2675C, JX-2678C, JX-2651C, JX-2650C, and JX-2652C.⁸³

Accordingly, based on the considerations above, Corning has not shown by a preponderance of the evidence that reasonable security precautions were taken at SCP as to the documents that do not carry clear confidential or restricted markings. With respect to the other documents, the evidence (which includes confidentiality markings on the documents themselves) is sufficient to meet the preponderance of the evidence standard.

The table below summarizes the issues concerning acquisition and security measures conclusions for the Operational Trade Secret Documents:

JX-2651C, JX-2650C, and JX-2652C are not clearly marked as confidential or restricted (other than being marked as CBI when produced by Corning in this investigation).

⁸² The Korean court decision addressed the civil case brought by Corning against Dongxu. *See* CX-2742C. Caihong Display was not a party.

⁸³ Ms. Markham testified that these documents reflect “Corning’s information about how to start up, operate, and troubleshoot a fusion draw machine.” Tr. (Markham) at 328:2-329:11.

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Exhibit No.	Document Title	TS No(s).	Acquired by Caihong?	Reasonable Security Measures?
JX-2655C	[REDACTED]	59	Insufficient evidence	Yes
JX-2656C	[REDACTED]	61	Insufficient evidence	Insufficient evidence
JX-2660C	[REDACTED]	59, 61, 64, 68	Insufficient evidence	Yes
JX-2662C	[REDACTED] [REDACTED]	61, 62	Insufficient evidence	Yes
JX-2664C	[REDACTED]	64	Insufficient evidence	Yes
JX-2671C	[REDACTED]	59, 64	Yes	Insufficient evidence
JX-2672C	[REDACTED] [REDACTED]	64, 68	Insufficient evidence	Insufficient evidence
JX-2673C	[REDACTED]	59	Yes	Yes
JX-2675C	[REDACTED]	62	Insufficient evidence	Insufficient evidence
JX-2679C	[REDACTED]	59, 68	Yes	Yes
JX-2678C	[REDACTED]	61	Insufficient evidence	Insufficient evidence
JX-2651C	[REDACTED]	62	Insufficient evidence	Insufficient evidence
JX-2650C	[REDACTED] [REDACTED]	61, 62, 64	Insufficient evidence	Insufficient evidence
JX-2652C	[REDACTED] [REDACTED]	61, 62, 64, 68	Insufficient evidence	Insufficient evidence

Based on this finding, the evidence is insufficient to show a violation of TS 61, 62, or 64 based on lack of sufficient evidence of acquisition and/or lack of sufficient evidence regarding security.

The following sections discuss the Operational Trade Secrets individually. As discussed below, the evidence shows trade secret misappropriation as to TS 68 but not as to TS 59, 61, 62, or 64.

2. Trade Secret 59

Regarding TS 59, the evidence is only sufficient to show that three of the five Operational Trade Secret Documents relied upon were acquired by Caihong Display (and that only two of these documents were sufficiently protected as confidential). *See* discussion *supra*. In addition, as discussed below, the evidence at the hearing fails to show that trade secret 59 was sufficiently identified, and fails to show by a preponderance that the three Operational Trade Secret documents acquired by Caihong Display were substantially used. Accordingly, the evidence fails to show a violation as to TS 59 by a preponderance of the evidence.

a) Identification of Trade Secret 59

Corning identifies Trade Secret 59 as:

Operational know-how relating to [REDACTED]
[REDACTED]. Corning documents
that reflect this trade secret include: the files named “[REDACTED]
[REDACTED]” (CORNING-LCD-00012330; CORNING-LCD-
00013755) [JX-2655C], “[REDACTED]” (CORNING-LCD-
00012487) [JX-2671C], “[REDACTED]” (CORNING-LCD-
00012489) [JX-2673C], “[REDACTED]” (CORNING-LCD-00012537)
[JX-2679C], and “[REDACTED]” (CORNING-LCD-
00012342) [JX-2660C].

CIB at 118; RX-6749C at ¶ 59; RIB at xvi; SIB at 102.

The parties dispute whether TS 59 is identified with a sufficient degree of particularity. Corning states that Trade Secret 59 is “reflected in [REDACTED] (JX-2655C); [REDACTED] (JX-2671C); [REDACTED] (JX-2679C); [REDACTED] (JX-2673C); [REDACTED] (JX-2660C).” CIB at 119 (citing Tr. 535:18-536:8 (Bravman); RX-6749C ¶ 59; Mot. No. 1433-007, Ex. 5 at 34 (identifying pages files where trade secret was reflected). Corning argues that (1) [REDACTED] [REDACTED] CIB at 119 (citing JX-2655C at 3-4); (2) [REDACTED] [REDACTED] *id.* (citing JX-2671C at 4); (3) [REDACTED] [REDACTED] JX-2679C at 4-10 and Tr. 411:14-20 (Kudva), [REDACTED] [REDACTED] *id.* (citing Tr. 411:14-20 (Kudva)); (4) [REDACTED] [REDACTED] *id.* (citing Tr. 412:15-414:9 (Kudva); JX-2673C at 4-13); and (5) [REDACTED] [REDACTED] *id.* at 120 (citing Tr. 414:17-415:18, 416:25-417:8 (Kudva); JX-2660C at 3, 7, 11).⁸⁴

⁸⁴ As discussed with respect to Trade Secret 12.1, Corning further argues that Order No. 22 “already found that Corning described the Trade Secrets with a reasonable degree of precision” and that the “identification requirement ‘does not create a procedural device to litigate the ultimate merits of the case—that is, to determine as a matter of law on the basis of evidence presented whether the trade secret actually exists.’” CRB at 3 (citing omitted).

In opposition, Respondents argue that none of the operational trade secrets were appropriately identified, including TS 59. In particular, Respondents argue that because “Corning refused to provide any details regarding the content of the Operational Trade Secrets other than citation to documents” during discovery,” deferred the details to expert discovery, and the details were “ultimately absent from Dr. Bravman’s report,” “Corning’s last-minute injection of new specificity is improper and should not be permitted for the reasons stated on the record.” RIB at 99. Respondents argue that Corning “tried to remedy this deficiency during the hearing, having Ms. Markham and Dr. Kudva associate the documents with particular trade secrets and explain Corning’s practice of them.” *Id.*

Staff argues that “[t]he evidence shows that Corning described the Operational Trade Secrets (*i.e.*, TS 59, TS 61, TS 62, TS 64, and TS 68) with sufficient particularity.” SIB at 102. Staff argues “the documents relied upon for purposes of its Operational Trade Secrets do not offer much assistance in defining the contours of the alleged trade secrets” but that “Respondents’ arguments that Corning’s identifications are vague go to the merits of the alleged misappropriation – not to the identification of the asserted trade secrets.” *Id.* at 104.

Upon review of the evidence and submissions of record, the undersigned finds that TS 59 as presented at trial was not sufficiently identified or defined. As a preliminary matter, TS 59 must be limited to information about “[REDACTED]” *contained within the documents cited in TS 59.*⁸⁵ CIB at 118-19. Here, the only trial testimony substantively

⁸⁵ To the extent that TS 59 is extended more broadly to operational know-how outside the documents at issue, the trade secret is not adequately defined, since the narrative portion of TS 59 does not provide any substantive information about “[REDACTED],” instead just identifying the general subject matter of the asserted trade secret. *See Coda Dev. s.r.o. v. Goodyear Tire & Rubber Co.*, 160 F. 4th 1350, 1357 (Fed. Cir. 2025) (finding trade secret that “merely describes the functions” of the product did not sufficiently articulate the trade secret). In addition,

relating the TS 59 documents to the subject matter of TS 59 was provided by Dr. Kudva, who testified regarding JX-2673C ([REDACTED]) and JX-2660 ([REDACTED]). *See id.* at 119-120 (citing Tr. (Kudva) at 412:15-414:9, 413:14-25, 414:17-415:18, 416:25-417:8; JX-2673C; JX-2660C).

Within this testimony, the only portions of the TS 59 documents shown to address [REDACTED] [REDACTED] were: (1) a reference to [REDACTED] in JX-2673C ([REDACTED]) (*see* Tr. (Kudva) at 413:8-12); and (2) “a reference to [REDACTED]” and a table that includes “[REDACTED]” in JX-2660C (*see* Tr. (Kudva) at 414:17-417:8).⁸⁶ Most of this testimony was stricken. *See* Part III.C *supra*. However, even if considered, none of this information was clearly or sufficiently persuasively shown to discuss “[REDACTED]” or to provide [REDACTED] [REDACTED].⁸⁷ While Dr. Kudva elaborated on how the disclosed material ultimately relates to [REDACTED] [REDACTED], none of that elaboration was in the documents themselves. *See, e.g.*, Tr. (Kudva) at 409:15-24. Nor did Dr. Kudva show that the cited documents provided [REDACTED] [REDACTED].⁸⁸

Corning has not shown that operational know-how outside the documents was acquired by Caihong, as Corning’s “acquisition” theory is based solely on documents conveyed by Mr. Choi to Mr. Park, and then by Mr. Park to Caihong.

⁸⁶ Corning’s opening brief also includes discussion of other documents identified for TS 59, including JX-2655C and JX-2671C, without citation to any expert or fact testimony. This attorney argument is unpersuasive.

⁸⁷ While the table on page 4 of JX-2660C appears to include [REDACTED], Dr. Kudva did not identify any information showing “[REDACTED]” [REDACTED].

⁸⁸ Corning argues that JX-2671C [REDACTED] contains [REDACTED] but there is no trial testimony to that effect; nor is this clearly evident from the document itself.

Accordingly, the evidence shows that TS 59, as presented at trial, was not sufficiently identified.⁸⁹

b) Corning's Ownership of Trade Secret 59

Corning argues that “Corning’s ownership of TS 59 is reflected in its development of operational knowledge over decades of trial and error of operating the FDM, Tr. 667:22-668:19 (Bocko), and its possession (with secrecy) of the documents” discussed in the identification section. CIB at 120 (citing Tr. 328:5-329:11 (Markham), 414:25-415:4, 413:3-7, 417:19-21 (Kudva)). Staff supports Corning’s position. SIB at 104. Respondents oppose for the same reasons set forth for TS 12.1. RIB at 100, 23.

Accordingly, Corning has shown that it owns asserted TS 59 (to the extent it meets the other criteria for being a trade secret), where TS 59 is understood as limited to information within the referenced documents. *See* SIB at 103-104.

c) Existence of a Protectable Trade Secret

As discussed *supra*, TS 59 was not sufficiently identified and thus there is no trade secret for that reason alone. Even if TS 59 is accepted as the information in JX-2673C and JX-2660C discussed by Dr. Kudva, the evidence fails to show a preponderance that TS 59 is a protectable trade secret. In particular, there is insufficient evidence that the limited information relating to the “[REDACTED]” in those documents has independent economic value. As discussed *supra*, the evidence fails to show that the documents

⁸⁹ While the undersigned held that Corning’s identification of trade secrets was sufficient at the discovery stage, this holding was undermined by the testimony of Corning’s witness at trial regarding the content of documents cited in TS 59. Corning acknowledged that different standards may apply at early stages of the investigation. *See* Corning Opp’n to Mot. 1433-007, at 13 (EDIS Doc. ID 849248) (“[a]s the Ninth Circuit has explained, discovery provides an iterative process where requests between the parties lead to a refined to sufficiently particularized trade secret identification”) (internal quotations omitted).

cited in TS 59 provide information about how to [REDACTED] and much of the testimony presented by Corning was stricken.

d) Acquisition by Improper Means

As discussed *supra*, the evidence is insufficient to show that Caihong Display acquired certain documents relied upon for TS 59. The only documents that were shown to have been acquired were JX-2673C, JX-2671C, and JX-2679C. *See supra*.

e) Use or Disclosure of Trade Secret 59

Corning argues, with respect to all the asserted operational trade secrets, that “the nature of the Operational Trade Secrets prevents . . . apples-to-apples comparison,” but that “there is compelling circumstantial evidence that Irico used and continues to use these trade secrets,” that “the implausibly fast time frame and circumstances in which Irico developed and began operating its FDM supports an inference that Irico used the Operational Trade Secrets provided by Park, including TS 59,” that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] CIB at 121-22. Corning further argues that [REDACTED]

[REDACTED]

[REDACTED] that “[t]his operational

knowledge is necessary operation of the edge roll and pulling machine designs that Irico improperly took from Corning (TS. 35.1, 35.2, and 52.2),” that “Irico still needs to know how to operate the pulling and edge rolls to achieve commercially viable glass,” and thus “it is reasonable to infer that Irico continues to use TS 59.” *Id.* at 122.

In opposition, and concerning alleged past use, Respondents argue that “Corning and Dr. Bravman exclusively rely on [REDACTED] [REDACTED] but that “Mr. Park’s statements and testimony are not reliable,” that “Mr. Park’s initial statements to police specifically denied that any of these questions came from any Shaanxi Caihong employee. RIB at 104. Respondents argue that in any event “these questions are not sufficient to establish substantial use of any Operational Trade Secret,” that “asking questions is not evidence of use of trade secrets embodied in specific documents,” that “Dr. Bravman did not refer to any *answers* to any question to demonstrate Shaanxi Caihong received the purported trade secret information,” and that Dr. Bravman did not refer to “any evidence of actual *use* of any such information.” *Id.* Respondents further argue that “[a]part from being improper, Corning’s newly provided details about what might be encompassed in these trade secrets just underscores its failure to meet its burden to demonstrate substantial use,” that “[t]here have been no specific allegations regarding if or how Shaanxi Caihong modified its [REDACTED] (TS 59), what its [REDACTED] were (TS 61), how the FDM was [REDACTED] (TS 62), how it [REDACTED] (TS 64), or how it [REDACTED] (TS 68)—let alone any evidence suggesting the specific information in the SCP materials matches any Shaanxi Caihong operations.” *Id.* at 104-05.

Regarding alleged current use, Respondents argue that “Dr. Bravman’s current use opinions are premised on Caihong using [REDACTED] [REDACTED],” that “[b]ecause Corning has failed to demonstrate misappropriation or any past use of the Operational Trade Secrets, current use analysis premised on it must fail,” and that “Dr. Bravman’s opinions are not

supported by any evidence—conclusory opinions as to substantial use are insufficient to meet Corning’s burdens.” *Id.* at 105.

Staff provides a single “use or disclosure” section for all five operational trade secrets. Staff argues that “Corning contends that Caihong Display’s implausibly fast time frame in constructing and operating its FDM is evidence that it used Corning’s Operational Trade Secrets,” that, however, “this time frame can be explained through the alleged misappropriation of Corning’s Design Trade Secrets,” that “[w]hile the evidence shows that Park sought to improperly acquire Corning proprietary information, it is not clear what information, if any, Caihong Display used in operating its FDM, nor is it clear what information, if any, it continues to use in its Gen 7.5 and Gen 8.5 FDMs,” that “[e]ven if Caihong Display possessed Corning Operational Trade Secrets, that is not enough, by itself, for misappropriation,” and that “the evidence does not show that Caihong Display has used the Operational Trade Secrets.” SIB at 107-08.

Upon consideration of the evidence of record, the evidence fails to show by a preponderance that Caihong Display made substantial use of TS 59 in operating its Gen 5 equipment (or in subsequent generations of glass). As discussed above, there is insufficient evidence that Caihong Display acquired two of the documents it relies upon for TS 59. Moreover, as discussed above, the portions of the TS 59 documents that Dr. Kudva asserts address pulling rolls and edge rolls were extremely limited, and do not appear to even show the [REDACTED] or provide specific methodologies to address this issue, and Dr. Kudva’s testimony as to this issue was stricken. *See* Part III.C *supra*. Accordingly, Corning has not shown by a preponderance of the evidence that Caihong Display made substantial use of the TS 59 documents to address the “[REDACTED]

██████████.” *Id.* at 102.

f) Independent Development of Trade Secret 59

For all five operational trade secrets, Corning refers to the factual background section of its post-hearing brief in arguing that “Irico has no evidence” that it independently developed the operational know-how information that comprises operational Trade Secrets 59, 61, 62, 64, and 68. CIB at 122, 126, 129, 132, 136 (citing Section III.B.5.a (factual background section concerning independent development)). In the factual background section, Corning argues, *inter alia*, that “Irico’s materials show no “trial and error” or other problem-solving documentation that would accompany a new LCD glass manufacturer overcoming issues such as crystallization, cord and inclusion defects, and flatness deviations,” and that “had Irico independently developed the Trade Secrets, one would also expect to see extensive documentation of “give and take with a customer” regarding the quality and performance of its glass, but Irico provided no such evidence.” CIB at 58. Corning argues that “[t]he evidence undermines the claim that, starting in 2003, Irico spent four years developing a pilot line for G5 glass substrate,” that “[e]ven if Irico had started its efforts in 2003, it could not plausibly have developed advanced FDM technology in just four years,” that “Irico’s CRT experience, ██████████
██████████ does not “explain its fast development,” that “[a]lthough Respondents claim (at 41, 53, 80), without any supporting witness testimony, that the EGLASS materials had information about a few Trade Secrets, no evidence suggests that Irico actually used those materials in its design,” and that “[t]o the contrary, Irico’s witnesses disavowed using those materials to design the FDM.” CRB at 22.

For all five operational trade secrets including Trade Secret 59, Respondents refer to the Trade Secret 12.1 independent development section of its post-hearing brief in arguing that “Caihong independently developed its FDM technology. RIB at 105 (citing its post-hearing brief § III.C.6 (Trade Secret 12.1 independent development section)). With respect to Trade Secret 12.1, Respondents argue, *inter alia*, that “[d]ocuments produced by Corning show that Corning knows Caihong developed its own manufacturing lines, both independently and in consultation with others. Corning’s outsized competitive intelligence apparatus determined Caihong has a large R&D team of “340 people,” including “8 national and provisional experts,” “42 PhDs,” “[m]ore than 20 domestic scholars,” and “[m]ore than 10 overseas experts,” that “[a] 2014 report from Corning’s consulting firm, Martec, noted “ASI [(AvanStrate)] is a very good partner to help IRICO for larger size technology development” including G8.5,” that “[t]he report also notes the “[c]ooperation of IRICO and ASI was quite smooth” and that Caihong “[o]btain[ed] G8.5 melting, forming and BOD technology from ASI,” and thus, “Corning’s contention that Caihong did not independently develop its manufacturing technology is not only false, it is also flatly contradicted by Corning’s [REDACTED].” *Id.* at 35 (citations omitted).

Staff provides a single “independent development” section for all five operational trade secrets. Staff argues that “Caihong Display has not identified evidence showing that it independently designed and developed its operational know-how,” and thus “the evidence does not support a finding of independent development of the Operational Trade Secrets.” SIB at 108.

As discussed above, Corning has failed to show that the subject matter of asserted TS 59 is a trade secret or provided a *prima facie* case of substantial use. Accordingly, it is unnecessary to reach independent development as a defense. *See Raised Garden Beds*, 2024 WL 1434222, at *11.

3. Trade Secret 61

The evidence fails to show that any of the documents relied upon for TS 61 were acquired by Caihong Display, and thus fails to show substantial use or misappropriation as well. *See discussion supra.* The evidence shows, however, that TS 61 (to the extent contained in JX-2660C and JX-2662C) was a protectable trade secret at the time of the alleged misappropriation.

a) Identification of Trade Secret 61

Corning identifies Trade Secret 61 as:

Operational know-how related to the start-up of the fusion draw machine, [REDACTED] and steps to be taken from start-up to production of LCD glass. Corning documents that reflect this trade secret include: the files named [REDACTED] [REDACTED] [REDACTED] (CORNING-LCD-00012424) [JX-2662C], [REDACTED] [REDACTED] (CORNING-LCD-00012536) [JX-2678C], [REDACTED] [REDACTED] (CORNING-LCD-00012311) [JX-2650C], [REDACTED] [REDACTED] (CORNING-LCD-00012317) [JX-2652C], [REDACTED] [REDACTED] (CORNING-LCD-00012331) [JX-2656C], and [REDACTED] [REDACTED] CORNING-LCD-00012342) [JX-2660C].

CIB at 122; RX-6749C at ¶ 61; RIB at xvi; SIB at 102.

The parties dispute whether TS 61 is identified with a sufficient degree of particularity.

Corning argues that Trade Secret 61 includes “[REDACTED]”
 [REDACTED],” and “[REDACTED]”
 [REDACTED]
 [REDACTED]
 [REDACTED].” CIB at 122-23. Corning further argues that “TS 61 is reflected in
 [REDACTED] (JX-2662C), [REDACTED] (JX-2678C), [REDACTED] (JX-2656C), [REDACTED]

[REDACTED] (JX-2650C), [REDACTED] (JX-2652C), and [REDACTED]
[REDACTED],” that “[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED],” and
that [REDACTED]
[REDACTED] that [REDACTED] *Id.* at
123.

Corning argues that “[b]ased on her personal knowledge, Markham explained” that

[REDACTED]
[REDACTED] that [REDACTED]
[REDACTED] that it
[REDACTED]
[REDACTED] that
[REDACTED]
[REDACTED] and that [REDACTED]
[REDACTED] *Id.* at 123-24.

As noted above with respect to TS 59, Respondents argued that none of the asserted trade secrets has been disclosed with adequate particularity. *See* RIB at 99, RRB at 38. Also as noted above with respect to TS 59, Staff argued that “[t]he evidence shows that Corning described the Operational Trade Secrets (*i.e.*, TS 59, TS 61, TS 62, TS 64, and TS 68) with sufficient particularity.” SIB at 102.

Upon review of the evidence and submissions of record, the undersigned finds that TS 61 has been sufficiently identified. The evidence shows (even without consideration of Ms. Markham's testimony) that the documents identified with respect to this trade secret, including the specific pages identified by Respondents in the Ex. 5 Disclosure, provide information reasonably correlating to the asserted subject matter of the trade secret.⁹⁰

b) Corning's Ownership of Trade Secret 61

For the same reasons identified above for TS 59, Corning has shown that it owns asserted TS 61 (to the extent it meets the other criteria for being a trade secret).

c) Existence of a Protectable Trade Secret

(1) Economic Value

Corning argues that Corning's start-up procedures as set forth in this trade secret have economic value because "they enable Corning to timely deliver high quality glass meeting customer specifications" and helps avoid damage to the FDM. CIB at 124. Corning also argues that the economic value of the trade secret is evidenced by Corning's substantial investment in developing it, [REDACTED], and Corning's and SCP's efforts to protect the operational trade secrets. *Id.*

Respondents argue, in opposition, that Corning has failed to show that any of the Operational Trade Secrets have independent economic value based on high-level opinions by Dr. Bravman and testimony by Dr. Bocko that did not "address any trade secret individually." *See* RIB at 100, 23-24; RRB at 38. Staff argues that Corning has failed to show that any of the Operational Trade Secrets have independent economic value because "Corning has identified

⁹⁰ Respondents object to the detail provided by Ms. Markham regarding this trade secret; however, the same conclusion regarding sufficient identification would be reached without her testimony based on the description of the trade secret together with the content of the documents.

those trade secrets with only a broad brush” and that the documents do not “reflect the full extent of any trade secret.” SIB at 105.

The undersigned finds that evidence shows, by a preponderance, that the start-up information in the cited documents for TS 61 has independent economic value in connection with Corning’s FDM machine. *See* CIB at 124; Tr. (Markham) at 350:13-351:25 (discussing JX-2656C); *id.* at 328:17-329:10 (testifying that all documents relied upon for this trade secret “reflect Corning’s information about how to start up, operate, and troubleshoot a fusion draw machine”); *id.* at 342:21-348:13 (discussing JX-2652C); *id.* at 348:14-350:13 (discussing JX-2650C). Corning provided testimony regarding the value of information in each of the documents relied upon for this trade secret. *See* CIB at 134. Respondents’ and Staff’s high-level arguments, generic to all the Operational Trade Secrets, do not persuasively controvert this evidence.

(2) Generally Known or Readily Ascertainable

The parties’ discussion of this factor addresses certain public references identified by Respondents’ expert Mr. Gordon. Corning argues that “Gordon incorrectly testified that five patents make this trade secret generally known,” that “[n]one discloses [REDACTED] [REDACTED] [REDACTED],” and that “[e]ach of the patents was filed years after the misappropriation, and two (JX-0243 and JX-0228) were filed by Dongxu.” CIB at 124-25.

Respondents combined its arguments for Trade Secrets 61 and 62 for this issue. RIB at 101-02. Respondents argue that “Mr. Gordon established that” Trade Secrets 61 and 62 are “generally known or readily ascertainable in view of numerous publicly available references,”

(citing Tr. (Gordon), 1242:20-1245:7 (TS 61), 1245:8-1246:10 (TS 62), and that Trade Secrets 61 and 62’s “know-how regarding the start-up of the FDM (including the heat-up process)” is “well known.” RIB at 101.

Respondents argue that (1) “Corning’s US9284209 (“Filippov”) teaches how to “heat the isopipe to its appropriate operating temperature, for example, after a repair shutdown” to avoid a “crack during heat up resulting from thermal stresses,” citing RX-6302 (Filippov) (published Jun. 2, 2016, applicant Corning), 5:51-6:5; (2) “CN109809675A (“Li675”) teaches “before the production of glass substrates begins, the furnace body must undergo a one-month heating process” and teaches closing the damper “to prevent heat loss from the furnace body, which could cause equipment damage,” citing JX-0228 (Li675) (published May 28, 2019, applicant Wuhu Dongxu), ¶ [0047]; (3) “Corning’s US20180370836A1 (“Aniolek”) teaches operational know-how relating to “heating the transition upper...during a start-up of the glass forming apparatus 100,” citing RX-0596 (Aniolek) (published Dec. 27, 2018, applicant Corning), ¶ [0107]; (4) “CN106630557A (“He557”) teaches muffle temperature ranges to reduce glass defects,” citing JX-0215 (He557) (published May 10, 2017, Applicant Wuhu Tunghsu), ¶ [0004]⁹¹; (5) Trade Secrets 61 and 62 are taught by “CN117125879A (“Li879”), which teaches know-how relating to “wetting of the overflow brick 22,” a process that can take “5 to 6 days,” and during which “the angle of the overflow brick 22 continuously increases during the formation of the glass ribbon,” citing JX-0243 (Li879) (published Nov. 28, 2023, applicant Wuhu Tunghsu), ¶¶ [0076]-[0077]; and (6) “CN222331791U (“Li791”) teaches operational know-how relating to the use of a long pull roll (“plate-guiding traction roller 25”) that is

⁹¹ Mr. Gordon’s testimony regarding the He reference was limited to TS 62. See Tr. (Gordon) at 1245:10-16. *See also* CIB at 128.

selectively used “[o]nly when the muffle furnace 10 initially starts flowing glass or after a glass ribbon 60 breaks and needs to be pulled again to form the glass ribbon 60,” whereby “the plate-guiding traction roller 25 clamps the glass ribbon 60 for drawing,” citing JX-0327 (Li791) (issued Jan. 10, 2025), ¶ [0041]. *Id.* at 101-02 (citing Tr. (Gordon) at 1242:20-1245:7 (TS 61) and *id.* at 1245:8-1246:10 (TS 62)).

Staff provides a single “generally known or readily ascertainable” section for all asserted operational trade secrets, arguing that “Corning fails to provide sufficient evidence to show that its Operational Trade Secrets differ from that generally known by others in the field.” SIB at 106.

Here, the evidence is sufficient to show that the operational know-how set forth in the TS 61 documents was not generally known at the time of the alleged misappropriation to the extent reflected in JX-2662C and JX-2660C. *See* discussion *infra* re Secrecy. Each of the six patents or patent publications cited by Mr. Gordon was published after the alleged misappropriation. *See* CIB at 124-25. Moreover, while others in the field may have had operational knowledge regarding FDM equipment, the evidence shows that the trade secret documents at issue provided operational information specific to Corning’s design.

(3) Reasonable Measures to Maintain Secrecy

As discussed *supra*, the evidence is insufficient to show reasonable measures to maintain secrecy for four out of the six documents relied upon for this trade secret. The only documents sufficiently shown to have been reasonably protected are JX-2660C and JX-2662C.

In view of the considerations above, the evidence shows that TS 61 is a protectable trade secret as to the information relating to the subject matter of this trade secret that is contained in JX-2660C and JX-2662C.

d) Acquisition by Improper Means

For the reasons *supra*, the evidence fails to show by a preponderance that Caihong Display acquired by improper means the documents relied upon for TS 61.

e) Use or Disclosure of Trade Secret 61

The evidence fails to show by a preponderance that Caihong Display used the documents relied upon for TS 61, including because the evidence fails to show acquisition of these documents.

f) Independent Development of Trade Secret 61

Corning has failed to provide a *prima facie* case of substantial use. Accordingly, it is unnecessary to reach independent development as a defense. *See Raised Garden Beds*, 2024 WL 1434222, at *11.

4. Trade Secret 62

a) Identification of Trade Secret 62

Corning identifies Trade Secret 62 as:

Operational know-how related to heating up the fusion draw machine during start-up. [REDACTED]

[REDACTED] Corning documents that reflect this trade secret include: the files named “[REDACTED]”

(CORNING-LCD-00012316) [JX-2651C], “[REDACTED]

[REDACTED]” (CORNING-LCD-00012424) [JX-2662C], “[REDACTED]

[REDACTED]”

(CORNING-LCD-00012311) [JX-2650C], “[REDACTED]

[REDACTED]” (CORNING-LCD-

00012317) [JX-2652C], and “[REDACTED]”

(CORNING-LCD-00012515) [JX-2675C].

CIB at 126; RX-6749C at ¶ 62; RIB at xvi; SIB at 102-03.

The parties dispute whether TS 62 is identified with a sufficient degree of particularity.

Corning argues that the subject matter of TS 62 is reflected in the documents cited, including in JX-2662 (the only document for which reasonable measures to protect secrecy was shown). Corning argues that this document “.” CIB at 127 (citing Tr. (Markham) and JX-2662C).

As noted above with respect to TS 59, Respondents argued that none of the asserted trade secrets has been disclosed with adequate particularity. *See* RIB at 99, RRB at 38. Also as noted above with respect to TS 59, Staff argued that “[t]he evidence shows that Corning described the Operational Trade Secrets (*i.e.*, TS 59, TS 61, TS 62, TS 64, and TS 68) with sufficient particularity.” SIB at 102.

Upon review of the evidence and submissions of record, the undersigned finds that TS 62 has been sufficiently identified. The evidence shows (even without consideration of Ms. Markham’s testimony) that the documents identified with respect to this trade secret, JX-2662C, including the specific pages identified by Respondents in the Ex. 5 Disclosure, are reasonably correlated to the asserted subject matter of the trade secret.⁹²

b) Corning’s Ownership of Trade Secret 62

For the same reasons identified above for TS 59, Corning has shown that it owns asserted TS 61 (to the extent it meets the other criteria for being a trade secret).

⁹² Respondents object to the detail provided by Ms. Markham regarding this trade secret; however, the same conclusion regarding sufficient identification would be reached without her testimony based on the description of the trade secret together with the content of the documents.

c) Existence of a Protectable Trade Secret

For the reasons discussed below, the undersigned finds that Trade Secret 62, to the extent reflected in JX-2662C, is protectable as a trade secret.

(1) Economic Value

Corning argues that Corning's start-up procedures for heating the fusion draw machine, as set forth in this trade secret have economic value because they "are critical to preventing the FDM from heating too quickly, which could crack the isopipe or cause deformation of other parts." CIB at 127 (citing Tr. (Markham) at 336:19-338:7, 340:22-341:10, 339:15-340:6).

Corning also argues that the economic value of the trade secret is evidenced by Corning's substantial investment in developing it, [REDACTED]

[REDACTED], and Corning's and SCP's efforts to protect the operational trade secrets. *Id.*

Respondents argue, in opposition, that Corning has failed to show that any of the Operational Trade Secrets have independent economic value based on high-level opinions by Dr. Bravman and testimony by Dr. Bocko that did not "address any trade secret individually." *See* RIB at 100, 23-24; RRB at 38. Staff argues that Corning has failed to show that any of the Operational Trade Secrets have independent economic value because "Corning has identified those trade secrets with only a broad brush" and that the documents do not "reflect the full extent of any trade secret." SIB at 105.

The undersigned finds that evidence shows, by a preponderance, that the start-up information in the cited documents for TS 62 has independent economic value in connection with Corning's FDM machine. *See* CIB at 127; Tr. (Markham) at 330:6-338:10 (discussing JX-2650); *id.* at 338:11-341:10 (discussing JX-2651C); *id.* at 328:17-329:10 (testifying that all

documents relied upon for this trade secret “reflect Corning’s information about how to start up, operate, and troubleshoot a fusion draw machine”). Respondents’ and Staff’s high-level arguments, generic to all the Operational Trade Secrets, do not persuasively controvert this evidence. Moreover, even if the documents do not reflect the “full extent” of the narrative description of the asserted trade secret, the material relevant to the subject matter of the trade secret contained within the cited documents can be trade secret information. *See Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Prods. Containing Same*, Inv. No. 337-TA-1352, Final ID at 82 (Oct. 3, 2024) (EDIS Doc. ID 837434) (standard for independent economic value is “not a high standard”), *aff’d in rel. part*, Comm’n Op. at 1-2 (May 29, 2025).

(2) Generally Known or Readily Ascertainable

The arguments regarding whether TS 62 is generally known or readily ascertainable mirror those for TS 61. See CIB at 128; RIB at 101-102; SIB at 106. For the reasons discussed above for TS 61, the evidence shows that asserted TS 62 was not generally known or readily ascertainable to the extent reflected in JX-2662C.

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.B.1, the evidence shows by a preponderance that Corning has taken reasonable security measures to guard the secrecy of JX-2662C. Corning has not shown, by a preponderance, evidence of reasonable security measures as to the other documents relied upon for this trade secret.

d) Acquisition by Improper Means

For the reasons *supra*, the evidence fails to show by a preponderance that Caihong Display acquired by improper means the documents relied upon for TS 61.

e) Use or Disclosure of Trade Secret 62

As discussed above, the evidence is insufficient to show that Caihong Display acquired these documents and thus is also insufficient to show use.

f) Independent Development of Trade Secret 62

For the same reasons discussed with respect to TS 61, it is unnecessary to reach the issue of independent development.

5. Trade Secret 64

a) Identification of Trade Secret 64

Corning identifies Trade Secret 64 as:

Operational know-how regarding the use, function, and maintenance of component parts of the fusion draw machine and how they are operated together to produce high quality LCD glass, including [REDACTED]

[REDACTED] Corning documents that reflect this trade secret include: the files named “[REDACTED]” (CORNING-LCD-00012426) [JX-2664C], “[REDACTED]” (CORNING-LCD-00012487) [JX-2671C], “[REDACTED]” (CORNING-LCD-00012311) [JX-2650C], “[REDACTED]” (CORNING-LCD-00012317) [JX-2652C], “[REDACTED]” CORNING-LCD-00012342) [JX-2660C] and “[REDACTED]” (CORNING-LCD-00012488) [JX-2672C].

CIB at 129; RX-6749C at ¶ 64; RIB at xvii; SIB at 103.

The parties dispute whether TS 64 is identified with a sufficient degree of particularity.

Corning argues that the subject matter of TS 64 is reflected in JX-2664C, JX-2650C, JX-2652C, JX-2660C, and JX-2672C. CIB at 130.⁹³ Corning argues, *inter alia*, that JX-2664C

“[REDACTED]” *Id.* (citing JX-2664C at 25).

As noted above with respect to TS 59, Respondents argued that none of the asserted trade secrets has been disclosed with adequate particularity. *See* RIB at 99, RRB at 38. Also as noted above with respect to TS 59, Staff argued that “[t]he evidence shows that Corning described the Operational Trade Secrets (*i.e.*, TS 59, TS 61, TS 62, TS 64, and TS 68) with sufficient particularity.” SIB at 102.

Upon review of the evidence and submissions of record, the undersigned finds that TS 64 has been sufficiently identified as to the information contained in the specific pages identified in Corning’s identification of TS 64 and in its Ex. 5 Disclosure.⁹⁴ The evidence shows that these pages of the cited documents identified with respect to this trade secret provide information reasonably correlated to the asserted subject matter of the trade secret.⁹⁵

b) Corning’s Ownership of Trade Secret 64

For the same reasons identified above for TS 59, Corning has shown that it owns asserted TS 61 (to the extent it meets the other criteria for being a trade secret).

⁹³ Corning made no argument that (or how) this trade secret is reflected in JX-2671C. *See* CIB at 129-130.

⁹⁴ Corning’s discussion of JX-2664C relies on a page (page 25) that was not identified in Corning’s Exhibit 5 disclosure. *See* Ex. 5 Disclosure (identifying 3-13 of [REDACTED]); CIB at 130 (relying on page 25 of JX-2664C at 25). In addition, certain of Dr. Bravman’s testimony as to this trade secret was stricken. *See* Order No. 82. Even absent this testimony, however, the narrative description of the trade secret together with the identified pages of the documents provides sufficient identification under the circumstances here.

⁹⁵ Respondents objected to the detail provided by Ms. Markham regarding this trade secret; however, the same conclusion regarding sufficient identification would be reached without her testimony based on the description of the trade secret together with the content of the documents.

c) Existence of a Protectable Trade Secret

For the reasons discussed below, the undersigned finds that Trade Secret 64 is protectable as a trade secret as to the information disclosed in JX-2660C and JX-2664C (to the extent specified in Corning's Exhibit 5 Disclosure).

(1) Economic Value

Corning argues that its "operational know-how regarding the use, function, and maintenance of components of the FDM helps Corning to continuously produce high-quality glass." CIB at 130 (citing Tr. (Bravman). Corning also argues that the economic value of the trade secret is evidenced by Corning's substantial investment in developing it, [REDACTED], and Corning's and SCP's efforts to protect the operational trade secrets. *Id.*

Respondents argue, in opposition, that Corning has failed to show that any of the Operational Trade Secrets have independent economic value based on high-level opinions by Dr. Bravman and testimony by Dr. Bocko that did not "address any trade secret individually." *See* RIB at 100, 23-24; RRB at 38. Staff argues that Corning has failed to show that any of the Operational Trade Secrets have independent economic value because "Corning has identified those trade secrets with only a broad brush" and that the documents do not "reflect the full extent of any trade secret." SIB at 105.

The undersigned finds that evidence shows, by a preponderance, that the operational information in the cited portions of documents for TS 64, including in JX-2660C and JX-2664C, has independent economic value in connection with Corning's FDM machine. *See* CIB at 130; Tr. (Markham) at 328:17-329:10 (testifying that all documents relied upon for this trade secret "reflect Corning's information about how to start up, operate, and troubleshoot a fusion draw

machine”). Respondents’ and Staff’s high-level arguments, generic to all the Operational Trade Secrets, do not persuasively controvert this evidence.

(2) Generally Known or Readily Ascertainable

Corning argues that “Gordon incorrectly testified that four public references (three patents and one Baidu Wenku document) make TS 64 generally known, but that “[n]one discloses the operational know-how for the use, function, and maintenance of FDM components that comprises TS 64.” CIB at 131. Corning argues that the three patents cited by Mr. Gordon “were filed many years after the misappropriation, and one of them was filed by Dongxu.” *Id.* Corning further argues that the Baidu Wenku material was “uploaded by someone 11 years after Irico misappropriated Corning’s Trade Secrets” and does not support Mr. Gordon’s opinion. *Id.* at 130, 69-71 (citing Tr. (Gordon) at 1294:12-1295:12).

Respondents argue that Mr. Gordon’s testimony shows that TS 64 is generally known or readily ascertainable. Respondents argue that: (1) CN222331791U (“Li791”) (JX-0327, issued Jan. 10, 2025) teaches “adjusting and controlling the temperature and stress of the glass during” glass forming and annealing to precisely control “the thickness of the ultra-thin glass,” including a “speed ratio” between rollers and an “integrated control system.” RIB at 102. Respondents argue RX-1735, a presentation on Wenku Baidu, teaches operational know-how for responding to process upsets and defects. *Id.* at 103-104. Respondents argue that Filippov and Li675, discussed in the context of TS 61, also show the subject matter of TS 64. *Id.* (citing Tr. (Gordon) at 1246:12-16, 1243:1-1244:9; RX-6302 (Filippov) (published Jun. 2, 2016, applicant Corning); JX-0228 (Li675) (published May 28, 2019, applicant Wuhu Dongxu).

Staff provides a single “generally known or readily ascertainable” section for all asserted operational trade secrets, arguing that “Corning fails to provide sufficient evidence to show that its Operational Trade Secrets differ from that generally known by others in the field.” SIB at 106.

Here, the evidence is sufficient to show that the operational know-how set forth in the TS 61 documents was not generally known at the time of the alleged misappropriation to the extent reflected in JX-2660C and JX-2664C. *See* discussion *infra* re Secrecy. Each of the patents or publications cited by Mr. Gordon was published after the alleged misappropriation. *See* CIB at 130; Tr. (Gordon) at 1294:12-1295:12. Moreover, while others in the field may have had operational knowledge regarding FDM equipment, the evidence shows that the trade secret documents at issue provided detailed operational information specific to Corning’s design.

(3) Reasonable Measures to Maintain Secrecy

For the reasons discussed in Part IV.B.1, the evidence shows that Corning took reasonable measures to protect the secrecy of JX-2660C and JX-2664C. The evidence fails to sufficiently show reasonable measures to protect secrecy for the other documents relied upon for this trade secret.

d) Acquisition by Improper Means

For the reasons discussed in Part IV.B.1 *supra*, the evidence shows that one of the documents relied upon for this trade secret, JX-2671C, was acquired by improper means by Caihong Display. However, the evidence fails to show that the information in this document was a trade secret *See* discussion *supra*. Accordingly, the evidence fails to show acquisition by improper means of TS 64.

e) Use or Disclosure of Trade Secret 64

As discussed above, the evidence is insufficient to show that Caihong Display acquired this trade secret and thus is also insufficient to show use.

f) Independent Development of Trade Secret 64

For the same reasons discussed with respect to TS 61, it is unnecessary to reach the issue of independent development.

6. Trade Secret 68

a) Identification of Trade Secret 68

Corning identifies Trade Secret 68 as:

Operational process and proprietary knowledge for treating and responding to cracks in the glass sheet, including [REDACTED]

[REDACTED] Corning documents that reflect this trade secret include: the files named “[REDACTED],” (CORNING-LCD-00012537) [JX-2679C], “[REDACTED]” (CORNING-LCD-00012317) [JX-2652C], “[REDACTED],” (CORNING-LCD-00012342) [[JX-2660C], and “[REDACTED]” (CORNING-LCD-00012488) [JX-2672C].

CIB at 132; RX-6749C at ¶ 68; RIB at xvii; SIB at 103. Corning argues that these documents evidence Corning’s actions, “developed through trial and error, to regain stability of the glass sheet” in response to “Rubicons, crack events, and sheet walking.” CIB at 133. Respondents argue, as discussed *supra*, that none of the operational trade secrets were sufficiently identified. Staff argues, as discussed *supra*, that all of the operational trade secrets were sufficiently identified.

Upon review of the evidence and submissions of record, the undersigned finds that TS 68 as presented at trial was sufficiently identified to the extent it is limited to the information in

JX-2679C, JX-2652C, and JX-2672C; Ex. 5, at 39.⁹⁶ The evidence shows that each of these documents includes information reasonably correlated to the subject matter of this trade secret, including the procedures for operating the pulling rolls. *See* CIB at 132-133; Tr. (Gordon) at 1250:6-15 (acknowledging that TS 68 relates to monitoring and operating the pulling rolls).

b) Corning's Ownership of Trade Secret 68

For the same reasons identified above for TS 59, Corning has shown that it owns asserted TS 68 (to the extent it meets the other criteria for being a trade secret).

c) Existence of a Protectable Trade Secret

For the reasons discussed below, the undersigned finds that Trade Secret 68, as reflected in the information in JX-2679C (titled “[REDACTED]”) relating to “[REDACTED],” is protectable as a trade secret.

(1) Economic Value

Corning argues that the economic value of this trade secret is based on the value of the operational know-how in the relevant documents. *See* CIB at 134. Respondents argue, in opposition, that Corning has failed to show that any of the Operational Trade Secrets have independent economic value based on high-level opinions by Dr. Bravman and testimony by Dr. Bocko that did not “address any trade secret individually.” *See* RIB at 100, 23-24; RRB at 38. Staff argues that Corning has failed to show that any of the Operational Trade Secrets have independent economic value because “Corning has identified those trade secrets with only a

⁹⁶ As noted, *supra*, to the extent Corning seeks to extend the scope of this trade secret to material outside the identified documents, the asserted trade secret information was not disclosed during discovery and Corning has not shown acquisition of the trade secret by Caihong Display. Dr. Kudva’s testimony relating to JX-2660C was stricken and the evidence of record is insufficient to show sufficient identification of the trade secret in relation to this document. *See* Part III.C *supra*.

broad brush” and that the documents do not “reflect the full extent of any trade secret.” SIB at 105.

The undersigned finds that evidence shows, by a preponderance, that the information in JX-2679C has independent economic value in connection with “treating and responding to cracks in the sheet glass” for Corning’s FDM machine. *See* Tr. (Kudva) at 417:15-419:10 (discussing JX-2679C).⁹⁷ Corning provided testimony regarding the value of the information in this document in connection with TS 68. *See id.* Respondents’ and Staff’s high-level arguments, generic to all the Operational Trade Secrets, are not persuasive and do not controvert this evidence.

(2) Generally Known or Readily Ascertainable

Corning argues that “Gordon incorrectly testified that three patents make TS 68 generally known,” that “[n]one discloses what steps to take in response to or in prevention of such Rubicons or sheet walking, as included in this trade secret,” that “Gordon asserted, without further analysis, that the references he identified for TS 64 also make this trade secret generally known,” that additionally, “two of the patents (RX-0596 and JX-0327) were filed more than ten years after the misappropriation.” CIB at 134-35.

Respondents argue that “Mr. Gordon established that TS 68 is generally known or readily ascertainable in view of numerous publicly available references,” that “TS 68 relates to operational process for treating and responding to cracks in the glass sheet,” and “[t]his know-how is in the public domain.” In particular, Respondents rely on the following:

⁹⁷ Dr. Kudva’s testimony relating to JX-2660C was stricken and the evidence of record is insufficient to show independent economic value as to TS 68 in relation to that document. *See* Part III.C *supra*. It is unnecessary to address the additional documents cited because the evidence fails to show sufficient measures to protect their secrecy.

(1) US20180370836A1 (“Aniolek”) (RX-0596, published Dec. 27, 2018, applicant Corning), which Respondents contend teaches how to control temperature to reduce instances of ‘uncontrolled separation of the glass web 148 (commonly referred to as a ‘crack out’)’ as well as other upsets and ‘defects such as blisters, cracks, seeds, stones and other inclusions in the glass web’; (2) US8627684B2 (“Shultz”) (JX-0215, published May 10, 2017, applicant Tunghsu), which Respondents contend teaches know-how to ‘recover from a ‘crackout’ event which is what occurs when there is a break in the glass sheet 305,’ including changes to the pulling rollers’; and (3) CN222331791U (“Li791”) (JX-0327, issued Jan. 10, 2025), which Respondents contend teaches operational know-how relating to the use of a long pull roll (‘plate-guiding traction roller 25’) that is selectively used ‘[o]nly when the muffle furnace 10 initially starts flowing glass or after a glass ribbon 60 breaks and needs to be pulled again,’ whereby ‘the plate-guiding traction roller 25 clamps the glass ribbon 60.’ RIB at 103-104 (citing Tr. (Gordon) at 1248:9-1251:11). Respondents also rely on the references identified for TS 64.

As discussed above with respect to Trade Secret 59, Staff provides a single “generally known or readily ascertainable” section for all five operational trade secrets, arguing that “Corning fails to provide sufficient evidence to show that its Operational Trade Secrets differ from that generally known by others in the field.” SIB at 106.

The evidence shows by a preponderance that the information in JX-2679C was not generally known or ascertainable at the time of the misappropriation. The testimony and evidence also showed that Corning kept this document confidential. *See* JX-2679C; Tr. (Kudva) at 417:15-21. Each of the three patents identified by Respondents was published after the alleged misappropriation in September 2008 and thus fail to show lack of trade secret status as of the

alleged misappropriation date.⁹⁸ Moreover, while others in the field may have had operational knowledge regarding FDM equipment, the evidence shows that the documents at issue provided information specific to Corning's design. *See, e.g.*, JX-2679C, at 11.

(3) Reasonable Measures to Maintain Secrecy

Based on the review of evidence regarding security measures taken by Corning over the last several decades to the present, including the confidentiality designation on JX-2679C and JX-2660, the evidence shows by a preponderance that Corning has taken reasonable measures to guard the secrecy of these two documents asserted in connection with Trade Secret 68. *See* Section IV.B.1 *supra*. The evidence is insufficient to show reasonable measures to maintain secrecy for JX-2652C and JX-2672C. *See id.*

d) Acquisition by Improper Means

For the reasons discussed above, the evidence shows by a preponderance that Caihong Display acquired TS 68, to the extent reflected in JX-2679C, by improper means. *See* Section IV.B.1 *supra*. The evidence is insufficient to show improper acquisition of the other documents relied upon for this trade secret.

e) Use or Disclosure of Trade Secret 68

Upon consideration of the evidence of record, the evidence shows by a preponderance that Caihong Display made substantial use of TS 68 through use of JX-2679C. While, as Staff notes, there is no evidence of record indicating the procedures followed by Caihong Display in operating its machinery, the Park email correspondence seeking [REDACTED]

⁹⁸ However, the undersigned agrees with Respondents that the evidence shows that the later-issued patents provide information with subject matter that substantially overlaps with JX-2679C. This may be relevant to remedy.

██████████ (CX-3243C, at 3)⁹⁹, together with Park’s acquisition and translation of JX-2679C, is substantial circumstantial evidence of use. *See* CIB at 135; Tr. (Bravman) at 557:21-558:11; CDX-0006C.129; *Greenberg v. Croydon Plastics Co.*, 378 F. Supp. 806, 814 (E.D. Pa. 1974) (trade secret misappropriation cases “in most cases” involve a “delicate construct of circumstantial evidence”); *Certain Crawler Cranes*, Inv. No. 337-TA-887, Comm’n Op. at 56 (May 6, 2015) (EDIS Doc. ID 556530) (citing *Greenberg* for proposition that trade secret misappropriation may be based on circumstantial evidence). Under the circumstances here, the evidence shows by a preponderance the use of TS 68 in connection with Corning’s Gen 5 FDM. Further, given the evidence that Caihong Display’s later-generation FDMs were substantially based on its Gen 5 FDM (*see* Part IV.1.d *supra*), the evidence shows by a preponderance substantial use of TS 68, to the extent reflected in JX-2679C, for the later-generation FDMs.¹⁰⁰

f) Independent Development of Trade Secret 68

With respect to “independent development, for the same reasons discussed in relation to TS 12.1, Respondents have not shown independent development without use of certain Corning trade secrets. Accordingly, the evidence as a whole shows misappropriation as to this trade secret, to the extent reflected in JX-2679C.

C. Isopipe Scaling Trade Secret

The Isopipe Scaling Trade Secret (TS 19) is alleged by Corning to have been acquired by Caihong Display through a third pathway, the “He Longting (HLT) Pathway.” *See* CIB at 47.

⁹⁹ *See also* CX-3243C, at 6 ██████████. Dr. Kudva testified that ██████████

Tr. (Kudva) at 413:4-13. JX-2679C specifically refers to “Rubicon” events. *See* JX-2679C, at 4, 8, 12.

¹⁰⁰ Dr. Kudva testified that this information is still relevant to Corning’s later-generation FDMs as well. *See* Tr. (Kudva) at 419:4-7.

Corning alleges that HLT worked for Corning “as a mathematical modeler on systems related to LCD glass production, including the FDM.” Corning alleges that HLT accessed various technical reports while an employee at Corning. Corning alleges that Caihong Display recruited HLT and that “HLT assisted Irico in its scaling of the FDM to make Gen 8.5 glass by providing the Isopipe Scaling Trade Secret from a Corning restricted technical report.” CIB at 49; *see generally* CIB at 47-51.

For the reasons set forth below, the evidence fails to show by a preponderance that TS 19 is a protectable trade secret or that Caihong Display acquired and/or substantially used TS 19.

1. Trade Secret 19

a) Identification of Trade Secret 19

Corning identifies Trade Secret 19 as:

Methodologies for scaling the isopipe [REDACTED]
[REDACTED]. Corning documents that reflect this trade secret include but are not limited to: [REDACTED] (CORNING-LCD-00013506).

CIB at 87; RX-6749C at ¶ 19; RIB at xvi; SIB at 48.

The parties dispute whether TS 19 is sufficiently identified. Corning states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].” CIB at 87. Corning further argues that Order No. 22 “already found that Corning described the Trade Secrets with a reasonable degree of precision.” CRB at 3. Corning argues that the “identification requirement ‘does not create a procedural device to litigate the ultimate merits of the case—that is, to determine as a matter of law on the basis of evidence presented

whether the trade secret actually exists.” *Id.* (citing *Uni-Systems, LLC v. U.S. Tennis Ass’n*, 2017 WL 4081904, at *4 (E.D.N.Y. Sept. 13, 2017)).

Respondents and Staff argue that Trade Secret 19 has not been disclosed with adequate particularity. In particular, Respondents argue that “[REDACTED] does not provide any details about how those [REDACTED] work and therefore has not disclosed how any design criteria listed in the document is utilized,” and that Corning has failed to “actually identify how it conducts scaling—by, e.g., explaining what it does with the criteria it considers or how the [REDACTED] work.” RIB at 54. Respondents further argue that Corning fails to provide a definition that “distinguish[es] the alleged trade secret[s] from matters already known to persons skill in that field.” *Id.* at 55 (internal quotation omitted); *see also* RRB at 30.

Staff, largely in agreement with Respondents, argues that [REDACTED] “fails to specify the methodologies used by Corning for scaling the isopipe [REDACTED] with reasonable particularity.” SIB at 48. Relying on Mr. Gordon’s testimony, Staff argues that available models that are discussed in [REDACTED] for designing various elements of scaling “‘were not provided’ by that document.” *Id.*; *see also* SRB at 12.

Upon review of the evidence and submissions of record, the undersigned finds that TS 19—understood as limited to the contents of [REDACTED]—has been sufficiently identified.¹⁰¹

[REDACTED] (JX-2260C), cited in the definition of TS 19, states that [REDACTED]

¹⁰¹ To the extent that TS 19 is extended more broadly to methodologies for scaling the isopipe that are not disclosed within [REDACTED], then the trade secret is not adequately defined. The fact that [REDACTED] does not include all the “tools” it references does not preclude trade secret status for the scaling-related information that is included.

[REDACTED] (JX-2260C at 3) and provides [REDACTED]

[REDACTED] to consider for pursuing an isopipe design (*id.* at 4-5).¹⁰²

b) Corning's Ownership of Trade Secret 19

Corning argues that its ownership of Trade Secret 19 is “reflected in its development of methodologies over decades based upon empirical data, Tr. 662:14-23 (Bocko), and its possession (with secrecy) of [REDACTED] (JX-2260C), Tr. 315:8-25 (Markham).” CIB at 87.

Respondents argue that Corning “failed to meet its burden” on ownership for the same reasons discussed with respect to TS 12.1. RIB at 55.

Staff argues that “[t]he document relied upon by Corning as evidence of ownership, *i.e.*, [REDACTED] (JX-2260C), does not establish Corning’s possession of TS 19” because “it fails to disclose TS 19 with reasonable particularity.” SIB at 49.

Upon review of the evidence and submissions of record, the undersigned finds that Corning has shown that it owns asserted TS 19 (to the extent it meets the other criteria for being a trade secret). Ownership is shown by possession, with secrecy, of the trade secret. *See Certain Raised Garden Beds and Components Thereof*, Inv. No. 337-TA-1334, Comm’n Op., 2024 WL 1434222 n.23. Respondents do not dispute that Corning possesses the document relied upon for this trade secret, which was produced with Corning production numbers. Moreover, the evidence shows that [REDACTED] is a Corning document authored at Corning’s Sullivan Park location. *See* Tr. (Markham) at 315:8-316:7.

¹⁰² Respondents argue that Ms. Markham’s testimony relating to material other than the [REDACTED] in [REDACTED] should not be used in assessing whether TS 19 is sufficiently identified because this information was not provided until trial. *See* RIB at 53-54. Based on Ms. Markham’s deposition testimony, the undersigned agrees. *See* JX-0023C (Markham Dep. Tr.) at 298:14-302:16. However, TS 19 is sufficiently identified based on Ms. Markham’s deposition testimony regarding the document.

c) Existence of a Protectable Trade Secret

For the reasons discussed below, the evidence fails to show that asserted Trade Secret 19 (understood as limited to the content of [REDACTED] as it relates to scaling) is protectable as a trade secret. In particular, as discussed below, the evidence fails to show that TS 19 has independent economic value in view of the publicly available knowledge in the art.

(1) Economic Value

Corning argues that “TS 19 provides Corning value because [REDACTED]
[REDACTED],” that
[REDACTED]
[REDACTED] that “[t]he value of TS 19 is also demonstrated by Corning’s substantial investment in developing new isopipe generations” and “HLT’s theft of [REDACTED]” and “the extensive measures Corning has taken to protect its trade secrets and proprietary information, including TS 19.” CIB at 87-88.

Respondents state, in opposition: “Corning failed to meet its burden for the reasons explained in § III.C.3.a [Trade Secret 12.1 economic value section] *supra*. Dr. Bravman offered no opinion regarding TS 19, including economic value.” RIB at 55. With respect to Trade Secret 12.1, Respondents argue, *inter alia*, that Dr. Bocko’s opinions “did not address any alleged trade secret individually and his estimated times to develop were static even after Corning stopped asserting large swaths of the alleged trade secrets he bucketed together” and that for all alleged trade secrets “Corning does not tie their alleged value to the aspects it contends are secret and therefore failed to meet its burden of proving any independent economic value of any alleged trade secret.” RIB at 24.

Staff argues that “because TS 19 has not been described with reasonable particularity, it is not possible to assess its economic value. The evidence thus fails to show that TS 19 derives independent economic value by virtue of not being generally known or readily ascertainable.” SIB at 50.

Based on the evidence and submissions of record, including the discussion of what was generally known in the art (*see infra*), Corning has not shown that asserted TS 19 has independent economic value. *See* Part II.C.1 *supra*. Dr. Bravman provided no testimony on the economic value of TS 19 (or any other aspect of TS 19), nor did he provide any testimony specifically addressing Mr. Gordon’s testimony and references on scaling. *See* Tr. (Bravman) at 452:18-455:15; Tr. (Gordon) at 1144:20-1146:9. While Ms. Markham testified that [REDACTED] provides information that would provide an “advantage” (*see* CIB at 87-88, Tr. (Markham) at 325:17-326:21), this testimony did not sufficiently show that TS 19 has independent economic value in view of the knowledge in the art.¹⁰³

(2) Generally Known or Readily Ascertainable

Corning argues that the evidence shows this trade secret was not generally known or readily ascertainable. *See* CIB at 88. Corning argues that Mr. Gordon “incorrectly testified that three public references make this trade secret generally known,” and that “[n]one discloses, or enables the reverse engineering of, the design criteria or models that comprise TS 19 and are described in [REDACTED].” CIB at 88 (citing Tr. 1144:12-18 (Gordon); RDX-0004C.19; Tr. 452:18-455:15 (Bravman)).

¹⁰³ Ms. Markham acknowledged that there are “other ways” to achieve the same results but that “it would be a long way around” in her “experience.” Tr. (Markham) at 326:11-21. Ms. Markham was not proffered as an expert and her testimony is insufficient to carry Corning’s burden to show independent economic value.

Respondents argue that “to the extent TS 19 can be understood from Corning’s vague reference to [REDACTED] (JX-2260C.5), it is generally known and/or readily ascertainable in view of” (1) a 1967 U.S. patent US3338696A (“Dockerty696”) (RX-6295); (2) Lin et al., *Design of a sheet forming apparatus for overflow fusion process by numerical simulation* (July 23, 2007) (“Lin1”) (RX-1029); and (3) Lin et al., *Trough design for the overflow fusion process by numerical simulation* (Apr. 2007) (“Lin3”) (RX-1135). RIB at 55-56.¹⁰⁴ More specifically, Respondents argue, citing Mr. Gordon’s testimony, that “Dockerty696, which is assigned to Corning, provides governing equations for designing an isopipe to ‘maintain[] a constant flow rate over the lips along the channel’ of an isopipe of any length,” that “Dockerty696’s formulas describe the relationship between ‘glass flow rate, ‘viscosity of the glass,’ and ‘angle of tilt between the plane of the two top or lip edges of the trough and the horizontal,’ among other factors, thus teaching the ‘methodologies’ for scaling a trade secret that Corning appears to be claiming as a trade secret.” *Id.* at 56 (citing Tr. (Gordon) at 1144:20-1145:3).

Respondents also argue that “TS 19 is also generally known and/or readily ascertainable in view of Lin1 and Lin3, which are 2007 publications that teach numerical and computational models ‘for simulation of molten glass flow through an isopipe during the overflow fusion process,’” that “[for example, Lin1’s model is based on several governing equations, including the ‘continuity equation’ and ‘Navier-Stokes equation,’ among others,” that “Lin1 teaches the ‘effect of the geometry of the forming apparatus, flow rate and viscosity of molten glass on [isopipe] flow patterns,’ the ‘effect of the bottom tilted angle,’ the ‘influence of the root angle,’ and the ‘effect of flow rate and viscosity,’ that “Lin3 uses ‘the Flow3D™ package [] for the

¹⁰⁴ Respondents also argue that “TS 19 is also generally known for the additional reasons provided in § III.C.3.b [Trade Secret 12.1 “generally known” section], *supra.*” *Id.* at 56.

modelling of molten glass flow,’ and relies on ‘an Eulerian grid by using the full Navier-Stokes momentum equation and the volume of fluid (VOF) method,’” that “Lin3 similarly teaches the effects of different isopipe criteria on the produced glass sheet, such as ‘the radius on the top edges and tip angle at the bottom of the trough’ and the influence of ‘flow velocity and viscosity of molten glass’ on the glass’s ‘flow profile and uniform thickness,’ and that “Lin1 and Lin 3 thus teach the ‘methodologies’ for scaling the isopipe that Corning appears to regard as a trade secret.” *Id.* at 56-57 (citing Tr. (Gordon) at 1145:4-1146:9).

Staff argues that “Corning has not identified the methodologies of TS 19,” that “[w]ithout a sufficient identification of TS 19, it is not possible to properly assess whether Corning’s scaling methodologies are generally known or readily ascertainable,” and that “[t]he evidence thus fails to support Corning’s position” that Trade Secret 19 is not generally known or readily ascertainable. SIB at 50.

The undersigned finds that Respondents have shown that the references discussed by Mr. Gordon provide information in the art, prior to the time of the alleged misappropriation, relating to designing and scaling isopipes for an overflow fusion process. This finding supports the lack of independent economic value, discussed *supra*.

(3) Reasonable Measures to Maintain Secrecy

Regarding secrecy, the parties generally rely on the same arguments for TS 19 that they do for TS 12. *See* CIB at 88; RIB at 57; SIB at 27, 50. Corning argues, *inter alia*, that [REDACTED], before HLT allegedly “stole restricted technical reports containing Corning’s trade secrets, around 2007-2008,” Corning “put in place additional security measures that: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].” *Id.* at

27-28 (citation omitted). Respondents further argue, *inter alia*, that “Corning states that HLT’s printing activity and travel to China were reported internally *before* HLT ever left Corning,” and that Corning “knew HLT had purportedly printed numerous documents beyond his scope of work yet did not demand their return upon his exit, investigate what might have happened to physical copies, file any complaints (criminal or civil), or otherwise do anything.” RIB at 30 (emphasis in original).

Based on the review of evidence demonstrating proactive security measures taken by Corning over the last several decades to the present, as well as the [REDACTED] [REDACTED], the undersigned agrees with Corning and Staff that Corning has taken reasonable measures to guard the secrecy of Trade Secret 19 (as limited to the information in [REDACTED] (JX-2260C). *See* Part IV.A.1.e *supra*. Respondents’ argument that Corning did not investigate HLT’s printing activity at the time does not persuasively show that Corning’s security measures were not reasonable.¹⁰⁵

¹⁰⁵ HLT’s printing activities took place in the 2007-2008 timeframe. *See* JX-0002C (Bartone Dep. Tr.) at 40:12-41:7. The anonymous email questioning HLT’s activities was dated May 2016. *See* JX-0002C (Bartone Dep. Tr.) at 50:3-51:21. In addition, as Staff argues, [REDACTED] and HLT was a mathematical modeler. *See* SIB at 21.

For the reasons discussed, above, the evidence fails to show by a preponderance that TS 19 is a protectable trade secret.

d) Acquisition by Improper Means/Use or Disclosure of Trade Secret 19

Corning's arguments regarding acquisition and use largely overlap and thus are considered here together.

Corning argues that "Irico wrongfully took TS 19 when it acquired [REDACTED] from HLT." CIB at 88. Corning argues, *inter alia*, that "[i]n 2007, HLT accessed more than 150 technical reports about the manufacture of LCD glass and printed many of them," most of which "did not align with his scope of work," that he "made multiple trips to China and requested CAD training, which was outside his primary work responsibilities," that after his separation from Corning in 2008, "Irico recruited HLT through a talent plan," and that "HLT's recruitment fits with this common method of corporate espionage." CIB at 47-48. Corning argues that as of 2015, HLT had become an external director for Irico Group, a director of Irico Group Electronics, Vice Chairman of Irico Display, and was appointed to a five-year term as Director of the Technical Committee at Irico's National Engineering Research Center for Flat Panel Display Glass Technology ("NERC"), and that "HLT's corporate leadership roles at Irico and appointment to NERC in 2015 coincided with Irico's attempts to scale up to Gen 8.5 technology." *Id.* at 48.

Corning further argues that "HLT assisted Irico in its scaling of the FDM to make Gen 8.5 glass by providing the Isopipe Scaling Trade Secret" from [REDACTED], which "[REDACTED] [REDACTED], and that that [REDACTED] [REDACTED] *Id.* at 49.

Corning also argues that a certain Irico internal document (Edge Director Training Document) (JX-0114C) “shows [REDACTED],” and that patent applications were filed in 2018 and 2023 that “also show Irico’s use of those same parameters.” *Id.* at 49-50 (citing CX-3135 at 8 fig. 2(a) and CX-3127 at 19 fig. 3). Corning contends that “[a]n anonymous May 2016 email from an informant further confirms that HLT disclosed Corning’s trade secrets in helping Irico scale up to Gen 8.5 technology,” and that “[m]ore false testimony from Irico’s corporate representative about HLT’s role further suggests that he disclosed Corning’s trade secrets to Irico.” *Id.* at 51-52.

Corning argues that “Irico more likely than not used” the information from [REDACTED] that “Irico did not offer any testimony from an expert witness, or any Irico employee with engineering or technical knowledge, to demonstrate that it scaled its FDM independently,” and that “[t]he lack of evidence of independent development is further evidence that Irico used, and continues to use, Corning’s scaling methodologies.” CIB at 88.

In opposition, Respondents argue that HLT’s printing activities, HLT seeking professional development and his visits to China are “not even circumstantial evidence that HLT did anything improper with [REDACTED]—particularly in light of Corning’s expert’s failure to advance any opinion whatsoever that Caihong used the contents of [REDACTED] to scale to G8.5 (after apparently having scaled to G6 and 7.5 just fine without it).” *Id.* at 14-15. Citing a Corning document (RX-2268C.6, 9), Respondents also argue that “[REDACTED]

[REDACTED]

[REDACTED]” *Id.* at 15.

Respondents state that Corning did not present any evidence at the hearing regarding Caihong’s

scaling methodology, or any comparison between “any Caihong or External Document and any content from [REDACTED]. *Id.* at 57.

Staff argues that the evidence does not show that Trade Secret 19 was acquired by improper means because “Corning has not shown that [REDACTED] (JX-2260C) discloses TS 19, nor has it identified any other evidence that would support its argument.” SIB at 51. Staff argues that Corning “has not shown that Caihong Display ever possessed the trade secret, and it has not shown that Caihong Display used the trade secret to scale its design to Gen 8.5.” *Id.*

Based on review of the arguments and supporting evidence, the undersigned finds that Corning has not shown, by a preponderance of the evidence, that Caihong Display acquired Trade Secret 19 by improper means or used this trade secret. Corning’s own document from 2021 indicates that [REDACTED] [REDACTED].” *See* RX-2268C.6, 9; Tr. (Mulvenon) at 111:12-112:20; RIB at 15. Corning also has produced no sufficient evidence indicating that Caihong Display’s methodologies for designing the isopipe in its Gen 8.x products was based on or reflected [REDACTED]’s information. Dr. Bravman presented no opinion that TS 19 was used by Respondents. As discussed above, publicly-available information was available prior to the alleged use of the TS 19 relating to isopipe design, and Corning’s fact witness acknowledged that “there could be other ways [to develop larger sizes].” *See* Tr. (Markham) at 326:11-21.¹⁰⁶ In addition, as Respondents note in connection with TS 17.1 (concerning the isopipe), a Corning patent filed in September 2015 (and claiming relation to a provisional application filed in September 2014) stated that “[i]t is within

¹⁰⁶ Moreover, the Gen 5 FDM machine had already been scaled up to Gen 6 and Gen 7.5 prior to the alleged use for Gen 8.5. *See* RIB at 14-15.

the ability of one skilled in the art to select” the “dimensions of the forming body, including the length, trough depth and width, and wedge height and width.” RIB at 51 (citing RX-0586 ¶ [0030]).¹⁰⁷ Corning has also introduced no evidence showing that the methodologies set forth in [REDACTED] are similar to any scaling methodology used by Caihong Display.

In light of this record, Corning’s arguments regarding HLT’s and Caihong Display’s alleged wrongdoing fail to show Caihong Display’s acquisition or substantial use of TS 19 by a preponderance of the evidence. The undersigned gives little to no weight to the anonymous 2016 email (CX-2809C, email from [REDACTED]), particularly given [REDACTED]

[REDACTED] RX-2268C.6, 9. Corning’s arguments regarding the similarity between Corning’s Gen 8 [REDACTED] (which is set forth in [REDACTED]) and Irico’s Gen 8.5 isopipe [REDACTED] is also insufficiently probative evidence of improper acquisition and substantial use of TS 19 as opposed to the use of other scaling methodologies available in the art.¹⁰⁸

Accordingly, the evidence fails to show by a preponderance that Caihong Display acquired or made substantial use of TS 19.

¹⁰⁷ Although RX-0586 (Feenaughty) was not published until 2019, the statements were made as of the date of the application. Corning argues that “HLT’s appointment at Irico in 2015 coincided with the start of Irico’s efforts to scale to Gen 8.5 technology.” CRB at 16.

¹⁰⁸ Corning also refers to the [REDACTED], and similarities to information in Respondents’ training document (JX-0114C), as evidence of Caihong Display’s acquisition of [REDACTED] (and, thus, TS 19). *See* CIB at 49-50. However, the “edge directors” issue is separate from methodologies for scaling the isopipe; indeed, the evidence shows that the edge directors did not need to be “scaled.” *See* Tr. (Kudva) at 406:12-14 (dimensions of Corning’s edge directors [REDACTED]). Moreover, even if the evidence somehow showed acquisition of [REDACTED], the evidence is insufficient to show substantial use of TS 19 for at least the reasons discussed above.

e) Independent Development of Trade Secret 19

As an initial matter, it is not necessary for Respondents to show independent development of TS 19's subject matter because Corning has not set forth a *prima facie* case of acquisition and use of the scaling information in [REDACTED]. *See Raised Garden Beds*, 2024 WL 1434222, at *11 (burden of showing independent development shifts if Complainant presents a *prima facie* case of misappropriation).

Further, in its "independent development" arguments, Corning focuses on Respondents' alleged use of Gen 5 designs in developing its later-generation technology. *See* CIB at 89 (relying on Section III.B.5.a when arguing no independent development of scaling methodologies); CIB at Section III.B.5.a (CIB at 53-59) (discussing development of FDM machine, focusing on the 2000's); CRB at 22 (arguing lack of evidence that "later generations of its FDM equipment differ from its Gen 5 misappropriated technology"). This question is separate, however, from whether the trade secret information in [REDACTED] was used in Caihong Display's scaling-up process.

Staff argues that "Caihong Display has not identified evidence showing that it independently designed and developed its scaling methodologies." SIB at 51-52. However, Staff also takes the position that there is insufficient evidence that Respondents used TS 19. SIB at 51.

Here, while the evidence shows by a preponderance that certain of Corning's Design Trade Secrets were used in developing Caihong Display's Gen 5 product, and also in later generation products developed based on Gen 5 (*see* discussion *supra*), the evidence fails to show that Caihong Display's development of its later-generation products involved use of the scaling-up information contained in [REDACTED].

D. Downstream Respondents' Alleged Misappropriation

The parties dispute whether the remaining Downstream Respondents (i.e., Respondents CHOT, SCOT, and TCL) should be found in violation of Section 337 if a violation is found as to Caihong Display. Corning contends that TCL has stipulated that its liability “[r]ises and [f]alls” with that of Caihong Display. *See* CIB at 137-38. With respect to CHOT and CSOT, Corning contends that they had the requisite knowledge of trade secret misappropriation based on their continued purchase of Caihong Display glass after receiving notice letters in July 2024, and that they had “reason to know of the misappropriation” even earlier. *See id.* at 138-143. Corning also contends that Section 337’s “prohibition of unfair methods of competition and unfair acts extends to respondents that sell or distribute the principal misappropriator’s products.” *Id.* at 136; *see also* CRB at 44-45.

In opposition, Respondents argue that the Downstream Respondents lack the requisite knowledge because these Respondents did not obtain any of the alleged trade secrets. *See* RIB at 105-106. Respondents further argue that any knowledge by Caihong Display cannot be imputed to CHOT because CHOT “operates as a separate company.” *Id.* at 107. Respondents further argue that TCL’s importation stipulation cannot be used to impute knowledge to any of the Downstream Respondents because parties may not stipulate as to “legal conclusions.” RRB at 39. Respondents argue that the cease and desist letters included only “generalized allegations” and were insufficient to put the Downstream Respondents on notice. *Id.* at 40-45.

Staff agrees with Respondents that there can be no violation by the Downstream Respondents. Staff contends that marketing goods that were manufactured using the alleged trade secrets is insufficient for trade secret misappropriation because “Corning does not allege that CHOT or CSOT otherwise possess the alleged trade secrets.” SIB at 109. With respect to

TCL. Staff contends that TCL cannot “stipulate as to the law” and thus no violation has been established as to TCL either. *Id.* at 110; *see also* SRB at 13-15.

Upon consideration of the parties’ submissions and evidence of record, the undersigned finds that, to the extent a violation is found as to Caihong Display, a violation has also been shown as to each of the Downstream Respondents.

As an initial matter, the undersigned agrees with Corning that a Downstream Respondent may “use” the trade secret through marketing goods that rely upon exploitation of the trade secrets at issue. As discussed in Order No. 65, there is federal caselaw indicating that a broad definition of “use” should apply to trade secret misappropriation under federal law, and can encompass a downstream entity that markets a product made using a misappropriated trade secret without proof that the downstream entity itself possessed the trade secret information. *See* Order No. 65, at 7-8; *VIA Techs., Inc. v. ASUS Comput. Int’l*, 14-cv-03586-BLF, 2015 WL 3809382, at *4 (N.D. Cal. June 18, 2015) (denying motion to dismiss allegation under the “use” prong of the California Uniform Trade Secrets Act¹⁰⁹ because “marketing goods that embody the trade secret constitutes use of the trade secret” and because the complaint alleged that the defendant had “knowledge that those products were made using the trade secrets”); *Cognis Corp. v. CHEMCENTRAL Corp.*, 430 F. Supp. 2d 806, 811-13 (N.D. Ill. 2006) (rejecting motion to dismiss misappropriation claim because, while plaintiff did not “allege that [defendant] CHEMCENTRAL ever knew the formula or manufacturing process,” the allegation that CHEMCENTRAL misappropriated trade secrets by distributing a product that it “knew or should have known” were manufactured through misappropriated trade secret technology was sufficient

¹⁰⁹ The California statute’s definition of misappropriation is substantially the same as the UTSA and the DTSA definitions. *See* Cal. Civ. Code § 3426.1(b)(2).

“under a broad reading of the word ‘use’”); *Motorola Sols., Inc. v. Hytera Comm’ns Corp. Ltd.*, 436 F. Supp. 3d 1150, 1164 (N.D. Ill. 2020) (agreeing with *Cognis* regarding meaning of “use”); *X6D, Ltd. v. Li-Tek Corps. Co.*, CV 10–2327–GHK (PJWx), 2010 WL 11512197 at *1-3 (C.D. Cal. Oct. 26, 2010) (denying motion to dismiss trade secret misappropriation claim against distributors where pleading alleged at least constructive knowledge that plaintiffs’ manufacturing-related trade secrets had been employed, citing *inter alia* Restatement (Third) of Unfair Competition).¹¹⁰

Consistent with this caselaw (though not squarely addressing the disputed issue), the Commission has found a section 337 violation based on trade secret misappropriation of a manufacturing-related trade secret by a downstream respondent and issued remedial orders directed to that respondent. *See Raised Garden Beds*, Comm’n Op. at 6, 8, 51, 55-56, 59 (finding “violation of section 337 by [manufacturer] Green Giant and [distributor] Utopban with respect to misappropriation of Vego Garden’s Product Manufacturing Trade Secret” and issuing LEO and CDO directed to Utopban with respect to, *inter alia*, that trade secret).¹¹¹

The undersigned recognizes that there is contrary caselaw setting forth a narrower approach. *See* SIB at 109, CIB at 137 (citing *Precision Weather Sols., Inc. v. Hudson Ins. Co.*, 2025 WL 2676453 (D. Kan. Sept. 18, 2025) and *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App.

¹¹⁰ The Restatement (Third) of Unfair Competition suggests a broad view of “use.” *See* Restatement (Third) of Unfair Competition § 40 cmt. c (1995) (“There are no technical limitations on the nature of the conduct that constitutes “use” of a trade secret for purposes of the rules stated in Subsection (b). As a general matter, any exploitation of the trade secret that is likely to result in injury to the trade secret owner or enrichment to the defendant is a ‘use’ under this Section. Thus, marketing goods that embody the trade secret, employing the trade secret in manufacturing or production, relying on the trade secret to assist or accelerate research or development, or soliciting customers through the use of information that is a trade secret (*see* § 42, Comment f) all constitute ‘use.’”).

¹¹¹ The record does not appear to show a finding that Utopban had possession of the manufacturing-related trade secret.

4th 210 (Cal. App. 2010)).¹¹² However, the broader approach appears more consistent with past Commission practice as well as the purposes underlying section 337. *See TianRui Group Co. Ltd. v. Int’l Trade Comm’n*, 661 F.3d 1322, 1324, 1330 (Fed. Cir. 2011) (stating, in case involving wheels “manufactured using a process that was developed in the United States,” that Congress “clearly intended to create a remedy for the importation of goods resulting from unfair methods of competition”); *Cast Steel Railway Wheels, Processes for Manufacturing or Relating to Same and Certain Products Containing Same*, Inv. No. 337-TA-655, Comm’n Determination, 2010 WL 1055967, at *4 n.2 (Mar. 19, 2010) (Commission decision in underlying investigation stating that “if Amstead was seriously concerned about Respondents circumventing a limited exclusion order by shipping wheels to customers outside the United States for mounting onto undercarriages or railcars and importing them into the United States it should have included those customers as respondents in the investigation, particularly since Amsted identifies only three such customers”).

Accordingly, the undersigned finds that in the context of addressing unfair acts and unfair competition based on trade secret misappropriation, downstream respondents may be found in violation of section 337 based on importation of goods that they knew or should have known were manufactured through exploiting the trade secrets of another.

Under this framework, the evidence shows by a preponderance that CHOT, CSOT, and TCL had the requisite knowledge of misappropriation as of July and/or August 2024 and thus

¹¹² As discussed in *VIA Techs., Silvaco* involved an end user’s alleged “use” of a product, not a party actively marketing and selling a product, and thus is distinguishable. *See VIA Techs.*, 2015 WL 3809382, at *4 (discussing and distinguishing *Silvaco*). *Precision Weather Solutions* ultimately declined to dismiss the trade secret claim on a lack of possession basis. *See* 2025 WL 2676453, at *4.

should be found in violation with respect to any trade secrets used by Caihong Display after this time to form the glass substrate in the Downstream Respondents' products.

With respect to CHOT, the evidence shows that CHOT received notice from Corning in July 2024 that included discussion of the alleged trade secret misappropriation by Caihong Display "related to the detailed design of and operational know-how for Corning's fusion draw machine," as well as the Korean proceedings addressing misappropriation of those secrets by "[o]ther parties" and finding that "Irico was the beneficiary of the trade secrets related to Corning's fusion draw machine." *See* CX-0543; CIB at 139; Tr. (Hudson) at 747:22-750:7; JX-0035C (Zhao) at 82:11-84:14 (CHOT acknowledging receipt). The evidence also shows by a preponderance that CHOT continued using LCD glass from Caihong Display to manufacture LCD panels after receiving this notice letter and [REDACTED]

See CIB at 140; JX-0035C (Zhao) (CHOT) at 25:23-26:3, 28:6-8. These facts establish, by a preponderance, the requisite knowledge for a finding of misappropriation against CHOT. *See* Restatement (Third) of Unfair Competition § 40 reporters' note d ("Letters and other communications sent to the defendant by the trade secret owner can establish that the defendant knew its use or disclosure was wrongful."); *Brainwave Science, Inc. v. Arshee, Inc.*, 21-cv-4402 (BMC), 2022 WL 18998431, at *1 (E.D.N.Y. Aug. 16, 2022) (holding misappropriation adequately pleaded where defendant "continue[d] to market BWS's software even after the firm notified [defendant] that it was trying to sell a product with stolen trade secrets"); *Certain Flash-Spun Nonwoven Materials and Prods. Containing Same*, Inv. No. 337-TA-1424, Order No. 25 at 3 (Apr. 22, 2025) (EDIS Doc. ID 849351) (permitting misappropriation claim to be added

against downstream respondent based on, *inter alia*, evidence of notice provided by service of the Complaint), *not reviewed*, EDIS Doc. ID 851178.¹¹³

With respect to CSOT, the evidence shows that CSOT received a similar notice from Corning in or around July 2024. *See* CX-0551; Tr. (Hudson) at 747:22-750:7; JX-0037C (Zhu) (CSOT) (Aug. 7, 2025) at 58:12-59:7, 66:22-67:9, 67:16-68:9. The evidence also shows by a preponderance that CSOT continued using LCD glass from Caihong Display to manufacture LCD panels after receiving this notice letter and [REDACTED] JX-0026C (Tang) (CSOT) at 29:1-6, 100:8-15. Thus, the evidence also shows the requisite knowledge for a finding of misappropriation as to CSOT.

With respect to TCL, TCL has stipulated that its liability with respect to “violation of Section 337” will rise or fall based on findings with respect to Caihong Display. *See* CIB at 138; JX-2755C ¶ 16.¹¹⁴ In addition, the record evidence shows that Corning sent a similar cease and desist letter to TCL in August of 2024. *See* Tr. (Hudson) at 747:22-750:7; CX-0586. The evidence also shows by a preponderance that TCL continued using LCD glass from Caihong Display after receiving this notice letter and service of the Complaint. *See* JX-2755C (TCL

¹¹³ None of the Downstream Respondents showed that they had received any assurances from Caihong Display that no trade secrets were misappropriated, or that they had any other good-faith basis for discounting Corning’s notice letters (or subsequently filed complaint or discovery in this investigation). *Cf. Certain Beverage Brewing Capsules, Components Thereof, and Prods. Containing the Same*, Inv. No. 337-TA-929, Comm’n Op. at 17-21, 2016 WL 9751230, at *10-12 (Apr. 5, 2016) (holding that service of section 337 complaint with claim charts provides knowledge of the asserted patents and knowledge of infringement for purposes of indirect infringement, absent showing of a good-faith belief in non-infringement). Moreover, the evidence shows that CHOT and CSOT both have closing working relationships with Caihong Display. *See* CIB at 141.

¹¹⁴ Respondents and Staff argue that TCL should not be held to its stipulation. While a court has discretion to provide relief from a stipulation that conflicts with applicable law, no such showing has been made here for the reasons discussed above. *See generally TI Fed. Credit Union v. DelBonis*, 72 F.3d 921, 928 (1st Cir. 1995) (“Litigation stipulations can be understood as the analogue of terms binding parties to a contract . . . Parties will usually be relieved of their stipulations where it becomes evident that ‘the agreement was made under a clear mistake.’ . . . Relief from erroneous stipulations is especially favored where the mistake made concerns a legal conclusion.”).

Stipulation) at ¶¶ 11-13. The evidence shows the requisite knowledge for a finding of misappropriation as to TCL.

While Corning also argues that the Downstream Respondents knew or should have known of Caihong Display's misappropriation prior to the 2024 notice letters, this has not been shown by a preponderance of the evidence. *See, e.g.,* JX-0037C (Zhu) (CSOT) at 71:9-19, 73:9-22, 75:12-77:21, 84:3-10 (testifying about first awareness of certain proceedings and allegations after notice letter and/or Section 337 Complaint was received).

Given the findings above regarding the substantial use of certain trade secrets in connection with Caihong Display's Gen 7.5 and Gen 8.5 glass, a finding of violation is appropriate as to the Downstream Respondents.

V. DOMESTIC INDUSTRY AND INJURY THERETO

To establish a violation under 19 U.S.C. § 1337(a)(1)(A)(i), Complainants must show an “industry in the United States” and that the industry has suffered “actual substantial injury” or a threat thereof. *Certain Rubber Resins and Processes for Manufacturing Same*, Inv. No. 337-TA-849, 2014 WL 7497801, at *5 (Feb. 26, 2014) (“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”). For the reasons discussed below, Corning has shown an industry in the United States, and actual or threatened injury to that industry.

A. Existence of a Domestic Industry

The assessment of whether an “industry . . . in the United States” exists under Section 337(a)(1)(A) requires a fact-specific inquiry into the “nature and significance” of the

complainant's domestic activities.¹¹⁵ See *Bone Cements I*, 2022 WL 22782263, at *10 (“the Commission will continue to follow Commission precedent, affirmed by the Federal Circuit, by analyzing the nature and significance of the complainant's domestic activities to determine if they are sufficient to constitute a domestic industry”).

To meet the economic prong of the domestic industry requirement, Corning relies on certain domestic activities, including investments at two New York facilities—the [REDACTED] [REDACTED] and Sullivan Park—which Corning contends are used for the manufacture, research, development, and engineering of EAGLE XG Glass and/or the fusion draw systems used to make the EAGLE XG Glass. CIB at 143-53; Tr. (Kudva) at 383:7-15 (Corning's work in the United States relating to Eagle XG glass includes research and development, design and development of manufacturing platforms, and build and repair activities).¹¹⁶

Corning relies upon U.S. expenditures of “at least [REDACTED]” from 2015 to 2024¹¹⁷ in “research, development, and engineering for EAGLE XG Glass and in building and repairing the

¹¹⁵ It is not necessary for the domestic activities to involve use of the asserted trade secret in Section 337(a)(1)(A) investigations involving trade secret misappropriation. Rather, the domestic industry is the industry that is targeted, or which directly competes, with the unfair imports. See *TianRui*, 661 F.3d 1322, 1337 (Fed. Cir. 2011) (no statutory requirement that the domestic industry use the asserted trade secrets; the fact that the imported wheels directly competed with the complainant's domestically manufactured wheels was sufficient); see also *Certain Airtight Cast-Iron Stoves*, Inv. No. 337-TA-69, USITC Pub. 1126, EDIS Doc. ID 235399, Comm'n Op. at 8 (Jan. 1981) (agreeing with the ALJ that “the domestic industry consists of that segment of the entire coal and wood-burning stove industry which was the target of the unfair acts and practices”); *Certain Apparatus for the Continuous of Copper Rod*, Inv. No. 337-TA-52, EDIS Doc. ID 217930, USITC Pub. No. 1017, Comm'n Op. at 55 (Nov. 1979) (scope of domestic industry determined by “realities of the marketplace” and including components that were part of the competing system).

¹¹⁶ EAGLE XG glass is a display glass manufactured using the fusion draw process. See Tr. (Kudva) at 382:20-21; *id.* at 426:21-429:1; see generally Tr. (Corning Opening Statement) at 13:1 (referring to Eagle XG as “Corning's flagship LCD glass”).

¹¹⁷ Corning also provides U.S. expenditure amounts for alternative time periods depending on the type of expenditures, e.g., 2020-2024, 2022-2024, 2019-2024, 2021-2025, and 2018-2024. See CIB at 146-52.

FDMs required to make that glass.” CIB at 143; Tr. (Fischel) at 805:7-16, 811:10-24; CDX-0014C.13; CX-4988C; CX-4984C; CX-4985C. Corning argues that its “domestic facilities handle [REDACTED] of all new builds and repairs of EAGLE XG machines; contribute to [REDACTED] of all new EAGLE XG patents; and account for a significant share of its global EAGLE XG investment, however measured.” CIB at 143, citing Tr. (Fischel) at 805:17-19, 806:10-13; Tr. (Kudva) at 386:8-12; CX-4665C.

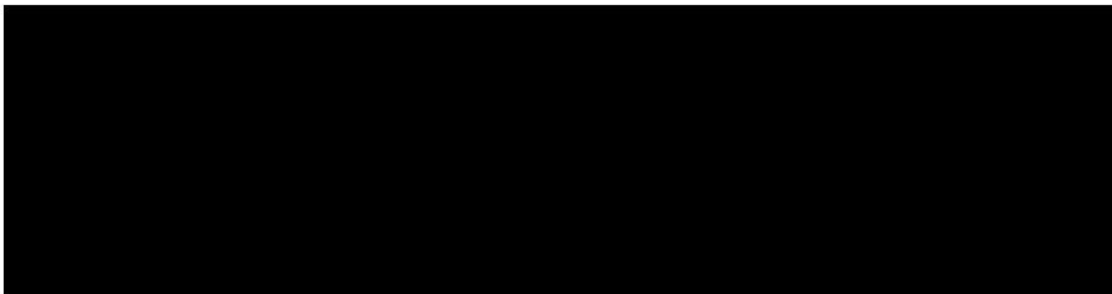
Respondents argue that “Corning failed to demonstrate the existence of a protectable domestic industry” because, *inter alia*, that “Corning and its economic expert, Mr. Daniel Fischel, presented a narrow, conclusory analysis at the hearing, glossing over entire categories expenditures, failing to analyze applicable allocation methods, and ignoring the contextual analysis required by the Commission,” that “[f]or both Sullivan Park and [REDACTED], Mr. Fischel failed to explain why the relied-upon investments are relevant or add value to EAGLE XG, and how his allocation ratios isolate investments in EAGLE XG,” and that “Mr. Fischel failed to address the many inconsistencies between his opinions and Corning documents, repeatedly conceding he did not consider them, undermining the reliability of his entire economic analysis.” RIB at 107-08; *see also id.* at 112-120. As to significance, Respondents argue, *inter alia*, that “Mr. Fischel’s analysis of Corning’s domestic industry disregarded the nature of the market: Corning’s LCD glass business is predominantly foreign in nature,” that “[e]vidence presented at the hearing demonstrated the movement of Corning’s EAGLE XG business overseas, namely to China, over the last two decades,” and that “[t]he handful of significance measures Mr. Fischel chose ignore these basic facts, are based on inflated investments and allocations, and do not reliably measure significance.” *Id.* at 108; *see also id.* at 120-23.

In Staff's view, "Corning's domestic investments attributable to EAGLE XG glass total approximately [REDACTED] for years 2022 through 2024, and the contextual evidence identified by Corning demonstrates that its investments are sufficient to satisfy the industry requirement." SIB at 113; *see also id.* at 113-15 and SRB at 15.

For the reasons set forth below, a preponderance of the evidence shows the existence of a domestic industry.

1. [REDACTED]

The evidence shows that [REDACTED], located in Erwin, New York, produces, refurbishes, and assembles critical specialized components for fusion manufacturing systems. Tr. (Fischel) at 805:12-16. A photo of the [REDACTED] facility is shown below:



CX-3480C; Tr. (Kudva) at 383:21-25.

At [REDACTED], Corning develops its prototypes and methodologies for glassmaking, and its engineers first learn how to build fusion manufacturing systems. Tr. (Kudva) at 384:1-12, 386:13-19; JX-0018C (Kudva Dep. Tr.) at 107:14-19. [REDACTED] also performs repair work. The evidence shows that repair work at [REDACTED] involves receiving parts from Corning's fusion manufacturing systems; cleaning and refining the precious metals (e.g., [REDACTED]) that form the parts; [REDACTED]; [REDACTED]; and building custom packaging to ship the parts. Tr. (Kudva) at 384:13-385:5; JX-0018C (Kudva Dep. Tr.) at 113:11-114:14; CIB at 144.

The evidence shows that [REDACTED] supplies the global manufacturing requirements for approximately [REDACTED] of Corning's over [REDACTED] fusion manufacturing systems, and from 2021 to 2025 built over [REDACTED] of those systems. Tr. (Kudva) at 386:8-12; Tr. (Fischel) at 805:17-19; JX-0018C (Kudva Dep. Tr.) at 112:2-9.¹¹⁸

Corning relies upon activities and investments at [REDACTED] including: (i) headcount; (ii) salaries, wages, and benefits ("SWB"); (iii) other fixed and variable costs; (iv) metal spend; (v) capital spend with U.S. vendors; and (vi) repair of fusion manufacturing systems. CIB at 146-47; Tr. (Fischel) at 806:3-5, 807:9-19; CDX-0014C.13; CX-4983C.

Because [REDACTED] does not work only on EAGLE XG Glass, Mr. Fischel allocated investments at [REDACTED] using a ratio (the "[REDACTED] Ratio") based on certain processing fees that [REDACTED] uses to track its shipments.¹¹⁹ Tr. (Fischel) at 808:21-809:15; Tr. (Kudva) at 387:15-18; CX-4981C ([REDACTED] Processing Fee Allocation ("[REDACTED] Ratio")) (citing CX-3415C – CX-3424C). [REDACTED] tracks processing fees in the ordinary course of business. JX-0006C (Bulkley Dep. Tr.) at 139:12-147:19; *see, e.g.*, CX-3424C. Mr. Fischel testified that the [REDACTED] Ratio, which is the "ratio of the [REDACTED] processing fees for EAGLE glass . . . divided by the total processing fees for all systems in that year" reasonably captures the relationship between [REDACTED]'s work on EAGLE XG systems and its total work on systems for all products. Tr. (Fischel) at 808:6-809:17.

The evidence shows that applying the [REDACTED] Ratio to Corning's total [REDACTED] investments, the investment amount allocable to EAGLE XG Glass was [REDACTED] from 2015 to 2024, [REDACTED] from 2020 to 2024, and [REDACTED] from 2022 to 2024. Tr. (Fischel) at

¹¹⁸ The evidence shows that Corning's [REDACTED] supplies the rest. Tr. (Fischel) at 845:2-15; JX-0018C (Kudva Dep. Tr.) at 94:10-20, 112:2-11..

¹¹⁹ Mr. Fischel testified that these processing fees are calculated based on the weight of precious metal in the tanks and are applied to shipments of materials used for the manufacture of Corning's glass. *See* Tr. (Fischel) at 846:7-10, 847:4-9.

807:20-808:5; CDX-0014C.9; CX-4982C; CX-4985C at row [9].¹²⁰ Mr. Fischel testified that these figures include SWB, other fixed and variable costs (excluding SWB), and capital spend with U.S. vendors; these figures exclude [REDACTED]'s gross purchases of precious metals.¹²¹ Tr. (Fischel) at 807:14-19; CDX-0014C.9. Mr. Fischel's underlying calculations are shown in the exhibit below:

Exhibit 17B Significance Summary - Trade Secret Claims Domestic EAGLE XG Investments (Excluding Metal Spend at [REDACTED])												Inv. No. 337-TA-1433 CX-4985C
2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015-2024 Total	2020-2024 Total	2022-2024 Total
[REDACTED]												

Notes and Sources:
 EXG = EAGLE XG Glass.
 [1]: See Exhibit 13B, row [6].
 [2]: See Exhibit 14A, row [8].
 [3] = [1] + [2].
 [4]: Sum of [Exhibit 15A, row [10] (Non-U.S. Investments in Research SWB)] + [12] (EXG Investments in Research SWB)] + [Exhibit 15B, row [6] (EXG AMC SWB)] + [12] (EXG OpEx SWB)].
 [5] = [3] / [4].
 [6]: Sum of Exhibit 14A, row [8] (EXG SWB) + row [13] (EXG Other Fixed and Var. Costs) + row [16] (EXG Spend with Vendors).
 [7]: Sum of [Exhibit 15A, row [10] (Non-U.S. Investments in Research SWB)] + [12] (EXG Investments in Research SWB)] + [Exhibit 15B, row [9] (EXG OpEx)].
 [8] = [6] / [7].
 [9]: Sum of Exhibit 13B, row [6] (EXG Labor SWB) + [11] (EXG Other Fixed and Var. Costs) + [19] (EXG Spend with Vendors).
 [10] = [6] + [9].
 [11]: Sum of [Exhibit 15A, row [10] (Non-U.S. Investments in Research SWB)] + [12] (EXG Investments in Research SWB)] + [Exhibit 15B, row [3] (EXG AMC)] + [9] (EXG OpEx).

CX-4985C (cited in CDX-0014C.9).¹²²

¹²⁰ CX-4985C, Row [9] is the sum of CX-4982C, row [6] (EXG Labor SWB), row [11] (EXG Other Fixed and Var. Costs), and row [19] (EXG Spend with Vendors). CX-4985C, Note for row [9].

¹²¹ Mr. Fischel explained that he removed a duplicative [REDACTED] from the gross precious metal purchases that was discovered in preparation for the hearing and that the revision affected only gross metal-spend figures. CIB at 146 n.18; Tr. (Fischel) at 949:22-951:3.

¹²² Respondents criticize Corning for not presenting the detailed underlying calculations in testimony at the hearing, both for [REDACTED] and for Sullivan Park. See RRB at 50, 52-53. However, these underlying calculations were clearly relied upon and referenced through Mr. Fischel's testimony and demonstratives.

More specifically, Mr. Fischel's calculations for (i) the headcount; (ii) salaries, wages, and benefits; (iii) other fixed and variable costs; (iv) metal spend; and (v) capital spend with U.S. vendors are as follows:

- the headcount for EAGLE XG Glass was [REDACTED] employees per year from 2015 to 2024, [REDACTED] from 2020 to 2024, and [REDACTED] employees per year from 2022 to 2024. CIB at 146; CX-4982C at rows [2] and [3]; Tr. (Fischel) at 806:3-5; CDX-0014C.8.
- Corning invested [REDACTED] in salaries, wages, and benefits attributable to EAGLE XG Glass from 2015 to 2024 and [REDACTED] from 2022 to 2024. CIB at 146; CX-4982C (cited in CDX-0014C.9) at rows [5] and [6].
- Corning invested [REDACTED] in fixed and variable costs attributable to EAGLE XG Glass from 2015 to 2024 and [REDACTED] from 2022 to 2024. CIB at 147; CX-4982C at [10] and [11].
- Corning invested [REDACTED] in metal spend attributable to EAGLE XG Glass from 2022 to 2024. CIB at 147; CX-4982C at [14] and [15].
- Corning spent [REDACTED] with U.S. vendors for refining precious metals attributable to EAGLE XG Glass from 2019 to 2024 and [REDACTED] from 2022 to 2024. CIB at 147; CX-4982C at [18] and [19].

The evidence also includes additional data regarding the quantity of repair activities performed at [REDACTED]. Dr. Kudva testified that Corning repairs its [REDACTED] fusion manufacturing systems on a [REDACTED]. CIB at 147; Tr. (Kudva) at 385:19-22. [REDACTED] performs [REDACTED] repairs [REDACTED], and [REDACTED] repairs, [REDACTED], as well as [REDACTED] repairs. Tr. (Kudva) at 385:23-386:7, 387:6-14; JX-0018C (Kudva Dep. Tr.) at 118:5-11; *id.* at 119:3-16; Tr. (Fischel) at 805:17-19; CX-4983C (cited in CDX-

Respondents have not argued waiver, and under the circumstances these calculations are fairly considered.

0014C.8); CX-3520C (cited in CDX-0014C.8).¹²³ [REDACTED] performed [REDACTED] from 2021 to 2025, of which [REDACTED] were EAGLE XG Glass tanks. CX-4983C at [14] and [16]; CX-3520C; CX-3491C. [REDACTED] performed [REDACTED] and [REDACTED] from 2021 to 2024, of which [REDACTED] respectively were for EAGLE XG Glass. CX-4983C at [4], [6], [7], [9]; CX-3520C.

Respondents present several criticisms of Corning’s calculation of [REDACTED] investments. Respondents argue that “[a]s explained by Mr. Bakewell, the [REDACTED] Ratio suffers from several issues rendering it unreliable and unreasonable in the context of the business,” that “Mr. Fischel made little effort to explain why weight is a reasonable proxy for the relative amounts of activity and investment for EAGLE XG glass versus other activity at [REDACTED],” and that Mr. Fischel’s [REDACTED] ratio “overstates the activities at [REDACTED] for EAGLE XG because the numerator includes values related to Corning’s *foreign* repair activities in [REDACTED].” RIB at 119-20. Staff disagrees with Respondents, arguing that “[REDACTED] is critical to Corning’s ability to manufacture EAGLE XG glass all over the world.” SIB at 113-14; *see also id.* at 113-15 (agreeing with Corning’s [REDACTED] investment analysis).

The undersigned is not persuaded by Respondents’ criticism concerning the [REDACTED] ratio as an allocation method. As discussed above, Mr. Fischel allocated investments using the [REDACTED] Ratio based on the metal processing fees that [REDACTED] uses to track shipments and which distinguish fees for machines used for Eagle XG glass versus fees for other machines. Tr. (Fischel) at 808:21-809:15; Tr (Kudva) at 387:15-18). The evidence shows that [REDACTED] tracks such metal processing fees in the ordinary course of business (JX-0006C (Bulkley Dep. Tr.) at 139:12-

¹²³ *See also* Tr. (Markham) at 311:4-21 (explaining that if machine is turned off, about [REDACTED] of the components need to be replaced).

147:19). Respondents offer no other alternative reasonable allocation. The undersigned agrees with Corning and Staff that the [REDACTED] Ratio, which is based on data produced in the ordinary course of business, is a reasonable approach under the circumstances to allocating [REDACTED]'s work on EAGLE XG systems. *See* Tr. (Fischel) at 808:6-809:17.¹²⁴ The undersigned is also not persuaded by Respondents' arguments that the [REDACTED] ratio "overstates the activities at [REDACTED] for EAGLE XG because the numerator includes values related to Corning's *foreign* repair activities in [REDACTED]." RIB at 120. As noted above, Mr. Fischel testified that he removed a duplicative [REDACTED] [REDACTED] from the gross precious metal purchases. CIB at 146 n.18; Tr. (Fischel) at 949:22-951:3; CDX-0014C.9, 13.

Additionally, Mr. Fischel did not use the [REDACTED] Ratio when analyzing the number of FDMs that Corning rebuilds and repairs at [REDACTED] versus the number processed at [REDACTED], which data also supports significance. *See* CRB at 49.

Respondents also argue that Corning's [REDACTED] capital and metal expenditures are unreliable. RIB at 115. However, even if the gross metal expenditures are not relied upon, the [REDACTED] total without metal expenditures still shows significant investments. *See* discussion *infra*; CRB at 48-49.¹²⁵

¹²⁴ In addition, Dr. Kudva testified, for example, that [REDACTED]'s repair process involves reusing all precious metals in the system. Tr. (Kudva) at 384:16-22; *see also* JX-0006C (Bulkley Dep. Tr.) at 146:6-147:19 (discussing RX-0267C) (noting that [REDACTED] is "capturing their cost to fabricate . . . [t]hey would come up with these codes so that they could capture costs and time to fabricate the components"); CRB at 145.

¹²⁵ Respondents also contend that certain capital investments paid to U.S. vendors for refining metals may not be properly attributable to [REDACTED] based on a statement in RX-1352C.0034 (shown on RDX-0007C.28) and Tr. (Bakewell) at 1003:17-1004.16. *See* RIB at 116. Even under Respondents' theory, however, Respondents have not shown why [REDACTED]'s capital investments should not be properly attributable to [REDACTED].

2. Sullivan Park

The evidence shows that Corning conducts research and development work at Sullivan Park relating to EAGLE XG Glass. CIB at 148; Tr. (Kudva) at 388:8-17; JX-0018C (Kudva Dep. Tr.) at 71:20-72:7. Dr Kudva testified that research at Sullivan Park led to the development of EAGLE XG Glass. Tr. (Kudva) at 382:8-11, 387:24-388:3; Tr. (Fischel) at 806:6-10; JX-0018C (Kudva Dep. Tr.) at 164:2-16; CX-2655C; CX-4544. The evidence indicates that research at Sullivan Park includes new composition discoveries, attribute improvements, cost-reduction programs, and improvements in melting, forming, and finishing. Tr. (Kudva) at 387:24-388:17; Tr. (Fischel) at 806:6-25. A photo of the Sullivan Park facility is shown below:



CX-3482C; Tr. (Kudva) at 387:19-23.

Corning relies on Mr. Fischel's analysis of Sullivan Park investments in four categories: (i) headcount; (ii) salaries, wages, and benefits; (iii) fixed and variable costs; and (iv) capital

spend with U.S. vendors. CIB at 148; Tr. (Fischel) at 810:7-19; CX-4640C at rows [A]-[D]. Mr. Fischel explained that he allocated certain of these investments using the ratio of EAGLE XG Glass revenues to total revenues for Corning Display Technologies (“CDT”), the business segment that makes EAGLE XG Glass. Tr. (Fischel) at 810:20-811:9; CX-4653C (CX-3590C).¹²⁶ Mr. Fischel testified that this “Sullivan Park Ratio” is a reasonable proxy for “the percentage of Sullivan Park CDT activities and investments ... devoted to EAGLE XG Glass.” Tr. (Fischel) at 810:20-811:9; CDX-0014C.12.

Applying the Sullivan Park Ratio, Mr. Fischel’s calculations for (i) the headcount; (ii) fixed and variable costs; and (iii) capital expenditures with U.S. vendors are as follows:

- Headcount for EAGLE XG Glass was between [REDACTED] from 2018 to 2024, between [REDACTED] from 2020 to 2024, and between [REDACTED] from 2022 to 2024. CIB at 148; Tr. (Fischel) at 807:1-3; CDX-0014C.8; CX-4640C at row [3].
- Other fixed and variable costs for EAGLE XG Glass were [REDACTED] from 2015 to 2024 and [REDACTED] from 2022 to 2024. CIB at 150; CX-4640C at row [13]; CDX-0014C.11.
- Capital spend with U.S. vendors at Sullivan Park attributable to EAGLE XG Glass was [REDACTED] from 2019 to 2024 and [REDACTED] from 2022 to 2024. CIB at 150; CX-4640C at row [16]; CDX-0014C.11.

With respect to SWB, Mr. Fischel’s calculations indicate that Corning invested [REDACTED] in salaries, wages, and benefits for development and engineering (“D&E”) related to EAGLE XG Glass at Sullivan Park from 2015 to 2024, and [REDACTED] from 2022 to 2024.

¹²⁶ Mr. Fischel used the Sullivan Park Ratio to allocate headcount, other fixed and variable costs, and capital spend with U.S. vendors. *See* CIB at 148-150. He did not use it to allocate SWB for development and engineering. Corning explains that it tracks its U.S.-based SWB for EAGLE GLASS D&E so no allocation was necessary. CIB at 149 (citing Tr. (Kudva) at 388:18-389:7 and CX-3425C).

CIB at 149; CX-4640C at row [4].¹²⁷ They further indicate that investments for CDT research at Sullivan Park include [REDACTED] in salaries, wages, and benefits related for EAGLE XG Glass research from 2015 to 2024 and [REDACTED] from 2022 to 2024. CX-4640C at row [6]. These numbers provide a total of [REDACTED] in EAGLE XG Glass salaries, wages, and benefits from 2015 to 2024, and [REDACTED] from 2022 to 2024. CX-4640C at row [8].

Combining SWB, fixed and variable costs, and capital spend, Mr. Fischel's calculations indicate that Corning invested [REDACTED] at Sullivan Park from 2015 to 2024, and [REDACTED] from 2022 to 2024, and that the allocable share for EAGLE XG Glass was [REDACTED] from 2015 to 2024, and [REDACTED] from 2022 to 2024. CIB at 148; Tr. (Fischel) at 809:16-810:2; CDX-0014C.11; CX-4640C at rows [17] and [18].

With respect to the Sullivan Park investments, Respondents argue, *inter alia*, that “[t]here are several issues with the Sullivan Park Ratio: namely, a sales-based allocation is improper here, and Mr. Fischel’s allocation does not account for other Corning segments and products which benefit from the activities performed at Sullivan Park,” that “Mr. Fischel did not conduct an independent analysis to support the use of a sales-based allocation in the context of Sullivan Park’s business,” that “the Sullivan Park Ratio does not account for other Corning products outside of Corning Display” such as “[REDACTED]”

_____” “that benefit from the relied-upon activities, rendering his calculations greatly overstated.” RIB at 117-18. Staff disagrees with Respondents, arguing that Corning developed EAGLE XG glass at Sullivan Park and “continues

¹²⁷ Dr. Kudva testified that he reviewed each research project from 2001 to 2024 to determine expenditures for U.S.-based employees who worked on EAGLE XG Glass projects. JX-0018C at 142:3-11 (Kudva); CX-3594C.

its research into new compositions, attribute improvements, cost reduction programs, and process improvements for melting, forming, and finishing EAGLE XG glass,” SIB at 115; *see also id.* at 115-16 (agreeing with Corning’s Sullivan Park investment analysis).

The undersigned is not persuaded by Respondents’ argument that Mr. Fischel’s allocation methodology for Corning’s Sullivan Park investments is improper. Respondents’ expert Mr. Chris Bakewell acknowledged that revenue ratios are commonly used for allocation. Tr. (Bakewell) at 1016:1-13.¹²⁸ The undersigned also disagrees with Respondents’ assertion that Mr. Fischel did not sufficiently investigate Corning’s expenditures (*see* RIB at 112-113) for the reasons set forth in Corning’s reply brief. *See* CRB at 50 (discussing Kudva’s deposition testimony).¹²⁹

3. Significance

While the parties briefed qualitative and quantitative significance separately, the Commission has recently considered what an initial determination under review “broke into determinations of ‘quantitative significance’ and ‘qualitative significance’” as “an integrated analysis” and “based on a holistic review of all relevant considerations.” *See Certain*

¹²⁸ Corning points out that Mr. Bakewell has used a revenue ratio for allocation where a complainant had a domestic industry based on domestic R&D activities but did its manufacturing abroad. CRB at 50, citing *Certain Color Intraoral Scanners & Related Hardware & Software*, Inv. No. 337-TA-1091, Final ID at 137, 142-146 (Mar. 1, 2019) (EDIS Doc. ID 681285) (describing and accepting Bakewell’s allocation), adopted in relevant part, Comm’n Op. (Dec. 19, 2019) (EDIS Doc. ID 697645). Respondents’ argument that a revenue-based allocation is necessarily improper because Sullivan Park does not itself engage in sales (*see* RRB at 51) is not persuasive.

¹²⁹ Respondents also argue that the Sullivan Park Ratio does not account for other Corning products “that Sullivan Park develops outside the Corning Display segment.” RIB at 118 (citing, *inter alia*, Tr. (Bakewell) at 998:1-24, RDX-0007C.21 (testifying that research relating to Eagle XG “can benefit other product lines as well”). Under the circumstances here, where the evidence shows that the research at issue related to the Eagle XG product, the lack of further allocation appears reasonable and in any case does not affect the conclusion of significance. *Cf. Certain Magnetic Data Storage Tapes and Cartridges Containing the Same*, Inv. No. 337-TA-1012, Comm’n Op., 2018 WL 8648372, at *74 (Apr. 2, 2018) (finding no further allocation necessary where “the equipment in question is used to assemble the LTO-6 products even though they are also used for older generation LTO products”).

Semiconductor Devices and Products Containing the Same, Inv. No. 337-TA-1414, Comm’n Op. at 38 (May 26, 2026) (EDIS Doc. ID 883116) (citing *Wuhan Healthgen Biotechnology Corp. v. Int’l Trade Comm’n*, 127 F.4th 1334, 1338 (Fed. Cir. 2025) (citing *Lelo Inc. v. Int’l Trade Comm’n*, 786 F.3d 879, 883 (Fed. Cir. 2015))). Accordingly, a holistic review is applied here.

With respect to significance, Corning argues, *inter alia*, that its “investments in [REDACTED] and Sullivan Park are qualitatively and quantitatively significant.” CIB at 151, citing Tr. (Fischel) at 815:16-816:3. Corning argues that “Corning could not manufacture EAGLE XG Glass without [REDACTED],” that “[REDACTED] conducts unique design, development, and [REDACTED] work not done at [REDACTED],” that “Sullivan Park was the birthplace of EAGLE XG Glass and remains integral to its development,” that “Corning conducts 80% of its research and development at Sullivan Park and uses the facility’s isopipe for experiments,” and that “Sullivan Park researchers have contributed to over [REDACTED] of all initial patent applications related to EAGLE XG Glass since 2009.” CIB at 151; *see also* CRB at 51.

Corning further argues that its investments in [REDACTED] and Sullivan Park are significant because “EAGLE XG labor investment at [REDACTED] and Sullivan Park was [REDACTED] of global RD&E labor for EAGLE XG Glass from 2022 to 2024, [REDACTED] from 2020 to 2024, and [REDACTED] from 2015 to 2024,” that “EAGLE XG Glass labor investment at [REDACTED] and Sullivan Park was also [REDACTED] of global CDT labor expenditure for research, manufacturing, and OpEx from 2022 to 2024, and [REDACTED] from 2020 to 2024,” and that “EAGLE XG Glass investment at [REDACTED] and Sullivan Park was [REDACTED] of Corning’s [REDACTED] global EAGLE XG Glass investment in manufacturing, OpEx, research, and capital spend from 2022 to 2024, and [REDACTED] from 2020 to 2024.” CIB at 151-52; *see also* CRB at 51.

With respect to significance, Respondents argue, *inter alia*, that “Corning’s domestic industry analysis is divorced from the ‘realities of the marketplace,’ because it lacks the necessary contextual analysis of Corning’s vast and growing investments in foreign manufacturing,” RIB at 120, that “[o]nce manufacturing is appropriately considered, Corning’s alleged domestic industry investments are not ‘significant,’” *id.* at 122, that “by Corning’s own estimates, [REDACTED] of Corning Display employees engage in domestic activities related to EAGLE XG,” *id.*, that “[w]hen comparing Mr. Fischel’s labor and ‘fixed and variable costs’ calculations to Corning Display’s revenues (total and for EAGLE XG) for both Sullivan Park and [REDACTED],” the ratio “calculated by Mr. Bakewell (RDX-0007C.33)” from 2022 to 2024 is “[REDACTED] for Sullivan Park and it is [REDACTED] for [REDACTED],” *id.* at 123.

Regarding significance, Staff argues, *inter alia*, that “Dr. Kudva explained the importance of [REDACTED] in developing, manufacturing, and repairing the equipment used worldwide in Corning’s manufacture of EAGLE XG glass,” that “Corning’s Sullivan Park facility, which is the birthplace of its domestic industry, is critical to its manufacturing of EAGLE XG glass,” and that the evidence thus shows that “Corning’s domestic industry investments satisfy the ‘industry’ requirement in the context of Corning’s EAGLE XG glass business.” SIB at 116, *see also id.* at 116-17 and SRB at 15.

Here, upon a holistic consideration of the evidence of record, the undersigned finds that Corning has shown, by a preponderance of the evidence, an industry in the United States under Section 337(a)(1)(A) relating to Eagle XG Glass.

The evidence presented by Corning shows that both [REDACTED] and Sullivan Park play critical roles relating to Eagle XG Glass. The evidence shows that, from 2021 to 2025, [REDACTED] has built over [REDACTED] of the fusion draw systems used to manufacture Eagle XG Glass. and that it possesses

certain capabilities that [REDACTED] (the only other Corning facility engaged in such activities) lacks. *See* Tr. (Fischel) at 805:17-806:3; CDX-0014C.8 Tr. (Kudva) at 384:1-385:18 ([REDACTED] is location for building full-scale prototypes); *id.* at 386:8-12 ([REDACTED] of the “repairs and rebuilds of Corning’s global fusion manufacturing systems” are supplied by [REDACTED])¹³⁰; JX-0018C (Kudva) at 107:12-19 ([REDACTED] is “key site for the company where we develop our prototypes”); *id.* at 111:14-112:11 ([REDACTED] “supplies [REDACTED] of Corning’s global production requirements for its [REDACTED] fusion manufacturing systems,” with [REDACTED] supplying [REDACTED] and with [REDACTED] having “additional capabilities” for prototyping, development, and engineering); *id.* at 113:14-114:15 ([REDACTED] has improved capabilities regarding metal refining that [REDACTED] lacks); CX-4983C (showing repairs data at [REDACTED] and [REDACTED]). The evidence shows that that [REDACTED] employed between [REDACTED] full-time equivalent employees related to Eagle XG Glass between 2020 and 2024. *See* Tr. (Fischel) at 806:3-5; CDX-0014C.8-9; CX-4982C.

The evidence also shows that Sullivan Park conducts research, development, and engineering that is important to improving Eagle XG Glass and that Corning has employed [REDACTED] full-time equivalent employees related to Eagle XG Glass activity between 2020 and 2024. *See* Tr. (Fischel) at 806:14-807:3; CDX-0014C.8; Tr. (Kudva) at 388:1-17 (Sullivan Park is location for “design and development for our fusion manufacturing systems, specifically for EAGLE XG”); JX-0018C (Kudva Dep. Tr.) at 71:20-72:7.

Further, the evidence shows that the investments by Corning in salaries, wages, and benefits at [REDACTED] and Sullivan Park relating to Eagle XG Glass totaled approximately [REDACTED] in 2022-2024 and [REDACTED] in 2020-2024, and that these investments constitute

¹³⁰ The evidence indicates that the repair process requires highly skilled labor and, in [REDACTED], involves a process where “[REDACTED].” Tr. (Kudva) at 385:6-18, 386:6-7.

██████████ of total global Eagle XG Glass-related salaries, wages, and benefits. *See* Tr. (Fischel) at 812:2-813:2; CDX-0014C.14.

Based at least on the foregoing, Corning has shown, by a preponderance of the evidence, significant investments under Section 337(a)(1)(A). *Cf. Certain Glass Substrates for Liquid Crystal Displays, Products Containing the Same, and Methods for Manufacturing the Same*, Inv. No. 337-TA-1441, Final ID at 114-131 (Apr. 7, 2026) (EDIS Doc. ID 879495) (*under review*, EDIS Doc. ID 884501) (finding, in patent case, that Corning has a domestic industry based on Eagle-XG investments at two facilities, including Sullivan Park).¹³¹

B. Injury to the Domestic Industry

The Commission has identified a broad range of indicia that can be considered in determining whether there is economic injury or a threat thereof:

¹³¹ Respondents contend that a holistic view of the evidence fails to show significance in part because of the lack of “value-add” evidence and because Eagle XG Glass is manufactured outside the United States. The Commission has never indicated that a value-add analysis is required or that a significance analysis must evaluate manufacturing costs. *See, e.g., Certain Wearable Electronic Devices with ECG Functionality and Components Thereof*, Inv. No. 337-TA-1266, Comm’n Op., 2023 WL 372372, at *12 (Jan. 20, 2023) (“The appropriate context for evaluating significance may vary depending on the facts of a particular investigation. For example, significance may be shown, *inter alia*, by demonstrating the value added by domestic activities, by comparing domestic investments to costs or revenues for DI products, or other contextual evidence of significance to the company’s operations.”), *vacated as moot*, 2025 WL 733105. Moreover, Mr. Fischel provided testimony showing that the total domestic investments in Eagle XG compared to total global Eagle XG investments is between ██████████. *See* Tr. (Fischel) at 814:1-17; CDX-0014C.15. In the context of all the evidence already discussed above, the Corning expenditures are significant.

Economic injury	Threat
In determining whether unfair acts have substantially injured the domestic industry, the Commission considers a broad range of indicia, including: [1] the volume of imports and their degree of penetration, [2] complainant’s lost sales, [3] underselling by respondents, [4] reductions in complainants’ declining production, [5] profitability and sales, and [6] harm to complainant's good will or reputation. (formatting and numbering added)	In determining whether a threat to substantially injure exists, the Commission considers, <i>inter alia</i>, the following indicia: (1) substantial foreign manufacturing capacity; (2) ability of imported products to undersell the domestic product; (3) explicit intention to enter into the U.S. market; (4) the inability of the domestic industry to compete with the foreign products because of vastly lower foreign costs of production and lower prices; and (5) the significant negative impact this would have on the domestic industry. (quoting <i>Certain Methods for Extruding Plastic Tubing</i>, Inv. No. 337-TA-110, Comm’n Op., 0082 WL 941574 at *9 (Sept. 1982).

Certain Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Therefor, Inv. No. 337-TA-1159, Comm’n Op. at 35 (Mar. 4, 2021) (EDIS Doc. ID 735927) (citing *Certain Rubber Resins and Processes for Manufacturing Same*, Comm’n Op., 2014 WL 7497801, at *30, *32 (Feb. 26, 2014)); SIB at 117-118. “Other factors may also be indicative of economic injury and threat under the facts of each case.” *Id.*

To show “actual injury, there must be a causal nexus between the unfair acts of the respondents and the injury.” *Rubber Resins*, Comm’n Op., 2014 WL 7497801, at *30. The Commission has held that, in the context of a domestic industry based on investments in research and development, “lost sales and diminished profits can injure a domestic industry that is based on research and development by ‘resulting in lower recoupment of those investments and reduced capital to invest in the U.S. industry.’” *Certain Raised Garden Beds and Components Thereof*, Inv. No. 337-TA-1334, 2024 WL 1434222, at *26 (Apr. 1, 2024) (quoting *Certain*

Foodservice Equipment and Components Thereof, Inv. No. 337-TA-1166, Comm’n Remand Op., 2020 WL 7419251, at *10 (Dec. 16, 2020)). Moreover, it is not necessary to quantify the harm to a complainant. *See Foodservice Equipment*, 2020 WL 7419251, at *9 (finding that the “ID erroneously required the Complainants, in effect, to provide direct evidence that Respondents’ importation and sales substantially harmed Complainants’ domestic activities and investments and to quantify such harm in order to support a finding of substantial injury”).

With respect to injury, Corning argues, *inter alia*, that “Irico has caused actual substantial injury to Corning’s domestic industry through rapid expansion, aggressive pricing, siphoning sales from Corning, and gaining market share,” and that “Irico also threatens substantial future injury to Corning’s glass business through its substantial manufacturing capacity, its ability to undersell, its lower costs of production, and its lower prices, all of which have a significant negative impact on Corning’s domestic industry.” CIB at 155, 163; *see also id.* at 155-68.

Respondents argue, *inter alia*, that Mr. Fischel’s evidence relating to pricing and lost sales is unpersuasive and fails to provide a comparison with a “but-for” world. *See* RIB at 125-132. Respondents also argue that Mr. Fischel’s models regarding purported future injury are overly simplistic. *Id.* at 133-134. For both injury and threat of injury, Respondents argue that Corning has not established a link to a domestic industry or to importation of Accused Products. *Id.* at 134.

Staff agrees with Corning and argues that “the evidence shows that Corning satisfies the injury requirement of Section 337 by demonstrating actual substantial injury and the threat of future substantial injury to its domestic industry.” SIB at 119. Staff argues that for actual injury, (1) “Caihong Display’s increased production demonstrates actual injury to Corning’s domestic industry,” (2) “Caihong Display’s aggressive pricing demonstrates further actual injury to

Corning’s domestic industry,” (3) “[the] lost sales provide further evidence of actual injury to Corning’s domestic industry caused by Caihong Display’s unfair acts,” and (4) “[the] loss in market share is further evidence of actual injury to Corning’s domestic industry caused by Caihong Display’s unfair acts.” SIB at 119-21; *see also* SRB at 15-16. Staff also argues that “Caihong Display’s substantial increase in manufacturing capacity to produce LCD glass that directly competes with Corning” shows “a serious threat of substantial injury,” and that in cases with “similar situations, the Commission has found a causal nexus between manufacturing trade secrets and the injury to the domestic industry because the misappropriation ‘allowed Respondents to enter the market quickly with [competitive products].’” SIB at 121-22; *see also* SRB at 16 (“Caihong Display has increased its production thirtyfold between 2020 to 2024” and “[t]his increased production alone demonstrates actual injury to Corning’s domestic industry.”).

For the reasons discussed below, a preponderance of the evidence shows substantial injury and/or a threat thereof from Respondents’ misappropriation.

1. Substantial Injury

As discussed below, the evidence of record shows that Caihong Display has increased its production and market share in recent years, that it has engaged in underselling, and that Corning has a decreased market share. This evidence, together with the other evidence of record, shows by a preponderance that Caihong Display’s misappropriation of certain of the asserted trade secrets has caused actual substantial injury to Corning.

a) Increased Capacity and Sales

Corning argues that Caihong Display has rapidly increased its Generation 8 production capacity in recent years. *See* CIB at 156; Tr. (Fischel) at 823:3-18; CDX-0014C.23 (and cited evidence). Corning further presents evidence that, *inter alia*, that Caihong Display’s share of the

Gen 8.x glass substrate market increased from 1.3% in Q1 2021 to 10.6% in Q4 2024. Tr. (Fischel) at 823:21-824:8; CDX-0014C.24; CX-4628C (Fischel Report, Appendix C-5, row [36]); *see also* CX-0536 at 3 (Caihong Display Devices Co. Ltd. 2023 Annual Report) (2023 was “breakthrough year for the rapid scaling of its glass substrate business”); JX-0028C (Wang Xioachun Dep. Tr.) at 105:16-106:6 (confirming this statement); CX-4654C (Fischel Report Ex. 20).

Staff agrees with Corning that “Caihong Display’s increased production demonstrates actual injury to Corning’s domestic industry.” SIB at 119-20.

Respondents do not dispute the factual evidence discussed above regarding Caihong Display’s increased capacity and market share (but dispute nexus). *See generally* RIB at 125-32; discussion *infra*.

Based on the foregoing, the evidence shows by a preponderance that Caihong Display has increased its production capacity and market share in recent years.

b) Underselling

Corning argues that Caihong Display has been a [REDACTED] CX-3576C at 5, and it has used [REDACTED]. Tr. (Fischel) at 823:3-824:17, Tr. (Hudson) at 757:11-22; CX-3577C at 12.

According to Mr. Fischel, [REDACTED] [REDACTED]. Tr. (Fischel) at 824:9-17; CDX-0014C.25; CX-4666C at row [14]. Certain Corning documents from the relevant time period refer to Caihong Display’s [REDACTED] pricing in the glass substrate market. *See, e.g.*, CX-3550C at 16 (Jan. 2023 “CDT Commercial Update”) (Caihong Display’s [REDACTED] in Jan. 2023); CX-3551C at 10, 38 (Caihong Display’s [REDACTED]

[REDACTED] in Apr. 2023); CX-3547C at 21 (June 2024 “CDT Commercial Update”) (Caihong Display undersold Corning’s Gen 8.x prices by [REDACTED], and [REDACTED] in 2Q23 and even more in 1Q24). Respondents’ expert Dr. Cameron agreed that Caihong Display’s “volumes were sold at significantly lower prices than Corning’s,” and “customers choosing [Irico] were motivated by price.” Tr. (Cameron) at 1073:1-3, 1073:21-23; *see also, e.g.*, JX-0005C at 57:7-18, 83:1-13 (Bu) ([REDACTED]
 [REDACTED]
 [REDACTED]).

According to Mr. Hudson, Corning’s prices are lower than they would be without Caihong Display’s pricing practices. JX-0017C (Hudson Dep. Tr.) at 214:17-215:10. Corning’s expert similarly testified that Caihong Display’s pricing actions have “ [REDACTED] [REDACTED] ” and “ [REDACTED] [REDACTED] .” Tr. (Fischel) at 822:2-14; CDX-0014C.25-26. This assessment is supported by Corning commercial assessments. CX-3576C at 6, 18 (Dec. 2022 Corning document noting [REDACTED] in 2022, as much as [REDACTED] and debating whether to [REDACTED] [REDACTED] or [REDACTED]); CX-3448C at 3-4 (Apr. 2023 Corning email containing analysis estimating [REDACTED]); CX-3551C at 38 (Apr. 2023 Corning document noting [REDACTED] , [REDACTED] , and [REDACTED] , among others, in 1Q23); CX-3554C at 16 (Dec. 2023 Corning document discussing [REDACTED] in 1Q24 to retain volume); Tr. (Hudson) at 758: 5-11 (CX-3551C and CX-3554C are Corning commercial updates).

Respondents argue that Corning’s claim that Caihong Display undersold Corning is “outdated and undercut by Corning’s implementation of significant price increases in 2023 and 2024, and Corning’s strong financial performance (in dollars) during the same period.” RIB at 129-131; Tr. (Cameron) at 1045:14-1046:14. Respondents also argue that Mr. Fischel “fails to demonstrate how any alleged price erosion was caused by Caihong’s presence in the market as opposed to numerous other factors that Corning itself conceded were driving price changes, including demand pressure from panel makers, other competitors, changes in the exchange rate, and post-pandemic supply shift,” RIB at 131, and that Mr. Fischel “made no effort to show a causal connection between Caihong’s alleged misappropriation and an alleged reduction in Corning’s prices,” *id.* at 132.

Staff agrees with Corning that “Caihong Display’s aggressive pricing demonstrates further actual injury to Corning’s domestic industry.” SIB at 120.

The evidence presented by Corning and discussed above shows by a preponderance that Caihong Display has engaged in aggressive pricing that has led to underselling Corning. *See* discussion *supra*. The evidence shows that the price differential between Corning’s and Caihong Display’s Gen 8.x glass increased between 2023 and 2024: from [REDACTED] to [REDACTED] at HKC, from [REDACTED] to [REDACTED] at CHOT, and from [REDACTED] to [REDACTED] at CSOT between 2021 and 2024. CX-4666C (cited in CDX-0014C.25); CX-3590C; CX-0387C. The evidence also shows that certain customers [REDACTED]. *See* Tr. (Hudson) at 758:19-759:18; CX-3579C at 16 ([REDACTED] Corning “CDT Commercial Update” noting [REDACTED]). The evidence also indicates that at least two customers reduced their reliance on Corning. JX-0035C (Zhao Dep. Tr.) at 74:10-75:4 (CHOT started buying from Caihong Display after [REDACTED]).

[REDACTED]); JX-0020C (Law Dep. Tr.) at 237:15-21 ([REDACTED]
[REDACTED]).¹³²

Based on the foregoing, Corning has shown by a preponderance of the evidence that Caihong Display has been underselling Corning and that this has negatively affected Corning.

c) Lost Sales

Corning presented evidence that, from mid-2023 to the end of 2024, while Caihong Display's share of the Gen 8.x glass substrate market increased from 4.1% to 10.6%, Corning's share decreased from [REDACTED] Tr. (Fischel) at 823:21-824:8, 977:5-16; CX-4628C at rows [24], [36]; CX-4656C. From 2023 to 2024, [REDACTED]
[REDACTED].¹³³ Corning argues that these sales went to Caihong Display because [REDACTED]
[REDACTED] CX-4846C at 9 (Respondent Xianyang Caihong Optoelectronics Technology Co., Ltd.'s Fifth Supplemental Objections and Responses to Complainant Corning Incorporated's First Set of Interrogatories (Nos. 1–89) (Aug. 8, 2025))
[REDACTED]

¹³² With respect to Corning's price increases (RIB at 129-131), the record evidence demonstrates that Corning increased prices in late 2023 largely to compensate for depreciation of the Japanese yen. *See* CIB at 159; JX-0020C (Law Dep. Tr.) at 229:7-12, 234:9-12, 235:5-12, 247:20-251:16 (explaining price increase and stating that up until that point, "Corning prices kept declining"); Tr. 825:6-826:5 (Fischel); Tr. (Cameron) at 1068:2-7 (agreeing that [REDACTED]). In view of the other evidence discussed above, the price increases do not obviate the evidence of underselling. Moreover, even if this evidence did not show actual injury, it provides strong evidence of threatened substantial injury.

¹³³ Tr. (Fischel) at 824:24-825:5; CDX-0014C.26; CX-2656C (Omdia Display Glass Market Tracker – 1Q23 Database (CORNING-LCD-00015355.xlsx), "Supply Chain Fab Area" tab, row 52 (showing supplier shares at CHOT's Generation 8.6 factory [REDACTED] as of Q1 2023)); CX-3489C (Omdia Display Glass Market Tracker – 1Q25 Database with 4Q24 Result (CORNING-LCD-00319719.xlsx), "Supply Chain Fab Area" tab, row 49 (showing supplier shares at CHOT's Generation 8.6 factory [REDACTED] as of Q4 2024)).

[REDACTED] Corning presents evidence that, in late 2023, Corning lost [REDACTED] to Caihong Display.¹³⁴

Respondents argue that a focus on “[REDACTED] that Corning supplies” undermines the existence of “substantial injury. RIB at 126. Respondents also argue a failure to show that Corning would not have lost business anyway in a “but-for” world since, for example, “corporate testimony indicated that CHOT had long been seeking alternative sources of supply beyond Corning.” *Id.* (citing Tr. (Cameron) at 1043:2-16, JX-0035C (Zhao Dep. Tr.) at 37:7-20, 74:10-24). Respondents also argue that Caihong Display’s increased market share “came at the expense of other competitors, namely NEG and AGC, as opposed to Corning.” *Id.* at 127-128 (arguing that Corning’s market share [REDACTED] over the 2020-2024 time period). Finally, Respondents argue that “Corning entered agreements with panel makers, OEMs, and ODMs that effectively remove Caihong from the market entirely,” and that “[w]hile some are [REDACTED], they have nonetheless crippled Caihong’s business and are likely to create a chilling effect going forward.” RIB at 128, citing Tr. (Cameron), 1044:24-1045:13.

Staff agrees with Corning that the evidence of lost sales and loss in market share provide “further evidence of actual injury to Corning’s domestic industry caused by Caihong Display’s unfair acts.” SIB at 120-21.

¹³⁴ Tr. (Fischel) at 824:24-825:5; CDX-0014C.26; CX-2656C (Omdia Display Glass Market Tracker – 1Q23 Database (CORNING-LCD-00015355.xlsx), “Supply Chain Fab Area” tab, row 74 (showing supplier shares at Innolux’s “ILX Fab 6” factory as of Q1 2023, including [REDACTED]); CX-2657C (Omdia Display Glass Market Tracker – 4Q23 Database (CORNING-LCD-00015358.xlsx), “Supply Chain Fab Area” tab, row 73 (showing supplier shares at Innolux’s “ILX Fab 6” factory as of Q4 2023, including [REDACTED])).

Based on the evidence presented, the undersigned finds that Corning's evidence shows certain lost sales and, at the least, a threat of substantial lost sales in the future. Respondents' arguments regarding a lack of direct competition are unpersuasive. Dr. Cameron opined that Caihong Display cannot replace Corning's sales because of "market segmentation" between "lower quality" products manufactured by "Chinese new entrants" including Caihong Display and Corning's products which sell "at a price premium." Tr. (Cameron) at 1035:20-25, 1050:15-1051:7. However, she conceded that Corning and Caihong Display do compete in the LCD glass substrate market, and that Corning foresaw a potential drop in its market share due to the "new entrants" (which included Caihong Display) from 2025 onward. Tr. (Cameron) at 1069:7-21; *see also id.* at 1072:16-25 (admitting that she "did not speak to anyone about the quality of Irico's glass" and that customers "would not purchase Irico's glass if it did not meet their specifications"). In addition, CHOT witnesses testified that there was "no significant difference" in quality between Corning and Caihong Display glass, that CHOT does not differentiate between their products, and that CHOT customers have not complained about the quality of Caihong Display glass. *See* JX-0010C (Cui Dep. Tr.) at 69:22-72:13, 104:7-15; JX-0036C (Zhou Dep. Tr.) at 152:12-19. CSOT witnesses similarly testified that CSOT uses any glass that meets its specifications, including Caihong Display's. JX-0026C (Tang Dep. Tr.) at 50:4-8, 82:2-5, 83:17-20; JX-0005C (Bu Dep. Tr.) at 98:6-99:22. This evidence is consistent with the testimony of Corning's witness and Corning's competitive intelligence documents. *See* JX-0017C (Hudson Dep. Tr.) at 188:5-13, 191:14-192:1, 208:11-209:8 (describing Caihong Display as [REDACTED] [REDACTED] " [REDACTED] ," and " [REDACTED] "); CX-3025C at 4, 6 (Dec. 2024 Corning document states " [REDACTED] [REDACTED] ," and " [REDACTED] . . .

We must [REDACTED]”); Tr. (Hudson) at 753:17-756:18 (discussing CX-3025C). The evidence, considered as a whole, fails to show that Corning and Caihong Display are not direct competitors or that there is market segmentation obviating the threat to Corning.

Respondents’ arguments based on Corning’s agreements with panel makers, OEMs, and ODMs (RIB at 128) are also unpersuasive, including because the agreements cited were [REDACTED] and appear [REDACTED]

[REDACTED].¹³⁵

Accordingly, the evidence shows by a preponderance that Corning and Caihong Display are direct competitors and that Corning has lost sales, or at the least is threatened with substantial lost sales, due to Caihong’s products.

d) Causal Nexus

Corning argues that there is “a causal nexus between Irico’s unfair acts and the injury it has already inflicted on Corning’s domestic industry,” that “[i]f Irico had not misappropriated Corning’s Trade Secrets, it could not make the Accused Products it now sells for importation,” CIB at 161, 161-63, and that “[b]ecause of Irico’s substantial and increasing manufacturing capacity, Respondents’ unfair acts also have a causal connection to the injury threatened at the time this Investigation started,” *id.* at 168. Corning further argues that this “causal nexus

¹³⁵ “[T]he date of the filing of [the] complaint” is “the relevant date at which to determine if the domestic industry requirement of Section 337 [is] satisfied.” *Motiva, LLC v. ITC*, 716 F.3d 596, 601 n.6 (Fed. Cir. 2013). The agreements at issue [REDACTED], and appear [REDACTED]. See e.g. RX-2375C, ¶¶ A, E ([REDACTED]); CRB at 54 (all agreements are [REDACTED] and Respondents point to no exceptions); RIB at 128 (“some are conditioned in part on the outcome of this Investigation”). Thus, they do not show a lack of substantial injury or threat thereof.

encompasses Irico's sales for importation, as well as other Respondents' later importation and sales after importation, of the Accused Products." *Id.* at 162-63.

Relying on their expert Dr. Cameron, Respondents argue that "as a matter of economics, nexus requires a counterfactual analysis" involving a "but-for world." RIB at 123.¹³⁶

Respondents argue that Mr. Fischel failed to evaluate a causal connection with respect to lost sales (*id.* at 126), price erosion (*id.* at 129), price undercutting (*id.* at 132), and threat of injury (*id.*).

Staff argues that in situations similar to this Investigation, "the Commission has found a causal nexus between manufacturing trade secrets and the injury to the domestic industry because the misappropriation 'allowed Respondents to enter the market quickly with [competitive products].'" SIB at 122 (citing *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 50).

As discussed in Part IV.A *supra*, the evidence of record shows that Caihong's Gen 5 and subsequent generation products benefited from misappropriation of certain of Corning's Design Trade Secrets. Without the benefit of misappropriation, a preponderance of the evidence shows that it would have taken longer for Caihong Display to independently develop its FDM technology and thus its current ability to expand capacity and compete with Corning on market share and pricing would be reduced. The evidence discussed above regarding direct competition between Corning and Caihong Display, as well as evidence of sales lost by Corning to Caihong Display, shows nexus between Respondents' unfair acts and Corning's injury. *See Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to*

¹³⁶ However, as Ms. Cameron conceded on cross-examination, her only cited source for that standard was a reference work about calculating damages, not injury to the domestic industry. Tr. (Cameron) 1056:25-1057:25.

Same, and Products Containing Same, Inv. No. 337-TA-1352, Comm’n Op., at 69 (June 26, 2025) (EDIS Doc. ID 855245) (“Nexus is not a stringent standard. Rather, nexus ‘lies between the unduly stringent “sole reason” standard . . . and the unduly lax “insubstantial connection” standard.’”).¹³⁷

Moreover, because Corning’s domestic industry involves the research and development of new technologies (*see* Part IV.A.2 *supra*), the misappropriation decreases Corning’s ability and incentive to invest in domestic research, development, and engineering. CIB at 161-62; Tr. (Fischel) at 820:4-821:17, 831:22-832:16. *See Certain Raised Garden Beds and Components Thereof*, Inv. No. 337-TA-1334, 2024 WL 1434222, at *26 (Apr. 1, 2024) (quoting *Certain Foodservice Equipment and Components Thereof*, Inv. No. 337-TA-1166, Comm’n Remand Op., 2020 WL 7419251, at *10 (Dec. 16, 2020)).¹³⁸ The undersigned agrees with Staff that this nexus is sufficient to show substantial injury or, at the least, a threat of substantial injury.

2. Threat of Substantial Injury

Corning argues that Caihong Display “threatens substantial future injury to Corning’s glass business through its substantial manufacturing capacity, its ability to undersell, its lower costs of production, and its lower prices, all of which have a significant negative impact on Corning’s domestic industry.” CIB at 163; *see id.* at 163-68.

Respondents argue, *inter alia*, that “the premise underlying Corning’s alleged ‘threat of substantial injury’ is entirely hypothetical, repeatedly contradicted by record evidence, and does not establish either injury or nexus.” RIB at 134; *see id.* at 132-34.

¹³⁷ The evidence also shows a nexus to importation. *See* CIB at 162; Tr. (Fischel) at 828:5-19; CDX-0014C.29; CX-4663C; CX-3564C.

¹³⁸ Similarly, Corning’s ability and incentive to invest in domestic activities relating to the production and refurbishment of FDM devices would be reduced.

Staff argues that “[i]f Corning is not found to satisfy the injury requirement based on actual injury, Caihong Display’s substantial increase in manufacturing capacity to produce LCD glass that directly competes with Corning” shows “at the very least, a serious threat of substantial injury,” and that “Caihong Display has announced intentions to further increase its production of high-generation substrate glass in the next 5 years, thus posing an even greater threat to Corning’s domestic industry in the future.” SIB at 121.

For the reasons discussed below, the evidence shows by a preponderance that Caihong Display’s misappropriation of certain Corning trade secrets threatens substantial future injury to Corning’s domestic industry.

a) Future Capacity

Corning presented evidence that Caihong Display currently operates [REDACTED] [REDACTED] CIB at 163 (citing CX-4454C). Corning further cites evidence regarding plans to build [REDACTED] and public discussion of plans to construct “up to 20 Gen 8.x lines in Xianyang.” CIB at 163 (citing supporting evidence).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]” RIB at 133. However,

[REDACTED]

[REDACTED] See RIB at 133 (citing JX-0008C

(Chen Dep. Tr.)); JX-0008C (Chen Dep. Tr.) at 34:17-21 (company's plan is to have 14 Gen 8.5 lines).¹³⁹

Based on the discussion in Part IV.A.1.a regarding current capacity as well as the above, the evidence shows by a preponderance that Caihong Display has substantial foreign manufacturing capacity that will likely increase significantly.

b) Likelihood of Lost Sales and Market Share

Corning argues that the evidence indicates that Corning has lost sales and market share to Caihong Display, and that Corning will continue to do so as Caihong Display further increases supply and lowers prices. *See* CIB at 164. Corning argues that its internal documents corroborate this threat. *See id.* at 165; CX-3025C at 4, 6 (Dec. 2024 Corning document states “[REDACTED],” and “[REDACTED] [REDACTED] . . . [REDACTED]”); Tr. (Hudson) at 753:17-756:18 (discussing CX-3025C); RX-6384C at 12-13, 18 (Jan. 2025 Corning document noting that Caihong Display “[REDACTED],” and because [REDACTED]).

Mr. Fischel estimated the likely effects on Corning's business using three scenarios in which Caihong Display has a production capacity of: (a) 500 Mft² (10 Gen 8.5 lines), (b) 700 Mft² (14 Gen 8.5 lines), and (c) 1,250 Mft² (26 Gen 8.5 lines). Tr. (Fischel) at 830:16-831:5; CX-4662C (Illustration of the Potential Adverse Effects from Irico's Infringing Sales on CDT's Financial Performance). In the 700 Mft² example, using the real dollar exchange rate, he

¹³⁹ [REDACTED]

[REDACTED] JX-0029C (Xu Dep. Tr.) at 263:3-21; *see also* JX-0028C (Wang Dep. Tr.) at 55:9-56:24 [REDACTED]

estimated that Corning's net profits after tax ("NPAT") would decrease by [REDACTED]
[REDACTED], and could decrease by [REDACTED]
[REDACTED]. Tr. (Fischel) at 830:16-831:13, 976:3-23; CX-4662C

[REDACTED].

Respondents argue that Mr. Fischel's estimations are overstated, provide "no temporal element," that Mr. Fischel assumes without sufficient basis that "Corning would [REDACTED] [REDACTED] due to alleged misappropriation," and that Mr. Fischel's analysis that Corning would have obtained [REDACTED] of Caihong Display's sales is not reasonable because "Corning is the industry leader, while Caihong and others are secondary participants." RIB at 133-34.

Respondents' arguments fail to controvert the likelihood of significant effects on Corning from Caihong Display's future anticipated capacity. As discussed above, the evidence shows a likelihood of significant increased capacity, and this increased capacity is likely to affect Corning's sales and/or profits (for the same reasons it has already affected Corning's sales and/or profits). Even if Mr. Fischel's estimates overstate the precise level of increased capacity, there is no requirement to "quantify [the] harm" that threatens its domestic industry. *Foodservice Equip.*, Inv. No. 337-TA-1166, Op. Remanding Inv., at 13-14 (Dec. 16, 2020) (EDIS Doc. ID 728171). Injury is often shown through "circumstantial evidence," *id.*, such as the evidence of expanded capacity, underselling, and direct competition. *See also Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 64; Tr. (Cameron) at 1069:7-21 (Dr. Cameron acknowledging that "[i]n 2025, Corning foresaw a potential drop in its market share due to ... new entrants" like Caihong Display).

Based on the foregoing, the undersigned finds that Corning has shown the likelihood of lost sales and/or profits due to Caihong Display's anticipated future capacity.

c) Causal Nexus

For the reasons discussed above regarding the injury analysis, the evidence shows by a preponderance that the likelihood of future lost sales and profits has a causal nexus to Caihong Display's misappropriation of certain Corning trade secrets. *Cf. Botulinum Toxin Prods., Inv. No. 337-TA-1145, Comm'n Op. at 58-60* (finding a threat of injury based on "threaten[ed] future annual losses" and "long-term price erosion"). Accordingly, the evidence shows a threat of substantial injury to the domestic industry.

VI. AFFIRMATIVE DEFENSES

Respondents have asserted affirmative defenses of equitable estoppel, statute of limitations, laches, acquiescence, waiver, license, and unclean hands. For the reasons discussed below, the evidence fails to show that these defenses should bar Corning's Section 337 claims.

A. Equitable Estoppel

1. The Parties' Positions

Respondents argue that between 2008 and at least 2022, Corning misled Caihong Display into believing that its trade secret claims had been resolved. RIB at 136. Respondents assert that Corning first raised its trade secret allegations with Caihong Display's predecessors in 2008 and that between 2008 and 2011, Corning and Caihong Display engaged in several rounds of written correspondence and in-person meetings to address Corning's allegations, which included a meeting where a Corning employee stated that Corning would not consider any type of cooperation with Caihong Display until the issue of trade secret misappropriation was resolved. *Id.* at 137. Respondents submit that in 2012, Corning sought to resolve its trade secret allegations

and solicited Caihong Group¹⁴⁰ to engage in a [REDACTED]
[REDACTED] ([REDACTED] *Id.* Respondents argue that by
[REDACTED], Caihong Display understood that the dispute on the trade secrets was
resolved. *Id.* at 137-38. According to Respondents, this is confirmed by [REDACTED]
[REDACTED] *Id.* at 138; RRB at 66-68. Respondents argue that Corning’s
argument it [REDACTED] [REDACTED]
[REDACTED] “and the commercial success that Corning enjoyed because of its
decision to collaborate instead of fight with Caihong.” RRB at 72.¹⁴¹

In addition, Respondents submit that consistent with the [REDACTED], Corning and
Caihong Display developed a long-standing business relationship in the following years resulting
in two multi-million-dollar joint ventures and other efforts to collaboratively expand China’s
LCD glass industry. RIB at 138. Specifically, Respondents state that Corning and Caihong
Display established two joint venture (JV) companies in 2017 and 2018, which constituted
further proof to Caihong Display that Corning’s trade secret claims were resolved. *Id.* Similarly,
in 2021 and 2022, Respondents state that Corning and Caihong Display [REDACTED]
[REDACTED]. *Id.* at
139. Respondents also argue that contemporaneous internal Corning documents confirm that
[REDACTED]

¹⁴⁰ Respondents state that “Caihong Group was the controlling shareholder [of] Caihong Display at the time, but is not any longer.” RIB at 137 n.23.

¹⁴¹ Corning contends that Respondents’ arguments on reply regarding [REDACTED]
[REDACTED] are new and untimely. *See* Corning MTS1 at 6-7. Upon review of the briefing, the
undersigned disagrees, particularly given that Corning itself described [REDACTED]
See Resp. MTS1 Opp. at 8; CIB at 172. However, in any event, this portion of Respondents’ Reply is not
material to the analysis in this ID. Corning’s objection to arguments regarding inferences from Corning
correspondence is also rejected. Corning MTS1 at 6.

[REDACTED]. *Id.* Respondents contend that from 2013-2022, Corning never raised the trade secret issue with Caihong Display. RRB at 68. Respondents contend that the first time Corning raised the trade secret claims again was in 2024 and that “[h]ad Corning thought its prior trade secret claims were unresolved, it would have started its pre-suit investigation for this matter with its 2008 trade secret claims, and it would not have [REDACTED] [REDACTED].” *Id.* (citing JX-0017C (Hudson)).¹⁴²

Respondents also argue that Caihong Display relied on Corning’s representations by heavily investing in the development of its manufacturing equipment and business infrastructure to sell LCD glass substrates. RIB. at 140. Respondents claim that Caihong Display invested in construction of new manufacturing lines, including lines it has been forced to halt due to this investigation. *Id.* Furthermore, Respondents assert that Caihong Display relied on Corning’s conduct in choosing not to pursue other technology sources not subject to Corning’s allegations, [REDACTED] *Id.* at 140-41. Respondents further assert that Caihong Display made significant organizational concessions, such as agreeing to have the JVs purchase all their glass from Corning, being required to provide guarantees for financing, secure subsidiaries, and cause Respondent CHOT to purchase nearly all of its glass from Corning or the JVs. *Id.* at 141. Respondents also assert that Caihong Display relied on Corning’s representations in deciding not to initiate litigation to resolve Corning’s allegations closer in time to the events in question. *Id.*; *see also* RRB at 76-79.¹⁴³

¹⁴² Corning contends that Respondents’ arguments on reply regarding how the pre-suit investigation was conducted are untimely. *See* Corning MTS1 at 5-6. Upon review of the briefing, the undersigned disagree and finds this is permissible attorney argument. In any event, this portion of Respondents’ Reply is not material to the analysis in this ID.

¹⁴³ Corning contends that Respondents’ arguments on reply regarding reliance include discussion of Wang Xiochun’s testimony about Irco’s [REDACTED] that are untimely. *See* Corning MTS1 at 7-8. Upon review of the briefing, the undersigned disagrees, given Respondents’ discussion in its initial

Furthermore, Respondents contend that Caihong Display will be materially harmed and prejudiced if Corning is permitted to proceed with its claim. *Id.* at 142. First, Respondents claim that Caihong Display will be economically prejudiced because it spent billions developing its manufacturing and sales infrastructure, investing in employees, customer relationships, and other assets associated with the products now accused by Corning in this Investigation, and would not have made those investments had it believed that Corning still had and/or might pursue trade secret claims against Caihong Display. *Id.* In addition, Respondents argue that Caihong Display has suffered evidentiary prejudice because both parties have struggled to locate relevant documents and secure testimony from critical witnesses. *Id.* at 143-44. Furthermore, Respondents assert that the passage of time has also led to the loss of other electronic documents and physical evidence as Caihong Display has decommissioned facilities, upgraded technology, moved office locations, and made several organization changes. *Id.* Respondents also contend that Caihong Display was unable to inspect the conditions where the drawings at issue were allegedly taken in 1999, which prevented it from fully investigating whether Corning exercised reasonable measures. *Id.* While Corning claims that the absence of certain R&D documents mean that Caihong Display has failed to produce evidence to show that it developed the technology to which the asserted trade secrets relate through independent research and development, Respondents argue that these documents would have been easier to locate had Corning brought its claims in a timely manner. *Id.* at 145. Similarly, Respondents claim that material witnesses are unavailable. *Id.*; *see also* RRB at ¹⁴⁴

post-hearing brief discussing AvanStrate and citing Ms. Wang's testimony. *See* Resp. MTS1 Opp. at 9; RIB at 140-141.

¹⁴⁴ Corning contends that Respondents' arguments on reply that certain witnesses were required to retire at age 60 under Chinese law and were not available to testify are untimely. *See* Corning MTS1 at 8-9. Upon review of the briefing, the undersigned agrees that the specific argument that there was evidentiary

Respondents also argue that other equities do not favor Corning. RRB at 88. Respondents dispute Corning's contention that a trade secret defendant that denies wrongdoing and defends itself in court is not entitled to equitable defenses. *Id.* In addition, Respondents argue that regardless of whether Corning had limited legal options, Corning always had the ability to tell Caihong Display expressly that it was not waiving its claims or that it intended to sue Caihong Display in the future. *Id.* at 89.¹⁴⁵

Corning asserts that Caihong Display failed to show any misleading statements or conduct that created a necessary inference that Corning would not enforce its rights. CIB at 170. In addition, Corning states that Caihong Display never [REDACTED] [REDACTED] nor did Corning [REDACTED] [REDACTED]. *Id.* Corning also submits that Caihong Display has not alleged or shown that Corning committed not to sue or that Caihong Display asked whether Corning would sue. *Id.* Moreover, Corning contends that Caihong Display relies on "unsubstantiated hearsay" from Xu Jian and Wang Xiaochun that is unreliable and unpersuasive.¹⁴⁶ *Id.* at 170-71. In addition, Corning argues that it always made clear that it regarded its fusion technology as proprietary. *Id.* Corning contends that the [REDACTED] came about after it pursued [REDACTED]

prejudice based on the legal retirement age was untimely. In any event, this portion of Respondents' Reply is not material to the analysis in this ID. To the extent Corning's motion to strike addresses any other portions of Respondents' equitable estoppel arguments regarding prejudice, the motion is denied for failure to adequately specify Corning's objection.

¹⁴⁵ Corning contends that Respondents' arguments addressing Corning's "other equities" argument are untimely, including arguments regarding "Corning's 2010 suit against RHI in New York state court." *See* Corning MTS1 at 4-5. Upon review of the briefing, the undersigned finds that most of these arguments are appropriate rebuttal and/or were fairly raised in Respondents' Initial Post-Hearing Brief and in any event are not material to resolution of this issue *See* Resp. MTS1 Opp. at 5-6.

¹⁴⁶ Corning also asserts that Respondents contend that [REDACTED], which would mean that Mr. Xu got the year wrong and undermines his reliability. *See* CRB at 61.

██████████ to try to work on ██████████ while consistently asserting misappropriation by Caihong Display. *Id.* at 172.

Corning further contends that it did not mislead Caihong Display at any later time. *Id.* Corning asserts that the fact that Corning and Caihong Display explored limited forms of cooperation does not mean that Corning abandoned its legal rights. *Id.* Rather, Corning submits that through their interactions, Corning continued to bring up its concerns over the IP and trade secret misappropriation with Caihong Display. *Id.* at 172-73. Corning states that Caihong Display consistently requested, and Corning consistently refused, a release of any issues in the agreement. *Id.* at 173. Corning therefore argues that Caihong Display's continued requests for releases well after the ██████████ show that it knew Corning had not abandoned its claims. *Id.*¹⁴⁷ While the parties ██████████, Corning submits that it protected Corning's trade secrets and did not create any binding obligation other than keeping discussions confidential and contemplated the parties taking measures to protect any intellectual property shared. *Id.* Corning argues that the ██████████ ██████████ also confirmed that it continued to regard its concerns about trade secret misappropriation as unresolved. *Id.* at 173-74. Corning submits that the ██████████ ██████████, expressly stated Corning's view that the fusion draw process of

¹⁴⁷ Respondents contend that the argument that Caihong requested release of trade secret misappropriation claims and that Corning refused those requests was untimely as it never appeared in Corning's pre-hearing brief. *See* Resp. MTS2 at 7. However, this argument is based on testimony from Mr. Hudson which went forward without objection. Rather, Respondents (effectively) cross-examined Mr. Hudson on the testimony. *See* Corning MTS2 Opp. at 13-14. Accordingly, this portion of Corning's briefing is not stricken.

glass substrate products manufactured by Caihong Display was related to certain intellectual property owned by Corning. *Id.*¹⁴⁸

Corning also contends that Caihong Display cannot show reliance because Caihong Display was committed to growing its glass substrate business using Corning's trade secrets, but presented no evidence that it would not have made its investments anyway. *Id.* at 175. Corning argues that between 2008 when Corning first raised its trade secret allegations and 2012 when [REDACTED] (*i.e.*, when the dispute was unresolved), Caihong Display built [REDACTED] production lines demonstrating that it was not waiting for Corning to abandon or settle its allegations. *Id.*¹⁴⁹

In addition, Corning contends that Caihong Display cannot show material prejudice. *Id.* at 176. For example, Corning asserts that Caihong Display cannot show economic prejudice because it has not shown that it declined non-violative alternatives. *Id.* Furthermore, Corning argues that Caihong Display cannot show evidentiary prejudice because it did not demonstrate anything specific, but rather, generically claimed difficulty in locating relevant documents and knowledgeable witnesses. *Id.* at 176-77. Corning states that Caihong Display's prejudice claims about technical issues are similarly vague and unsupported. *Id.* at 177.¹⁵⁰ Lastly, Corning argues that Caihong Display's alleged misappropriation weighs heavily against it in the "overall

¹⁴⁸ Respondents contend that Corning's argument regarding the [REDACTED] was untimely as it never appeared in Corning's pre-hearing brief. *See* Resp. MTS2 at 7. Upon review of the briefing, the undersigned finds that this argument is permissible. In any event, this portion of Corning's briefing is not material to the analysis in this ID.

¹⁴⁹ Respondents contend that Corning's related reply argument that "Caihong failed to 'show that it would have sued Corning in 2010'" was untimely. Resp. MTS2 at 6. Upon review of the briefing, the undersigned finds that this was a permissible failure of proof argument.

¹⁵⁰ Respondents contend that Corning's argument regarding that "Caihong has not established that it would have designed around Corning's purported trade secrets" or made additional investments in different technologies is untimely. *See* Resp. MTS2 at 8. Upon review of the briefing, the undersigned finds that this argument was permissible as a failure of proof argument.

balancing of equities” as well as its false denials of wrongdoing and refusal to deal honestly with Corning. *Id.* at 177-78.

Staff submits that “[f]or the reasons set forth by Corning, the evidence does not support Caihong Display’s equitable estoppel defense” SIB at 122-25.

2. Discussion

“Equitable estoppel, a doctrine designed to avoid injustice, has three elements: misleading conduct, reliance, and prejudice.” *GlaxoSmithKline LLC v. Teva Pharms. USA, Inc.*, 25 F.4th 949, 952 (Fed. Cir. 2022) (Moore, J., concurring in denial of rehearing en banc); *see also Schlafly v. Caro-Kann Corp.*, No. 98-1005, 155 F.3d 565, 1998 WL 205766, at *4 (Fed. Cir. Apr. 28, 1998) (“Equitable estoppel requires the alleged infringer to prove by a preponderance of the evidence that (1) the patent owner, through misleading conduct, led the alleged infringer to reasonably infer that the patent owner did not intend to enforce its patent against the alleged infringer; (2) the alleged infringer relied on this conduct; and (3) due to the reliance, the alleged infringer will be materially prejudiced if the patent owner is allowed to proceed on its claim.”); *High Point SARL v. Sprint Nextel Corp.*, 817 F.3d 1325, 1330 (Fed. Cir. 2016). All three elements must be established by a preponderance of the evidence. *See Certain Sortation Sys., Parts Thereof, and Prods. Containing Same*, Inv. No. 337-TA-460, Comm’n Op., 2003 WL 1712556, at *7 (Feb. 19, 2003) (citing *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1046 (Fed. Cir. 1992), *overruled on other grounds by SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328 (2017)).

Even where the three elements of equitable estoppel are established, the court must also “take into consideration any other evidence and facts respecting the equities of the parties in exercising its discretion and deciding whether to allow the defense of equitable estoppel to bar

the suit.” *Ferring B.V. v. Allergan, Inc.*, 980 F.3d 841, 857 (Fed. Cir. 2020) (quoting *Aukerman*, 960 F.2d at 1043).

As discussed below, while the evidence supports a finding of misleading conduct by a preponderance of the evidence, it does not show that the reliance and material prejudice elements are met.

a) Misleading Conduct

Respondents have shown, by a preponderance, misleading conduct by Corning with respect to whether it intended to enforce its trade secrets against Caihong Display. As applied by the Federal Circuit in the patent context, equitable estoppel requires that the conduct at issue “must have supported an inference that the patentee did not intend to press an infringement claim against the alleged infringer.” *Aukerman*, 960 F.2d at 1042. Equitable estoppel may arise “where, coupled with other factors, a patentee’s ‘misleading conduct’ is essentially misleading inaction” if “plaintiff’s inaction” is “combined with other facts respecting the relationship or contacts between the parties to give rise to the necessary inference that the claim against the defendant is abandoned.” *Id.*; *see also ABB Robotics, Inc. v. GMFanuc Robotics Corp.*, 52 F.3d 1062, 1063 (Fed. Cir. 1995) (“Misleading action by the patentee may be silence, if such silence is accompanied by some other factor indicating that the silence was sufficiently misleading to amount to bad faith.”). In “the most common situations, the patentee specifically objects to the activities currently asserted as infringement in the suit and then does not follow up for years.” *Aukerman*, 960 F.2d at 1042.; *see also Scholle Corp. v. Blackhawk Molding Co., Inc.*, 133 F.3d 1469, 1472 (Fed. Cir. 1998) (finding misleading conduct based on “cooperative behavior, in light of [plaintiff’s] previous threats to sue”); *ABB Robotics*, 52 F.3d at 1064 (affirming district court finding of misleading action in view of, *inter alia*, “other negotiations which took place . . .

which led to licensing agreements under other . . . patents”); *contrast with SCA Hygiene Prods.*, 767 F.3d 1339, 1350 (Fed. Cir. 2014) (reversing summary judgment on equitable estoppel where, *inter alia*, although there was a letter followed by inaction, the record failed to suggest “any other close relationship”).¹⁵¹

Here, a preponderance of the evidence supports the inference that Corning misled Caihong Display into believing that Corning did not intend to enforce its trade secrets relating to the manufacture of LCD glass against Caihong Display, including:

- Corning’s initial letter in 2008, made to Caihong Display’s predecessor, regarding Caihong’s alleged possession of Corning trade secrets “related to the manufacture of LCD glass.” See RIB at 137; JX-2383C (Corning “is extremely concerned about its proprietary information and trade secrets being in the possession of Caihong and the use Caihong is making of that information”).
- Subsequent meetings and correspondence discussing this issue between 2008 and 2012, including a Corning letter [REDACTED] and a Corning letter notifying Caihong of lawsuits in China and South Korea against Dongxu for misappropriation and use of “Corning’s manufacturing technology for liquid crystal display (LCD) glass substrates.” See RIB at 137; JX-2388C (Aug. 24, 2011 letter)¹⁵²; JX-2385C (April 2, 2010 Corning letter referencing two meetings with Shaanxi Caihong on Dec. 3, 2008 and Feb. 11, 2009 to address trade secret misappropriation issues and seeking meeting [REDACTED]). This correspondence also included a letter from Irico Group to Corning denying any misappropriation of Corning’s trade secrets. See JX-2391C (May 5, 2009).
- In [REDACTED] by Corning and Irico. RIB at 137; JX-2403C ([REDACTED]). The [REDACTED] states that its purpose was

¹⁵¹ See also *Wang Labs, Inc. v. Mitsubishi Elecs. Am., Inc.*, 103 F.3d 1571, 1581 (Fed. Cir. 1997) (“implied license looks for an affirmative grant of consent or permission . . . Equitable estoppel, on the other hand, focuses on ‘misleading’ conduct suggesting that the patentee will not enforce patent rights”).

¹⁵² As discussed in Part IV *supra*, Dongxu assisted Caihong with its Gen 5 FDM. Corning’s 2008 notice letter referenced the work of Dongxu employees for Caihong. See JX-2383C (referencing misappropriation by South Korean nationals recently or currently providing services for Caihong). The evidence shows that Corning settled its dispute with Dongxu in [REDACTED]. See CX-3589C; CIB at 72 (stating, citing CX-3589C, that [REDACTED]).

JX-2403C at 1.

- Following the signing of the [REDACTED], the entrance of Corning and Caihong Display into two joint ventures relating to LCD glass (*i.e.*, the product at issue in the trade secret misappropriation allegations) in 2017 and 2018, as well as a [REDACTED]. See RIB at 138-139; JX-2364C; JX-2365C; JX-2394C ([REDACTED] stating that “[i]n consideration of the successful experience of two finishing JVs, [REDACTED]”).
- The evidence indicating the lack of any communications from Corning regarding the alleged trade secret misappropriation between 2013 and reasserting concerns after 2022. See RIB at 140; JX-0017C (Hudson Dep. Tr.) at 288:7-9, 11-13 (testifying that “I do not recall specific conversations in that window [between 2013 to 2022] related to the claims that we have here today”); Tr. (Hudson) at 739:1-10¹⁵³; *Aukerman*, 960 F.2d at 1044 (“the longer the delay, the stronger the inference becomes”).

Corning’s arguments in opposition do not persuasively controvert the misleading nature of this conduct. Corning argues that Corning never “committed not to sue” and that Caihong Display never “squarely asked whether Corning would sue.” CIB at 170. However, the caselaw indicating that misleading conduct can be based on silence (under appropriate circumstances) refutes the position that any explicit commitment not to sue or direct statement is required. See discussion *supra*.¹⁵⁴

Corning also argues that there is no reliable evidence that “Corning expressly stated if the dispute on trade secret[s] was resolved, then there would not be any collaborations between Corning and Caihong Display.” CIB at 170-71. While the undersigned agrees with this

¹⁵³ Similarly, Mr. Hudson’s testimony that Corning continued to bring up concerns over trade secret misappropriation, and that Irico would consistently bring up the issue of a release (see CIB at 172-73) was uncorroborated and not reliable, particularly in view of his corporate deposition testimony and cross-examination testimony. See RRB at 74-75. Corning’s argument that [REDACTED] corroborated Mr. Hudson’s testimony as to 2013-2022 is unpersuasive. See CRB at 62.

¹⁵⁴ Corning cites *Sprint Comm’n’s Co. L.P. v. Time Warner Cable, Inc.*, 2017 WL 978107 (D. Kan. Mar. 14, 2017) in support of its position. See CRB at 61-62. There, however, the defendant did “not contend that there was any . . . threat or objection” to the allegedly infringing activities raised prior to suit. 2017 WL 978107, at *5.

proposition, Caihong Display's equitable estoppel argument does not hinge on whether this statement was or was not made. *See* RRB at 69-70. The other evidence of record concerning Corning's course of conduct is sufficient.

Corning further seeks to discount the [REDACTED] as a [REDACTED] for which [REDACTED] and the two Joint Venture agreements as focused on the cold-end process for glass substrates (rather than the hot-end portion of the process addressed by the asserted trade secrets). *See* CIB at 171, 173. Corning also argues that none of these agreements included any kind of release or permission for Caihong Display to use Corning's trade secrets. *See id.* While these arguments may suggest the lack of an explicit license to Caihong Display, they do not controvert the evidence of a cooperative relationship between Corning and Caihong Display, relating to LCD glass, during a substantial period where no mention was made of trade secret misappropriation concerns. *See* discussion *supra*; *see also* Tr. (Fischel) at 837:17-25; RX-1786.0001 (Corning China website noting that in 2018, "to further strength the partnership with local enterprises, Corning opened two LCD glass substrate finishing joint ventures with IRICO Display Device Co., Ltd. in Chengdu and Xianyang."); *cf.* *ABB Robotics*, 52 F.3d at 1064 (affirming district court finding of misleading action in view of, *inter alia*, "other negotiations which took place . . . which led to licensing agreements under other . . . patents").¹⁵⁵

Corning also suggests that it would have been [REDACTED] [REDACTED], citing the testimony of its experts Mr. Triplett and Mr. Mulvenon. *See* CIB at 172 (citing Tr. (Triplett) at 912:1-19, 923:5-7 and Tr. (Mulvenon) at

¹⁵⁵ The length of time before Corning asserted its trade secrets against Caihong was all the more misleading given the expectation (and requirement) that a trade secret owner will act expeditiously if it wishes to protect its trade secret rights. *See* Part IV.D.2 *infra*.

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99:14-100:8). However, this generalized testimony is at odds with the more specific evidence of record. That evidence shows that Corning did assert legal claims against Dongxu (who assisted Caihong Display with its Gen 5 FDM), including a civil case in China, and specifically informed Caihong Display of this legal action. *See* JX-2388C.¹⁵⁶ Corning also initiated, in 2024, legal claims against Caihong Display in China. *See* Compl. ¶ 139. Further, when asked about the reasons Corning did not bring a legal claim against Caihong before 2012, Corning's corporate witness: (1) shielded this information on the basis of privilege (*see* Tr. at 736:14-25, JX-0017C at 263:17-264:12); and (2) to the extent Corning did provide testimony relating to this issue, the testimony identified an interest in [REDACTED]

[REDACTED]
[REDACTED].¹⁵⁷ *See also* RIB at 147; RRB at 90.¹⁵⁸ On the evidence of record, Corning's arguments regarding [REDACTED]

¹⁵⁶ The evidence shows that Corning ultimately settled this case with Dongxu in 2013 on terms that [REDACTED] *See, e.g.,* CX-3589C at 1, 12, 19-20, 43; Tr. (Hudson) at 145:1-11; CIB at 72 (noting that [REDACTED]); *id.* at 76, 81, 85, 90, 94, 97, 120, 134. The agreement indicates that Dongxu is "a company formed under the laws of The People's Republic of China" and refers to both civil and criminal actions in China. CX-3589C, at 1, 19-20. Mr. Mulvenon testified that "Dongxu was a party working with Irico on the development of the fusion draw machines . . . So what happened with Dongxu, I believe, would translate to Irico. Admittedly, they're separate parties, but the work was . . . done in combination." Tr. (Mulvenon) at 165:12-17.

¹⁵⁷ *See* Tr. (Hudson) at 737:10-13 [REDACTED]
[REDACTED]
(emphasis added); *id.* at 735:10-24 ([REDACTED] was [REDACTED])
[REDACTED]
(emphasis added); JX-0017C (Hudson Dep. Tr.) at 263:17-22 ("our view was that the best strategy was to approach and focus on the DongXu initiative here").

¹⁵⁸ Corning has more recently filed a complaint against IRICO companies in China. *See* Complaint ¶ 139.

██████████ do not sufficiently detract from the misleading nature of Corning's conduct.

Corning also argues that the parties' communications never discussed importation of Irico's glass into the United States and thus "there cannot have been any misleading communication about Section 337." CIB at 169. This argument is unpersuasive. The parties' communications discussed above referred to concerns about Caihong's alleged trade secret misappropriation, not about sales for importation into any particular geographic region or legal claims in any particular country. *See* JX-2383C; JX-2385C. Indeed, as Respondents point out, Corning's communications specifically discussed legal action outside China. *See* RRB at 87 (discussing JX-2388C and distinguishing *Certain Motorized Vehicles*).

Taken as a whole, a preponderance of the evidence shows misleading conduct by Corning as to enforcement of its trade secret rights relating to manufacture of LCD glass against Caihong.¹⁵⁹

b) Reliance

While Respondents have shown misleading conduct, Respondents have not shown by a preponderance of the evidence that Caihong relied on Corning's alleged misleading conduct. Respondents contend that Caihong relied on Corning's representations by "heavily investing in the development of its manufacturing equipment and business infrastructure to sell the LCD glass substrates," "invest[ing] to construct new manufacturing lines," "choosing not to pursue other technology sources," entering into the JVs with Corning, and "deciding not to initiate litigation to resolve Corning's allegations closer in time to the events in question." *See* RIB at

¹⁵⁹ The analysis above does not apply to the Scaling Trade Secret (TS 19). Corning's allegations regarding TS 19 do not relate to the 2008-2012 time period.

140-41. However, Respondents fail to provide sufficient evidence showing that those actions were made as a result of relying on Corning's conduct "rather than a business judgment of its own." *See Hemstreet v. Comput. Entry Sys. Corp.*, 972 F.2d 1290, 1294-95 (Fed. Cir. 1992) ("[T]here is a total absence in the record of any showing by CES that its activities were in reliance upon supposed actions of Hemstreet, rather than a business judgment of its own—a judgment which subsequent events may well prove to have been faulty.").

For example, Respondents cite testimony from Ms. Wang regarding certain investments or actions by Caihong Display. *See* RIB at 140-41 (citing Tr. (Wang) at 888:13-15, 881:18-882:8, 884:10-885:12, 899:19-22, 889:2-6, 889:7-10; JX-0028C (Wang Dep.) at 52:9-14). This testimony, however, consists of conclusory statements that Caihong's actions were "[d]ue to the [REDACTED]." *See* Tr. (Wang) at 888:13-15 ("Due to the [REDACTED], Caihong Display increased its investment of the R&D of glass substrate."), 899:19-22 ("After the [REDACTED], two joint ventures were established. For that, Caihong Display had invested over [REDACTED] RMB of expenditure, those joint ventures. Had the dispute on trade secret not been resolved, Caihong Display would not have established such joint ventures with Corning."), 889:2-6 ("Had [REDACTED], then Caihong Display's understanding would be that the dispute of trade secret would continue and Caihong Display would not have entered into these two joint ventures with Corning."); *Gasser Chair Co., Inc. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770, 776 (Fed. Cir. 1995) (rejecting "conclusory assertions" in support of equitable estoppel arguments); *Meyers v. Asics Corp.*, 974 F.2d 1304, 1309 (Fed. Cir. 1992) (reversing grant of summary judgment on equitable estoppel

where “Defendants make numerous conclusory assertions that they relied on Meyers conduct, but they have not presented undisputed facts to show that they did.”).

This testimony was also not sufficiently credible. Ms. Wang began working as chief financial director for Caihong Display in 2018 and did not establish personal knowledge of the events described above. *See* Tr. (Wang.) at 874:11-17. Nor is Caihong Display’s alleged reliance corroborated by any other record evidence. Moreover, Caihong Display’s reliance argument is undercut by the fact that it expanded its production lines between 2008 (when it received notice of certain of Corning’s trade secret allegations) and the [REDACTED]. *See* CIB at 175 (citing CX-4454C).¹⁶⁰ Taking the evidence as a whole, Respondents have not persuasively shown that Caihong Display relied on Corning’s misleading conduct. *See SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 767 F.3d 1339, 1351 (accused infringer’s testimony that it “would not have made certain capital investments had it been involved in an earlier lawsuit over the [accused] products” did “not necessarily establish that [the accused infringer] expanded its business after considering the implications of [the patent owner]’s silence”); *Certain Color Intraoral Scanners and Related Hardware and Software*, Inv. No. 337-TA-1091, Final ID, EDIS Doc. ID 681285, at 128 (July 15, 2019) (“3Shape presents no evidence that it would not have made those investments anyway but for Align’s purported conduct.”), *unreviewed in relevant part by* Comm’n Notice, EDIS Doc. ID 682195, at 2 (July 18, 2019); *Aukerman*, 960 F.2d at 1042-43 (“The accused infringer must show that, in fact, it substantially

¹⁶⁰ Respondents state that Corning’s interpretation of RX-4454C is incorrect, but does not persuasively controvert that Caihong expanded its production lines during this time. This expansion is different from the “stopping sales” scenario discussed by Respondents. *See* RRB at 77 (citing *Arctic Cat*). In *High Point SARL v. Sprint Nextel Corp.*, 817 F.3d 1325 (Fed. Cir. 2016) (cited at RRB at 140), the Federal Circuit found reliance based on specific testimony of witnesses with personal knowledge regarding the content of “many conversations.” No such persuasive evidence was presented here.

relied on the misleading conduct of the patentee in connection with taking some action.”); *id.*

(“Reliance is not the same as prejudice or harm, although frequently confused.”).¹⁶¹

c) Material Prejudice

Respondents have also failed to demonstrate material prejudice based on reliance. *See Schlafly*, 1998 WL 205766, at *4 (prejudice element requires “alleged infringer to prove by a preponderance of the evidence that . . . due to the reliance, the alleged infringer will be materially prejudiced if the patent owner is allowed to proceed on its claim”). Because Respondents have not proven reliance, *see supra*, they also have not shown that Caihong Display has been materially prejudiced due to that reliance. *See SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 767 F.3d 1339, 1350 (Fed. Cir. 2014) (“There is a difference between prejudice that *results from* a patentee’s alleged misrepresentation and prejudice caused by *reliance upon* it. . . . Although the former is sufficient to show a nexus for laches, the latter is required to show reliance for equitable estoppel”) (emphasis in original); *Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V. v. Sirius XM Radio Inc.*, 138 F.4th 1373, 1382 (Fed. Cir. 2025) (finding, in the context of equitable estoppel, that while summary judgment was appropriate as to misleading conduct, “because SXM has not presented undisputed evidence of its reliance, SXM necessarily cannot establish that it would be prejudiced by that reliance at this stage.”).¹⁶²

* * *

¹⁶¹ Respondents’ argument that they relied upon Corning’s conduct in not suing Corning (*see* RIB at 141) is unpersuasive. *See* CRB at 63-64.

¹⁶² While Respondents’ economic prejudice arguments do not show prejudice from *reliance* on Corning’s misleading actions, Respondents do appear to show economic prejudice from the length of Corning’s misleading conduct, including investments in new facilities and equipment between 2010 and 2024. *See* RIB at 142-43; RX-2645C ([REDACTED]); RX-2642C ([REDACTED]); Tr. (Hudson) at 779:22-782:17 (discussing RX-2645C and RX-

For the reasons discussed above, Respondents have failed to prove by a preponderance of the evidence that Corning’s claims should be barred by equitable estoppel.

Further, even where the three elements of equitable estoppel are established, the court must also “take into consideration any other evidence and facts respecting the equities of the parties in exercising its discretion and deciding whether to allow the defense of equitable estoppel to bar the suit.” *Ferring B.V. v. Allergan, Inc.*, 980 F.3d 841, 857 (Fed. Cir. 2020) (quoting *Aukerman*, 960 F.2d at 1043). Here, consideration of the equities does not warrant barring Corning’s claims. *Cf. Sprint Commc’ns L.P. v. Time Warner Cable, Inc.*, No. 11-2686-JWL, 2017 WL 978107, at *7 (D. Kan. Mar. 14, 2017) (concluding that even if the three elements of equitable estoppel had been shown, equitable estoppel would have been denied based on “the totality of the evidence”). Even if the evidence discussed above were sufficient to show reliance and prejudice, a consideration of the other equities, including the intentional conduct involved in Caihong Display’s trade secret misappropriation discussed above (*i.e.*, the improper acquisition and use of Corning’s trade secrets through both the PicVue and SCP pathways and benefit therefrom), would weigh against barring Corning’s claims. *See Gasser Chair Co. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770, 775-76 (Fed Cir. 1995) (“[i]ntentional

2642C); *see also* CIB at 156 (describing Caihong Display’s increased capacity between 2020 and 2024); *SCA Hygiene*, 767 F.3d at 1347 (“[e]conomic prejudice results from a patentee’s delay if the financial losses at issue likely would have been prevented from by earlier suit”; “for example, making heavy capital investment and increasing production can constitute economic prejudice.”) (internal emphases and quotations omitted). Respondents have not persuasively shown significant and material evidentiary prejudice. Respondents acknowledge that multiple Caihong Display employees were able to “thoroughly describe[] their development of Caihong’s G5 equipment in their depositions” (RRB at 84); *see also* CRB at 65 (identifying “numerous witnesses who have worked for Irico since it entered the glass substrate business”). This included Xu Jian, whose group “was responsible for designing the forming equipment.” JX-0029C (Xu Dep. Tr.) at 165:14-16. Respondents also cite no testimony persuasively identifying alleged missing Caihong documents that would have been material to the misappropriation analysis. *See* RRB at 82-83; RIB at 143-144. Indeed, Respondents did not use the Gen 5 documents they had, making only belated attorney arguments regarding these documents. *See* Part III.A, IV.A.1.c *supra*.

copying” of plaintiff’s product can “change the equities significantly in plaintiff’s favor”); *Aukerman*, 960 F.2d at 1044 (reversing district court summary judgment application of equitable estoppel, holding that “for purposes of summary judgment, [defendant’s] copying should have been deemed misconduct to be weighed into the court’s decision”); *cf.* *Certain Color Intraoral Scanners and Related Hardware and Software* (“*Color Intraoral Scanners*”), Inv. No. 337-TA-1091, Initial Determination, EDIS Doc. ID 681285, at 129-30 (July 15, 2019) (finding that even if evidence supported application of the doctrines of equitable estoppel, acquiescence, and waiver, the ALJ “would not exercise my discretion” to apply them under the circumstances of the case).^{163, 164}

B. Statute of Limitations

1. The Parties’ Positions

Respondents assert that a three-year statute of limitations should apply to Corning’s trade secret claims under the DTSA and UTSA. RIB at 157 (citing 18 U.S.C. § 1836(d); UTSA § 6.3).

¹⁶³ Respondents’ citations (RRB at 85) are unpersuasive. *Wilson v. Corning* discussed a laches defense where the court found that there had been no trade secret misappropriation. *See* 2023 WL 6218160, at *34 (Sept. 25, 2023) (plaintiffs “did not prove any wrongful ‘use’ of their confidential information or trade secrets”). In *Jones v. Ceramco*, 378 F.Supp. 65, 68 (E.D. New York Jul. 24, 1974) (*vacated in part* by 387 F.Supp. 940) (E.D. New York Jan. 7, 1975), the district court found that the statute of limitations “appear to be a complete bar” and addressed equitable estoppel and laches briefly in one sentence. While Respondents may be correct that the “other equities” argument is not a “threshold” argument that warrants ignoring the factual circumstances relating to misleading conduct, they do not persuasively argue that “other equities” should not be considered.

¹⁶⁴ However, Corning’s delay and the other facts and circumstances here may potentially be taken into account in determining the scope and extent of an appropriate remedy. *See generally Viscofan, S.A. v. U.S. Int’l Trade Comm’n*, 787 F.2d 544, 548 (Fed. Cir. 1986) (“the Commission has broad discretion in selecting the form, scope and extent of the remedy”); *cf. Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 666, 686 (2014) (while the courts below “erred in treating laches as a complete bar to Petrella’s copyright infringement suit,” in the event that plaintiff prevailed on the merits, “the District Court, in determining appropriate injunctive relief and assessing profits, may take account of her delay in commencing suit”); *Certain Crawler Cranes and Components Thereof*, Inv. No. 337-TA-887, Comm’n Op. at 70 (May 6, 2015) (EDIS Doc. ID 556530) (adopting length of exclusion order for trade secret misappropriation based on a “balancing of a totality of the evidence presented”).

While Respondents recognize that Section 337 does not expressly contain a statute of limitations provision, they submit that the Federal Circuit has held that a single federal standard should determine what constitutes a misappropriation of trade secrets to establish an unfair method of competition under Section 337. *Id.* Respondents argue that in order for that framework to operate consistently, a limitations period needs to apply to trade secrets claims in Section 337 investigations. *Id.* In addition, Respondents contend that strong policy rationales support applying a statute of limitations. *Id.*

Respondents dispute Corning's contention that proceedings brought by the government are normally not subject to a limitations period, arguing that Section 337 investigations are not proceedings of the type normally exempt, but rather, are adversarial disputes brought by and litigated between private parties, sometimes with Staff as a participating party representing separate interests. RRB at 99. With respect to Corning's "loophole" argument, Respondents contend that the same purported loophole already exists under the DTSA because the statute of limitations starts accruing when the misappropriation is discovered but a claimant can only file suit under the DTSA when an act in furtherance of the offense was committed in the United States. *Id.* Moreover, Respondents argue that Corning's position would create a loophole to the statute of limitations by allowing claims that are barred in federal district courts to proceed at the Commission, potentially even offering similar relief. *Id.* Respondents submit that under Corning's theory, a claimant that is time-barred under the DTSA from suing an alleged misappropriator in federal district court who has been importing into the United States for over three years could still sue that same party under Section 337 for the same exact cause of action and that claimant could take no steps to mitigate any alleged harm. *Id.* at 99-100.

Respondents also assert that Corning knew of the facts underlying its misappropriation claim more than three years before filing suit because Corning admits that it knew of the alleged misappropriation in 2008 and that it acquired all the documents upon which it bases its claims no later than 2011. RIB at 158. According to Respondents, Corning's theory of importation is that Caihong sells its LCD glass substrates to panel manufacturers who sell those panels to LCD device manufacturers who in turn sell devices to the United States. *Id.* Respondents, however, argue that Corning was aware of each of those facts more than three years prior to filing suit. *Id.* For example, Respondents contend that Corning documents show that Corning knew Caihong sold LCD glass substrates to at least panel manufacturers [REDACTED] [REDACTED]. *Id.* Respondents further submit that Mr. Hudson testified that prior to 2020, Corning had an understanding of where its product was being sold, what customers were using that in the assembly of panels, what panel makers were selling to what brands in the market, and thus, what regions of the world that product went to. *Id.* at 158-59.

In opposition, Corning argues that Section 337 has no statute of limitations. CIB at 183. In addition, Corning asserts that the Commission has never applied, and ALJs have rejected, a statute of limitations to Section 337 claims. *Id.* at 184; CRB at 70. Corning also contends that Section 337 remedies are equitable in nature, which are not traditionally constrained by statutes of limitation. CIB at 184. Corning submits that Section 337 investigations are not private civil actions, but rather, are investigations conducted by the Commission and Corning argues that in the absence of a clearly expressed congressional bar, a government action is not subject to any time limitation. *Id.* Corning also contends that other statutes of limitation should not be borrowed for Section 337. *Id.*; CRB at 70 For example, Corning submits that UTSA is only model legislation and Congress said nothing about Section 337 when it enacted the DTSA, which post-

dates the Tariff Act. CIB at 184. Moreover, Corning contends that Congress has amended Section 337's timing features repeatedly without ever limiting the time to file a complaint, which indicates that its refusal to adopt a limitations period is purposeful. *Id.* at 185.

Corning argues that analogizing to the DTSA disfavors a limitations period for Section 337. *Id.* According to Corning, Congress authorized the Attorney General to obtain civil injunctive relief against trade secret theft and did not provide a limitations period for that authority. *Id.* Corning submits that when the DTSA amended the same statutory section to create private civil actions, its limitations provision applied only to the new private actions, not the preexisting governmental actions. *Id.* In addition, Corning contends that the DTSA provides a poor fit for Section 337's elements because its limitations period runs from the date on which the misappropriation is or should have been discovered while Section 337 requires importation and actual or threatened injury. *Id.* Corning argues that those elements may accrue well after the misappropriation and thus, borrowing the DTSA's approach would "break the 'standard rule' that a 'limitations period commences when the plaintiff has a complete and present cause of action.'" *Id.* (internal citations omitted). In addition, Corning asserts that applying the DTSA's rule would create a loophole because a company that openly misappropriated trade secrets could wait out the limitations period and then import at will. *Id.* at 186.

In addition, Corning argues that Respondents cannot show that Corning's Complaint was untimely under any period that might apply. *Id.* Corning submits that any period should commence only when it had a complete and present cause of action, that is, only when it knew or reasonably should have known that Caihong Display glass made with the allegedly misappropriated trade secrets was entering the U.S. and that it faced actual or threatened injury to its domestic industry. *Id.* Corning contends that Respondents did not present any evidence that

Corning knew or should have known about imports or products containing Caihong Display glass into the U.S. more than three years before Corning filed its Complaint. *Id.* at 187.

Moreover, Corning disputes Respondents' suggestion that Corning's general awareness of Caihong Display's customers put it on notice of Caihong Display glass's importation into the U.S. in years past because device-makers using those panels could ship those products somewhere else in the world. *Id.*; CRB at 71.

Staff contends that Respondents' statute of limitations defense should be rejected because the Commission's authority to investigate claims of trade secret misappropriation arises under Section 337, not the DTSA, and Section 337 does not itself contain a statute of limitations or similar statutory provision. SIB at 128. In contrast to a claim brought on the basis of trade secret misappropriation in state or federal court, Staff submits that a multi-faceted Section 337 claim requires a showing of additional elements, including (1) the importation or sale of articles involving use or reliance on the misappropriated trade secrets; and (2) an injury or threat of injury to a domestic industry. *Id.* Staff also argues that Respondents do not identify any legal authority for why the statute of limitations provisions of the DTSA and UTSA should apply to Section 337 investigations. *Id.* at 129. Rather, Staff contends that the Commission has repeatedly made clear that the federal standard governing Section 337 trade secret misappropriation is not limited to one particular source, but draws from several bodies of law, including the Restatement of Unfair Competition, the UTSA, federal statutes, and federal common law. *Id.* Staff asserts that the Commission also continues to apply precedent concerning trade secret misappropriation that pre-dates the DTSA and UTSA, demonstrating that the statute of limitations provisions of the DTSA and UTSA have not replaced and do not govern the Commission's trade secret misappropriation precedent. *Id.* Furthermore, Staff argues that the plain text of the DTSA

indicates that it is applicable only to “private civil actions” and that Section 337 investigations are not private civil action investigations. *Id.* at 129-30. Staff argues that if Congress intended for the DTSA’s statute of limitations to apply to Section 337, it knew how to make that clear. *Id.* at 130. Lastly, Staff contends that applying DTSA’s statute of limitations does not make sense in the Section 337 context because it limits a plaintiff’s relief based on when it had knowledge of misappropriation whereas Section 337 requires the Commission to issue relief when the Commission finds an importation or sale of articles resulting from unfair acts or unfair methods of competition. *Id.*

2. Discussion

The undersigned finds that Respondents’ statute of limitations argument does not bar Corning’s claims. It is undisputed that Section 337 itself does not contain an explicit statute of limitations provision. *See* RIB at 157; CIB at 183; SIB at 128; 19 U.S.C. § 1337; *see also Certain Botulinum Toxin Prods., Processes for Mfg. or Relating to the Same and Certain Prods. Containing Same (“Botulinum Toxin”),* Inv. No. 337-TA-1145, Final ID, EDIS Doc. ID 716576, at 232 (Aug. 6, 2020) (“As complainants correctly point out, section 337 does not itself contain a statute of limitations, or a similar statutory provision.”), *unreviewed in relevant part*, Comm’n Notice, EDIS Doc. ID 720157, at 2 (Sept. 21, 2020). Indeed, Respondents do not cite any Commission (or other) precedent applying a statute of limitations to Section 337. *See* RIB at 157-59; RRB at 98-100. In *Botulinum Toxin*, despite the respondents specifically petitioning for review of the FID’s finding that trade secret cases brought under Section 337 are exempt from any statute of limitations, the Commission determined not to review the FID with respect to that issue. *See* Respondents’ Petition for Review of the FID, EDIS Doc. ID 716067, at 94-95 (July 31, 2020) (“The ID erred in finding trade secret cases brought under Section 337 exempt from

any statute of limitations.”); Comm’n Notice, EDIS Doc. ID 720157, at 2 (not reviewing FID as to any affirmative defenses).¹⁶⁵

Respondents nevertheless assert that the Federal Circuit has held that a single federal standard should determine what constitutes a misappropriation of trade secrets sufficient to establish an unfair method of competition under Section 337 and “[f]or that framework to operate consistently, a limitations period needs to apply to trade secret claims in Section 337 investigation.” See RIB at 157 (citing *TianRui Grp. Co., Ltd. v. Int’l Trade Comm’n*, 661 F.3d 1322, 1327 (Fed. Cir. 2011)). As an initial matter, the DTSA (upon which Respondents rely) does not impose a statute of limitations for all actions.¹⁶⁶ In addition, If Congress had intended for a statute of limitations to apply to Section 337, it could have done so.¹⁶⁷ Moreover, the

¹⁶⁵ In a different investigation, the 1378 investigation, the ALJ found that “(i) the DTSA SOL is inapplicable in Section 337 investigations; and (ii) even having considered Respondents’ SOL defense on the merits, Respondents did not present sufficient evidence to demonstrate that SDC had the requisite knowledge, more than three (3) years prior to filing its Complaint, of Respondents’ unfair acts such that the SOL would be implicated.” See *Certain Organic Light-Emitting Diode Display Modules and Components Thereof*, Inv. No. 337-TA-1378, Initial Determination, EDIS Doc. ID 859309, at 384-99 (Aug. 12, 2025). The Commission determined to review, *inter alia*, “the FID’s findings with respect to the applicability of the DTSA SOL.” See Comm’n Notice, EDIS Doc. ID 861721, at 3 (Sept. 11, 2025). Before any Commission opinion issued, however, the investigation was terminated based on settlement and the Commission “determined to take no position with respect to the FID’s findings under review.” See Comm’n Notice, EDIS Doc. ID 867902, at 3 (Jan. 5, 2026).

¹⁶⁶ As Corning and Staff note, the DTSA does not impose a statute of limitations for civil actions brought by the Attorney General, and Section 337 takes into account more than private rights. See CIB at 184; SIB at 129-130; *Akzo N.V. v. Int’l Trade Comm’n*, 808 F.2d 1471, 1488 (Fed. Cir. 1993) (“Although it is true that private rights may be affected by § 337 determinations, the thrust of the statute is directed toward the protection of the public interest from unfair trade practices in international commerce.”), *cert. denied*, 482 U.S. 909 (1987). Moreover, issues of unfairness may be taken into account through other means, including the doctrines of equitable estoppel and laches, and the Commission’s discretion with respect to the scope and extent of remedy.

¹⁶⁷ For example, other provisions of the Tariff Act of 1930 impose certain time limitations. See CIB at 183; *see, e.g.*, 19 U.S.C. § 1621 (pursuant to certain conditions, “[n]o suit or action to recover any duty under section 1592(d), 1593a(d) of this title, or any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered, or in the case of forfeiture, within 2 years after the time when the involvement of the property in the alleged offense was discovered, whichever was later”).

DTSA’s statute of limitations appears to provide a poor fit with Section 337 relating to trade secrets because such Section 337 investigations require importation and injury. *See* CIB at 186; SIB at 130-31; *Akzo*, 808 F.2d 1471, 1486 (“[U]nfair acts, without more, are legally insufficient to support a finding of a § 337 violation. That provision declares unlawful ‘[u]nfair methods of competition and unfair acts in the importation of articles . . . , the effect or tendency of which is to destroy or substantially injure an industry [] in the United States.’ Thus, to prove a violation of § 337, the complainant must show both an unfair act and a resulting detrimental effect or tendency.”); *cf. Bd. of Trs. of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 583 F.3d 832, 846 (Fed. Cir. 2009) (“In California, ‘[i]t is elementary that a statute of limitations does not begin to run until the cause of action accrues. Equally basic is that a cause of action does not accrue “until the party owning it is entitled to begin and prosecute an action thereon,” that is, not until “the last element essential to the cause of action” occurs.’”).¹⁶⁸

Further, if a three-year statute of limitations did apply to Section 337 claims, Respondents’ defense would not succeed on the merits. Because Section 337 claims based on trade secret misappropriation require importation and injury, a claim would not accrue until Corning knew or reasonably should have known that Caihong Display glass made with the alleged misappropriated trade secrets was being imported or sold for importation into the U.S. and would meet the substantial injury (or threat thereof) requirement. *See* CIB at 18-1886; *Certain Foodservice Equip. and Components Thereof*, Inv. No. 337-TA-1166, Initial Determination, EDIS Doc. ID 745962, at 13 (July 2, 2021) (“The undersigned agrees with

Similarly, if Congress had intended for the DTSA’s statute of limitations to apply in the Section 337 context, it could have done so. *See* SIB at 130 (citing 35 U.S.C. § 315(e)(2)).

¹⁶⁸ “A claim ordinarily accrues ‘when [a] plaintiff has a complete and present cause of action.’” *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 670 (2014).

Complainants that to the extent that any statute of limitations applies, it cannot be triggered before the accused products were first imported, because that is the earliest that Complainants could have known of a violation of section 337.”), *unreviewed in relevant part by Comm’n Notice*, EDIS Doc. ID 748779, at 2-3 (Aug. 5, 2021).

Respondents’ argument that Corning had the requisite knowledge, more than three years before this investigation was filed,¹⁶⁹ relies on certain documents related to Caihong Display’s customers, and the testimony of Mr. Christopher Hudson. *See* RIB at 158-59.¹⁷⁰ However, Respondents do not demonstrate by a preponderance that Corning knew or should have known that Caihong Display’s LCD glass substrates were being imported or sold for importation into the U.S..and would meet the substantial injury requirement. With respect to Mr. Hudson, his testimony shows that Corning had a general awareness of Caihong Display’s customers prior to 2024. *See* Tr. (Hudson) at 775:22-780:15; JX-0017C (Hudson Dep.) at 113:13-114:22, 115:12-116:2 (prior to 2024, Corning “had a general awareness of all of our competitors and their largest customer relationships”), 118:10-13. This is insufficient to meet Respondents’ burden of proof. *See* CRB at 71.¹⁷¹

¹⁶⁹ Corning filed its complaint in this investigation on December 18, 2024. *See* Complaint, EDIS Doc. ID 839509 (Dec. 18, 2024).

¹⁷⁰ Respondents also contend that Sharp Corporation filed a Section 337 complaint alleging that CHOT LCD panels and VIZIO TVs containing those panels were imported into the U.S. *See* RIB at 159 n.32 (referring to Inv. No. 337-TA-1201). According to Respondents, “Corning cited the 1201 investigation complaint as evidence of CHOT’s importation of allegedly LCD panels containing Caihong glass into the U.S.” *Id.* (citing Compl. at ¶ 284). Corning’s citation in the complaint does not show that Corning knew about the 1201 complaint at least three years prior to filing its own complaint in this investigation.

¹⁷¹ Further, the evidence shows that in the first quarter of 2021, Caihong Display had around 1% of the Gen 8.x glass substrate market worldwide and had two production lines for Gen 8.5+ glass substrates. *See* CDX-0014C.24; Tr. (Fischel) at 823:21-824:8; CX-4656C; CX-4454C at 4-5. By the fourth quarter of 2024, Caihong Display attained 11% of the Gen 8.x market and added eight more Gen 8.5+ production lines. *See* CDX-0014C.24; Tr. (Fischel) at 823:21-824:8; CX-4656C; CX-4454C at 4-5; *see also* CX-0536 at 3 (Caihong Display Annual Report stating that 2023 was “a breakthrough year for the rapid

The evidence as a whole, even in the event that a statute of limitations applied, fails to show that Corning's Section 337 claims are barred by a statute of limitations.

C. Laches

1. The Parties' Positions

Respondents argue that Corning's claims are barred by laches. RIB at 146. According to Respondents, Corning alleges it knew of misappropriation and acquired the documents upon which it bases its claims in 2008. *Id.* Specifically, Respondents contend that Corning alleges it obtained Caihong Display's subsidiary's technical documents from Mr. Park and Gao Chao between 2008-2011, and that these form the basis for Corning's trade secret claims. *Id.* However, despite having that documentation and being aware of its claims since 2008, Respondents argue that Corning did not file suit against Caihong Display in any jurisdiction for trade secret misappropriation until 2024. *Id.* at 147. Respondents argue that Corning's delay caused Caihong economic and evidentiary prejudice. *Id.* at 147-48.

Respondents dispute Corning's contention that this defense should be deemed waived because it was not pled. RRB at 92. According to Respondents, they informed Corning during the course of the investigation that an amended response to the complaint was not necessary because Respondents assert that laches is a theory of acquiescence and waiver, which Caihong Display pled. *Id.* Respondents claim that they "understood that this resolved the matter because, despite initially threatening to move to strike this defense, Corning never did so." *Id.* at 93. Respondents further argue that Corning did not file motions for summary determination or motions *in limine* on that basis. *Id.*

scaling of its glass substrate business"). As discussed in Part V *supra*, this data is relevant to the existence of substantial injury (and/or threat thereof).

Corning asserts that Caihong Display did not plead a laches defense and thus, it is waived. CIB at 179; CRB at 66. According to Corning, the issue was first raised on July 16, 2025 in a supplemental interrogatory response, which Corning promptly objected to. CIB at 179. Corning submits that Caihong Display refused to withdraw the new defense or seek leave to amend from the ALJ. *Id.* Corning also disputes Caihong Display's argument that laches is merely a theory of waiver or acquiescence because Corning asserts that these are distinct defenses with different elements. *Id.* Furthermore, Corning argues that Caihong Display's laches defense fails because it cannot prove that Corning delayed this Section 337 proceeding for an unreasonable and inexcusable length of time or that the delay caused Caihong Display prejudice or injury. *Id.* at 180; CRB at 66.

Staff submits that Respondents failed to plead laches as an affirmative defense and thus, have waived their right to present this defense. SIB at 126. Furthermore, Staff argues that Caihong Display cannot show that Corning delayed filing its complaint for an unreasonable and inexcusable length of time or that any delay caused Caihong Display prejudice or injury because Corning could not file its complaint before it had evidence of importation and injury. *Id.*

2. Discussion

Respondents' laches arguments do not bar Corning's claim. Respondents failed to plead laches as an affirmative defense and thus, it is waived as an affirmative defense. "Affirmative defenses are waived if not pled." *Certain Ink Application Devices & Components Thereof & Methods of Using the Same*, Inv. No. 337-TA-832, Order No. 27, EDIS Doc. ID 506463, at 2 (Mar. 26, 2013) (respondent waived affirmative defense of invalidity because it failed to plead the defense); *see also Certain Liquid Transfer Devices with an Integral Vial Adapter*, Inv. No. 337-TA-1362, Order No. 19, EDIS Doc. ID 809672, at 3-4 (Dec. 4, 2023) ("Commission

regulations require affirmative defenses, like invalidity, to be pled in the response to the complaint.”); *Certain UV Curable Coatings for Optical Fibers, Coated Optical Fibers, and Prods. Containing Same*, Inv. No. 337-TA-1031, Order No. 40, EDIS Doc. ID 617793, at 2-3 (July 21, 2017) (Respondents waived inequitable conduct defense by not including it in the response to the complaint or interrogatory answers and not seeking leave to file the defense); *Certain Lithium-Ion Battery Cells, Battery Modules, Battery Packs, Components Thereof, & Prods. Containing the Same*, Inv. No. 337-TA-1181, Order No. 37, EDIS Doc. ID 728459, at 6 (Dec. 18, 2020) (“If [Respondents] wished to assert a claim of inequitable conduct based on the misrepresentation of test data they should have pled the defense in conformity with the rules.”).¹⁷²

Here, Respondents did not plead laches in their responses to the complaint. *See* CHOT Response, EDIS Doc. ID 845324, at 74-82 (Mar. 7, 2025); CSOT Response, EDIS Doc. ID 845327, at 59-70 (Mar. 7, 2025); TCL Response, EDIS Doc. ID 845336, at 60-71 (Mar. 7, 2025); Caihong Display Response, EDIS Doc. ID 845341, at 99-111 (Mar. 7, 2025); SIB at 126. Respondents do not dispute that they did not specifically plead laches.¹⁷³ *See* RRB at 92-93. Respondents have thus waived the affirmative defense of laches.

¹⁷² Commission Rules state that “[a]ffirmative defenses should be pleaded with as much specificity as possible in the response.” 19 C.F.R. § 210.13(b).

¹⁷³ Respondents state that they “informed Corning that they did not believe an amended response to the Complaint was necessary because laches is a theory of acquiescence and waiver, which Caihong pled.” RRB at 92. To the extent Respondents contend that the elements of laches are the same as acquiescence and waiver, then the discussion herein regarding acquiescence and waiver applies. Moreover, while Respondents contend that Corning did not move to strike the defense or file motions for summary determination or motions *in limine*, it was Respondents who failed to file a motion to amend their responses. *See* SIB at 126. Respondents’ argument that Corning did not timely raise this issue (RIB at 93) is also unpersuasive. Respondents supplemented their interrogatory response on July 16 to “identify the facts underlying this defense” and Corning objected in a meet-and-confer on July 22 and a supplemental interrogatory response on August 1. *See* RRB at 92; CIB at 179; SIB at 126; RX-0548C at 30, 33-37.

However, even if Respondents had properly pled laches and the defense applies at the Commission, that defense would not bar Corning’s Section 337 claims. “To prove laches, a defendant must show that the plaintiff delayed filing suit an unreasonable and inexcusable length of time after the plaintiff knew or reasonably should have known of its claim against the defendant; and the delay resulted in material prejudice or injury to the defendant.”¹⁷⁴ *Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tools Prods. Containing Same, and Power Tools, with Lithium-Ion Batteries Containing Same*, Inv. No. 337-TA-951, Comm’n Op., EDIS Doc. ID 601871 at 12 (quoting *Wanlass v. General Elec. Co.*, 148 F.3d 1334, 1337 (Fed. Cir. 1998)); *Gasser Chair Co., Inc. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770, 773 (Fed. Cir. 1995) (“To successfully invoke laches, a defendant must prove by a

¹⁷⁴ Corning argues that the Commission takes “no position” on whether laches is available in Section 337 actions. See CIB at 179. In the 944 Investigation, the Commission stated: “The Commission declines to reach the legal issue of whether laches is available as a defense at the Commission given the uncertainty of the law” *Certain Network Devices, Related Software and Components Thereof (II)*, Inv. No. 337-TA-944, Comm’n Op., EDIS Doc. ID 609119, at 26 (Apr. 19, 2017) (“After the Commission asked the parties to brief whether laches is an available defense at the Commission, the Supreme Court granted *certiorari* [in *SCA Hygiene*] to address the question of whether laches is available as a defense in patent infringement actions”); see also *Certain Lithium Metal Oxide Cathode Materials, Lithium-Ion Batteries for Power Tool Prods. Containing Same, and Power Tool Prods. with Lithium-Ion Batteries Containing Same*, Inv. No. 337-TA-951, Comm’n Op., EDIS Doc. ID 601871, at 15 (Jan. 26, 2017) (“With respect to the legal question of whether laches is an available defense in section 337 investigations, the Commission has determined to vacate the ID’s discussion, and consistent with recent Commission reasoning, has determined to take no position on the legal issue.”). Subsequently, the Supreme Court issued its opinion in *SCA Hygiene*, holding *inter alia* that laches is a “gap-filling doctrine” applicable where there is no statute of limitations and that it cannot be invoked against a claim for damages brought within the statute of limitations in the Patent Act. See *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328, 335, 346 (2017). Since *SCA Hygiene*, other ALJs have considered laches as an affirmative defense. See, e.g., *Certain Video Capable Elec. Devices, Including Computs., Streaming Devices, Televisions, Cameras, and Components and Modules Thereof*, Inv. No. 337-TA-1379, Final ID, EDIS Doc. ID 842988, at 113-15 (Feb. 10, 2025), terminated based on settlement by Comm’n Notice, EDIS Doc. ID 849302 (Apr. 22, 2025); *Certain Video Capable Elec. Devices, Including Computs., Streaming Devices, Televisions, and Components and Modules Thereof*, Inv. No. 337-TA-1380, Final ID, EDIS Doc. ID 840761, at 153-54 (Jan. 8, 2025), terminated based on settlement by Comm’n Notice, EDIS Doc. ID 844616 (Feb. 27, 2025); *Certain Botulinum Toxin Prods., Processes for Mfg. or Relating to Same and Certain Prods. Containing Same*, Inv. No. 337-TA-1145, Final ID, EDIS Doc. ID 716576, at 235-43 (Aug. 6, 2020), unreviewed in relevant part by Comm’n Notice, EDIS Doc. ID 720157, at 2 (Sept. 21, 2020).

preponderance of the evidence (1) that the plaintiff delayed filing suit an unreasonable and inexcusable length of time after the plaintiff knew or reasonably should have known of its claim against the defendant; and (2) the delay resulted in material prejudice or injury to the defendant.”). In addition, laches is an equitable doctrine and will not necessarily bar a claim. The circumstances may, for example, warrant limiting relief but not dismissing the claim. *See Petrella*, 572 U.S. at 681-82, 687-88.

Here, for the reasons discussed above regarding the statute of limitations, the record evidence fails to show that Corning unreasonably delayed its Section 337 claims after becoming aware of importation and substantial injury, or a threat thereof.

For at least these reasons, the evidence does not support application of laches to bar Corning’s Section 337 claims.

D. Acquiescence/Waiver

1. The Parties’ Positions

Respondents argue that even if Corning previously had legitimate trade secret claims, those claims are now waived. RIB at 148. Respondents assert that Corning knew of the facts underlying its trade secret misappropriation allegations since 2008, possessed the documents underlying its claim since 2011, remained inactive for over a decade while entering collaborative engagements with Caihong, and thus, its conduct amounted to an intentional relinquishment of its alleged trade secret rights (or at least intentional conduct inconsistent with those rights). *Id.* Respondents therefore contend that Corning waived its claims against Caihong and also waived any claim that the alleged trade secrets are protectible trade secrets. *Id.* at 149 (citing, *inter alia*, *J.T. Healy & Son*, 357 Mass. at 738); *see also* RRB at 94.

Respondents further argue that Corning acquiesced to any use of its alleged trade secrets because despite learning of misappropriation in 2008, Corning took no actions to defend its alleged trade secrets until 2023. *Id.* Respondents assert that between 2013 and 2022, Corning and Caihong engaged in numerous collaborative endeavors and Corning never indicated that it still intended to assert its trade secret claims, which led Caihong to believe that those claims were resolved. Thus, Respondents contend that Corning has acquiesced in any use of its alleged trade secrets because it “(1) remain[ed] inactive for a considerable time; or (2) freely d[id] what amounts to recognition of the complained of act; or (3) act[ed] in a manner inconsistent with [its] subsequent repudiation, which [led Caihong] to believe the act has been approved.” *Id.*; RRB at 95.

Corning argues that Caihong’s waiver and acquiescence defenses fail for the same reasons as equitable estoppel – *i.e.*, because Caihong has not shown that Corning intentionally relinquished its rights to the trade secrets or assured Caihong that it was doing so, nor has Caihong proved that it relied on such assurances. CIB at 178; CRB at 65. Corning argues that the argument that Corning “lost its trade secret protections by not suing Irico earlier is incorrect as a factual matter and does not defeat relief anyway.” *Id.* at 178 n.23 (citing *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm’n Op. at 53 n.34).

Staff asserts that Corning’s trade secret misappropriation claims are not barred by waiver or acquiescence because Respondents did not proffer any persuasive evidence showing Corning’s intentional relinquishment or abandonment of a known right. SIB at 125-26.

2. Discussion

a) Waiver

Waiver requires (1) “a voluntary or intentional relinquishment of a known right” or (2) conduct that “was so inconsistent with an intent to enforce its rights as to induce a reasonable belief that such right has been relinquished.” *Qualcomm Inc. v. Broadcom Corp.*, 548 F.3d 1004, 1019-20 (Fed. Cir. 2008); *Hynix Semiconductor Inc. v. Rambus Inc.*, 645 F.3d 1336, 1348 (Fed. Cir. 2011) (citing *Qualcomm*); *Certain Color Intraoral Scanners and Related Hardware and Software* (“*Color Intraoral Scanners*”), Inv. No. 337-TA-1091, Final ID, EDIS Doc. ID 681285, at 118 (July 15, 2019).¹⁷⁵ “Implied waiver is an equitable doctrine.” *Core Wireless Licensing S.A.R.L. v. Apple Inc.*, 899 F.3d 1356, 1368 (Fed. Cir. 2018).

Under the circumstances here, waiver does not bar Corning’s claim. With respect to the alleged waiver of Corning’s trade secret rights, Respondents’ arguments regarding Corning’s lack of “vigilance” (RIB at 148) may show that Corning, at some point after the alleged misappropriation, lost trade secret rights by not asserting a trade secret claim earlier (and thus failing to take reasonable measures to protect its trade secrets).¹⁷⁶ However, as noted by Corning, a loss of trade secret rights after the alleged misappropriation does not preclude relief based on misappropriation that occurred prior to that loss of rights. *See* CIB at 178 n.23; *Raised Garden*

¹⁷⁵ The accused entity must prove implied waiver by clear and convincing evidence. *Qualcomm*, 548 F.3d at 1019-22; *Hynix*, 645 F.3d at 1348 (citing *Qualcomm*); *Color Intraoral Scanners*, Final ID at 118.

¹⁷⁶ *See* RIB at 178; *Alamar Biosciences, Inc. v. Difco Labs., Inc.*, 1995 WL 912345 (E.D. Cal.) (Oct. 13, 1995) (granting summary judgment of no trade secret misappropriation on intervenor’s claim against defendant because intervenor, in failing to take earlier action against a different entity (plaintiff) for misappropriation, “did not take reasonable steps to protect its trade secrets”); *Edelman Fin. Engines, LLC v. Mariner Wealth Advisors LLC*, 2026 WL 1618502, at *9 (D. Kans. June 6, 2026) (“selective enforcement of Edelman’s alleged trade-secret rights shows a lack of reasonable protective measures”); *HiRel Connectors, Inc. v. U.S.*, 2005 WL 4958547, at *6-7 (C.D. Cal. Jan. 4, 2005) (finding that plaintiff “no longer possesse[d] trade secret protection” as of the date when reasonable efforts failed to be taken but declining to determine a precise date when trade secret protection was lost).

Beds, Inv. No. 337-TA-1334, Comm’n Op., EDIS Doc. ID 817237 at 53 n.34 (where trade secret protection was lost through patent application publication, this did not preclude LEO for “reasonable period of time to eliminate commercial advantage that otherwise would be derived from the misappropriation”). Further, a consideration of all the equities does not favor a finding that Corning’s claims should be barred. *See Gasser Chair Co.*, 60 F.3d at 775-76; discussion regarding equitable estoppel, *supra*.

b) Acquiescence

The parties present different legal standards regarding acquiescence. Respondents argue that acquiescence is shown where a claimant knowingly “(1) remains inactive for a considerable time; or (2) freely does what amounts to recognition of the complained of act; or (3) acts in a manner inconsistent with the subsequent repudiation, which leads the other party to believe the act has been approved.” RIB at 149 (citing *Sonos, Inc. v. D&M Holdings Inc.*, No. 14-1330, 2016 WL 4249493 (D. Del. Aug. 10, 2016)). Corning contends that acquiescence is a form of equitable estoppel that involves “(1) knowledge of the facts giving rise to the claim; (2) implicit or explicit assurances to the party-opponent; and (3) reliance.” CIB at 178 (citing *Color Intraoral Scanners*, Inv. No. 337-TA-1091, Initial Determination, at 118).¹⁷⁷

Under either approach, acquiescence is an equitable doctrine. *See Color Intraoral Scanners*, at 118; *Sonos v. D&M Holdings*, 2016 WL 4249493, at *4.¹⁷⁸

Here, the underlying facts raise the same issues discussed above regarding equitable estoppel. For the reasons discussed above regarding equitable estoppel, even if the facts could

¹⁷⁷ In *Color Intraoral Scanners*, the relevant legal elements did not appear to be disputed. *See id.* at 118 n.13.

¹⁷⁸ Other differently formulated expressions also exist. *See, e.g., Sprint Commc’ns Co. L.P. v. Time Warner Cable, Inc.*, No. 11-2686-JWL, 2017 WL 978107, at *11 (D. Kan. Mar. 14, 2017) (“Acquiescence requires a showing more demanding than that required to establish laches . . . As

establish acquiescence, the equities in this matter do not favor barring Corning's claims in full.

See discussion *supra* regarding equitable estoppel.

E. License

Respondents argue that Caihong Display is impliedly licensed based on Corning's pre-suit conduct as discussed with respect to equitable estoppel, acquiescence, waiver, and laches.¹⁷⁹ RIB at 159. Caihong Display also argues that it is impliedly licensed based on Corning's interactions with Caihong Display since at least 2012, which led Caihong Display to reasonably believe that their dispute had been resolved. *Id.* Respondents dispute Corning's contention that Caihong Display did not pay consideration and thus, there was no offer and acceptance. RRB at 101. Respondents assert that "Corning offered to resolve its claims in exchange for collaboration, and Caihong accepted that offer by agreeing to a partnership with Corning spanning more than a decade." *Id.* Thus, Respondents submit that Caihong Display's contributions and other significant concessions in establishing the parties' JVs was valuable consideration. *Id.*

Corning argues that Caihong Display failed to support its implied license defense at the hearing. CIB at 188. Corning stated that it never led Caihong Display to believe that it was abandoning its rights much less affirmatively intending to contract with Caihong Display about

with laches, the defendant must prove an inexcusable delay and undue prejudice resulting from that delay, but while laches allows for passive consent, acquiescence requires active consent and an active representation that the plaintiff will not assert[] its rights."); *ProFitness Physical Therapy Ctr. v. Pro-Fit Orthopedic and Sports Physical Therapy P.C.*, 314 F.3d 62, 68 (2d Cir. 2002) (similar) ("a plaintiff communicates active consent by conduct that amounts to an explicit or implicit assurance that plaintiff, with knowledge of defendant's conduct, will not assert its trademark rights").

¹⁷⁹ Respondents do not assert an express license. *See* RIB at 159-60.

its trade secrets. *Id.*; CRB at 71. Furthermore, Corning asserts that Caihong Display did not pay any consideration to Corning nor was any offer made or accepted. CIB at 188; CRB at 71.¹⁸⁰

“[A]n implied-in-fact license ‘is one founded upon a meeting of the minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding.’”

Bitmanagement Software GmbH v. U.S., 989 F.3d 938, 946 (Fed. Cir. 2021) (quoting *City of Cincinnati v. U.S.*, 153 F.3d 1375, 1377 (Fed. Cir. 1998)). An implied license requires finding “1) mutuality of intent to contract; 2) consideration¹⁸¹; and, 3) lack of ambiguity in offer and acceptance.” *Bitmanagement*, 989 F.3d at 946. In addition, an implied licenses may arise by acquiescence, by conduct, by equitable estoppel, or by legal estoppel. *Wang Labs., Inc. v. Mitsubishi Elecs. Am., Inc.*, 103 F.3d 1571, 1581 (Fed. Cir. 1997) (“The primary difference between the estoppel analysis in implied license cases and the analysis in equitable estoppel cases is that implied license looks for an affirmative grant of consent or permission to make, use, or sell: i.e., a license.”).

Here, Respondents have not sufficiently proven a “meeting of the minds” and consideration between Corning and Caihong with respect to a license from Corning. In addition, for the reasons discussed in previous sections, the evidence and equities do not support a finding of implied license based on other doctrines such as equitable estoppel. Accordingly, the evidence fails to support a finding of implied license. *See Wang Labs.*, 103 F.3d at 1581 (“implied licenses are rare under any doctrine”).

¹⁸⁰ Staff did not separately address this issue. *See* SIB at 122-31.

¹⁸¹ The *Bitmanagement* opinion notes, however, that an “implied nonexclusive copyright license may be found . . . in the absence of consideration” and in that situation may be revocable. *See* 989 F.3d at 946-47.

F. Unclean Hands

1. The Parties' Positions

Respondents argue that Corning's claims are the product of improper acquisition of evidence. RIB at 150; RRB at 95. Respondents contend that Corning should be precluded from [REDACTED] from Shaanxi Caihong and given to Corning or, in the alternative, that Corning's trade secret claims based on such documents or information should be barred on unclean hands grounds.¹⁸² RIB at 150.

Respondents assert that [REDACTED] [REDACTED] to Corning, and [REDACTED] before relying on them in this litigation. *Id.* at 154. Respondents submit that [REDACTED] [REDACTED] [REDACTED]. *Id.* at 154-55; RRB at 96.

According to Respondents, exclusion is the proper remedy for [REDACTED] [REDACTED]. RIB at 155. Respondents contend that they have been severely prejudiced by the way Corning obtained and produced the documents. *Id.* For example, Respondents state that Corning failed to secure Gao's testimony in this investigation, which prevented Respondents from cross-examining him. *Id.* Respondents also argue that exclusion is warranted on policy grounds because allowing Corning's misconduct to go unpunished would injure the judicial

¹⁸² Respondents argue that there is no evidence that the External Documents were provided to Corning by Gao or that Gao obtained them from Shaanxi Caihong. *See* RIB at 150. However, Respondents state that "accepting Corning's allegations as true, then [REDACTED], and the appropriate remedy is precluding Corning from relying on them or barring all claims based on them." *Id.*

system and provide future litigants with an incentive to take potential opponents' property using improper means. *Id.* at 156. In addition, Respondents assert that Corning's delay in filing suit should bar its claim on unclean hands grounds for the same reasons as its theories of laches, acquiescence, and/or waiver. *Id.* at 156-57.

Corning asserts Caihong has failed to prove any relevant or egregious misconduct. CIB at 181. For example, Corning contends that it did not engage in the improper acquisition of confidential information by receiving evidence from whistleblowers confirming Caihong's theft of Corning's trade secrets because the informants provided evidence that Caihong was using Corning's own designs. *Id.* According to Corning, its discovery that it was the victim of Caihong's theft by receiving Corning's own misappropriated trade secrets is not misconduct nor was it improper for Corning to secure non-disclosure and non-compete commitments from the informants. *Id.* In addition, Corning submits that its discovery of Caihong's theft is not sufficiently related to Corning's claims in this investigation to sustain an unclean hands defense. *Id.* Corning asserts that Caihong does not contend that Corning used the evidence it received from the informants to create the asserted trade secrets nor does Caihong contend that Corning misused the evidence to design any Corning equipment or methods. *Id.* Moreover, although Caihong cited settlements that Corning has secured in connection with this investigation, Corning argues that negotiated settlements are favored by Commission policy and Caihong failed to show any impropriety. *Id.* at 182. Similarly, Corning contends that Caihong failed to show that other agreements were improper. *Id.* at 182-83.

Corning also argues that Caihong's sanctions request is untimely and meritless. CRB at 66.¹⁸³ Corning contends that while it produced [REDACTED], Caihong did not seek sanctions until a few weeks before the hearing. *Id.* at 66-67. In addition, Corning asserts that excluding [REDACTED] would be prejudicial because it has relied on those materials to fill gaps in Caihong's document production. *Id.* Corning states that if Caihong had moved to exclude [REDACTED] earlier, it could have pursued additional discovery to fill those gaps. *Id.* at 67. Furthermore, Corning argues that Caihong's request for sanctions fails on the merits because they have not shown bad faith. *Id.* According to Corning, [REDACTED]. *Id.* Corning asserts that Caihong does not identify any part of [REDACTED] that reflect its own intellectual property. *Id.* at 68. Moreover, Corning states that out of an abundance of caution, it took steps to ensure that any possible third-party confidential information would be limited in its receipt. *Id.* As to confidentiality and non-compete agreements with [REDACTED], Corning submits that they were entered into to prevent further dissemination of materials. *Id.* In addition, with respect to the court's inherent authority to issue sanctions, Corning argues that sanctions are inappropriate because Corning's receipt of [REDACTED] has not diminished the Commission's ability to determine whether there is a violation of Section 337. *Id.* at 69.

Staff argues that Respondents have failed to identify an inappropriate act, much less clear and convincing evidence of some unconscionable act that would give rise to an unclean hands

¹⁸³ Corning contends that the sanctions request was made in Respondents' Motion *in Limine* No. 3. See CRB at 66-67. In Order No. 70, the undersigned ruled that the issue of whether "sanctions are appropriate under the court's inherent powers" would be addressed "to the extent appropriate upon a full evidentiary record and related briefing." Order No. 70, at 4 n.4.

defense. SIB at 128. Rather, Staff submits that at best, Respondents have alleged that Corning has engaged in wrongdoing by following up on and investigating an anonymous tip that Caihong Display had stolen its technology, and seeking to enforce its rights. *Id.* Staff therefore agrees with Corning that Respondents' unclean hands defense lacks merit and should be rejected. *Id.*

2. Discussion

The doctrine of unclean hands “closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant.”¹⁸⁴ *Precision Instrument Mfg. Co. v. Auto. Maintenance Mach. Co.*, 324 U.S. 806, 814 (1945). The Supreme Court in *Keystone Driller Co. v. General Excavator Co.* articulated the legal standard governing the doctrine of unclean hands “that a determination of unclean hands may be reached when ‘misconduct’ of a party seeking relief ‘has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation,’ *i.e.*, ‘for such violations of conscience as in some measure affect the equitable relations between the parties in respect of something brought before the court.’” *Gilead Scis., Inc. v. Merck & Co., Inc.*, 888 F.3d 1231, 1239 (Fed. Cir. 2018) (quoting *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245 (1933)). “[T]he doctrine ‘necessarily gives wide range to the equity court’s use of discretion in refusing to aid the unclean litigant.’” *Id.* (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 815 (1945)). A party

¹⁸⁴ Corning cites to the Initial Determination in *Sausage Casings* to assert that “[u]nclean hands cannot bar an otherwise-valid Section 337 trade secret claim.” CIB at 180 (citing *Certain Processes for the Manufacture of Skinless Sausage Casings & Resulting Prod.* (“*Sausage Casings*”), Inv. No. 337-TA-148/169, Initial Det., EDIS Doc. ID 235421, at 301-02 (July 31, 1984)). However, the ALJ did not determine that an unclean hands defense could never be asserted with respect to misappropriation of trade secrets; rather, the ALJ found that under the circumstances of that investigation, “there has been no concerted, collusive behavior between complainants with respect to the trade secrets at issue.” *See Sausage Casings*, ID at 301.

asserting unclean hands “bears the burden of proving by clear and convincing evidence that [the opposing party] acted with unclean hands.” *In re Omeprazole Patent Litig.*, 483 F.3d 1364, 1374 (Fed. Cir. 2007).

Balancing the parties’ conduct and in view of the totality of the evidence, the undersigned finds that under the circumstances, Respondents have not proven unclean hands by clear and convincing evidence. *See Princess Cruises, Inc. v. U.S.*, 397 F.3d 1358, 1369 (Fed. Cir. 2005) (“The trial court has broad discretion under the doctrine of unclean hands.”) (internal citation omitted); *Gilead*, 888 F.3d at 1239 (“the doctrine ‘necessarily gives wide range to the equity court’s use of discretion in refusing to aid the unclean litigant’”) (internal citation omitted); *Northbay Wellness Grp., Inc. v. Beyries*, 789 F.3d 956, 960 (9th Cir. 2015) (“[D]etermining whether the doctrine of unclean hands precludes relief requires balancing the alleged wrongdoing of the plaintiff against that of the defendant, and weigh[ing] the substance of the right asserted by [the] plaintiff against the transgression which, it is contended, serves to foreclose that right.”) (internal quotations omitted).

Respondents have not shown that Corning engaged in significant misconduct, let alone misconduct egregious enough to support an unclean hands defense.¹⁸⁵ The record evidence fails

¹⁸⁵ For the same reasons, Respondents have not made the requisite showing of bad faith to warrant sanctions pursuant to the Commission’s inherent authority. *See Certain Opaque Polymers*, Inv. No. 337-TA-883, Comm’n Op., EDIS Doc. ID 556186, at 30 (Apr. 30, 2015) (“sanctions under a court’s inherent authority require a finding of bad faith”) (internal citation omitted). Nor is the alleged misconduct “sufficiently egregious.” *See Certain Silicon-on-Insulator Wafers*, Inv. No. 337-TA-966, Comm’n Notice, EDIS Doc. ID 596551, at 3 (Dec. 2, 2016) (conduct not sufficiently egregious to warrant imposing monetary sanctions under the Commission’s inherent authority) (citing *Certain Concealed Cabinet Hinges and Mounting Plates*, Inv. No. 337-TA-289, Comm’n Op., 1990 WL 10608981, at *5 (U.S.I.T.C. Jan. 8, 1990)); *Cabinet Hinges*, Comm’n Op. at *3 (“The Commission has inherent authority to regulate its adjudicative proceedings and . . . [to] impose[] a sanction . . . if the misconduct . . . [is] sufficiently egregious.”). In addition, under the circumstances, sanctions are not necessary for the Commission to protect the integrity of its proceedings or its statutory duty to investigate the alleged violations of section 337. *See Certain Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Therefor*, Inv. No. 337-TA-1159, Comm’n Op., EDIS Doc. ID 735927, at 2, 21

to show that Corning engaged in the improper acquisition of confidential information as opposed to preserving information it reasonably understood to contain Corning trade secrets. *See* Tr.

(Burke) at 137:20-138:1, 139:11-16, 160:23-161:10; CX-2750C; Tr. (Zou) at 173:14-18 (Zou was informed that [REDACTED]

[REDACTED]), 174:12-24 ([REDACTED] that the drawings were from PicVue),

175:10-15 ([REDACTED] that PicVue had stolen the information from Corning), 176:2-8

([REDACTED] the information was inappropriately taken and used without permission), 224:3-8 ([REDACTED] was reported as being stole from Corning).

Furthermore, the record shows that Corning took certain steps to limit the receipt of confidential information belonging to others. *See* Tr. (Burke) at 161:2-10; Tr. (Zou) at 224:9-225:3 (Zou). For example, [REDACTED]

[REDACTED] *See* Tr. (Zou) at 224:9-18 (“We never got Corning team involved.”). Corning’s [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *See id.* at 224:9-225:3.

There is also no evidence of sufficiently improper misconduct by Corning from entering into [REDACTED]. Mr. Zou testified that the

[REDACTED]

[REDACTED]. *See* Tr. (Zou) at 16-20; RX-0449C at 1-4

([REDACTED]), 5-8 ([REDACTED]

(Mar. 4, 2021); *Certain Portable Battery Jump Starters and Components Thereof*, Inv. No. 337-TA-1256, Order No. 50, EDIS Doc. ID 762517, at 4 (Feb. 4, 2022) (“it has not been shown that . . . NOCO’s conduct has diminished the Commission’s ability to determine whether there is a violation of section 337”).

[REDACTED]; RX-0450C ([REDACTED])

[REDACTED]).¹⁸⁶

* * *

For the reasons discussed above, Respondents have failed to prove that Corning's claims should be barred by unclean hands.

VII. CONCLUSION

For the reasons discussed therein, it is the undersigned's final initial determination that there has been a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by each of the remaining Respondents, in the importation into the United States, the sale for importation, and/or the sale within the United States after importation of glass substrates for liquid crystal displays, display panels containing the same, which are TVs, monitors, notebook and laptop computers, and tablets, or in the sale of such products by the owner, importer, or consignee, by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States.

In particular, the evidence of record shows a violation with respect to the following trade secrets asserted by Complainant: TS 15.1, 16.1, 17.1, TS 22.1, TS 24.1, TS 30.1, TS 35.1, TS

¹⁸⁶ The evidence does not show that Corning [REDACTED] in any manner similar to the cases cited by Respondents. *See* RIB at 151; *see, e.g., Xyngular Corp. v. Schenkel*, 200 F. Supp. 3d 1273, 1311 (D. Utah 2016) (party approached source and requested information and documentation); *Jackson v. Microsoft Corp.*, 211 F.R.D. 423, 428 (W.D. Wash. 2002), *aff'd*, 78 F. App'x 588 (9th Cir. 2003) (party's role in obtaining the CDs was not a passive one), at 432 (party demonstrated "astonishing pattern of deceptive acts and fraudulent testimony"). At most, Respondents cite an email, *see* RIB at 151, [REDACTED]

[REDACTED] *See* RX-2451C at 2. This is not clear and convincing evidence of unclean hands. *See C.R. Bard, INC. v. Med. Components, Inc.*, No. 2:17-CV-754 TS, 2019 WL 1746309, at *7 (D. Utah 2019) (dismissing unclean hands defense because the alleged actions did not rise to a level of an "unconscionable act").

35.2, TS 41.1, TS 51, and TS 68. The evidence does not show a violation with respect to the following trade secrets: TS 12.1, TS 19, TS 20.1, TS 52.2, TS 59, TS 61, TS 62, and TS 64.

Pursuant to Commission Rule 210.42(a)(1)(ii), a recommended determination on remedy, bonding, and the public interest will issue within 14 days of this initial determination. 19 C.F.R. § 210.42(a)(1)(ii).

The undersigned hereby certifies the record in this investigation to the Commission with the undersigned's final initial determination. Pursuant to Commission Rule 19 C.F.R. § 210.38(a), the record further comprises the complaint and exhibits thereto.

Pursuant to Commission Rule 19 C.F.R. § 210.42(h)(2), this initial determination shall become the determination of the Commission 60 days after the service thereof, unless a party files a petition for review pursuant to Commission Rule 19 C.F.R. § 210.43(a)(1), the Commission orders its own review pursuant to Commission Rule 19 C.F.R. § 210.44.

This final initial determination is being issued with a confidential designation pursuant to Commission Rule 19 C.F.R. § 210.5 and the protective order in this investigation. Within 10 days of the date of this document, the parties shall submit a joint statement as to whether or not they seek to have any portion of this document deleted from the public version. If the parties do seek to have portions of this document deleted from the public version, they must submit a single proposed public version of this recommended determination with any proposed redactions consistent with the manner specified by Ground Rule 1.9.¹⁸⁷ The submission shall be made by email to Bhattacharyya337@usitc.gov and need not be filed with the Commission Secretary.

¹⁸⁷ Redactions should be limited to avoid obscuring the reasoning underlying the decision. Parties who submit excessive redactions may be required to provide an additional written statement, supported by declarations from individuals with personal knowledge, explaining why each proposed redaction meets the definition for confidential business information in 19 C.F.R. § 201.6(a).

SO ORDERED.



Monica Bhattacharyya
Administrative Law Judge