

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN PRE-STRETCHED
SYNTHETIC BRAIDING HAIR AND
PACKAGING THEREOF (II)

Investigation No. 337-TA-1457

COMMISSION OPINION

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I. INTRODUCTION

On June 5, 2026, the presiding Administrative Law Judge (“ALJ”) issued a final initial determination (“Final ID”) finding no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to the asserted claims of U.S. Patent Nos. 10,786,026 (“the ’026 patent”), 10,980,301 (“the ’301 patent”), 10,945,478 (“the ’478 patent”), and 12,127,616 (“the ’616 patent”). As to the ’026, ’301, and ’616 patents, the ALJ found the asserted claims infringed but invalid as anticipated. For the ’478 patent, the ALJ found the asserted claim not infringed and invalid as anticipated.

Having examined the Final ID, petitions for review, and the record of this investigation, the Commission has determined to review the Final ID in part. As to the ’026, ’301, and ’616 patents, the Commission has determined to review the Final ID’s invalidity analysis in part, and on review, the Commission takes no position regarding invalidity by two prior art references. As to the ’478 patent, the Commission has determined to review the Final ID’s analysis regarding the construction of “pre-stretched,” technical prong of the domestic industry requirement, and invalidity. On review, the Commission affirms the Final ID’s claim construction with supplemental reasoning, affirms-in-part the Final ID’s invalidity findings as to certain grounds with supplemental reasoning and takes no position on the remaining grounds of invalidity, and takes no position regarding the technical prong. Finally, the Commission has determined to review the Final ID’s findings regarding the economic prong of the domestic industry requirement, and on review, takes no position on that issue. The Commission has determined not to review the remainder of the Final ID and adopts the Final ID’s findings to the extent that they are not inconsistent with this opinion. Accordingly, the investigation is terminated with a finding of no violation of section 337 as to all four patents.

II. BACKGROUND

A. Procedural History

The Commission instituted this investigation on August 7, 2025, based on a complaint filed by JBS Hair, Inc. of Atlanta, Georgia. 90 Fed. Reg. 38178-79 (Aug. 7, 2025). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pre-stretched synthetic braiding hair and packaging thereof that infringe one or more of certain claims of the '026, '301, '478, and '616 patents. *Id.* at 38178. The complaint further alleged that a domestic industry exists. *Id.* at 38178-79. The respondents in this investigation are Sun Taiyang Co., Ltd. (d/b/a Outre), Beauty Elements Corporation (d/b/a Bijouz), Hair Zone, Inc. (d/b/a Sensationnel), Beauty Essence, Inc. (d/b/a Supreme Hair US), SLI Production Corp. (d/b/a It's a Wig!), Royal Imex, Inc. (d/b/a Zury Hollywood), GS Imports, Inc. (d/b/a Golden State Imports, Inc.), Eve Hair, Inc., Midway International, Inc. (d/b/a BOBBI BOSS), Mayde Beauty Inc., Hair Plus Trading Co., Inc. (d/b/a Femi Collection), Optimum Solution Group LLC (d/b/a Oh Yes Hair), Chade Fashions, Inc., Mane Concept Inc., Beauty Plus Trading Co., Inc. (d/b/a Janet Collection), Model Model Hair Fashion, Inc., New Jigu Trading Corp. (d/b/a Harlem 125), Shake N Go Fashion, Inc., and Amekor Industries, Inc. (d/b/a Vivica A. Fox Hair Collection) (collectively, "Respondents"). *Id.* at 38179. The Office of Unfair Import Investigations ("OUII") is also a party to this investigation. *Id.*

The ALJ conducted an evidentiary hearing from March 9-13, 2026. At the time of the evidentiary hearing, Complainant asserted the following claims for both infringement and domestic industry purposes: claim 1 of the '026 patent; claims 1 and 8 of the '301 patent; claim 20 of the '478 patent; and claim 11 of the '616 patent. Final ID at 9-10.

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The ALJ issued the Final ID on June 5, 2026, finding no violation of section 337. Complainant and OUII filed petitions for review of portions of the Final ID's findings, and Respondents filed a contingent petition for review.¹ Each party filed a response to the other petitions.²

B. Asserted Patents

The patents at issue relate to bundles of synthetic braiding hair. The four asserted patents are from a single patent family generally directed to bundled synthetic braiding hair with two different lengths of hair strands that are folded in half. The '026 patent specifies that the bundle is coupled to a backer panel and has a substantially cardioid shaped perimeter. *See* JX-4.00015 (cl. 1). The '301 patent is directed to bundled synthetic braiding hair folded to form a perimeter that narrows on one end. *See* JX-2.00015 (cl. 1). The '616 patent is similar to the '301 patent but specifies that the bundle is "hackled" or combed to create the perimeter that narrows on one end. JX-1.00015 (cl. 11). Likewise, the '478 patent provides for a bundle that narrows on one end but asserted claim 20 recites the additional requirement that the bundle comprises "pre-stretched braiding hair." JX-3.00024 (cls. 17, 20). Only the '478 patent is discussed in detail in this opinion.

¹ Complainant JBS Hair, Inc.'s Pet. for Review of the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond (June 17, 2026) ("CPet."); Pet. of the Office of Unfair Import Investigations for Review in Part of the Initial Determination on Violation of Section 337 (June 22, 2026) ("OUII Pet."); Respondents' Contingent Pet. for Review (June 22, 2026) ("RPet.).

² Respondents' Resp. to Complainant's Pet. for Review (June 25, 2026); Combined Resp. of the Office of Unfair Import Investigations to the Private Parties' Pets. for Review of the Initial Determination on Violation of Section 337 (June 30, 2026); Complainant JBS Hair, Inc.'s Resp. to Pet. of the Office of Unfair Import Investigations for Review in Part of the Initial Determination on Violation of Section 337 (June 30, 2026) ("C. Resp. to OUII Pet."); Respondents' Reply to Staff's Pet. for Review (June 30, 2026).

C. Domestic Industry Products

Complainant identified thirteen of its pre-stretched synthetic braiding hair products as domestic industry products (“DI Products”). Final ID at 10. All thirteen DI Products purportedly practice claim 20 of the ’478 patent. *Id.* at 10-11. Complainant alleged that the QB 3X Multi 50 (CPX-0012) was representative of all accused products for purposes of claim 20. *See id.* at 12. The Final ID found that Complainant failed to make that showing of representativeness here and thus Complainant could not claim any particular domestic industry product as representative of any of the others. *Id.* at 13-14. However, the Final ID ultimately reviewed the physical exhibits corresponding to each of the domestic industry products to determine if they practice the asserted claims. *Id.* at 15. Respondents contingently petitioned for review of the Final ID’s decision to evaluate whether the non-representative DI Products practice the asserted claims. RPet. at 18-19. The Commission has determined not to review the Final ID’s findings regarding representativeness and the Final ID’s determination to examine the non-representative DI Products.

D. Accused Products

Complainant identified a total of 55 accused products from the various respondents as infringing claim 20 of the ’478 patent. Final ID at 17-28. For each respondent, Complainant also identified one or more “representative” accused products, for a total of twenty-six representative products. *Id.* As with the DI Products, the Final ID found that Complainant failed to meet its burden to show that the purported representative products are in fact representative of all other accused products for the respective respondent. Final ID at 21. Although the Final ID examined the physical exhibits for the twelve non-representative DI Products, the Final ID did not individually examine the twenty-nine non-representative accused products. Complainant petitioned for review of both the finding that Complainant failed to prove representativeness and

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the Final ID's decision not to examine the physical exhibits of the non-representative accused products. CPet. at 9-10. The Commission has determined not to review either finding.

III. COMMISSION REVIEW OF THE FINAL ID

When the Commission reviews an initial determination, in whole or in part, it reviews the determination *de novo*. *Certain Electronic Stud Finders, Metal Detectors and Electrical Scanners*, Inv. No. 337-TA-1221, Comm'n Op. at 9 (Mar. 14, 2022) (citation modified), *aff'd*, *Zircon Corp. v. Int'l Trade Comm'n*, 101 F.4th 817 (Fed. Cir. 2024). On review, the "Commission has all the powers which it would have in making the initial determination, except where the issues are limited on notice or by rule." *Certain Electronic Devices, Including Streaming Players, Televisions, Set Top Boxes, Remote Controllers, and Components Thereof*, Inv. No. 337-TA-1200, Comm'n Op. at 7 (Dec. 3, 2021) (citation modified), *aff'd*, *Roku, Inc. v. Int'l Trade Comm'n*, 90 F.4th 1367 (Fed. Cir. 2024). With respect to the issues under review, "the Commission may affirm, reverse, modify, vacate, or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge." 19 C.F.R. § 210.45(c). The Commission also "may take no position on specific issues or portions of the initial determination," and "may make any finding or conclusions that in its judgment are proper based on the record in the proceeding." *Id.*; *see also Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984).

IV. ANALYSIS OF THE ISSUES UNDER REVIEW

Upon consideration of the Final ID, the parties' submissions on review, and the record as a whole, the Commission has determined to review the Final ID in part, and on review, affirm in part with supplemental reasoning and take no position in part, resulting in a determination of no violation for all asserted patents.

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A. '026, '301, and '616 Patents

Respondents asserted, among other invalidity grounds, that the asserted claims of the '026, '301, and '616 patents are invalid as anticipated by ten prior art synthetic braiding hair products that were on sale prior to December 15, 2016, the priority date for all three patents. *See* Final ID at 63-64, 125, 179. The Final ID found that the asserted claims are invalid as anticipated by six products: the New York Short Braid, the Mini Braid, the Asante Short Braid, the Sana Abuja Short Braid, the Sana Hi-Yaki Braid, and the Ganda Short Braid. Final ID at 65-108; *id.* at 125-38; *id.* at 179-85. Complainant petitioned for review of these findings. CPet. at 22-89.

The Commission has determined to review the Final ID's invalidity analysis only as to the Asante Short Braid and Sana Abuja Short Braid. On review, the Commission takes no position regarding whether the asserted claims of these patents are invalid under the on sale bar based on the Asante Short Braid and Sana Abuja Short Braid prior art products. The Commission has determined not to review the remainder of the Final ID's analysis regarding the '026, '301, and '616 patents, and therefore finds no violation of section 337 as to those patents.

B. '478 Patent

1. Overview and Asserted Claims

The '478 patent, entitled "Packaged Synthetic Braiding Hair," issued from application no. 16/992,935 ("the '935 application") on March 16, 2021. JX-3.00002. The '935 application was a continuation in part of the application that issued as the '026 patent. *Id.* The specification of the '478 patent contains several additional figures and columns of materials compared to the '026 patent. The patent is assigned to Complainant JBS Hair, Inc. *Id.*

The '026 patent is directed to a hair accessory comprising bundled synthetic braiding hair. JX-3.00002 (Abstract). "Braiding hair is loose strands of synthetic hair that are bundled

together and sold in a package.” JX-3.00016 (1:32-34). These loose strands are braided into the wearer’s hair, creating a lengthening effect and adding body. *Id.* (1:35-40). The manufacturing process for prior art hair accessories left the bundles with a blunt bottom edge:

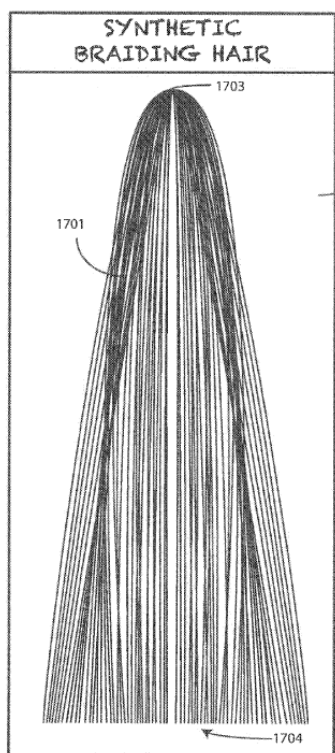


FIG. 17
--PRIOR ART--

JX-3.00015 (Fig. 17). “The problem with each strand of the braiding hair **1701** having the same length is that when it is bundled with a common midpoint, this constitutes an unnatural look.”

JX-3.00017 (3:19-21). As a result:

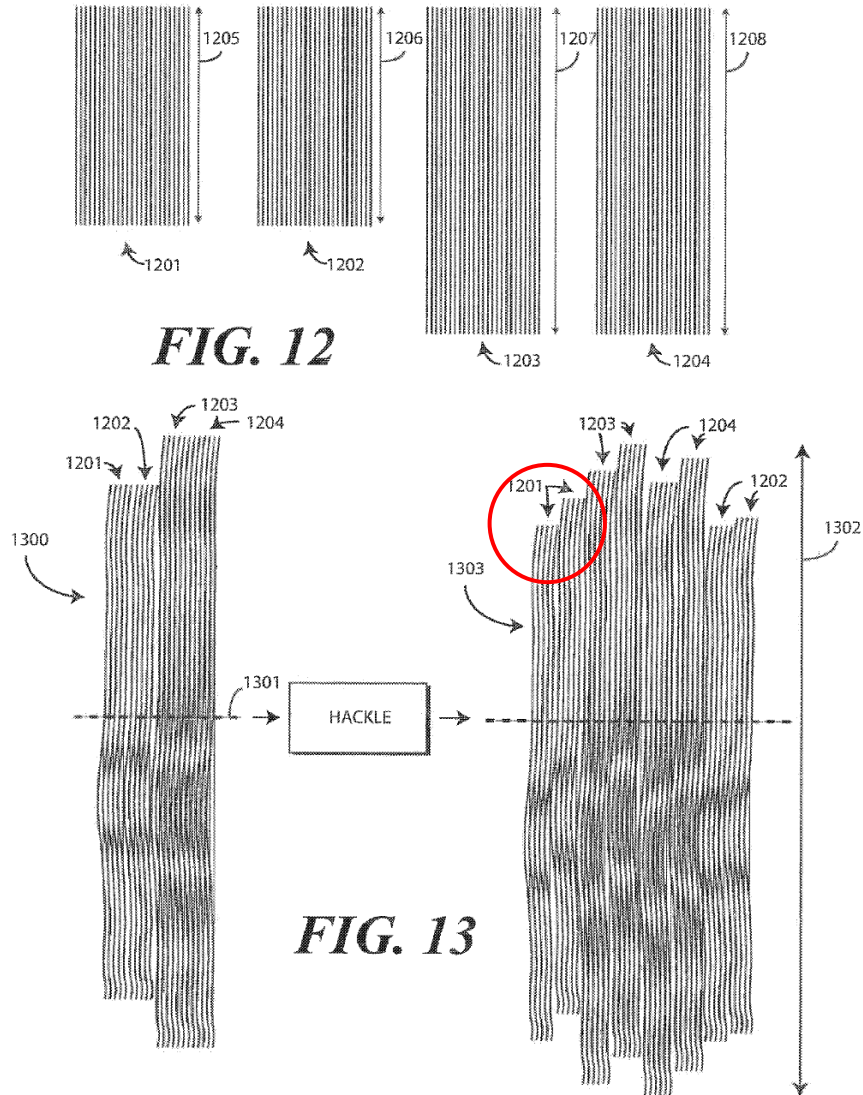
[H]air stylists must “tease” the strands of braiding hair **1701** from the bundle in their hands to pull the ends of some strands back into their hand so that the ends of the braiding hair **1701**, i.e., the base **1704**, has a more natural look by being uneven. This is tedious and takes a tremendous amount of time. This teasing process must occur before the strands of braiding hair **1701** can be used.

Id. (3:22-28). The ’478 patent provides two solutions that eliminate the need for manual teasing:

(1) combining bundles of braiding hair of different lengths; or (2) combining bundles of braiding

hair of the same length but offsetting the bundles from the center of each other. *Id.* (4:1-5).

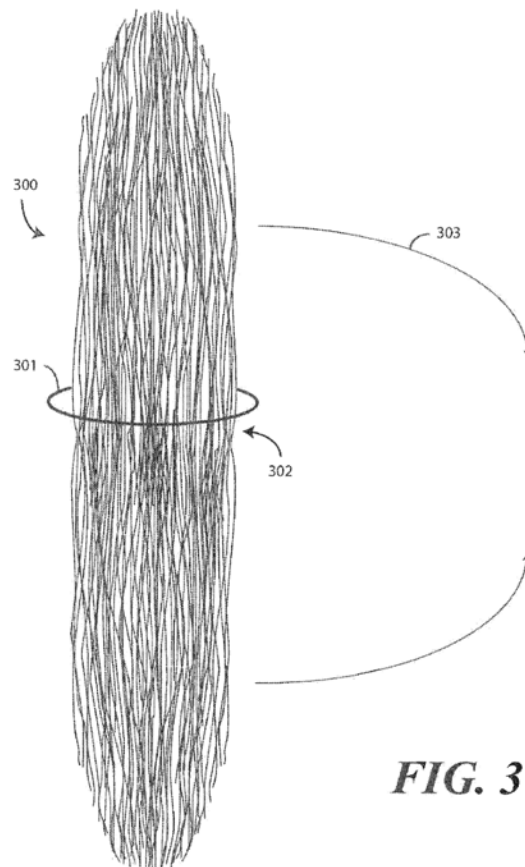
Figure 12 depicts the former:



JX-3.00012 (Fig. 12). In this embodiment, bundles **1201** and **1202** have a common length, and bundles **1203** and **1204** have a second length, longer than bundles **1201** and **1202**. JX-3.00021 (11:11-42; 12:21-35). These bundles are assembled together then “hackled,” which involves “pulling the bundles of hair strands through a bed of metal or plastic spikes,” which evenly

distributes the strands from the bundles “in two dimensions (length and width).” *Id.* (12:41-47). In Figure 13 above, after hackling, a portion of the strands from bundle **1201** have shifted downwards. JX-3.00012 (Fig. 13) (annotation added above). The same is true for bundles **1202**, **1203**, and **1204**. *Id.* As a result, after hackling, the overall bundle of strands **1302** is longer than the length of the individual strands. JX-3.00021-.00022 (12:50-13:14); *see id.* (12:59-63) (“[T]he first length (**1205**) and the second length (**1206**) are twenty-six inches, and the third length (**1207**) and the fourth length (**1208**) are thirty-five inches, the length **1302** of the bundled synthetic braiding hair accessory **1303** is forty inches after hackling.”).

The resulting bundle is shown in Figure 3:



JX-3.0005 (Fig. 3); JX-3.00022 (13:12-14). A binder **301**, such as an elastic band, rubber band, or twist tie, is coupled around the waist (middle) of the bundle. JX-3.00018 (5:51-60). The

bundle is then folded about the waist. *Id.* (5:63-67). The resulting folded bundled synthetic braiding hair **400** is shown in Figure 4, below:

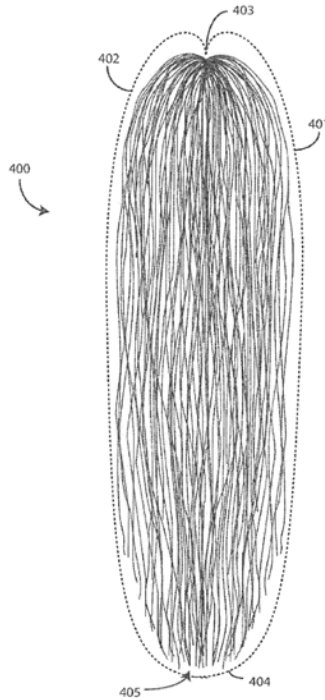


FIG. 4

JX-3.0006 (Fig. 4); JX-3.00022 (13:12-14).

Finally, the specification notes that:

Numerous modifications, changes, variations, substitutions, and equivalents will occur to those skilled in the art without departing from the spirit and scope of the present disclosure as defined by the following claims. For example, the synthetic braiding hair used with embodiments of the disclosure can be pre-stretched synthetic braiding hair or synthetic braiding hair that is not pre-stretched.

Id. (15:58-65) (emphasis added).

Complainant asserts that the Group 1 accused products infringe claim 20, which depends from independent claim 17:

17. A hair accessory, comprising:
bundled synthetic braiding hair, comprising:

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a first bundle of synthetic hair strands having a first length; and

a second bundle of synthetic hair strands having a second length that is shorter than the first length;

wherein the bundled synthetic braiding hair is folded by about a waist of the bundled synthetic braiding hair to define a perimeter having a first end collocated with the waist, a middle, and a second end located distally from the waist; and

wherein a width of the perimeter narrows as the bundled synthetic braiding hair extends distally from the middle to the second end.

* * *

20. The hair accessory of claim 17, wherein the bundled synthetic braiding hair comprises pre-stretched braiding hair.

JX-3.00024 (cls. 17, 20).

2. Claim Construction

The parties proposed three different constructions for the term “pre-stretched braiding hair” as used in claim 20 of the ’478 patent:

Complainant	Respondents	OUII
“teased or pulled strands of braiding to form a more natural distally narrowed or rounded bottom.”	Plain and ordinary meaning, “stretched braiding hair,” without importing unstated manufacturing steps, appearance-based requirements, or stylist-dependent judgments	Plain and ordinary meaning, which is “stretched braiding hair,” wherein the bundle of hair is stretched but not by any particular means

Final ID at 142-43; Commission Investigative Staff’s Initial Post-Trial Brief (Mar. 27, 2026) at 47. The Final ID construed “pre-stretched braiding hair” to mean “stretched braiding hair,” as in “pulled or put in tension” (as opposed to merely shifting the strands within the bundle). Final ID at 149, 151; *see id.* at 168 (“‘[P]re-stretched’ simply means ‘stretched’ as in lengthened by pulling.”). Complainant and OUII petitioned for review of the Final ID’s construction of “pre-stretched” and related findings. CPet. at 89-98; OUII Pet. at 6-15. The Commission has

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determined to review the Final ID's construction of the term "pre-stretched braiding hair," and on review, affirms the Final ID's construction with the supplemental analysis set forth below.

Claim terms are normally construed according to their ordinary and customary meaning in the art, as understood by a person of ordinary skill in the art in the context of the entire patent. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005). Claim construction focuses mainly on the intrinsic evidence, which consists of the language of the claims themselves, the specification, and the prosecution history. *Id.* at 1313-1317. If the intrinsic evidence does not establish the meaning of a claim, then extrinsic evidence, including evidence external to the patent and the prosecution history, may be considered.

Beginning with the claim language, claim 20 recites the hair accessory of claim 17 wherein "the bundled synthetic braiding hair comprises *pre-stretched* braiding hair." JX-3.00024 (cl. 20) (emphasis added). Respondents and OUII argued that the plain and ordinary meaning of "pre-stretched" is "stretched," though they disagree as to whether that term modifies the strands or the bundle of synthetic hair. *See* Final ID at 142-43, 148. Complainant argued that "pre-stretched" is a term of art coined by Complainant shortly before the filing of the application that issued as the '026 patent,³ but acknowledged that the plain and ordinary meaning of "stretched" as used in Respondents' proposed construction is "to pull."⁴ The Final ID found that the plain meaning of "pre-stretched" is "stretched," meaning "having been pulled." Final ID at 143, 149.

Turning next to the specification, the term "pre-stretched" only appears in a single sentence of the written description, in the second to last paragraph of the specification, which

³ Compl. Initial Post-Hearing Br. at 53-54 (Mar. 27, 2026).

⁴ Compl. Pre-Hearing Br. at 152 (Feb. 13, 2026).

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states that “the synthetic braiding hair used with embodiments of the disclosure can be pre-stretched braiding hair or synthetic braiding hair that is not pre-stretched.” JX-3.00023 (15:58-65). The specification does not otherwise define or use the term “pre-stretched.” Nor does the specification connect “pre-stretched” to earlier discussions of “teasing.” This limited record suggests, as the Final ID concluded, that “pre-stretched” should be given its plain and ordinary meaning of “stretched,” meaning “pulled or put in tension.”

Complainant points to earlier discussions of “teasing,” to suggest that pre-stretching means pulling or teasing to form a narrowed or rounded bottom edge. CPet. at 91 (quoting ’026 patent 2:59-3:3). The Commission disagrees. The cited passage describes pulling and teasing in order to achieve “a more natural look by being *uneven*,” not necessarily a narrowed or rounded edge. Moreover, the specification refers to “pre-stretched” as a possible modification or variation on the disclosed embodiments teaching combinations of different length strands or offset bundles of hair in order to form larger bundles with narrowed or rounded bottom edges, strongly implying that “pre-stretching” requires something more than pulling or teasing to form a narrowed or rounded bottom edge. *See id.* (15:58-65).

The doctrine of claim differentiation provides additional support for the Final ID’s construction of “pre-stretched.” “Under the doctrine of claim differentiation, each claim in a patent is presumptively different in scope.” *Ecolab, Inc. v. Paraclipse, Inc.*, 285 F.3d 1362, 1375 (Fed. Cir. 2002) (citation modified). Moreover, “the presence of a dependent claim that adds a particular limitation raises a presumption that the limitation in question is not found in the independent claim.” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004). Independent claim 17, from which claim 20 depends, recites bundled synthetic braiding hair with a perimeter that narrows as the hair extends distally from the waist of the bundle. JX-3.00024

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(cl. 17). Defining “pre-stretched” as Complainant suggests would mean that claim 20 would require the hair accessory of claim 17—which must have a narrowed end—to have a narrowed end, rendering claim 20 meaningless. *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 801, 810 (Fed. Cir. 2021) (“It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.”) (citation modified).

The phrasing of other claims in the ’478 patent further support the Final ID’s construction of “pre-stretched.” Independent claim 10 recites a method of packaging a hair accessory comprising combining bundles of synthetic hair strands. JX-3.00023-24 (cl. 10). Dependent claim 15 is directed to the method of claim 10 “further comprising hackling the bundled synthetic braiding hair.” JX-3.00024 (cl. 15). Claim 16, which depends from claim 15, adds the requirement that the hackling “result[s] in a length of the bundled synthetic braiding hair being longer than [the strands in the bundles].” *Id.* (cl. 16). Thus, the patent uses “hackling” to describe the process that results from the overall bundle being lengthened in claim 16, but uses a different term, “pre-stretched,” to describe the bundled synthetic braiding hair in claim 20, strongly suggesting “pre-stretched” requires more than simply shifting hairs lengthwise. This is reinforced by the specification, which describes “pre-stretched” as a possible modification of the disclosed embodiments, like those in Figures 12 and 13 that teach hackling to shift hairs lengthwise. *See* JX-3.00023 (15:58-65). The Final ID’s construction of “pre-stretched” as denoting lengthening the hair strands by applying tension (rather than shifting lengthwise within the bundle) differentiates between “hackled” and “pre-stretched,” consistent with the claim

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language and the specification. Accordingly, the Commission finds that the intrinsic record suggests that “pre-stretched” means pulled under tension.⁵

Complainant points to certain extrinsic evidence in support of its construction. For instance, it points to a May 2016 prototype DI Product purportedly pre-stretched by pulling and teasing strands to form a narrowed bottom; *id.* at 90 (citing RX-0373C). But the testimony regarding this prototype described the product as “pre-stretched” solely because the bottom edge is not blunt:

Q. Is the prototype pre-stretched?

A. It is.

Q. What do you understand “pre-stretched” to mean?

A. So we’re talking about a product where the bottom surface, or the surface at the bottom would not be flat or blunt. So as you go along towards the bottom or towards the end of the product, it is made to be getting narrower.

Tr. 175:9-16 (Lee). Again, if “pre-stretched” just means “narrowed,” then dependent claim 20 is redundant of independent claim 17.

Complainant’s expert testified that she had never heard of the term “pre-stretched” prior to June 2016, but that prior to that time, braiders manually “pulled and teased and feathered out the hair.” Tr. 397:14-18. Respondents’ expert (Ms. DuPriest) likewise testified that “the term ‘pre-stretching’ is fairly new.” Tr. 871:9-10. Ms. DuPriest explained that “they used to say stretching, but they were always talking about the bundle. You’re taking the bundle of fibers and

⁵ OUII contends that “stretched braiding hair” means that the *bundle* is elongated, not that individual hairs are pulled under tension and thus elongated. OUII Pet. at 6-7; *see* OUII Reply PHB at 2-6. Even if OUII is correct that “pre-stretched braiding hair” refers to a pre-stretched bundle, that does not resolve the question of whether the bundle is lengthened by applying tension or by merely shifting strands. The Commission agrees with the Final ID that the plain and ordinary meaning of “pre-stretched” means that the lengthening of the bundle occurs through elongating individual hairs under tension.

stretching them out, which means this elongated shift relative to each other.” *Id.* 871:10-13.

Even if the Commission were to consider this extrinsic evidence, it does not support Complainant’s contention that pre-stretched meant teasing and pulling to form a specific shape, namely, a narrowed or rounded bottom edge.

Finally, Complainant claims to have coined the term “pre-stretched.” CPet. at 90. To act as its own lexicographer, in the patent specification a patentee “must clearly set forth a definition of the disputed claim term other than its plain and ordinary meaning” and “must clearly express an intent to redefine the term.” *Thorner v. Sony Computer Entertainment Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). Complainant points to no such “clear” statement or definition in the specification that would warrant construing “pre-stretched” as suggested by Complainant.

For these reasons, and the reasons set forth in the Final ID, the Commission affirms the Final ID’s construction of “pre-stretched” as “stretched,” meaning pulled under tension. The Commission has determined not to review the Final ID’s finding of no infringement applying that construction and thus affirms the finding of no violation as the ’478 patent.

3. Technical Prong of the Domestic Industry Requirement

To prove a violation of section 337, the Complainant must show an industry in the United States relating to the articles protected by the patent exists or is in the process of being established. 19 U.S.C. § 337(a)(2). This requirement has been divided into two parts: (1) the “technical prong,” under which a complainant must show an article practices a claim of the asserted patent; and (2) the “economic prong” under which the complainant must show significant and/or substantial investments with respect to those articles, as set forth in section 337(a)(3). *See Certain Video Game Systems and Controllers*, Inv. No. 337-TA-743, Comm’n Op. at 6-7 (April 14, 2011).

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Complainant argued that all of the DI Products practice claim 20 of the '478 patent, thus satisfying the technical prong for that patent. Final ID at 154. The Final ID found that “given the overall lack of opposition . . . from Respondents” regarding the unique limitations of claim 20, the DI Products “have been show to practice claim 20.” *Id.* at 155. None of the parties petitioned for review of this finding. The Commission has determined to review this finding *sua sponte*, see 19 C.F.R. § 210.44, and on review, takes no position regarding whether the DI Products practice claim 20 of the '478 patent.

4. Invalidity

Respondents argued that in light of the Final ID’s construction of “pre-stretched,” the '026 patent did not provide adequate written description for the “pre-stretched” limitation in the '478 patent and thus claim 20 of the '478 patent was not entitled to claim priority to the '026 patent. Final ID at 156. The Final ID agreed and found the priority date for claim 20 to be August 13, 2020. *Id.* at 157. The parties did not dispute that the DI Products were on sale prior to August 13, 2020, therefore the Final ID found claim 20 invalid based on the sale of the DI Products themselves. *Id.* Complainant and OUII petitioned for review of this finding. CPet. at 96-98; OUII Pet. at 14-15.

“[A] patent application is entitled to the benefit of the filing date of an earlier filed application only if the disclosure of the earlier application provides support for the claims of the later application, as required by 35 U.S.C. § 112.” *PowerOasis, Inc. v. T-Mobile USA, Inc.*, 522 F.3d 1299, 1306 (Fed. Cir. 2008). The Commission has determined to review the Final ID’s invalidity analysis for the '478 patent. On review, the Commission takes no position regarding the priority date for claim 20 and whether the DI Products are prior art to the '478 patent.

OUII argues that the Final ID erred in its construction of “pre-stretched,” but even under the correct construction, claim 20 of the '478 patent is invalid in light of the New York Short

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Braid and Mini Braid prior art products. OUII Pet. at 15-18. The Commission takes no position regarding the New York Short Braid but finds that if “pre-stretched” means elongation of a bundle of synthetic hair through shifting strands lengthwise as OUII contends, then claim 20 is invalid based on the Mini Braid prior art product.

The Final ID found that the Mini Braid practices all limitations of independent claim 17, leaving only the “pre-stretched” limitation of claim 20. Final ID at 159. Advertisements indicate the Mini Braid was on sale as early as 2011-2012, prior to the earliest alleged priority date for claim 20. *Id.* at 73. One advertisement in African Hair & Beauty Magazine from 2011 describes the Mini Braid as “already stretched.” RX-0416.0008; *accord* RX-0253.0010. The manufacturing specification of the Mini Braid from January 22, 2014, lists two lengths of fibers, ■ inches and ■ inches, but the overall length of the product is ■ inches. *See* RX-0242C.0003. RX-2800 shows the two lengths of strands next to the final bundle:



RX-2800. Respondents’ expert (Ms. DuPriest) explained that the hackling process leads to “the stretch effect of the bundle” such that the bundle is longer than the longest fiber. Tr. 999:25-

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1000:18; *see id.* 1000:16-18 (“Q: [T]hat must indicate that the product was pre-stretched[,] right? A: That’s correct.”). Thus, the evidence clearly shows the bundle was “stretched” under OUII’s construction, rendering claim 20 invalid under that construction.

In opposition, Complainant argues that the Mini Braid had a blunt bottom edge and thus did not meet the limitation in claim 17 (from which claim 20 depends) that “a width of the perimeter narrows as the bundled synthetic braiding hair extends distally from the middle to the second end.” C. Resp. to OUII Pet. at 13. For the reasons set forth in the Final ID at pp. 72-77, and as clearly shown in RX-2800, the Mini Braid had an overall rounded bottom edge. Complainant does not dispute the obvious point that the final bundle was longer than the individual strands. The Commission therefore finds that, if “pre-stretched” were construed to cover elongation of the synthetic hair bundle by shifting strands lengthwise, as OUII contends, there is clear and convincing evidence that the Mini Braid embodied the limitations of claim 20 and was on sale before the priority date of the ’478 patent, thus invalidating the asserted claim.

C. Economic Prong of the Domestic Industry Requirement

Complainant argued that it satisfied the economic prong of the domestic industry requirement under sections 337(a)(3)(A), (B), and (C). Final ID at 190. The Final ID agreed as to subsections (A) and (B), but found Complainant failed to show substantial investment in its exploitation of the asserted patents under subsection (C). *Id.* at 189-210. Respondents contingently petitioned for review of the Final ID’s findings as to subsections (A) and (B). RPet. at 18-22. The Commission has determined to review the entirety of the Final ID’s economic prong analysis, and on review, the Commission takes no position on whether Complainant satisfied the economic prong of the domestic industry requirement.

V. CONCLUSION

The Commission has considered all other arguments by the parties and does not find them persuasive. Therefore, for the reasons set forth herein and the Final ID, the Commission finds no violation of section 337 in this investigation.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', enclosed within a thin black rectangular border.

Lisa R. Barton
Secretary to the Commission

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