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U.S. Customs and Border Protection

HQ H351104

February 20, 2026

OT:RR:BSTC:EOE H351104 ACC

CATEGORY: 19 U.S.C. § 1337; Unfair Competition

George C. Summerfield
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RE: Ruling Request; U.S. International Trade Commission; Limited Exclusion Order; Investigation No. 337-TA-1394; Certain Liquid Coolers for Electronic Components in Computers, Components Thereof, Devices for Controlling Same, And Products Containing Same

Dear Mr. Summerfield:

Pursuant to 19 C.F.R. Part 177, the Exclusion Order Enforcement Branch, Regulations and Rulings, U.S. Customs and Border Protection ("CBP") issues this ruling letter, based on a request from SilverStone Technology Co., Ltd., SilverStone Technology, Inc., Enermax Technology, Enermax USA, Shenzhen Apaltek Co., Ltd., and Guangdong Apaltek Liquid Cooling Technology Co., Ltd. (collectively, "Apaltek" or "Respondent") submitted on August 4, 2025 ("Ruling Request"), holding that the articles at issue, as described below, are subject to the limited exclusion order ("LEO") that the U.S. International Trade Commission ("ITC" or "Commission") issued as a result of Investigation No. 337-TA-1394 ("the 1394 investigation" or "underlying investigation") under section 337 of the Tariff of 1930, as amended, 19 U.S.C. § 1337.

We further note that determinations of the Commission resulting from the underlying investigation or a related proceeding under 19 C.F.R. Part 210 are binding authority on CBP and, in the case of conflict, will by operation of law modify or revoke any contrary CBP ruling or decision pertaining to section 337 exclusion orders.

This ruling letter is the result of a request for an administrative ruling under 19 C.F.R. Part 177 that was conducted on an *inter partes* basis. The proceeding involved the two parties with a direct and demonstrable interest in the question presented by the Ruling Request: (1) your client, Apaltek, the ruling requester and respondent in the 1394 investigation; and (2) Cooler Master Co., Ltd., CMI USA, Inc., and CMC Great USA, Inc. (collectively "Cooler Master"), the patent owner and complainant in the 1394 investigation. See, e.g., 19 C.F.R. § 177.1(c).

The parties were asked to identify in their submissions confidential information, including information subject to the administrative protective order in the underlying investigation, with [[red brackets]]. See 19 C.F.R. §§ 177.2, 177.8. Consistent with the above, the parties are directed to identify information in this ruling that should be bracketed in red [[ ]] because it constitutes confidential information, as defined below, such that it should be redacted from the public version of this ruling that will be published in accordance with 19 C.F.R. § 177.10. The parties are to contact the EOE Branch within ten (10) business days of the date of this ruling letter to identify such information with brackets. See, e.g., 19 C.F.R. § 177.8(a)(3).

Please note that disclosure of information related to administrative rulings under 19 C.F.R. Part 177 is governed by, for example, 6 C.F.R. Part 5, 31 C.F.R. Part 1, 19 C.F.R. Part 103, and 19 C.F.R. § 177.8(a)(3). See, e.g., 19 C.F.R. § 177.10(a). In addition, CBP is guided by the laws relating to confidentiality and disclosure, such as the Freedom of Information Act ("FOIA"), as amended (5 U.S.C. § 552), the Trade Secrets Act (18 U.S.C. § 1905), and the Privacy Act of 1974, as amended (5 U.S.C. § 552a). A request for confidential treatment of information submitted in connection with a ruling requested under 19 C.F.R. Part 177 faces a strong presumption in favor of disclosure. See, e.g., 19 C.F.R. § 177.8(a)(3). The person seeking this treatment must overcome that presumption with a request that is appropriately tailored and supported by evidence establishing that: the information in question is customarily kept private or closely-held and either that the government provided an express or implied assurance of confidentiality when the information was shared with the government or there were no express or implied indications at the time the information was submitted that the government would publicly disclose the information. See Food Marketing Institute v. Argus Leader Media, 139 S. Ct. 2356, 2366 (2019) (concluding that "[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of exemption 4."); see also U.S. Department of Justice, Office of Information Policy (OIP): Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA (updated 10/7/2019); see also OIP Guidance: Exemption 4 after the Supreme Court's Ruling in Food Marketing Institute v. Argus Leader Media (updated 10/4/2019).

I. BACKGROUND

A. ITC Investigation No. 337-TA-1394

1. Procedural History At The ITC

The Commission instituted Investigation No. 337-TA-1394 on March 21, 2024, based on a complaint filed by Cooler Master. Certain Liquid Coolers for Electronic Components In Computers, Components Thereof, Devices for Controlling Same, And Products Containing Same, Inv. No. 337-TA-1394, EDIS Doc. ID 858641, Public Commission Opinion (August 5, 2025) ("Comm'n Op.") at 2 (citing 89 Fed. Reg. 20247-48 (Mar. 21, 2024)). The complaint alleged a violation of section 337 by reason of infringement of claims 1-3 and 14 of U.S. Patent No. 10,509,446 ("the '446 patent"); claims 1-4 of U.S. Patent No. 11,061,450 ("the '450 patent"); and the claim of U.S. Patent No. D856,941 ("the '941 design patent"). Comm'n Op. at 2-3. The notice

of investigation named SilverStone Technology Co., Ltd. of Taiwan; SilverStone Technology, Inc. of Chino, California; Enermax Technology Corp. of Taiwan; Enermax USA of Chino, California; Shenzhen Apaltek Co., Ltd. of China; and Guangdong Apaltek Liquid Cooling Technology Co., Ltd. of China as respondents. Id. at 3. The Commission's Office of Unfair Import Investigations ("OUII") was not a party in the investigation. Id.

On March 21, 2025, the Chief Administrative Law Judge ("CALJ") issued a final initial determination, Certain Liquid Coolers for Electronic Components In Computers, Components Thereof, Devices for Controlling Same, And Products Containing Same, Inv. No. 337-TA-1394, EDIS Doc. ID 848531, Initial Determination on Violation of Section 337 and Recommendation on Remedy and Bond (March 21, 2025) ("FID"), finding a violation of section 337. Id. at 3. Specifically, the CALJ determined that a violation of section 337 occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of the accused products due to infringement of certain claims of the '446 patent and the '450 patent. Id.

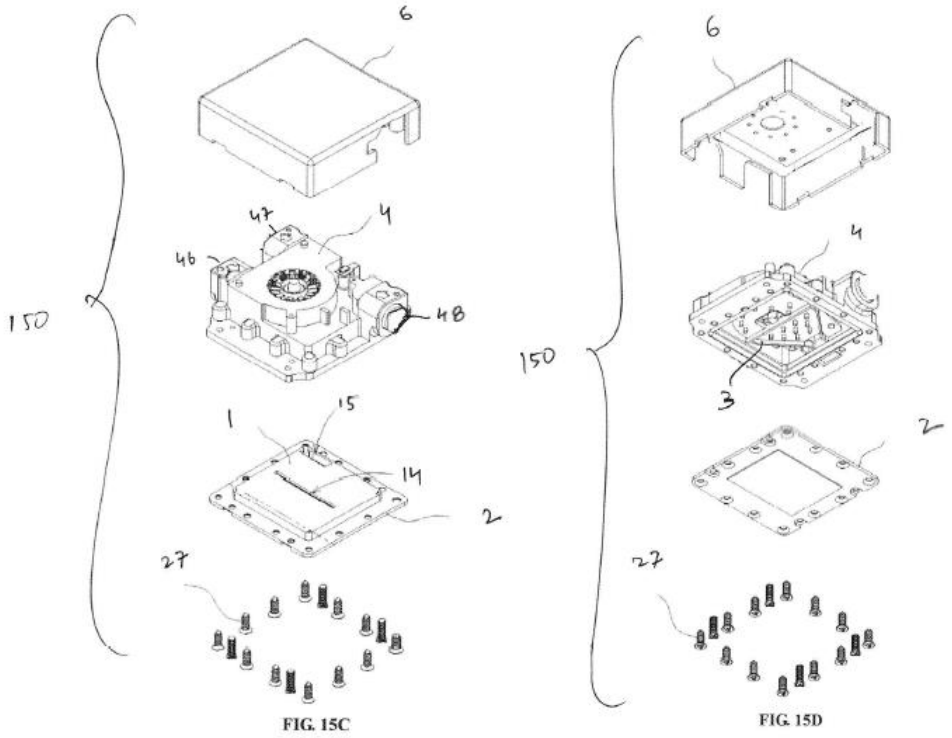
The Commission determined to review in part the FID and requested submissions responding to the Commission's questions on review and remedy, the public interest, and bonding. Id. at 3-4 (citing 90 Fed. Reg. 22755-56). The Commission, in its review of the FID, found a violation of section 337 as to the '446 patent and the '450 patent, and determined that the appropriate remedy was a limited exclusion order and a CDO. Id. at 36.

In the limited exclusion order, the Commission ordered that "[c]ertain liquid coolers for electronic components in computers, components thereof, and products containing same that infringe one or more of claims 1-3 and 14 of the '446 patent or claims 1-4 of the '450 patent and are manufactured abroad by, or on behalf of, or imported by or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or its successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the Asserted Patents, except under license from, or with the permission of, the patent owner or as provided by law." Certain Liquid Coolers for Electronic Components In Computers, Components Thereof, Devices for Controlling Same, And Products Containing Same, Inv. No. 337-TA-1394, EDIS Doc. ID 857700, Limited Exclusion Order (July 24, 2025) ("1394 LEO") at 2, ¶ 1. The Commission further defined the articles covered by the 1394 LEO as "liquid coolers for electronic components in computers, components thereof, and products containing same subject to this exclusion order (i.e., "covered articles") [including the following]: liquid coolers for electronic components in computers, components thereof, and products containing same." Id. at 2, ¶ 2.

2. The Patents And Claims In The 1394 LEO

The 1394 LEO prohibits the unlicensed entry for consumption of certain liquid coolers for electronic components in computers, components thereof, and products containing same that infringe one or more of claims 1-3 and 14 of the '446 patent"; and claims 1-4 of the '450 patent. 1394 LEO at 2, ¶ 1. These patents are related, and their specifications are materially the same. Comm'n Op. at 5. Both patents are titled "Cooling Apparatus for Electronic Components". Id. at

5. The specification for these patents describes a cooling apparatus for dissipating heat generated by electronic components. Id. at 5. One embodiment from the specification is a cooling apparatus that incudes "an outer casing 6 installed on the base plate 2 and enclosing the housing 4, the flow guidance plate 3, and the cover member 1." Id. at 5 (quoting '446 patent at 7:61-64). The general structure of the cooling apparatus is shown in the figures below:



'446 patent at Figs. 15C, 15D. In the above structure, the cover member 1 is disposed on the base plate 2 to define a "heat exchange chamber." See id. at 4:5-25. The flow guidance plate 3 is positioned on the cover member and defines a first cavity and a second cavity. See id. at 5:10-63. In general, the cooling apparatus functions by pumping fluid at a lower temperature into the heat exchange chamber, circulating the fluid in the heat exchange chamber where it absorbs thermal energy from and cools the base plate, and then circulating the fluid to an external heat dissipating device to cool the fluid again. Id. at 1:33-44, 6:66-7:27.

a. Claims 1-3 and 14 of the '446 patent

For the covered claims from the '446 patent, claims 2 and 14 depend from independent claim 1 and claim 3 depends from dependent claim 2. Independent claim 1 and claims 2, 3, and 14 of the '446 patent are reproduced below:

1. A cooling apparatus, comprising:

a base plate configured to dissipate heat and including a heat exchange unit;

a cover member coupled to the base plate and at least partially enclosing the heat exchange unit, the cover member and the base plate defining a heat exchange chamber that includes the heat exchange unit, the cover member defining a first opening and a second opening, and the cover member being coupled to the base plate such that at least one of the first and second openings is above the heat exchange unit;

a flow guidance plate disposed on a top surface of the cover member and including a bottom surface facing the top surface of the cover member, wherein

the flow guidance plate at least partially defines a first cavity and a second cavity separated from the first cavity, and

the first cavity and the second cavity are defined on the bottom surface of the flow guidance plate; and

a housing disposed on the flow guidance plate.

2. The cooling apparatus of claim 1, wherein

the heat exchange unit includes a plurality of fins,

the first opening is a first elongated slot and the second opening is a second elongated slot parallel to the first elongated slot, the first and second elongated slots having different lengths, and

the cover member is coupled to the base plate such that the first and second elongated slots extend perpendicular to the plurality of fins.

3. The cooling apparatus of claim 2, wherein the plurality of fins form an array having a width substantially equal to a length of the first elongated slot.

14. The cooling apparatus of claim 1, further comprising an outer casing secured to the base plate and at least partially enclosing the cover member, the flow guidance plate, and the housing.

Comm'n Op. at 6-7; see also '446 patent, claims 1, 2-3, 14.

b. Claims 1-4 of the '450 patent

For the covered claims from the '450 patent, claim 4 depends from claim 3, claim 3 depends from claim 2, and claim 2 depends from independent claim 1. Independent claim 1 and claims 2, 3, and 4 of the '446 patent are reproduced below:

1. A cooling apparatus, comprising:

a base plate configured to dissipate heat and including a heat exchange unit;

a cover member coupled to the base plate and at least partially enclosing the heat exchange unit, the cover member and the base plate defining a heat exchange chamber that includes the heat exchange unit, the cover member defining a first opening and a second opening, and the cover member being coupled to the base plate such that at least one of the first opening and the second opening is above the heat exchange chamber;

a flow guidance plate disposed on the cover member;

a housing disposed on the flow guidance plate; and

an outer casing secured to the base plate and at least partially enclosing the cover member, the flow guidance plate, and the housing.

2. The cooling apparatus of claim 1, wherein the heat exchange unit comprises a plurality of fins.

3. The cooling apparatus of claim 2, wherein the first opening is a first elongated slot and the second opening is a second elongated slot parallel to the first elongated slot, the first and second elongated slots having different lengths, and

the cover member is coupled to the base plate such that the first and second elongated slots extend perpendicular to the plurality of fins.

4. The cooling apparatus of claim 3, wherein the plurality of fins form an array having a width substantially equal to a length of the first elongated slot.

'450 patent at claims 1-4.

B. 19 C.F.R. Part 177 Ruling Request

1. Procedural History Regarding the Current Ruling Request

On August 4, 2025, Apaltek submitted the Ruling Request to the EOE Branch, which included Exhibits A through F (collectively, "Ruling Request"). Apaltek Email to EOE Branch (dated August 5, 2025). Apaltek also confirmed that it had transmitted the Ruling Request to Cooler Master's counsel. Id. Apaltek requested "a ruling pursuant to 19 U.S.C. § 177.1(a)(1) that their prospective importation of redesigned liquid coolers will not violate the Exclusion Order ('Exclusion Order') issued by the United States International Trade Commission ('ITC') on July 24, 2025 in Investigation No. 337-TA-1394 ('the Investigation')." Ruling Request at 1.

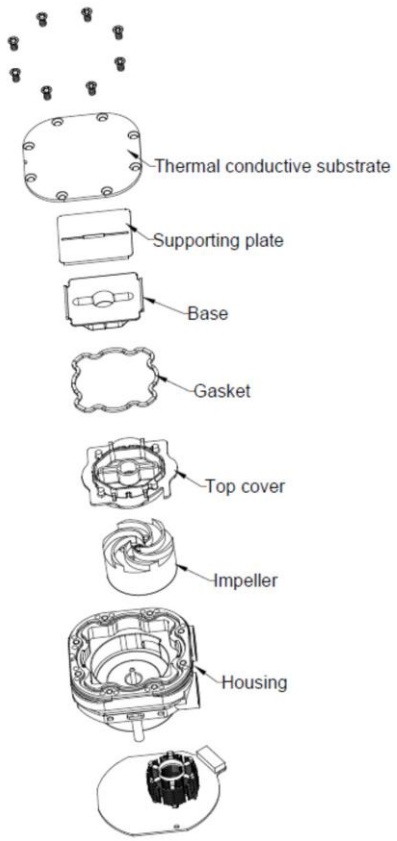
On August 12, 2025, the EOE Branch had an initial conference call with Apaltek and Cooler Master, on which both parties agreed to conduct this proceeding on an *inter partes* basis as administered by the EOE Branch. During this initial call, the EOE Branch and the parties discussed the ground rules and scheduling for the *inter partes* proceeding. On August 15, 2025, the parties

sent the EOE Branch an executed non-disclosure agreement and jointly proposed a procedural schedule for this *inter partes* proceeding. Cooler Master Email to EOE Branch (dated August 15, 2025). On August 15, 2025, the EOE Branch established the procedural schedule, based on the parties' jointly proposed procedural schedule. See EOE Branch Email to Parties (dated August 15, 2025).

On September 2, 2025, Cooler Master provided its response to the Ruling Request (collectively, "Cooler Master Response"). On September 3, 2025, Apaltek provided its reply to Cooler Masters's response, which included multiple exhibits A through D (collectively, "Apaltek Reply"). On September 16, 2025, Cooler Master provided its sur-reply ("Cooler Master Sur-Reply") to the Apaltek Reply. On September 23, 2025, the EOE Branch conducted an oral discussion with the parties, with each party providing a presentation ("Apaltek Oral Discussion Presentation" and "Cooler Master Oral Discussion Presentation," respectively). Lastly, on September 30, 2025, the parties submitted post oral discussion submissions ("Apaltek Oral Discussion Submission" and "Cooler Master Post Oral Discussion Submission," respectively).

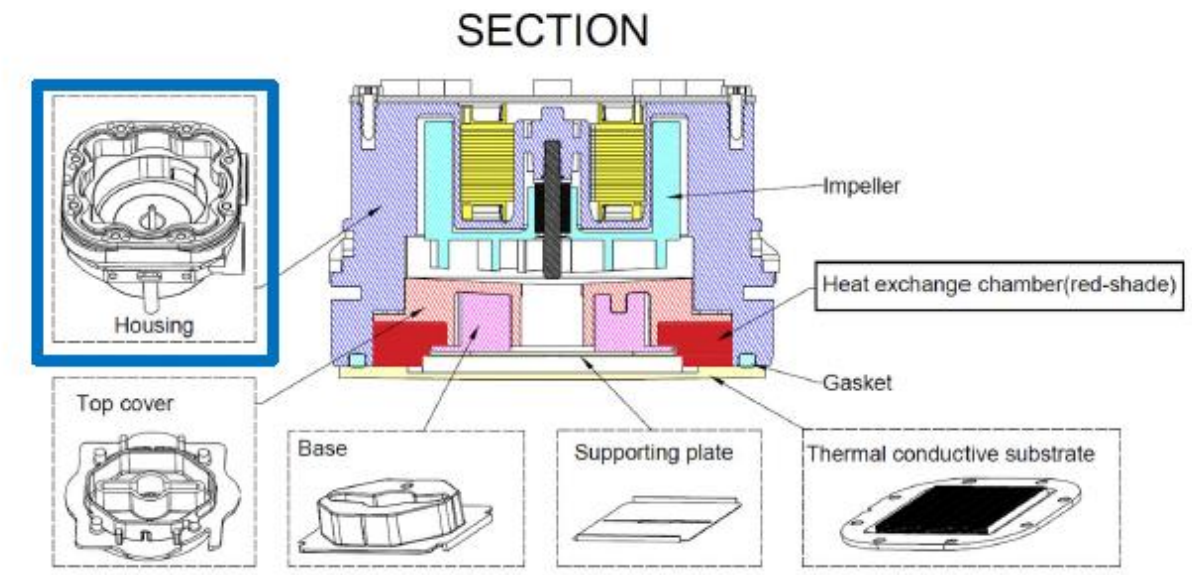
2. The Articles at Issue

The articles at issue in the Ruling Request include redesigned liquid coolers: (1) the CF liquid cooler; and (2) the TDT liquid cooler (collectively, "Redesign Liquid Coolers"). The first redesigned liquid cooler is the CF liquid cooler as depicted below:



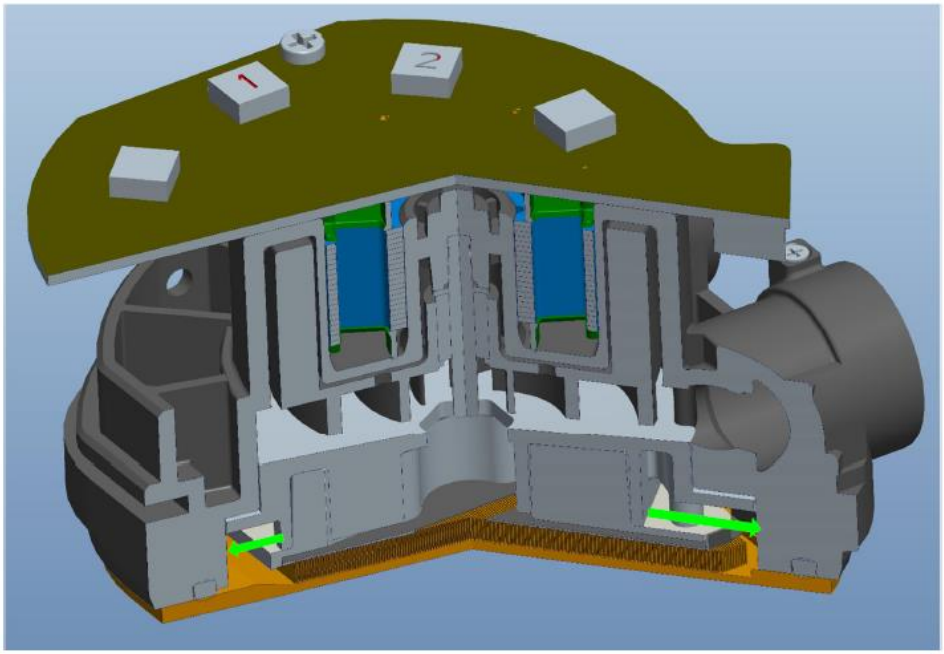
Ruling Request at 6.

An image showing the heat exchange chamber of the CF liquid cooler is included below:



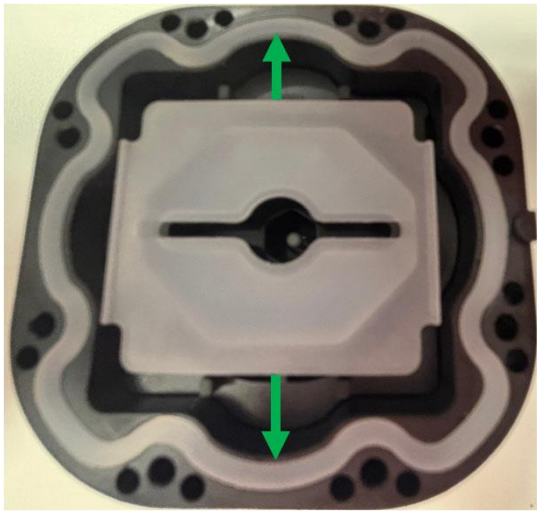
Id. at 7.

Further, the below CAD drawing of the CF liquid cooler similarly shows that the housing provides the side walls of the heat exchange chamber, with the space between the heat exchange fins and the housing as designated by green arrows:



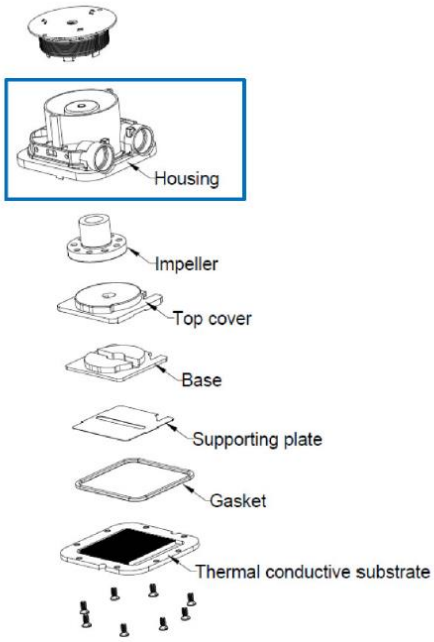
Id.

The image below of the CF liquid cooler shows a space between the cover member and the side walls of the housing as indicated by a green arow:



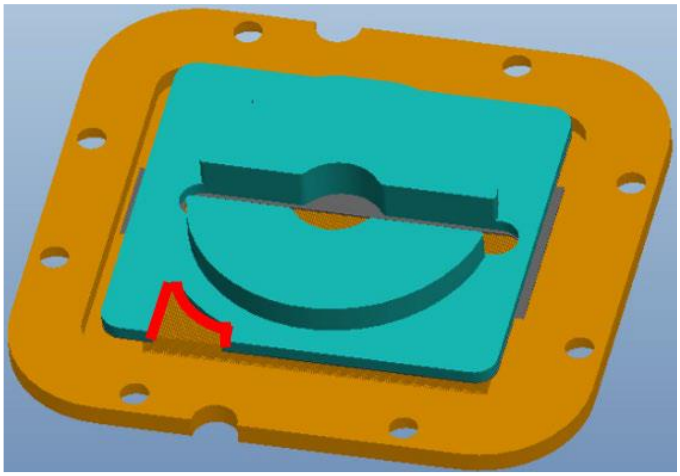
Id. at 8.

The second redesigned liquid cooler is the TDT redesigned liquid cooler as shown below:



Id. at 9.

In the TDT redesigned liquid cooler, the liquid cooler has an uncovered portion of the heat exchange fins (shown below in red) when the cover member and base plate are assembled:



Id. at 9-10; see also Xiao Decl. at ¶ 11.

II. ISSUE

Whether Apaltek has failed to meet its burden to show that the articles at issue do not infringe the '446 and '450 patents and thus are not subject to the LEO issued in the 1394 investigation.

III. LEGAL FRAMEWORK

A. Section 337 Exclusion Order Administration

The Commission shall investigate any alleged violation of section 337 to determine, with respect to each investigation conducted by it under this section, whether there is a violation of this section. See 19 U.S.C. § 1337(b)(1) and (c). If the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States unless the Commission finds based on consideration of the public interest that such articles should not be excluded from entry. See 19 U.S.C. § 1337(d)(1).

When the Commission determines that there is a violation of section 337, it generally issues one of two types of exclusion orders: (1) a limited exclusion order or (2) a general exclusion order. See Fuji Photo Film Co., Ltd. v. ITC, 474 F.3d 1281, 1286 (Fed. Cir. 2007). Both types of orders direct CBP to bar infringing products from entering the country. See Yingbin-Nature (Guangdong) Wood Indus. Co. v. ITC, 535 F.3d 1322, 1330 (Fed Cir. 2008). "A limited exclusion order is 'limited' in that it only applies to the specific parties before the Commission in the investigation. In contrast, a general exclusion order bars the importation of infringing products by everyone, regardless of whether they were respondents in the Commission's investigation." Id. A general

exclusion order is appropriate only if two exceptional circumstances apply. See Kyocera Wireless Corp. v. ITC, 545 F.3d 1340, 1356 (Fed. Cir. 2008). A general exclusion order may only be issued if (1) "necessary to prevent circumvention of a limited exclusion order," or (2) "there is a pattern of violation of this section and it is difficult to Identify the source of infringing products." 19 U.S.C. § 1337(d)(2); see Kyocera, 545 F.3d at 1356 ("If a complainant wishes to obtain an exclusion order operative against articles of non-respondents, it must seek a GEO [general exclusion order] by satisfying the heightened burdens of §§ 1337(d)(2)(A) and (B).").

In addition to the action taken above, the Commission may issue an order under 19 U.S.C. § 1337(i) directing CBP to seize and forfeit articles attempting entry in violation of an exclusion order if their owner, importer, or consignee previously had articles denied entry on the basis of that exclusion order and received notice that seizure and forfeiture would result from any future attempt to enter articles subject to the same. An exclusion order under § 1337(d)—either limited or general—and a seizure and forfeiture order under § 1337(i) apply at the border only and are operative against articles presented for customs examination or articles conditionally released from customs custody but still subject to a timely demand for redelivery. See 19 U.S.C. §§ 1337(d)(1) ("The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry."); id. at (i)(3) ("Upon the attempted entry of ***articles*** subject to an order issued under this subsection, the Secretary of the Treasury shall immediately notify all ports of entry of the attempted importation and shall identify the persons notified under paragraph (1)(C).") (emphasis added).

Significantly, unlike district court injunctions, the Commission can issue a general exclusion order that broadly prohibits entry of articles that violate section 337 of the Tariff Act of 1930 without regard to whether the persons importing such articles were parties to, or were related to parties to, the investigation that led to issuance of the general exclusion order. See Vastfame Camera, Ltd. v. ITC, 386 F.3d 1108, 1114 (Fed. Cir. 2004). The Commission also has recognized that even limited exclusion orders have broader applicability beyond just the parties found to infringe during an investigation. See Certain GPS Devices and Products Containing Same, Inv. No. 337-TA-602, Comm'n Op. at 17, n.6, Doc ID 317981 (Jan. 2009) ("We do not view the Court's opinion in Kyocera as affecting the issuance of LEOs [limited exclusion orders] that exclude infringing products made by respondents found to be violating Section 337, but imported by another entity. The exclusionary language in this regard that is traditionally included in LEOs is consistent with 19 U.S.C. § 1337(a)(1)(B)-(D) and 19 U.S.C. § 1337(d)(1).").

Moreover, "[t]he Commission has consistently issued exclusion orders ***coextensive with the violation*** of section 337 found to exist." See Certain Erasable Programmable Read Only Memories, Inv. No. 337-TA-276, Enforcement Proceeding, Comm'n Op. at 11, Doc ID 43536 (Aug. 1991) (emphasis added). "[W]hile individual models may be evaluated to determine importation and [violation], the Commission's jurisdiction extends to all models of [violative] products that are imported at the time of the Commission's determination and to all such products that will be imported during the life of the remedial orders." See Certain Optical Disk Controller Chips and Chipsets, Inv. No. 337-TA-506, Comm'n Op. at 56-57, USITC Pub. 3935, Doc ID 287263 (July 2007).

Lastly, despite the well-established principle that "the burden of proving infringement generally rests upon the patentee [or plaintiff]," Medtronic, Inc. v. Mirowski Family Ventures, LLC, 571 U.S. 191 (2014), the Commission has held that Medtronic is not controlling precedent and does not overturn its longstanding practice of placing the burden of proof on the party who, in light of the issued exclusion order, is seeking to have an article entered for consumption. See Certain Sleep-Disordered Breathing Treatment Systems and Components Thereof, Inv. No. 337-TA-879, Advisory Opinion at 6-11. In particular, the Commission has noted that the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") "has upheld a Commission remedy which effectively shifted the burden of proof on infringement issues to require a company seeking to import goods to prove that its product does ***not*** infringe, despite the fact that, in general, the burden of proof is on the patentee to prove, by a preponderance of the evidence, that a given article ***does*** infringe[.]" Certain Integrated Circuit Telecommunication Chips, Inv. No. 337-TA-337, Comm'n Op. at 21, n.14, USITC Pub. 2670, Doc ID 217024 (Aug. 1993) (emphasis in original) (citing Sealed Air Corp. v. ITC, 645 F.2d 976, 988-89 (C.C.P.A. 1981)).

This approach is supported by Federal Circuit precedent. See Hyundai Elecs. Indus. Co. v. ITC, 899 F.2d 1204, 1210 (Fed. Cir. 1990) ("Indeed, we have recognized, and Hyundai does not dispute, that in an appropriate case the Commission can impose a general exclusion order that binds parties and non-parties alike and ***effectively shifts to would-be importers of potentially infringing articles, as a condition of entry, the burden of establishing noninfringement***. The rationale underlying the issuance of general exclusion orders—placing the risk of unfairness associated with a prophylactic order upon potential importers rather than American manufacturers that, vis-a-vis at least some foreign manufacturers and importers, have demonstrated their entitlement to protection from unfair trade practices—applies here [in regard to a limited exclusion order] with increased force.") (emphasis added) (internal citation omitted).

B. Patent Infringement

Determining patent infringement requires two steps. Advanced Steel Recovery, LLC v. X-Body Equip., Inc., 808 F.3d 1313, 1316 (2015). The first is to construe the limitations of the asserted claims and the second is to compare the properly construed claims to the accused product. Id. To establish literal infringement, every limitation recited in a claim must be found in the accused product whereas, under the doctrine of equivalents, infringement occurs when there is equivalence between the elements of the accused product and the claimed elements of the patented invention. Microsoft Corp. v. GeoTag, Inc., 817 F.3d 1305, 1313 (Fed. Cir. 2016). One way to establish equivalence is by showing, on an element-by-element basis, that the accused product performs substantially the same function in substantially the same way with substantially the same result as each claim limitation of the patented invention, which is often referred to as the function-way-result test. See Intendis GmbH v. Glenmark Pharms., Inc., 822 F.3d 1355, 1361 (Fed. Cir. 2016).

As for the first step above, "claim construction is a matter of law." SIMO Holdings, Inc. v. H.K. uCloudlink Network Tech., Ltd., 983 F.3d 1367, 1374 (Fed. Cir. 2021). Moreover, the ultimate construction of a claim limitation is a legal conclusion, as are interpretations of the patent's intrinsic evidence (the patent claims, specifications, and prosecution history). UltimatePointer, L.L.C. v. Nintendo Co., 816 F.3d 816, 822 (Fed. Cir. 2016) (citing Teva Pharms.

USA, Inc. v. Sandoz, Inc., 135 S. Ct. 831, 841, 190 L. Ed. 2d 719 (2015).[1] "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." Phillips v. AWH Corp., 415 F.3d 1303, 1313 (Fed. Cir. 2005) (en banc). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges." Id. at 1314. In others, courts look to public sources such as "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art." Id.

"To begin with, the context in which a term is used in the asserted claim can be highly instructive." Phillips, 415 F.3d at 1314 ("To take a simple example, the claim in this case refers to 'steel baffles,' which strongly implies that the term 'baffles' does not inherently mean objects made of steel."). The context in which a claim term is used also includes the full chain of dependence as well as the remaining suite of claims and the written description. See Inline Plastics Corp. v. EasyPak, LLC, 799 F.3d 1364, 1371 (Fed. Cir. 2015) ("Since the specification explicitly mentions the 'alternative' . . . there can be no debate concerning the application of the doctrine of claim differentiation.").

The second step to establish infringement involves a comparison of the claims, as properly construed, to the accused product, which is a question of fact. Apple Inc. v. Samsung Elecs. Co., Ltd., 839 F.3d 1034, 1040 (Fed. Cir. 2016) (en banc).

IV. LAW AND ANALYSIS

Apaltek argues that the Redesigned Liquid Coolers "do[] not infringe [the asserted] claims" because "the housing is required to form the heat exchange chamber[.]" Ruling Request 8-11. Specifically, Apaltek's non-infringement argument is based on its position that "Cooler Master is judicially estopped from arguing infringement of any structure wherein a housing forms part of the heat chamber." Ruling Request at 11; see also Apaltek Reply at 3 ("Cooler Master clearly argued, and prevailed on, the position that a liquid cooler in which the housing forms part of the heat exchange chamber falls ***outside*** the scope of the subject claims, and judicial estoppel precludes Cooler Master from taking up a contrary position."). As argued by Apaltek, "Complainants in the investigation … successfully distinguished the prior art from the asserted claims of the patents in suit because such prior art required the use of a housing to form a portion of a heat exchange chamber in a liquid cooler[.]" Ruling Request at 1.

Although Apaltek indicates that it is not arguing non-infringement based on a "practicing the prior art" defense, Apaltek appears to allude to claim disavowal or some other legal theory as an alternative non-infringement theory. Id. at 11 ("Cooler Master may respond that Apaltek's alternate design merely represents a 'practicing the prior art' defense to an infringement charge. In fact, Apaltek is relying upon what Cooler Master expressly told the public about what is covered by the asserted claims and what is not. Not only is this a legitimate basis for urging non-infringement[.] … Apaltek is simply doing what any member of the public is entitled to do, *i.e.,*

[1] Although claim construction is a question of law, the consideration of extrinsic evidence may constitute a subsidiary finding of fact. Teva, 135 S. Ct. at 841, 190 L. Ed. 2d at 733.

relying on the patentee's public statements regarding the scope of the subject claims in determining how to avoid the infringement thereof. … Apaltek, relying on such statements, is entitled to a ruling that its redesigns, which also require a housing to form the heat exchange chamber, do not infringe the claims of the '446 and '450 Patents, and is therefore not subject to the Exclusion Order."); see also Oral Discussion Tr. at 32:19-33:13 ("Q: So is the distinction between a practicing-the-prior-art defense and the arguments that Apaltek is making here is that the latter, the arguments in this *inter partes* proceeding are more about representations and really concessions … that Cooler Master made at the ITC regarding it's [sic] claim scope? … [Apaltek:] Correct. As we understand the practicing-the-prior-art defense is I can go rude [sic] around the prior art and find something that is prior art and then just replicate that and say without any input from the patentee, I am now practicing the prior art and I'm free and clear. … It's akin to disavowal. But it's certainly judicial estoppel.").

However, Apaltek did not expressly raise claim disavowal as a non-infringement theory and has not cited any legal precedent to support such a theory in its pre-oral discussion briefs. Accordingly, the EOE Branch finds that any non-infringement arguments premised on claim disavowal are therefore untimely and will not be considered. Additionally, Apaltek does not argue that the Redesigned Liquid Coolers fail to satisfy a specific limitation under the traditional two step infringement analysis involving claim construction and a comparison of the properly construed claims to the accused device. See AFG Indus. v. Cardinal IG Co., 239 F.3d 1239, 1244 (Fed. Cir. 2001) ("A patent infringement analysis entails two steps: first, determining the meaning and scope of the patent claims asserted to be infringed, and second, comparing the properly construed claims to the device accused of infringing.") (citation omitted). Instead, the sole theory of non-infringement raised by Apaltek to be addressed by the EOE Branch in this proceeding is whether Cooler Master is judicially estopped from arguing that the Redesigned Liquid Coolers infringe the asserted patents when a liquid cooler has a design in which the housing forms part of the heat exchange chamber.

The Supreme Court identified a few considerations to help determine whether the application of judicial estoppel is appropriate:

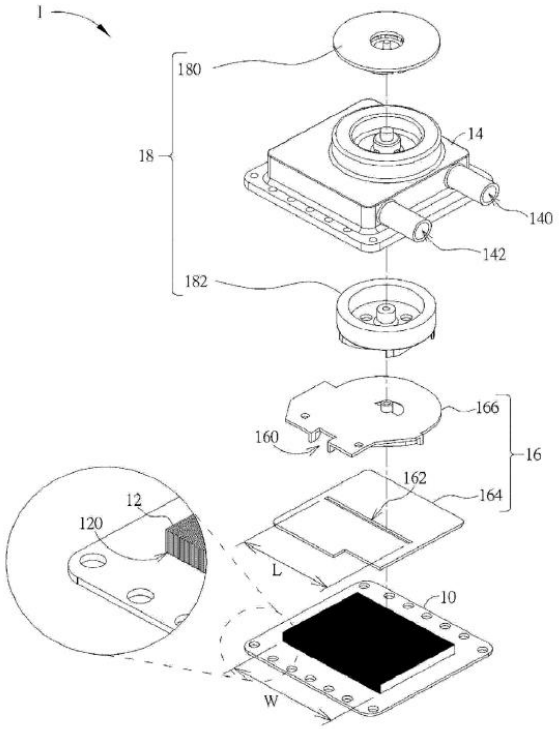
> Courts have observed that "the circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle[.]" Nevertheless, several factors typically inform the decision whether to apply the doctrine in a particular case: First, a party's later position must be clearly inconsistent with its earlier position. ***Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled[.] Absent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity.*** A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

New Hampshire v. Maine, 532 U.S. 742, 750-51 (2001) (emphasis added) (citations and quotations omitted).

The Supreme Court further explained "[t]his rule, known as judicial estoppel, 'generally prevents a party from ***prevailing in one phase*** of a case on an argument and then relying on a contradictory argument to ***prevail in another phase***.'" Id. at 749 (emphasis added). (quoting Pegram v. Herdrich, 530 U.S. 211, 227, n. 8 (2000)). Apaltek argues that "the Commission, adopt[ed] Cooler Master's arguments on the validity issue, [and] determined that Respondents did not identify components in two prior art references that met that limitation because each also required the use of a housing to define the claimed 'heat exchange chamber.'" Ruling Request at 3.

In the underlying investigation, the Commission, as part of its review of the ID, "affirm[ed] the ID's finding that Respondents failed to prove anticipation by [] two asserted prior art references[: (1)] the Chinese Utility Model[; and (2)] the '498 Application, because ***Respondents did not identify components in those references that met the 'defining a heat exchange chamber' limitation.***" Comm'n Op. at 14 (emphasis added); see also Ruling Request at 3.

The first prior art reference was the Chinese Utility Model No. 203313585 ("Chinese Utility Model"). An illustration from the Chinese Utility Model shows a liquid cooler with the following componentry:



See Exhibit D to Ruling Request; see also Comm'n Op. at 15.

In the underlying investigation, the Commission adopted the following findings from the FID in the 1394 investigation regarding the invalidity analysis based on this Chinese Utility Patent:

> [T]he "defining a heat exchange chamber" limitation was not met by the base 164 and substrate 10 because these two components could not form a heat exchange chamber without housing 14, citing the admission of Respondents' expert, Himanshu Pokharna, that heat exchange could only occur when the housing 14 is holding base 164 in place." The ID thus read the "defining a heat exchange chamber" limitation to require identification of the components that form a chamber where heat exchange can occur. The Commission finds that the ID's analysis of the Chinese Utility Model is consistent with the plain and ordinary meaning of "defining a heat exchange chamber." The ID cited the testimony of Complainants' expert, David Trumper, explaining how no heat exchange could occur in a chamber without walls. His testimony described how the walls of the housing 14 were necessary to define the chamber in the Chinese Utility Model: "[W]hat makes this thing work for heat exchange, the housing is what constrains the flow to then exit through the second slot. So that's – in the case of the Chinese Utility Model, you can see clearly that heat exchange chamber is formed by the cover, the base plate, and the housing." He further explained that "fluid that enters goes through the heat exchange chamber, gets heated, and then leaves and encounters the cover, the base plate, and the walls of the housing in that process." The Commission affirms the ID's determination based on this testimony that ***the base 164 and substrate 10 in the Chinese Utility Patent are insufficient to "defin[e] a heat exchange chamber***. … Accordingly, the Commission affirms the determination that ***Respondents failed to show that this limitation is met by the Chinese Utility Model***.

Comm'n Op. at 16 (citations omitted) (emphasis added); see also Ruling Request at 3.

The second prior art reference was U.S. Patent App. Pub. No. 2012/0152498 ("the '498 Application"). An illustration from the '498 Application shows a liquid cooler with the following componentry:

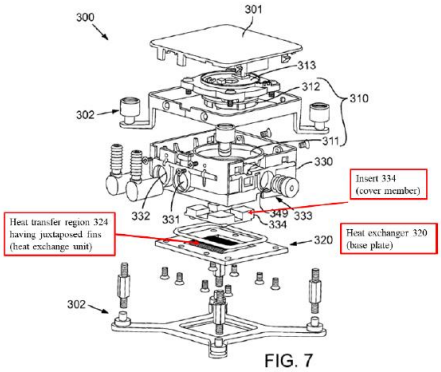


FIG. 7

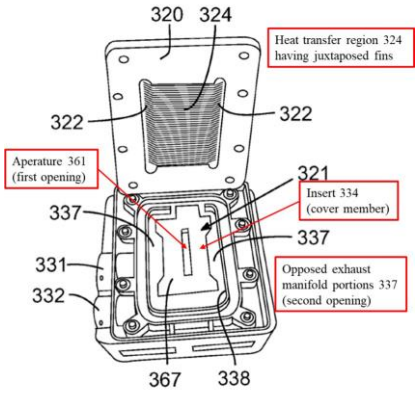


FIG. 11

Comm'n Op. at 17, 19.

In the underlying investigation, the Commission adopted the following findings from the FID in the 1394 investigation regarding the invalidity analysis based on the '498 Application:

> With respect to the prior art '498 Application, ***Respondents identified the "heat exchanger 320" as the claimed "base plate configured to dissipate heat," and the "insert 334" as the "cover member coupled to the base plate."*** The ID found that ***these components did not define a heat exchange chamber because Respondents did not identify housing 330 as part of the "base plate" or the "cover member."*** The ID found that housing 330 was necessary to define the "heat exchange chamber," because the '498 Application describes a separate seal 323 between the heat exchanger 320 and the housing 330, indicating that fluid flows to the housing. The ID cited Dr. Trumper's testimony that the walls of housing 330 are an essential part of the "heat exchange chamber" in the '498 Application. In this testimony, Dr. Trumper described the fluid flow in the alleged "heat exchange chamber" of the '498 Application, noting that if there's liquid going in the first slot, through the fins, it encounters the walls of the housing before exiting the heat exchange chamber, and the element that directs that fluid to go somewhere is the housing. The ID also cited an admission by Respondents' expert, Dr. Pokharna, that liquid would leak without housing 330 in place and heat exchange could not occur. The Commission supplements the ID's findings by noting that additional disclosures in the '498 Application further support the determination that heat exchanger 320 and insert 334 are insufficient to define a "heat exchange chamber." Specifically, the '498 Application describes how insert 334 only partially covers the top of the chamber: "[T]he insert 334 . . . partially occupies the third recessed region 351, leaving a pair of opposed portions of the region unfilled." These "unfilled" portions are labeled "exhaust manifold portions 337" and were identified by Dr. Pokharna to correspond to the "second opening" in the "cover member" of the asserted claims of the '446 patent and '450 patent, where coolant liquid flows out of the "heat exchange chamber." The '498 Application describes the flow of coolant fluid through these "exhaust manifold portions 337." Because these exhaust manifold portions are "unfilled" by the insert 334, the coolant fluid in the "heat exchange chamber" must flow outside the boundaries of the insert 334, coming into contact with the sides of housing 330. These disclosures in the '498 Application further support the ID's finding that the housing 330 in the '498 Application is required to "defin[e] a heat exchange chamber" in accordance with the plain and ordinary meaning of that limitation. … Accordingly, the Commission affirms the determination that ***Respondents failed to show that this limitation is met by the prior art '498 Application.***

Comm'n Op. at 17-20 (quotations and citations omitted) (emphasis added).

Cooler Master disagrees with Apaltek's understanding of the Commission's invalidity findings and argues that the Commission instead found that "Respondents failed to prove invalidity by clear and convincing evidence during the Investigation because they did not identify a 'cover

member' and 'base plate' that met the 'defining a heat exchange chamber' limitation of the asserted claims." Cooler Master Response at 2. The below excerpt from the Commission Opinion in the underlying investigation supports Cooler Master's position and shows that the Commission rejected Apaltek's understanding that its invalidity determination was based on a finding that certain liquid cooler "designs in which a housing forms part of the 'heat exchange chamber' are outside the scope of the asserted claims":

> Respondents seek an exemption from the remedial orders for products with a configuration that does not infringe the asserted claims of the Asserted Patents. But there were no products adjudicated to be non-infringing in this investigation, and Respondents have not identified, nor sought adjudication of, any of their products that have an allegedly non-infringing configuration. Respondents argue that ***in the context of invalidity***, the ID found that ***designs in which a housing forms part of the "heat exchange chamber" are outside the scope of the asserted claims***. But the ***ID made no such finding*** regarding the scope of this limitation—as discussed above, the ***ID's determination on invalidity was based on Respondents' failure to identify sufficient structures in the prior art that met the limitation "defining a heat exchange chamber." There has been no determination that a particular configuration is outside the scope of the asserted claims***.

Comm'n Op. at 29 (citations omitted) (emphasis added).

Apaltek argues that this portion of the Commission's opinion "merely noted that 'there were no products adjudicated to be non-infringing in this investigation, and Respondents have not identified, nor sought adjudication of, any of their products that have an allegedly non-infringing configuration.'" Apaltek Reply at 3 (quoting Comm'n Op. at 29). Based on this position, Apaltek further argues that it "puts forth such specific designs now, and that portion of the Commission's ruling is immaterial to the instance request." Id. We find Apaltek's position to be unpersuasive because it fails to acknowledge the subsequent language in the Commission Opinion which both rejected Apaltek's understanding of the invalidity findings (*i.e.*, ID made no such finding that any design in which a housing forms part of the "heat exchange chamber" are outside the scope of the asserted claims) and explained the Commission's actual basis for its invalidity findings (*i.e.*, Respondents' failure to identify sufficient structures in the prior art that met the limitation "defining a heat exchange chamber.").

Even assuming *arguendo* that Cooler Master's position during the underlying investigation was that liquid coolers in which a housing forms part of the "heat exchange chamber" are outside the scope of the patent claims, we find that judicial estoppel is inapplicable in this *inter partes* proceeding because Cooler Master has not prevailed on, and the Commission did not adopt, this position. This point was made clear in the underlying investigation when the Commission rejected Apaltek's understanding of the Commission's invalidity findings. Specifically, in response to Apaltek's argument that liquid cooler "designs in which a housing forms part of the 'heat exchange chamber' are outside the scope of the asserted claims" (*i.e.*, the same position that Apaltek argues Cooler Master took in the underlying investigation), the Commission unequivocally stated that it adopted "***no such findings regarding the scope of*** [the 'heat exchange chamber'] ***limitation***" and instead its "invalidity [finding] was based on Respondents' failure to identify sufficient structures

in the prior art that met the limitation 'defining a heat exchange chamber.'" See Comm'n Op. at 29. Since Cooler Master never prevailed on this alleged position in the underlying investigation, the EOE Branch does not find judicial estoppel to be applicable in this proceeding.

Since Apaltek has made no non-infringement arguments beyond those concerning judicial estoppel, we find that Apaltek has failed to show that the articles at issue do not infringe the relevant claims of the asserted patents.

V. HOLDING

We find that Apaltek has not met its burden to establish that the articles at issue do not infringe the relevant claims of the asserted patents. Accordingly, we find that the articles at issue are subject to the limited exclusion order issued as a result of Inv. No. 337-TA-1394.

The decision is limited to the specific facts set forth herein. If articles differ in any material way from the articles at issue described above, or if future importations vary from the facts stipulated to herein, this decision shall not be binding on CBP as provided for in 19 C.F.R. §§ 177.2(b)(1), (2), (4), and 177.9(b)(1) and (2).

Sincerely,

Dax Terrill
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