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U.S. Customs and Border Protection

HQ H354124

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

Mr. Bryan Harrison
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VIA EMAIL: bryan.harrison@troutman.com

RE: Ruling Request; U.S. International Trade Commission; Limited Exclusion Order; Investigation No. 337-TA-1415; Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor

Dear Mr. Harrison:

Pursuant to 19 C.F.R. Part 177, the Exclusion Order Enforcement Branch ("EOE Branch"), Regulations and Rulings, U.S. Customs and Border Protection ("CBP") issues this ruling letter, based on a request from A-Hair Import Inc. ("A-Hair") dated October 9, 2025 ("Ruling Request"), holding that the articles at issue, as described below, are subject to the limited exclusion order ("LEO" or "1415 LEO") that the U.S. International Trade Commission ("ITC" or "Commission") issued as a result of Investigation No. 337-TA-1415 ("the 1415 investigation") under Section 337 of the Tariff of 1930, as amended, 19 U.S.C. § 1337 ("Section 337").

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, A-Hair, the ruling requester and respondent in the 1415 investigation; and (2) JBS Hair, Inc. ("JBS Hair"), the patent owner and complainant in the 1415 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-1415

1. Procedural History At The ITC

The Commission instituted Investigation No. 337 TA-1415 on September 4, 2024, based on a complaint, as supplemented ("complaint"), that was filed by JBS Hair of Atlanta, Georgia. Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. 337-TA-1415, EDIS Doc. ID 831423, Notice of Institution of Investigation (Sept. 4, 2024) at 1. The complaint alleged a violation of Section 337 by reason of infringement of certain claims of U.S. Patent Nos. 10,786,026 (the '026 Patent), 10,945,478 (the '478 Patent), and 10,980,301 (the '301 Patent). Id. at 3-4. The notice of investigation, as amended, named the following respondents: (1) Vivace, Inc. of Levittown, New York; A-Hair Import Inc. of Norcross, Georgia ("A-Hair"); Crown Pacific Group Inc. of Doraville, Georgia ("Crown Pacific"); Loc N Products, LLC of Atlanta, Georgia ("Loc N"); and Zugoo Import Inc. of Norcross, Georgia ("Zugoo") (collectively, "Defaulting Respondents"); (2) Chois International, Inc. of Norcross, GA ("Chois"); I & I Hair Corp. of Dallas, TX ("I & I Hair"); Kum Kang Trading USA, Inc. d/b/a BNGHAIR of Paramount, CA ("Kum

Kang"); Mink Hair, Ltd. d/b/a Sensual® Collection of Wayne, NJ ("Mink Hair"); Oradell International Corp. d/b/a MOTOWN TRESS of Manalapan, NJ ("Oradell"); and Twin Peak International, Inc. d/b/a Dejavu Hair of Atlanta, GA ("Twin Peak") (collectively, "Consent Order Respondents"); and (3) Sun Taiyang Co., Ltd. d/b/a Outre® of Moonachie, NJ; Beauty Elements Corporation d/b/a Bijouz® of Miami Gardens, FL; Hair Zone, Inc. d/b/a Sensationnel® of Moonachie, NJ; Beauty Essence, Inc. d/b/a Supreme™ Hair US of Moonachie, NJ; SLI Production Corp. d/b/a It's a Wig! of Moonachie, NJ; Royal Imex, Inc. d/b/a Zury® Hollywood of Santa Fe Springs, CA; GS Imports, Inc. d/b/a Golden State Imports, Inc. of Paramount, CA; Eve Hair, Inc. of Lakewood, CA; Midway International, Inc. d/b/a BOBBI BOSS of Cerritos, CA; Mayde Beauty Inc. of Port Washington, NY; Hair Plus Trading Co., Inc. d/b/a Femi Collection of Suwanee, GA; Optimum Solution Group LLC d/b/a Oh Yes Hair of Duluth, GA; Chade Fashions, Inc. of Niles, IL; Mane Concept Inc. of Moonachie, NJ; Beauty Plus Trading Co., Inc. d/b/a Janet Collection™ of Moonachie, NJ; Model Model Hair Fashion, Inc. of Port Washington, NY; New Jigu Trading Corp. d/b/a Harlem 125® of Port Washington, NY; Shake N Go Fashion, Inc. of Port Washington, NY; and Amekor Industries, Inc. d/b/a Vivica A. Fox® Hair Collection of Conshohocken, PA (collectively, "Remaining Respondents"). Id.; see also 89 FR 97068-69 (Dec. 6, 2024). Id. at 2-4 (as amended in Initial Determination Granting Complainant's Motion to Amend the Complaint and Notice of Investigation (November 4, 2024), unrev'd by Commission, December 2, 2024). The Commission's Office of Unfair Import Investigations ("OUII") was named a party to the investigation. Id. at 4.

Through various consent orders, the Commission terminated the investigation with respect to the Consent Order Respondents. Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. 337-TA-1415, EDIS Doc. Id. 863271, Notice of Commission Final Determination to Issue a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation (Sept. 29, 2025) at 2. Additionally, on April 1, 2025, JBS Hair filed a motion to terminate the investigation against the Remaining Respondents based on a withdrawal of the complaint. Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. 337-TA-1415, EDIS Doc. Id. 847558, Complainant's Motion to Terminate the Investigation as to Remaining Respondents Based on Withdrawal of the Complaint, Unopposed Motion to Stay the Procedural Schedule, Unopposed Request for Shortened Response Time, and Request for Expedited Treatment (April 1, 2025) at 1. The presiding Administrative Law Judge ("ALJ") then terminated the investigation against the Remaining Respondents in an order dated April 10, 2025. Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. 337-TA-1415, EDIS Doc. Id. 848362, Initial Determination Granting Complainant's Motion to Terminate the Investigation as to Remaining Respondents based on Withdrawal of the Complaint, Order No. 44 (April 10, 2025) at 1.

A-Hair filed its Answer to JBS Hair's Complaint and the Notice of Investigation on October 21, 2024. Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. 337-TA-1415, EDIS Doc. Id. 835173, Response of A-Hair Import Inc. to the Complaint and Notice of Investigation (October 21, 2024). Prior to A-Hair filing its Answer, Complainant JBS Hair indicates that it "served its initial discovery requests, including First Set of Interrogatories and First Set of Requests for Production of Documents, on A-Hair via electronic mail on Friday, September 20, 2024." Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. No. 337-TA-1415, EDIS Doc. Id. 833789, A-Hair's Unopposed Motion for an Extension of Time to Respond to Complaint's Initial Discovery Requests (October 1, 2024) at 2. While not a part of

the administrative record in this *inter partes* proceeding, A-Hair has indicated that it submitted a supplemental response to JBS Hair's discovery requests on December 26, 2026. A-Hair Reply Submission to EOE Branch (December 26, 2025) ("A-Hair Reply) at 2.

After initially participating in discovery and filing various claim construction briefs, A-Hair filed a Default Notice on January 14, 2025, citing "the ongoing burden and expense of participating in this Investigation" and requesting the Commission to treat its notice as a "Motion for Default." Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. 337-TA-1415, EDIS Doc. Id. 841078, Default Notice of Respondent A-Hair Import Inc. (January 14, 2025) at 1.

On February 4, 2025, the ALJ issued an initial determination finding respondents A-Hair and Dae Do Inc. in default. Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. No. 337-TA-1415, Order 31 [Corrected], Initial Determination Finding Respondents A-Hair Import Inc. and Dae Do Inc. in Default, EDIS Doc. ID 842597 (February 4, 2025) at 1, *unreviewed* by Commission Notice (February 24, 2025). As part of this default, A-Hair "waived the right to appear, to be served with documents, and to contest the allegations at issue in this investigation." Id. at 1-2 (citing 19 C.F.R. § 210.16(b)(4)). In additional rulings unreviewed by the Commission, the ALJ found other respondents to be in default. Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. No. 337-TA-1415, EDIS Doc. ID 863271, Notice of Commission on Final Determination to Issue a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation (Sept. 29, 2025) at 2.

On September 29, 2025, the Commission issued an LEO against the Defaulting Respondents, including A-Hair. Certain Pre-Stretched Synthetic Braiding Hair and Packaging Therefor, Inv. No. 337-TA-1415, EDIS Doc. 863272, Limited Exclusion Order (Sept. 29, 2025) at 1. In the LEO, the Commission ordered that "certain pre-stretched synthetic braiding hair and packaging therefor that infringe one or more of [claims 1 and 9-11 of the '026 Patent, claim 20 of the '478 Patent, and claims 1, 4-9, and 11 of the '301 Patent] and that are manufactured abroad by or on behalf of, or imported by or on behalf of the Defaulting Respondents or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their 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." Id. at 2. The 1415 LEO further defined the covered articles as "pre-stretched synthetic braiding hair products having a substantially cardioid shaped perimeter formed by hackling and pre-stretching synthetic hair strands having different lengths and packaging for such products." Id. at 3.

2. The Patents And Claims In The 1415 LEO

The 1415 LEO bars the unlicensed entry for consumption of pre-stretched synthetic braiding hair and packaging therefor that infringe one or more of claims 1 and 9-11 of the '026 patent, claim 20 of the '478 patent, and claims 1, 4-9, and 11 of the '301 patent. LEO at 1. The '026, '478, and '301 patents have substantially similar specifications with the '301 patent being a continuation and the '478 a continuation-in-part of the '026 patent. Certain Pre-Stretched Synthetic

Braiding Hair and Packaging Therefor, Inv. No. 337-TA-1415, EDIS Doc. ID 828244, Complaint (August 2, 2024) at 13.

a. Claims 1 and 9-11 of the '026 patent

The '026 patent is titled "Synthetic Braiding Hair of Differing Lengths Packaged with a Cardioid" and "relates to bundled synthetic braiding hair of differing packaged in a substantially cardioid shape." Id. at 14. Claims 9-11 depend on independent claim 1. These claims are reproduced below:

1. A hair accessory, comprising:

bundled synthetic braiding hair, comprising:

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; and

a binder coupled about a waist of the bundled synthetic braiding hair;

wherein the bundled synthetic braiding hair is folded about the binder to define a substantially cardioid shaped perimeter;

further comprising a backer panel, wherein the binder is coupled to the backer panel, wherein the backer panel is folded, thereby completely spanning a first side of the bundled synthetic braiding hair and partially spanning a second side of the bundled synthetic braiding hair.

9. The hair accessory of claim 1, the substantially cardioid shaped perimeter comprising a rounded side and a cusp side.

10. The hair accessory of claim 9, further comprising a container disposed about the backer panel and the bundled synthetic braiding hair.

11. The hair accessory if claim 1, wherein a rounded side of the substantially cardioid shaped perimeter opposite a cusp side of the substantially cardioid shaped perimeter is exposed beneath a portion of the backer panel partially spanning the second side of the bundled synthetic braiding hair.

'026 patent at 9:52-67 and 10:26-54.

b. Claim 1, 4-9, and 11 of the '301 patent

The '301 patent is titled "Packaged, Bundled Synthetic Braiding Hair Having Bundles of Differing Lengths" and "describes a bundled synthetic braiding hair and packaging therefor and a method of packaging a bundled synthetic braiding hair." Complaint at 18-19. Claims 4-9 and 11 depend from claim 1. These claims are reproduced below:

1. A hair accessory, comprising:

bundled synthetic braiding hair, comprising:

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 about a waist 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 of the perimeter to the second end.

9. The hair accessory of claim 8, wherein a rounded side of the perimeter is exposed beneath a portion of the backer panel partially spanning the second side of the bundled synthetic braiding hair.

10. The hair accessory of claim 1, the bundled synthetic braiding hair further comprising a third bundle of synthetic hair strands having the first length and a fourth bundle of synthetic hair strands having the second length.

11. The hair accessory of claim 1, the perimeter shaped as an inverted teardrop with a rounded end.

'301 patent, 9:58-10:3 and 10:29-38.

c. Claim 17 of the '478 patent

The '478 patent is titled "Packaged Synthetic Braiding Hair" and "relates to bundled synthetic braiding hair of differing lengths folded by about a waist wherein a width of the perimeter of the bundled synthetic braiding hair narrows from the middle to the second end located distally from the waste." Complaint at 17. Claim 17 is reproduced below:

17. A hair accessory, comprising:

bundled synthetic braiding hair, comprising:

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.

'478 patent, 18:7-20.

3. The Products from the Underlying Investigation

A-Hair's accused articles from the underlying investigation consisted of a certain pre-stretched synthetic braiding hair products. Complaint at 44. According to the complaint, "Respondent A-Hair's infringing pre-stretched synthetic braiding hair products include at least the AMAZING EAST brand imported, offered for sale and sold through beauty salons, *e.g.,* at least Beauty & Fashion Boutique, 2297 Peachtree Road NE, Atlanta, Georgia 30309, and the A-Hair website www.ahairamazing.com in at least 1x a2x packs and in a variety of colors and sizes." Id. at 44-45. Moreover, the complaint alleged that "the AMAZING EASY pre-stretched synthetic braiding hair products" "are representative of A-Hair's pre-stretched synthetic braiding hair products that infringe the Asserted Patents." Id. at 45. The complaint additionally provided the following image of the aforementioned product with the caption "Kanekalon Braiding Hair Amazing Easy 38."

Id.

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

1. Procedural History Regarding the Ruling Request

On October 9, 2025, A-Hair requested an administrative ruling under 19 C.F.R. Part 177 ("Ruling Request") from the EOE Branch that its redesigned synthetic braiding hair ("redesigned articles") was not subject to the 1415 LEO because they do not infringe any of the claims of the '026, '301, or '478 patents. A-Hair Ruling Request Letter to EOE Branch (October 9, 2025) at 1. On October 22, 2025, the EOE Branch confirmed receipt of the ruling request submitted by A-

Hair and requested a preliminary meeting with the parties to discuss procedural aspects of the *inter partes* process. EOE Branch email to Parties (dated October 22, 2025).

On October 28, 2025, the EOE Branch had an initial conference call with A-Hair and JBS Hair, on which both parties agreed to conduct this proceeding on an *inter partes* basis as administered by the EOE Branch. On November 2, 2025, A-Hair executed a Waiver for Continued Participation as a party who is represented by counsel who was not signed onto the administrative protective order ("APO") from the underlying investigation, and the parities submitted a proposed procedural schedule. Parties Email to EOE Branch (dated November 2, 2025).

JBS filed its response to A-Hair's ruling request on November 25, 2025, which included Exhibits 1-8 (collectively, "JBS Hair Response"). JBS Hair Letter to EOE Branch (November 25, 2025). Notably, in its response, JBS Hair alleges that A-Hair introduced "the alleged 'new' product into the 1415 Investigation." JBS Hair Response at 2.

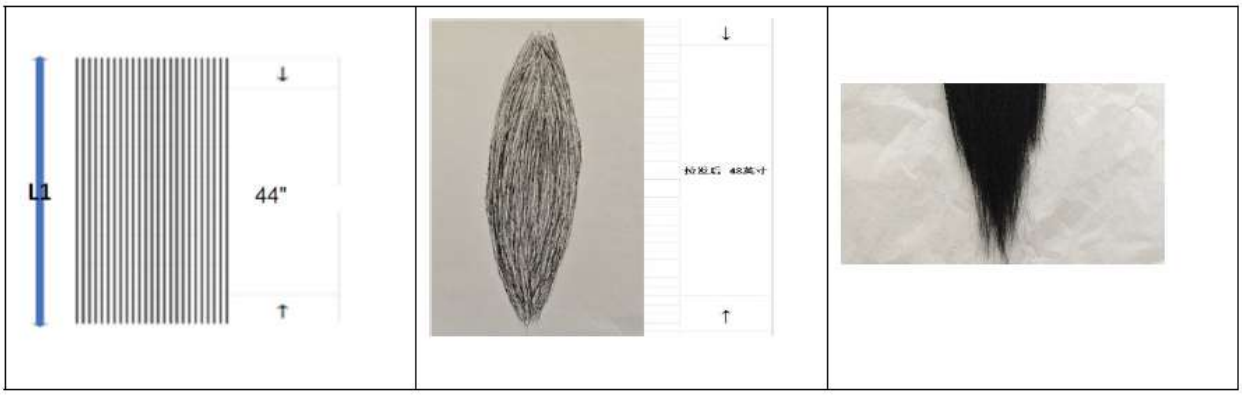
On December 2, 2025, A-Hair filed its Reply to JBS Hair's Response. A-Hair Letter to EOE Branch (December 2, 2025) ("A-Hair Reply"). Then, on December 12, 2025, JBS Hair submitted a redacted Sur-Reply and a confidential version of its Sur-Reply to the EOE Branch, along with Exhibit 9 marked confidential. JBS Hair Letter to EOE Branch (December 12, 2025) (collectively, "JBS Hair Sur-Reply").

On December 30, 2025, the EOE Branch conducted an oral discussion with the parties, with each party providing a presentation ("A-Hair Oral Discussion Presentation" and "JBS Hair Oral Discussion Presentation"). On January 16, 2026, both A-Hair and JBS Hair submitted post oral discussion briefs. A-Hair Submission to EOE Branch (January 16, 2026) ("A-Hair Post Oral Discussion Brief"); and JBS Hair Submission to EOE Branch (January 16, 2026) ("JBS Hair Post Oral Discussion Brief"). In JBS Hair's Post Oral Discussion Brief, JBS Hair contended that "[t]he new A-Hair product was in the 1415 investigation under the *Milk* case and the Commission's Final Determination of Default is binding on this product." JBS Hair Post Oral Discussion Brief at 1.

The Articles at Issue

The articles at issue in the ruling request consist of a "hair accessory that is comprised of synthetic braiding hair strands that is available in varying colors and lengths from 28-inches to 56-inches" that A-Hair calls the "New A-Hair Product." A-Hair Ruling Request at 7. In its Ruling Request, A-Hair describes the process used to create the New A-Hair Product as follows:

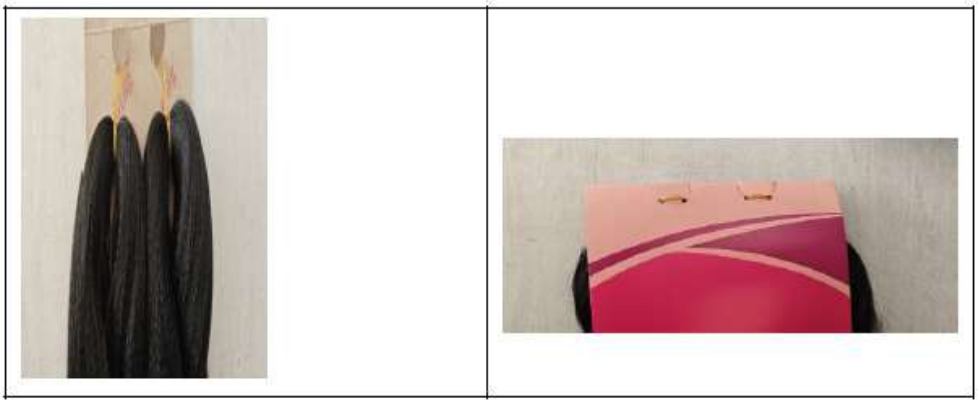
> A bundle of 44-inch synthetic braiding hair strands is hackled to 48 inches with an uneven end to create a natural look. The individual strands comprising a bundle shown on the left are prior to hackling while the bundle in the center shows the result of the hackling process on the 44-inch bundle that creates a 48-inch product.



The 48-inch bundle is then weighed for uniformity and quality control and its strands blushed in preparation for packaging.

The 48-inch bundle is then folded in half and bound in the middle with a string, with each half being braided or not depending upon the product, as shown below.

A backing board is then attached via hooks to the strings binding two 48-inch bundles, as shown on the left below, and the backing board is then folded over to cover the area with the string binding of the bundle, as shown on the right below.



The backing board containing the bundles is then packaged into a clear plastic sleeve for protection during shipping and display.

Id. at 7-8.

In its Reply, A-Hair admits that "the Opposition is correct that the New A-Hair Product is similar in appearance to the A-Hair product identified in A-Hair's supplemental discovery response[.]" A-Hair Reply at 2. [[

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A-Hair has not provided any other factual information concerning its redesigned articles as part of its submissions to the EOE Branch, including additional photos of the articles or product names. See e.g., A-Hair Ruling Request, A-Hair Reply, A-Hair Oral Discussion Presentation, and A-Hair Post Oral Discussion Brief, and exhibits thereto.

II. ISSUES

There are two issues before the EOE Branch in this Ruling Request. The first is whether A-Hair's redesigned articles are subject to the Commission's default finding against A-Hair and is therefore covered by the 1415 LEO. The second is, if the redesigned articles are not part of the underlying investigation, whether A-Hair has met its burden to show that the articles at issue do not infringe the '026, '301, and '478 patents and are thus not subject to the 1415 LEO.

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

A. Whether the Redesigned Articles Were "Accused Products" in the 1415 Investigation

[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.

As a preliminary matter, JBS Hair alleges that "A-Hair is barred from challenging the Commission's LEO with respect to the alleged 'New A-Hair Product,' because the alleged 'New A-Hair product' was at issue in the 1415 Investigation and A-Hair Defaulted." JBS Hair Response at 1. Specifically, JBS Hair alleges that "[o]n December 26, 2024, A-Hair served Supplemental Responses to Interrogatory No. 5, [[

]]. Id. at 2. Moreover, JBS Hair contends that "A-Hair's alleged New A-Hair Product is identical to the redesigned product it deliberately placed at issue in the 1415 Investigation ('A-Hair 1415 Redesign')." Id. at 3. To this end, JBS in its Response provides a side-by-side comparison of images of the New A-Hair Product and redesigned product, their SKUs, and manufacturer drawings. Id. at 3-4. Lastly, JBS Hair contends that "A-Hair [[

]]."

JBS Hair then alleges that "[o]n January 14, 2025, following [an] adverse Claim Construction Order, A-Hair filed a Default Notice (EDIS Doc ID 841078) and on February 4, 2025, the ALJ issued a [Corrected] Initial Determination finding Respondent A-Hair in default, noting that that 'A-Hair ... waived the right ... to contest the allegations at issue in the investigation. (EDIS Doc ID 842597)." Id. at 4 (see also JBS Hair Sur Reply at 8). JBS then goes on to state that "[i]n short, A-Hair injected the New A-Hair Product into the 1415 Investigation, argued claim construction positions relevant to New A-Hair Product, and then intentionally defaulted after an unfavorable claim construction ruling. Thus A-Hair has waived its right to reassert the same, previously rejected, arguments here. As the Commission noted '*A-Hair itself recognizes that as a defaulting respondent, it has forfeited any 'right…to contest the allegations at issue in the investigation,*' and now A-Hair cannot use the CBP to evade the LEO." (emphasis in original) (citing Commission Final Determination at 3 and LEO. Id. at 5. Accordingly, A-Hair states that "[t]he New A-Hair Product is the subject of, and bound by, the LEO … issued by the ITC in its final determination holding A Hair in default." Id.

In its Reply, A-Hair acknowledges that "the Opposition is correct that the New A-Hair Product is similar in its appearance to the A-Hair product identified in A-Hair's supplemental discovery response[.]" A-Hair Reply at 2. A-Hair also concedes that it made a supplemental response to JBS Hair's Interrogatory No. 5 in which it states "A-Hair has introduced redesigned articles into this Investigation." Id. However, A-Hair argues that "it does not appear that Complainant ever asserted in the Investigation, in its discovery responses or any filing, that the New A-Hair Product failed as a design-around of the Asserted Patents and that the New A-Hair Product also infringed. To be sure, had Complainant affirmatively asserted the New A-Hair Product infringed, the Opposition would have prominently pointed to such a document." Id.

In its post-oral discussion brief, JBS Hair additionally argues that the A-Hair's redesigned articles meet the factors of the "*Milk* Case" (raised during the Oral Discussion by CBP) for

"assessing whether a redesign product was at issue in an ITC investigation – namely, (1) whether the product is within the scope of the investigation; (2) whether it has been imported; (3) whether it is sufficiently fixed in design; and (4) whether it has been sufficiently disclosed by the respondent during discovery." JBS Hair Post-Oral Discussion Brief at 2-5. A-Hair argues in its own post-oral discussion brief that "[w]hile the New A-Hair Product and the Redesigned Product are identical in the features material to the Request, the Commission never determined that the Redesigned Product infringed any Asserted Claim in the 1415 Investigation." JBS Hair Post-Oral Discussion Brief at 2.

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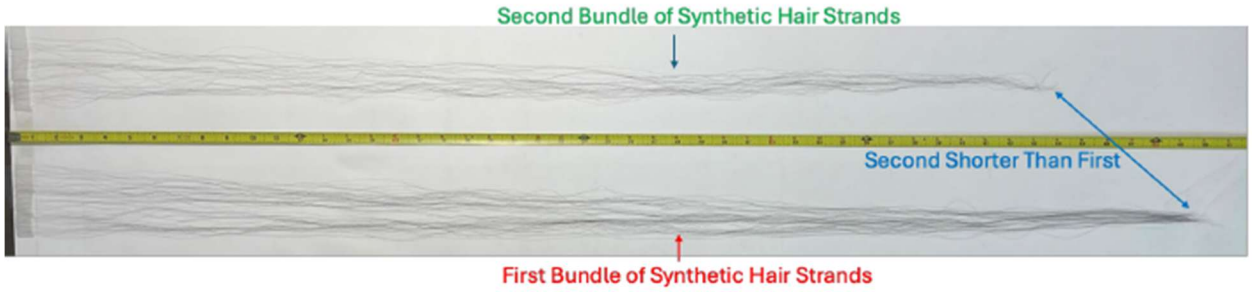
B. A-Hair Has Not Met Its Burden to Show that the Redesigned Articles at Issue Do Not Infringe the Asserted Patents

A-Hair argues that the redesigned articles at issue do not infringe the asserted patents because "each independent claim within the Asserted Patents requires bundled synthetic braiding hair comprised of at least two different length bundles, with the second bundle being a shorter length than the first bundle" and the redesigned articles at issue "include[] ***only a single bundle*** that is hackled to obtain additional length from some of the fibers, e.g., extending certain fibers from their 44-inch initial length up to a 48- inch length." Ruling Request at 8 (emphasis added).

In response to A-Hair's non-infringement theory, JBS Hair argues that A-Hair has failed to meet the "burden of production or persuasion necessary" to show that the redesigned articles at issue do not infringe the asserted patents because "because A-Hair only provides attorney argument, fails to address the evidence of infringement in JBS' Opposition, and fails to submit or show a physical sample of the alleged New A-Hair Product to establish any competent evidence to rebut JBS' Opposition." JBS Hair Sur-Reply at 1.

Notably, JBS Hair examined a product sample from the underlying investigation, which A-Hair admitted was similar to the redesigned articles at issue, to prepare its submissions. JBS Hair Sur-Reply at 8. Further, JBS Hair, based on its examination of the sample of the product that was similar to the redesigned articles at issue, provided the following image showing that the redesigned articles at issue have hair strands of at least two different lengths:



JBS Hair Sur-Reply at 8.

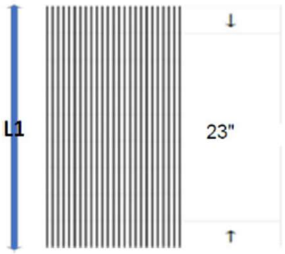
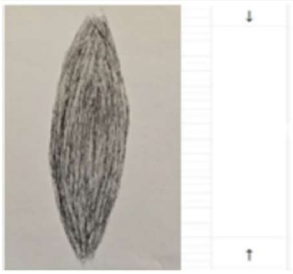
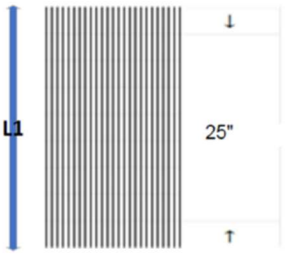
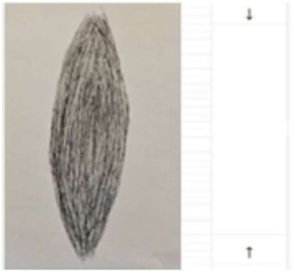
In the exclusion order context, it is well established that the party who is seeking to enter an article in light of an exclusion order has both the burden of production and persuasion. In CBP HQ Ruling H338254, the EOE Branch provided the following explanation for this approach:

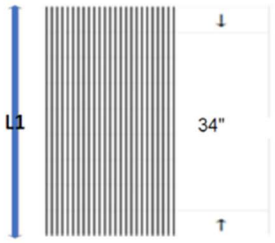
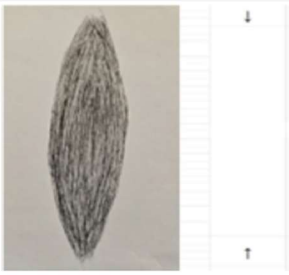
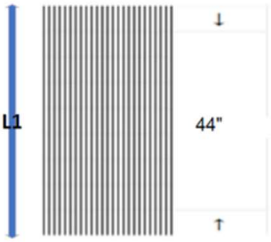
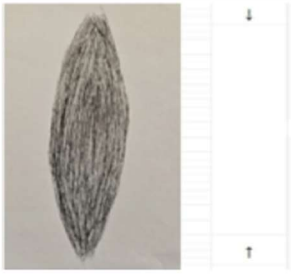
> [T]he Federal Circuit has noted that, as "two distinct burdens of proof" for a party to carry, "the burden of persuasion is the ultimate burden assigned to a party who must prove something to a specified degree of certainty, such as by a preponderance of the evidence or by clear and convincing evidence" and the distinct "burden of production may entail producing additional evidence and presenting persuasive argument based on new evidence or evidence already of record." In re Magnum Oil Tools Int'l, Ltd., 829 F.3d 1364, 1375 (Fed. Cir. 2016) (internal quotations and citations omitted). Significantly, when Hyundai places the "burden" on the "would be importer," that is understood to encompass both the "burden of persuasion" and the "burden of production" such that [the importer] must produce sufficient record evidence that proves to the requisite degree of certainty the relevant question of fact. This approach is generally consistent with application of the Customs laws in other contexts. See Shamrock Bldg. Materials, Inc. v. United States, 119 F.4th 1346, 1352 (Fed. Cir. 2024) ("[T]the importer must produce evidence (the burden of production portion of the burden of proof) that demonstrates by a preponderance (the burden of persuasion portion of the burden of proof) that Customs' classification decision is incorrect.") (citing Universal Electronics Inc. v. United States, 112 F.3d 488, 492 (Fed. Cir. 1997); Timber Products Co. v. United States, 515 F.3d 1213, 1219 (Fed. Cir. 2008); and Libas, Ltd. v. United States, 193 F.3d 1361, 1365 (Fed. Cir. 1999)).

CBP HQ Ruling H338254 (dated January 7, 2025) at 47.

Taking the above into consideration, for Section 337-based inter partes proceedings under 19 C.F.R. Part 177, the party with the burden to establish admissibility generally must provide a sample of the article at issue for examination and testing by the other party, as well as other

information or evidence needed to establish non-infringement, and therefore admissibility, of that article. However, the only information provided by A-Hair to describe the features of the redesigned articles at issue, upon which all of A-Hair's non-infringement arguments rely, was the following claim charts and unsupported descriptions for the redesigned articles at issue stating that the manufacturing process for the redesigned articles at issue "begin[] with a single bundle."

Amazing Easy-N, 28"	 The 28" New A-Hair Product begins with a single bundle of 100% Kanekalon 23-inch synthetic hair strands.	 The 23-inch bundle of synthetic hair strands is drawn through a hackle[1] to create a 28" bundle with uneven ends.	 
Amazing Easy-N, 30"	 The 30" New A-Hair Product begins with a single bundle of 100% Kanekalon 25-inch synthetic hair strands.	 The 25-inch bundle of synthetic hair strands is drawn through a hackle to create a 30" bundle with uneven ends.	 

Amazing Easy-N, 38”	 The 38” New A-Hair Product begins with a single bundle of 100% Kanekalon 34-inch synthetic hair strands.	 The 34-inch bundle of synthetic hair strands is drawn through a hackle to create a 38” bundle with uneven ends.	 
Amazing Easy-N, 48”	 The 48” New A-Hair Product begins with a single bundle of 100% Kanekalon 44-inch synthetic hair strands.	 The 44-inch bundle of synthetic hair strands is drawn through a hackle to create a 48” bundle with uneven ends.	 

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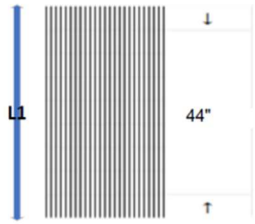
The chart, below, maps the limitations of independent claim 1 (the "'026 Asserted Claim") of U.S. Pat. No. 10,786,026 (the "'026 Patent") to the exemplary New A-Hair Product.

Claim	Limitation	Analysis
1-Pr	A hair accessory, comprising:	The preamble of Claim 1 is likely not limiting; however, the New A-Hair Product comprises a hair accessory.
1-a	bundled synthetic braiding hair, comprising:	The New A-Hair Product does not comprise the bundled synthetic braiding hair.
1-a-1	a first bundle of synthetic hair strands having a first length;	The New A-Hair Product comprises a first bundle of synthetic hair strands having a first length L1. 
1-a-2	and a second bundle of synthetic hair strands having a second length that is shorter than the first length;	The New A-Hair Product does not comprise a second bundle of synthetic hair strands having a second length L2 that is shorter than the first length.

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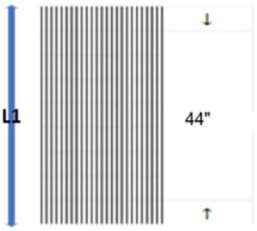
The chart, below, maps the limitations of independent claim 1 (the "'301 Asserted Claim") of U.S. Pat. No. 10,980,301 (the "'301 Patent") to the A-Hair N-1 Product (the "New A-Hair Product").

Claim	Limitation	Analysis
1-Pr	A hair accessory, comprising:	The preamble of Claim 1 is likely not limiting; however, the New A-Hair Product comprises a hair accessory.
1-a	bundled synthetic braiding hair, comprising:	The New A-Hair Product does not comprise the bundled synthetic braiding hair.
1-a-1	a first bundle of synthetic hair strands having a first length; and	The New A-Hair Product comprises a first bundle of synthetic hair strands having a first length L1. 
1-a-2	a second bundle of synthetic hair strands having a second length that is shorter than the first length;	The New A-Hair Product does not comprise a second bundle of synthetic hair strands having a second length L2 that is shorter than the first length L1.

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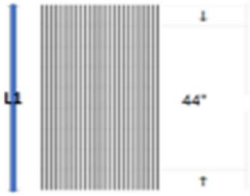
See Exhibits F, G, and H to Ruling Request.

The chart, below, maps the limitations of independent claim 17 and dependent claim 20 (collectively, the "'478 Asserted Claims") of U.S. Pat. No. 10,945,478 (the "'478 Patent") to the A-Hair N-1 Product (the "New A-Hair Product").

Claim	Limitation	Analysis
17-Pr	A hair accessory, comprising:	The preamble of Claim 1 is likely not limiting; however, the New A-Hair Product comprises a hair accessory.
17-a	bundled synthetic braiding hair, comprising:	The New A-Hair Product does not comprise bundled synthetic braiding hair.
17-a-1	a first bundle of synthetic hair strands having a first length; and	The New A-Hair Product includes a first bundle of synthetic hair strands having a first length L1. 
17-a-2	a second bundle of synthetic hair strands having a second length that is shorter than the first length;	The New A-Hair Product does not include a second bundle of synthetic hair strands having a second length L2 that is shorter than the first length L1.

Such statements as those above are attorney argument, rather than record evidence, and relying on such assertions would be improper. See Enzo Biochem, Inc. v. Gen-Probe, Inc., 424 F.3d 1276, 1284 (Fed. Cir. 2005) ("Attorney argument is no substitute for evidence."). In the absence of this evidence, A-Hair cannot be found to have carried its burden to establish admissibility when it has not come forward with any evidence, let alone sufficient record evidence, that establishes the features of the articles at issue and the evidentiary basis for their non-infringement.

Accordingly, we find that the claim charts and A-Hair's unsupported descriptions of the redesigned articles at issue that were provided by A-Hair are, by themselves, insufficient for showing that the manufacturing process for the redesigned articles at issue "begin with a single bundle." Thus, we find that A-Hair has failed to meet its burden of persuasion and production with respect this showing and therefore conclude that A-Hair has not established that the articles in question are not infringing.

V. HOLDING

We find that A-Hair 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-1415.

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
Chief, Exclusion Order Enforcement Branch

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