

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN SOFT PROJECTILE
LAUNCHING DEVICES, COMPONENTS
THEREOF, AMMUNITION, AND
PRODUCTS CONTAINING SAME

Inv. No. 337-TA-1325

**ORDER NO. 37: INITIAL DETERMINATION GRANTING
COMPLAINANTS' MOTION FOR SUMMARY
DETERMINATION OF INFRINGEMENT [MOTION
DOCKET NO. 1325-017]**

(April 27, 2023)

I. BACKGROUND

Complainants filed a complaint on July 21, 2022. (Doc. ID No. 775940 (July 21, 2022)).

On August 25, 2022, the Commission instituted this Investigation pursuant to subsection (b) of Section 337 of the Tariff Act of 1930, as amended, to determine:

whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-15 and 17-21 of the '282 patent and claims 1-6 and 10-15 of the '683 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337[.]¹

87 Fed. Reg. 52595 (Aug. 26, 2022).

The Notice of Investigation ("NOI") names as complainants: Hasbro, Inc. of Pawtucket, RI and Spin Master, Inc. of Los Angeles, CA (collectively, "Complainants"). *Id.* The NOI names as respondents: (i) Shenzhen Yi Jin Electronics Science of Shenzhen City, Guangdong

¹ The asserted patents are U.S. Patent No. 8,371,282 ("the '282 patent") and U.S. Patent No. 8,640,683 ("the '683 patent," and with the '282 patent, the "Asserted Patents").

Province, China; Guangdong Yu Lee Technology of Dongguan City, Guangdong Province, China; Yu Lee Company Ltd of Hong Kong; and Gel Blaster, Inc. of Austin, TX (“Gel Blaster Respondents”); (ii) S-Beam Precision Products Ltd. of Zhongshan City, Guangdong Province, China; Daisy Manufacturing Company of Rogers, AK; and Splat-R-Ball, LLC of Rogers, AK (“Splat-R-Ball Respondents”); and (iii) Prime Time Toys Ltd. of Hong Kong SAR; Prime Time Toys LLC of Pompton Lakes, NJ; and Easebon Services Ltd. of Hong Kong SAR (“PTT Respondents”) (collectively, “Respondents,” and with Complainants, the “Private Parties”). *Id.* Commission Investigative Staff (“Staff,” and with the Private Parties, the “Parties”) is also a party in this Investigation. *Id.* at 52595-96.

As a result of two (2) partial terminations, the remaining claims at issue in this Investigation are claims 6, 8, 19, and 20 of the ’282 patent and claims 1, 5, 11, and 14 of the ’683 patent. (See Order No. 10 (Oct. 25, 2022) (unreviewed); Order No. 21 (Jan. 18, 2023) (unreviewed)).²

A *Markman* Order issued on March 27, 2023. (See Order No. 28 (Mar. 27, 2023) (“*Markman* Order”)).

II. COMPLAINANTS’ MOTION FOR SUMMARY DETERMINATION

On March 16, 2023, Complainants moved for summary determination (“Motion”) that certain accused products imported into the United States, sold for importation, and/or sold within the United States after importation by the Splat-R-Ball Respondents, the Gel Blaster

² Complainants and the Gel Blaster Respondents (“Settling Parties”) informally notified Chambers that they agreed to resolve their disputes and are working on a final settlement agreement. However, as of the issuance of this Initial Determination (“ID”), the Settling Parties have not filed a motion partially terminating the Gel Blaster Respondents from this Investigation. Thus, this ID addresses all Respondents and their respective accused products as set forth in Complainants’ Motion.

Public Version

Respondents, and the PTT Respondents infringe claims 6, 8, 19, and 20 of the '282 patent and claims 1, 5, and 11 of the '683 patent.³ (“Motion Docket No. 1325-017 (Mar. 16, 2023); Mot. at 1.”).⁴ Complainants also filed a memorandum (“Memorandum”) and a statement of material facts (“SMF”) in support of their Motion.

Complainants’ Motion is directed to accused blaster kits that include one or more blasters and ammunition, where the ammunition is either already pre-hydrated for use or comes in a form that requires an end user to soak the ammunition in water before use. (Mem. at 4.). These products include the following blasters and ammunition:

Respondent	“Accused Products” Addressed in This Motion
Splat-R-Ball Respondents	SplatRBall SRB375 SplatRBall SRB400 SplatRBall SRB400-SUB SplatRBall SRB1200
Gel Blaster Respondents	Gel Blaster Surge Gel Blaster Starfire Gel Blaster Surge XL Gel Blaster Starfire XL
PTT Respondents	HydroStrike Nebula Pro HydroStrike Pulsar Pro Gel Zone Pro Stormer Spring-Powered Gel Bead Blaster Gel Zone Pro Hydrax Motorized Gel Bead Blaster

(*Id.* at 5 (annotated); SMF Nos. 1, 4, 6 (undisputed); Mot., Ex. 7 (Kudrowitz Op. Rpt.) at ¶ 54; Mot., Ex. 6 (Delman Reb. Rpt.) at ¶¶ 44, 45, 48.).

In accordance with Ground Rule 2.2., Complainants certify that they met and conferred with Respondents and Staff on the subject matter of this Motion on March 14, 2023. (Mot. at

³ Complainants note that this Motion does not address infringement of claim 14 of the '683 patent. (*See* Mem. at 2 n.5; *see also* Staff Resp. at 1 n.2.).

⁴ Respondents also moved for summary determination of non-infringement and invalidity (“Respondents Motion”). (Motion Docket No. 1325-019 (Mar. 16, 2023).). Respondents’ Motion was denied. (*See* Order No. 36 (Apr. 18, 2023).).

2.). Complainants reported that: (i) Respondents oppose the Motion; and (ii) Staff may take a position after reviewing the papers. (*Id.*).

Consistent with Complainants' Ground Rule 2.2 certification, on March 27, 2023, Respondents filed an opposition to Complainants' Motion ("Opposition") and a response to Complainants' SMF ("SMF Response"). (Doc. ID No. 793260 (Mar. 27, 2023)).⁵ Staff also filed a response to Complainants' Motion ("Staff Response"), in which Staff states that it does not oppose Complainants' Motion. (Doc. ID No. 793241 (Mar. 27, 2023)).

On April 6, 2023, Complainants moved for leave ("Reply Motion") to submit a limited reply ("Reply") to Respondents' Opposition.⁶ (Motion Docket No. 1325-024 (Apr. 6, 2023)). On April 17, 2023, Respondents filed an opposition to Complainants' Reply Motion. (Doc. ID No. 794444 (Apr. 17, 2023)). Complainants' Reply Motion was granted.⁷ (*See* Order No. 35 (Apr. 18, 2023)).

For the reasons discussed below, Complainants' Motion is *granted*.

III. DESCRIPTION OF THE ASSERTED PATENTS AND CLAIMS AT ISSUE

A. The '282 Patent

The '282 patent, entitled "Soft-Projectile Launching Device," was filed on May 10, 2010, as U.S. Patent Application Serial No. 12/777,134 ("the '134 application"). (JXM-0001 ('282 patent) at (21), (22), (54)). The '282 patent issued on February 12, 2013, and names Keith G. Meggs, Ronald Brawer, Michael G. Hoeting, and Neil Hamilton as the inventors. (*Id.* at (45),

⁵ On April 10, 2023, Respondents filed a corrected Opposition to Complainants' Motion. (Doc. ID No. 794087 (Apr. 10, 2023)).

⁶ Complainants certify that Staff takes no position on their Reply Motion. (Reply Mot. at 2.).

⁷ Complainants' Reply is attached to their Reply Motion as Exhibit A.

(75).). Spin Master, Inc. is the current valid assignee of the '282 patent. (*See, e.g.*, Compl. at ¶ 29; *see also id.* at Ex. 3 (assignments).). Hasbro, Inc. is the exclusive licensee of the '282 patent. (*Id.* at ¶ 29; *see also id.* at Ex. 5 (license agreement).).

The '282 patent is generally directed to ammunition for a projectile launching device that is made from hydrated super absorbent polymers (SAP). (JXM-0001 at cl. 1; *see also* Compl. at ¶ 31.). SAPs are polymers that can absorb an extremely large amount of water relative to their own mass. (JXM-0001 at 3:41-44; *see also* Compl. at ¶ 31.). The '282 patent describes that properly designed SAPs are more suitable ammunition in projectile launching devices (e.g., to improve conventional NERF® “blasters” as discussed in the patent) and have advantages compared to projectiles for gaming projectile launching devices that were previously known, such as paint balls, plastics, and foams. (JXM-0001 at 1:13-60, 1:64-66; *see also* Compl. at ¶ 31.).

The '282 patent describes the safety benefits of SAP ammunition as compared to paint balls and plastics (e.g., as found in “airsoft” guns). (JXM-0001 at 3:3-6; *see also* Compl. at ¶ 32.). For example, the '282 patent describes that certain SAP projectiles have beneficial characteristics for use in a projectile launcher used for gaming, in part because SAPs break down at different pressures based on their composition. (JXM-0001 at 3:62-65; *see also* Compl. at ¶ 32.). In one claimed improvement, hydrated SAP projectiles have sufficient cross-linking density such that they are projected from a projectile launching device without breaking apart. (JXM-0001 at 3:67-4:11; *see also* Compl. at ¶ 32.). At the same time, because hydrated SAP projectiles rupture when subjected to excessive pressure, such as when impacting a target after being launched from a projectile launcher, the force at impact is spread over a much wider surface area, thus reducing the likelihood of injury when the target is a person. (*See, e.g.*, JXM-

0001 at 3:45-4:17.).

The following claims are at issue in this Investigation:⁸

1. Ammunition configured for use with a projectile launcher⁹ comprising:

a plurality of soft-projectiles having the same shape, each soft projectile being formed from hydrated super absorbent polymer.^{10, 11}

4. The ammunition of claim 1, wherein the soft-projectiles are substantially spherical.

6. The ammunition of claim 4, wherein the soft-projectiles have a diameter greater than about 4 mm and less than about 9 mm.

8. A projectile launcher including the ammunition of claim 1 disposed within a feed chamber of the projectile launcher, and wherein the projectile launcher is adapted to load a soft projectile from the feed chamber to a firing position.

19. The projectile launcher of claim 8, further comprising:

an air compression chamber;

a piston disposed within and axially aligned with the air compression chamber, and

a spring operatively arranged to bias the piston toward a rest position from a cocked position within the air compression chamber.

20. The projectile launcher of claim 19, further comprising a smaller diameter tube in communication with the air compression chamber, and wherein a biasing force of the spring is sufficient to cause the piston to move from the cocked position to the rest position to force air from the air compression chamber into the smaller diameter tube and cause a soft-projectile located at the firing position to accelerate and be launched from the projectile launcher.

B. The '683 Patent

The '683 patent, also entitled "Soft-Projectile Launching Device," was filed on February

⁸ Under-lined terms were disputed and construed in the *Markman* Order.

⁹ The preamble, "ammunition configured for use with a projectile launcher," was found to be limiting. (*Markman* Order at 14.).

¹⁰ Claim 1 and claim 4, which depends from claim 1, have been terminated from this Investigation. (*See* Order No. 10 (unreviewed).). However, because asserted dependent claims 6, 8, 19, and 20 ultimately depend from claim 1, claims 1 and 4 have been included here.

¹¹ The term "super absorbent polymer" was given its plain and ordinary meaning, i.e., "polymer that can absorb an extremely large amount of liquid relative to its own mass." (*Markman* Order at 8-9.).

6, 2013, as U.S. Patent Application Serial No. 13/761,082 (“the ’082 application”). (JXM-0003 (’683 patent) at (21), (22), (54).). The ’683 patent issued on February 4, 2014, and like the ’282 patent, names Keith G. Meggs, Ronald Brawer, Michael G. Hoeting, and Neil Hamilton as the inventors. (*Id.* at (45), (72).). The ’082 application is a divisional of the ’134 application, which issued as the ’282 patent. (*Id.* at (62).). Like the ’282 patent, Spin Master, Inc. is the current valid assignee of the ’683 patent. (*See, e.g.*, Compl. at ¶ 37; *see also id.* at Exs. 4 and 3A-3E (assignments).). Hasbro, Inc. is the exclusive licensee of the ’683 patent. (*Id.* at ¶ 37; *see also id.* at Ex. 5 (license agreement).).

Similar to the ’283 patent, the ’683 patent is generally directed to a projectile launching system including ammunition made from a hydrated SAP. (*Id.* at ¶ 39.). The ’683 patent shares the same specification as the ’282 patent and thus contains the same disclosures as the ’282 patent. (*Id.* at ¶ 40; *see also id.* at ¶¶ 41-42.).

The following claims are at issue in this Investigation:

1. A projectile launching system, comprising: ammunition comprising a plurality of substantially spherical soft-projectiles formed from hydrated super absorbent polymer; ¹² and a projectile launcher for launching the ammunition in free flight.
5. The system of claim 1, wherein the projectile launcher includes a feed chamber for loading the soft-projectiles within projectile launcher.
11. The system of claim 1, wherein the projectile launcher is designed to use air pressure to launch the soft-projectiles.
14. The system of claim 1, wherein the projectile launcher comprises a firing mechanism that directly applies a force to the ammunition. ^{13, 14}

¹² *See* n.11, *supra*.

¹³ *See* n.3, *supra*.

¹⁴ The term “a firing mechanism that directly applies a force to the ammunition” was given its plain and ordinary meaning, i.e., “a firing mechanism that directly applies a force to the ammunition.” (*Markman* Order at 20.).

IV. LEGAL STANDARDS

A. Summary Determination

Summary determination under Commission Rule 210.18 is analogous to summary judgement under Federal Rule of Civil Procedure 56 and may be granted only where the evidence shows “that there is no genuine issue as to any material fact and that the moving party is entitled to summary determination as a matter of law.” *See* 19 C.F.R. § 210.18(b). “Any party may move with any necessary supporting affidavits for a summary determination in [its] favor upon all or any part of the issues to be determined in the investigation.” 19 C.F.R. § 210.18(a); *see also Certain Digital Processors and Digital Processing Sys., Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-559, 2006 ITC LEXIS 522, at *6, Order No. 13 (Sept. 6, 2006) (collecting cases). The party moving for summary determination bears the initial burden of establishing that there is an absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

If the movant satisfies its initial burden, the burden then shifts to the non-movant to demonstrate specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). When evaluating a motion for summary determination, the evidence must be examined in a light most favorable to the non-moving party, and all justifiable inferences are to be drawn in its favor. *Id.* The non-moving party “must set forth specific facts showing there is a genuine issue of fact.” *Certain Agricultural Tractors Under 50 Power Take-Off Horsepower*, Inv. No. 337-TA-380, Order No. 40 at 3, (August 8, 1996) (citing *Anderson*, 477 U.S. at 248). Summary determination should therefore be granted when a hearing on the matter at issue would serve no useful purpose and the movant is entitled to judgment as a matter of law. *See Certain Recombinant Erythropoietin*, Inv. No. 337-TA-281, U.S.I.T.C. Pub.

No. 2186, Initial Determination at 70 (Jan. 10, 1989).

B. Infringement

“Determination of infringement is a two-step process which consists of determining the scope of the asserted claim (claim construction) and then comparing the accused product . . . to the claim as construed.” *Certain Sucralose, Sweeteners Containing Sucralose, and Related Intermediate Compounds Thereof*, Inv. No. 337-TA-604, Comm’n Opinion at 36 (U.S.I.T.C., April 28, 2009) (citing *Litton Sys., Inc. v. Honeywell, Inc.*, 140 F.3d 1449, 1454 (Fed. Cir. 1998)).

An accused device literally infringes a patent claim if it contains each limitation recited in the claim exactly. *Litton*, 140 F.3d at 1454. Each patent claim element or limitation is considered material and essential. *London v. Carson Pirie Scott & Co.*, 946 F.2d 1534, 1538 (Fed. Cir. 1991). In a Section 337 investigation, the complainant bears the burden of proving infringement of the asserted patent claims by a preponderance of the evidence. *Enercon GmbH v. Int’l Trade Comm’n*, 151 F.3d 1376, 1384 (Fed. Cir. 1998). If any claim limitation is absent, there is no literal infringement of that claim as a matter of law. *Bayer AG v. Elan Pharm. Research Corp.*, 212 F.3d 1241, 1247 (Fed. Cir. 2000).

V. COMPLAINANTS ARE ENTITLED TO SUMMARY DETERMINATION OF INFRINGEMENT AS A MATTER OF LAW

A. There Is No Genuine Dispute that the Accused Products Practice the “Super Absorbent Polymer” Limitation

As an initial matter, Respondents did *not* dispute *any* other limitations. Mr. Joel Delman, Respondents’ non-infringement expert, agreed that the accused products meet all but the “SAP” limitation.

Q. So for Claim 6 of the [’]282 patent, the only limitation you are disputing is

whether the super absorbent polymer limitation is met?

A. Yes, that's correct.

Q. And then for Claim 8 of the [']282 patent, the only limitation you are disputing is whether the super absorbent polymer limitation is met?

A. That's correct.

Q. And for Claim 19 of the [']282 patent, the only limitation you disputing is whether the super absorbent polymer limitation is met?

A. That's correct.

Q. And for Claim 20 of the [']282 patent, the only limitation you are disputing is whether the super absorbent polymer limitation is met?

A. I believe that is correct.

* * *

Q. For [']683 patent [sic], Claim 1, the only limitation you're disputing with respect to Claim 1 is whether the super absorbent polymer limitation is met?

A. That is correct.

Q. And then for Claim 5 of the [']683 patent, the only limitation you are disputing is whether the super absorbent polymer limitation is met; correct?

A. That's correct.

Q. And then Claim 11 of the [']683 patent, the only limitation you are disputing is whether the super absorbent polymer limitation is met; correct?

A. Correct.

(Mot., Ex. 3 (Delman Dep. Tr.) at 70:10-25, 71:15-72:4; *see also* SMF Nos. 9, 24.).¹⁵

Additionally, there is no dispute that Respondents' ammunition is formed from [REDACTED], as shown in the safety data sheets for all of the accused ammunition. (*See, e.g.*, Mot., Ex. 8, PTT00158700 (PTT MSDS) at 8702 (indicating that the PTT ammunition contains

¹⁵ Respondents' purported disputes to certain of Complainants' SMF were considered but found to be unpersuasive.

[REDACTED]); *id.*, Ex. 9, SRB_000017562 (SRB MSDS) at 17563 (indicating that the SRB ammunition contains [REDACTED] by weight); *id.*, Ex. 10, GB-ITC_00001010 (Gellets MSDS) at 1011 (stating that the Gel Blaster ammunition contains [REDACTED]); *see also* SMF Nos. 17, 20, 22.).

Respondents acknowledged that [REDACTED] is a well-known “super absorbent polymer.” (Mot., Ex. 11, PTT00000010 (PTT HydroStrike Study) at 11 (“[REDACTED] is an example of a *super absorbing polymer*.”) (emphases added), 16 (“The [REDACTED] is the best performing *SAP* for this application based on searches.”) (emphases added); *id.*, Ex. 12, HASBRO-ITC-00006305 (Gel Blaster Website) at 6305 (“Gel blasters shoot gel balls that are made from a *super absorbent polymer called* [REDACTED].”) (emphasis added); SMF No. 16.). Respondents’ corporate witnesses, including Kyle Whiteis, Splat-R-Ball’s VP of Development, and Francis Chia, PTT’s CEO, also agreed that [REDACTED] is a SAP. (*See, e.g.*, Mot., Ex. 13 (Whiteis Dep. Tr.) at 169:16-22; *id.*, Ex. 14 (Chia Dep. Tr.) at 38:22-39:12.). Respondents’ documents and witness testimony are consistent with industry literature, which classifies [REDACTED] (the material of Respondents’ ammunition) as a “SAP.” (*See, e.g.*, Mot., Ex. 15 (publication from a division of the American Chemical Society indicating that [REDACTED] is a “superabsorbent polymer”).).

Moreover, the Private Parties do not dispute how much water Respondents’ ammunition can absorb. Complainants’ expert, Dr. Gerald Fuller, measured the absorption of Respondents’ ammunition in both tap water and distilled water. (SMF Nos. 10, 12-15 (undisputed).). Dr. Fuller’s results indicate that the ammunition absorbs anywhere between 23 and 53 times its own mass when hydrated.

Table No. 1: Summary of Dr. Fuller's Results

Table 1. Measured water absorption levels for 5 ammunition products. Data excerpted from Dr. Fuller's report. ¹¹		
Product	Average water absorption level (g/g) ¹²	
	Tap Water	Distilled Water
Nerf Pro GelFire	49.3	50.0
Splat R Ball Water Gel Ball Ammo	26.5	26.4
HydroStrike Gel-Tek Beads	32.3	34.0
Gel Blaster Gelllets	49.8	53.2
Gel Blaster Glow in the Dark Gelllets	23.3	26.2

(Mot., Ex. 2 (Reitman Reb. Rpt.) at ¶ 25 (annotated) (summarizing Dr. Fuller's data); *id.*, Ex. 29 (Fuller Op. Rpt.), Appendix 4 (Dr. Fuller's measurements).).

Respondents' expert, Dr. Maureen Reitman, incorporated Dr. Fuller's measurements in her report and testified that she did not dispute them. (Mot., Ex. 17 (Reitman Dep. Tr.) at 160:21-161:21 ("Q. Other than typographical errors, you don't have any dispute for the data; is that correct? A. As I sit here, I have no reason to dispute the measurements that are recorded."); SMF No. 11 (undisputed).).¹⁶

In addition, Dr. Reitman conceded that Respondents' ammunition qualifies as a SAP under the common industry usage of the term. As shown in the excerpt below, Dr. Reitman agreed that industry usage of "SAP," as reflected in the literature, classifies ammunition that absorbs more than ten times its own mass (10g/g) as a "SAP." She also acknowledged that "SAP" is used commercially to describe polymers (like Respondents' ammunition) that absorb more than ten times their mass.

¹⁶ In Respondents' own Motion for summary determination (*see* n.3, *supra*), Respondents did **not** dispute Dr. Fuller's measurements and, in fact, asserted that "[t]here is **no factual dispute** regarding the Accused Ammunition's water absorbency." (Respondents Mot., Mem. at 6-7 (emphasis added).). Moreover, in Respondents' Statement of Material Facts in support of their Motion, Respondents stated that "Respondents' experts have **not** done their own analysis of the Accused Ammunition absorbency and have **used** Dr. Fuller's measurements." (*Id.*, SMF Nos. 32-34.).

Dr. Fuller is *correct* that there are *publications* that refer to water absorbencies as low as 10 g/g as “super absorbent polymers.” He is likewise correct that “super absorbent polymer” is *used commercially* to describe such products. And as he notes, the Respondents have used “super absorbent polymer” to describe their products, which is consistent *with this commercial usage*.

(Mot., Ex. 2 (Reitman Reb. Rpt.) at ¶ 32 (emphases added) (footnotes omitted)).

Dr. Reitman’s concessions are consistent with Respondents’ own documents and witness testimony, which expressly confirm that their ammunition is formed from a SAP. (See SMF Nos. 18-19, 21, 23.). Table Nos. 2-4 below provide some examples.

Table No. 2: Evidence that PTT’s Ammunition Is Formed from a SAP

Citation	Evidence
Mot., Ex. 18 (Wong Dep. Tr.) at 110:14-17 ¹⁷	[REDACTED]
Mot., Ex. 18 (Wong Dep. Tr.) at 141:14-16	[REDACTED]
Mot., Ex. 14 (Chia Dep. Tr.) at 39:3-9	[REDACTED]

¹⁷ At the time of her deposition, Ms. Veronica Wong was the President of Prime Time Toys Ltd. (Doc. ID No. 794002, Respondents’ Pre-Hearing Statement (“RPSt.”) at 3.).

Citation	Evidence
Mot., Ex. 11, PTT00000010 (PTT HydroStrike Study) (copied from Mem. at 12)	
Mot., Ex. 19, PTT00084770 (PTT Product Quote) (copied from Mem. at 12)	
Mot., Ex. 30, PTT00087349 (PTT Product Quote) (copied from Mem. at 12)	

Table No. 3: Evidence that Splat-R-Ball's Ammunition Is Formed from a SAP

Citation	Evidence
Mot., Ex. 13 (Whiteis Dep. Tr.) at 169:20-22	

Citation	Evidence
Mot., Ex. 20 (Higginbotham Dep. Tr.) at 23:6- 9 ¹⁸	[REDACTED]
Mot., Ex. 21 SRB_000016831- 839 (SRB Safety Data Sheet Report) at 831 (copied from Mem. at 13)	[REDACTED]

Table No. 4: Evidence that Gel Blaster's Ammunition Is Formed from a SAP

Citation	Evidence
Mot., Ex. 22, HASBRO- ITC- 00006301 (Gel Blaster Website) (copied from Mem. at 13)	GROW YOUR AMMO USING OUR GELLETS® Our patented, no mess, no clean-up Gellets® burst on impact and evaporate in 30 minutes or less. <u>Made using Super Absorbent Polymers (SAP), an all-natural, non-toxic, water-based material,</u> so you can blast them anywhere. Spend less time cleaning and more time having a blast!

¹⁸ At the time of his deposition, Mr. Keith Higginbotham was President and CEO of Daisy Manufacturing Company and Splat-R-Ball LLC. (RPSt. at 3.).

Citation	Evidence
Mot., Ex. 12, HASBRO-ITC-00006305 (Gel Baster Website) at 6305 (copied from Mem. at 13)	Projectiles Used Airsoft and gel blaster ammo are made from very different materials. Gel blasters shoot gel balls that are made from a super absorbent polymer called sodium polyacrylate. Super absorbent polymers come in many different types, but sodium polyacrylate is the most common one used for gel beads because they can expand up to 1000 times their original size. You can learn more about what gel blaster balls are made of in our related blog post.
Mot., Ex. 23, HASBRO-ITC-00006308 (Gel Blaster Website) at 6309 (copied from Mem. at 14)	Instead of using plastic pellets or paintballs, gel blasters shoot out gel balls that are made from super absorbent polymer beads. These super absorbent polymer beads are non-toxic, 90% water, and 100% biodegradable. They burst upon contact and immediately begin to evaporate, leaving no mess, stains, or waste around you.
Mot., Ex. 24, HASBRO-ITC-00006314 (Gel Blaster Website) at 6314 (copied from Mem. at 14)	Yes, gel blasters are 100% legal in the United States. Although they share some similarities with heavily regulated toy guns like paintball guns and BB guns, gel blasters do not have the same potential to cause harm. This is mainly because of the type of projectiles that gel blasters use, which are super-absorbent water beads that have little to no risk of causing an injury.

Citation	Evidence
Mot., Ex. 25, HASBRO-ITC-00006339 (Gel Blaster Website) at 6339 (copied from Mem. at 14)	paintballs, gel blaster ammo leaves no residue on the skin, clothes, and the environment whatsoever. Why? Because <u>what gel blaster balls are made of</u> are super-absorbent polymers that primarily contain water, and therefore only leave water residue that will evaporate completely. Now - why does it matter how you store gel balls?

In sum, there is no dispute that Respondents' ammunition is formed from a polymer (i.e., [REDACTED]) and can absorb more than ten times its own mass. As discussed above, Complainants' expert, Dr. Fuller, measured Respondents' ammunition and determined that it absorbs anywhere between 23 and 53 times its own mass when hydrated. Furthermore, Respondents' expert, Dr. Reitman, did not contest Dr. Fuller's test results, and in fact incorporated them by reference into her own expert report. (*See* SMF No. 11 (undisputed)). Thus, it is undisputed that Respondents' ammunition absorbs at least ten times its own mass and meets the "SAP" limitation. (*See also* Staff. Resp. at 2 ("[T]here is no genuine issue of material fact as to whether the accused ammunition satisfy the SAP limitation of claims 6, 8, 19, and 20 of the '282 patent and claims 1, 5, and 11 of the '683 patent.")).

B. Respondents' Sole Non-Infringement Argument Is Based on a New and Untimely Claim Construction

Because Dr. Reitman could not credibly dispute that Respondents' ammunition is a "SAP" under the common, industry usage of the term, she provided a new construction of how "SAP" is purportedly used in the *specific context of the asserted patents*. For example, after

confirming that Dr. Fuller's opinions about the industry usage of "SAP" were correct (as discussed in Section V.A., *supra*), Dr. Reitman asserted non-infringement by alleging that "SAP" has a different meaning in the context of the asserted patents.

But, nowhere *in the Asserted Patents* is there a suggestion that relatively low absorbency levels on the scale of absorbencies that have been commercially described as "super absorbent polymers" (e.g., the lower bound of 10 g/g, as discussed by Dr. Fuller) constitute "super absorbent polymers" that can be used to make the "soft-projectiles" *required by the claims*. Again, *the only context in the patents* is an express reference to 500 times mass absorbency, a description of the USDA-patented SAPs (i.e., "Super Slurpers") in the background (which a POSITA would understand absorb 1000 times or more of the initial mass), and a statement that "SAPs are polymers that can absorb an extremely large amount of liquid relative to their own mass."

(Mot., Ex. 2 (Reitman Reb. Rpt.) at ¶ 32 (emphases added); *see also id.*, Ex. 17 (Reitman Dep. Tr.) at 118:12-19 ("A person of ordinary skill understands that the term, because it's not precisely defined, may be used in certain contexts in related but slightly different ways. And then a person of ordinary skill looking at the patent from a strictly technical point of view would recognize that the inventors point to the USDA information as an example of what they mean.")).

As Complainants point out, in her rebuttal expert report, Dr. Reitman did not explicitly state what absorbency she considered a polymer must exhibit to be a "SAP." (Mem. at 15.). Rather, she concluded in her report that the level of absorbency of Respondents' ammunition (between 23 and 53 times its own mass) does not meet the "SAP" requirement because the preferred levels of absorbency discussed in the asserted patents are higher. (Mot., Ex. 2 (Reitman Reb. Rpt.) at ¶ 32.). During her deposition, Dr. Reitman ultimately stated she was offering an opinion that in the context of the asserted patents, a "SAP" must absorb at least **100 times** its mass. (Mot., Ex. 17 (Reitman Dep. Tr.) at 179:5-183:7 (applying a minimum absorbency of 100 times to opine that a material which absorbs 80 times its mass in liquid is not a "SAP," but a material which absorbs 130 times its mass is a "SAP")).

Dr. Reitman's non-infringement argument is contrary to the Splat-R-Ball and PTT

Respondents' proposed construction of a "SAP." During the *Markman* proceedings, the Splat-R-Ball and PTT Respondents argued that a "SAP" is a term of art that does not require any particular construction in the context of the asserted patents.¹⁹ (*See, e.g.*, Doc. ID No. 782596 (Joint Claim Construction Chart)). In doing so, the Splat-R-Ball and PTT Respondents took the position that "SAP" does not have any different meaning in the context of the asserted patents than it would otherwise have in the relevant field. (*Id.*).

As discussed above in Section V.A., Dr. Reitman conceded that, outside the context of the asserted patents, in industry literature and as used to describe commercial products, a polymer with an absorbency of ten times its mass (10 g/g) would be recognized as a "SAP." (Mot., Ex. 2 (Reitman Reb. Rpt.) at ¶ 32.). Her new opinion that Respondents' ammunition is not formed from a "SAP" because "SAP" has a different, special meaning in the context of the asserted patents, i.e., must absorb at least **100 times** its mass, contradicts the construction Respondents pursued during the *Markman* process. Thus, Dr. Reitman's new opinion is an improper attempt to engage in claim construction and deemed waived. (*See* G.R. 1.14 ("[A]ny party who fails to set forth a specific proposed construction or who relies on the plain and ordinary meaning of the patent language at issue (without elaboration) may not subsequently elaborate or rely on a different proposed construction absent advance approval from the Administrative Law Judge.")).

To provide her new non-infringement opinion, Dr. Reitman relied on intrinsic evidence to explain how one of ordinary skill in the art would understand "SAP" in the context of the asserted patents. In the excerpt quoted above, Dr. Reitman based her non-infringement opinion

¹⁹ The Gel Blaster Respondents contended that the claim term is indefinite.

on a preferred embodiment of a SAP that absorbs “500 times” its weight and that the specification’s reference to “USDA-patented SAPs” (which she contended one of ordinary skill would understand to absorb 1000 times its initial mass). (*Id.*). She confirmed this in the next paragraph of her report, where she explained that her non-infringement opinion was grounded on an interpretation of “SAP” in the specific context of the asserted patents and the intrinsic evidence.

[T]he *intrinsic evidence* of the specification of the Asserted Patents specifically identifies SAPs for the application of the claimed invention in terms of a 500 g/g mass absorbency preferred example and the up to 1000 g/g or more mass absorbency of the USDA patent related to “Super Slurpers.” Therefore, in my opinion, in the event that there is no construction of “super absorbent polymer,” *a polymer with a 23-53 times initial mass maximum absorbency does not meet the limitation “soft-projectile[s] [] formed from hydrated super absorbent polymer” based on the intrinsic evidence offered by the Asserted Patents’ specification.*

(*Id.* at ¶ 33 (emphases added).).

If Respondents had an opinion that “SAP” had a special meaning in the context of the asserted patents (e.g., to require any particular level of absorbency) based on the intrinsic evidence, they were required to disclose that position during the *Markman* proceedings. Instead, Respondents took the position that “SAP” does not have a special meaning and requires no construction. Respondents are now tethered to that position and cannot shift to a new, undisclosed claim construction position that the intrinsic evidence supports a particular interpretation of “SAP” in the context of the asserted patents. Ground Rule 1.14 specifically prohibits the change in position that Respondents have attempted.

C. Respondents’ Non-Infringement Positions Raised in Their Opposition Are New and Untimely

As discussed in Section V.A., *supra*, Mr. Delman, Respondents’ non-infringement expert, testified that the “SAP” limitation was the only limitation on which he provided a non-

infringement position. (Mot., Ex. 3 (Delman Dep. Tr.) at 70:10-25, 71:15-72:4; *see also* SMF Nos. 9, 24.). Contrary to Mr. Delman’s unequivocal testimony, Respondents belatedly raise additional non-infringement arguments in their Opposition. Specifically, Respondents contend that factual disputes exist for the following claim limitations: (i) “soft-projectile”/“soft-projectiles”; (ii) “substantially spherical”; and (iii) “configured for use.” (Opp’n at 24.).

Respondents claim that their late disclosure was due to timing of the experts’ depositions. (*Id.* at 25 (“Mr. Delman’s deposition was taken on January 24, 2023, before Dr. Kudrowitz’s January 26-27th deposition. Mr. Delman therefore was not able to consider the full extent of the new de facto claim construction positions Dr. Kudrowitz applied for the ‘soft-projectile,’ ‘substantially spherical,’ and ‘configured for use’ terms.”)). However, as Complainants point out, Dr. Kudrowitz disclosed his opinions in his expert report of January 6, 2023, weeks before Mr. Delman testified at his deposition. (*See, e.g.*, Reply Mot., Ex. 60 (Kudrowitz Reb. Rpt.) at ¶¶ 74-76 (expert report discussing “soft projectile”), ¶¶ 63-69 (expert report discussing “substantially spherical”), ¶¶ 57-62 (expert report discussing “configured for use”).). Mr. Delman appears to have read and subsequently responded to Dr. Kudrowitz’s report: at the same deposition that Mr. Delman testified that the “SAP” limitation was the only limitation on which he provided a non-infringement position, Mr. Delman testified extensively about Dr. Kudrowitz’s other opinions. (*See, e.g.*, Reply Mot., Ex. 68 (Delman Dep. Tr.) at 176:6-8, 178:11, 186:15, 194:9, 196:4-19, 204:24, 205:2-206:14.).

Moreover, this does not explain why Respondents waited until March 27, 2023, nearly three (3) months from Dr. Kudrowitz’s report, and two (2) months after his deposition, and after this Court’s *Markman* Order (that rendered moot Respondents’ only disclosed non-infringement position as to these claims), to attempt to add new non-infringement positions which appear to be

disguised as “factual disputes.”

Thus, Respondents’ additional non-infringement positions are untimely and deemed waived. Nevertheless, a substantive review of Respondents’ belated positions is provided below. For the following reasons, there is no genuine dispute that the accused products meet the “soft-projectile”/“soft-projectiles,” “substantially spherical,” and “configured for use” limitations.

1. There Is No Genuine Dispute that the Accused Products Practice the “Soft-Projectile” Limitation

Respondents’ attempt to create a dispute with respect to whether their accused products embody the “soft-projectile” limitation is not supported by the evidence.²⁰ The Private Parties’ experts agreed that Respondents’ ammunition are “soft-projectiles.” Complainants’ expert, Dr. Kudrowitz, analyzed the “soft-projectile” limitation and observed that when Respondents’ ammunition was hydrated, it became “soft to the touch.” (Reply Mot., Ex. 61 (Kudrowitz Op. Rpt.) at ¶¶ 63, 139.). Respondents’ expert, Mr. Delman, also confirmed that Respondents’ accused ammunition meets the “soft-projectile” limitation. (Reply Mot., Ex. 68 (Delman Dep. Tr.) at 63:16-19 (“Q. You’d agree with me the ammunition for the accused products are soft-projectiles? A. I believe they are soft, yes. When they are hydrated, they are soft, yes.”)).

When he responded to *invalidity* opinions from Respondents’ experts Dr. Reitman and Mr. Delman, Complainants’ expert, Dr. Kudrowitz, observed that certain alleged prior art beads did “not mechanically deform under light touch.” (Opp’n, Ex. 55 (Kudrowitz Reb. Rpt.) at ¶¶ 74, 78.). Respondents criticize Dr. Kudrowitz’s analysis as “subjective” and assert that he “never explains how he reached this conclusion nor how a POSITA could recreate his subjective

²⁰ All of the asserted claims of the ’282 and ’683 patents require “soft-projectiles.” During the *Markman* proceedings, the Parties did not seek to have this term construed.

analysis.” (Opp’n at 26.). However, Respondents omit the fact that Dr. Kudrowitz was simply responding to Respondents’ expert, Dr. Reitman, who initially proposed that standard. In her opening expert report, Dr. Reitman opined that certain prior art beads were allegedly “soft” projectiles because they could be “mechanically deformed by light touch.”

I was provided physical samples of [an alleged prior art product]. . . . Immersing [it] in water resulted in swelling of the material; both the mass and the volume increased, maintaining its substantially spherical shape throughout the swelling process. Upon swelling, the [product] could be *mechanically deformed by light touch, returning to [its] original shape once the light touch was released.*

(Mot., Ex. 59 (Reitman Op. Rpt.) at ¶ 91 (emphasis added).).

In his rebuttal expert report, Dr. Kudrowitz merely pointed out that he disagreed with Dr. Reitman’s opinion because the prior art beads could not be “mechanically deformed by light touch” when used in the manner that Respondents’ experts proposed in order to make their obviousness combinations. (Opp’n, Ex. 55 (Kudrowitz Reb. Rpt.) at ¶¶ 74, 78.). As Complainants note, Dr. Kudrowitz’s *validity* opinions about the prior art do not transform this issue into one that is *disputed*.

In sum, Respondents’ non-infringement expert, Mr. Delman, did *not* dispute (and in fact *agreed with*) Dr. Kudrowitz’s opinion that Respondents’ accused ammunition are “soft-projectiles.” (See Reply Mot., Ex. 68 (Delman Dep. Tr.) at 63:16-19.). Thus, there is no genuine issue with respect to any material fact on this issue.

2. There Is No Genuine Dispute that the Accused Products Practice the “Substantially Spherical” Limitation

Respondents’ allegation of material fact disputes with respect to the “substantially spherical” limitation of certain claims is also unsupported by the evidence.²¹ Respondents’

²¹ Claim 4, from which asserted claim 6 of the ’282 patent depends, and all asserted claims of the ’683

expert, Mr. Delman, agreed that when Respondents' ammunition products are hydrated (i.e., soaked in water as required by Respondents' instructions), the projectiles are "substantially spherical." (Reply Mot., Ex. 68 (Delman Dep. Tr.) at 63:20-22 ("Q. And you would agree with me that they are substantially spherical when hydrated? A. Yes.")).

Respondents again raise *validity* issues that are entirely different than the issue for infringement. (Opp'n at 28.). Respondents do not dispute that Respondents' accused ammunition products are substantially spherical after the 2-4 hours of immersion in water that their own product instructions require. (*See id.*). As shown in Respondents' Opposition, when the accused ammunition is hydrated according to Respondents' instructions and ready for use with projectile launchers, the projectiles are "substantially spherical."



(Opp'n at 29 (citing *id.*, Ex. 68) (other citations omitted)).

Again, Respondents' expert, Mr. Delman, agreed that Respondents ammunition is "substantially spherical." (Reply Mot., Ex. 68 (Delman Dep. Tr.) at 63:20-22.).

In their Opposition, Respondents contend that Complainants are relying on a claim interpretation in which "'substantially spherical' apparently means 'perfectly spherical throughout the hydration process, with absolutely no apparent changes to the visual or textural

patent, require soft-projectiles that are "substantially spherical." During the *Markman* proceedings, the Parties did not seek to have this term construed.

shape of the ammunition.” (*Id.*). However, as Complainants point out, “Respondents provide no citation for the alleged quote, because Complainants have never advanced such an interpretation.” (Reply Mot. at 4.).

In his rebuttal expert report, Dr. Kudrowitz simply described his observations that certain alleged prior art beads upon which Respondents rely are non-spherical when at the size required by the relevant claims, i.e., “a diameter greater than about 4 mm and less than about 9 mm.” (Reply Mot., Ex. 60 (Kudrowitz Reb. Rpt.) at ¶¶ 63-69; JXM-0001 at cl. 6.). Complainants state that “[a]t no point did Dr. Kudrowitz, or Complainants, allege that any claims require projectiles to remain spherical all the way through the hydration process. They only pointed out—correctly—that the claims at issue require projectiles that are ‘substantially spherical,’ and the alleged prior art is not spherical at the size *Respondents* propose in putting forth their obviousness combinations.” (Reply Mot. at 5 (emphasis in original)). Again, Dr. Kudrowitz’s *validity* opinions about the prior art do not transform this issue into a *disputed* one.

In sum, Respondents’ non-infringement expert, Mr. Delman, did *not* dispute (and in fact *agreed with*) Dr. Kudrowitz’s opinion that Respondents’ accused ammunition are “substantially spherical.” (*See* Reply Mot., Ex. 68 (Delman Dep. Tr.) at 63:20-22.). Thus, there is no genuine issue with respect to any material fact on this issue.

3. There Is No Genuine Dispute that the Accused Products Practice the “Configured for Use” Limitation

Respondents’ argument that the Respondents’ ammunition “was not initially created with the specific intent that they be used with the accused launchers” is, again, not supported by the evidence. The accused ammunition products are “specifically sold with and intended to be used as ammunition with the [accused] blasters,” which Respondents do *not* dispute. (Mem. at 21.).

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SMF Item #	Statement	Disputed?
36	PTT's Gel-Tek beads are sold with and intended to be used with the PTT Accused Blasters.	No.
38	The Splat-R-Ball Ammo are sold with and intended to be used with the Splat-R-Ball Accused Blasters.	No.
40	The Gel Blaster Gellets and Glow in the Dark Gellets are sold with and intended to be used with the Accused Gel Blaster Blasters.	No.

(Reply Mot. at 7 (citing SMF Resp. to SMF Nos. 36, 38, 40)).

Dr. Kudrowitz opined (and Respondents' experts did not dispute) that ammunition must be carefully sized to make sure it fits in the barrel, and does not cause misfires. (Reply Mot. at 7 (citing Kudrowitz Op. Rpt. at ¶ 160)). Splat-R-Ball Respondent's designated representative, Mr. Patrick Tam, provided the following testimony during his deposition, which confirmed the same:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Reply Mot., Ex. 62 (Tam Dep. Tr.) at 30:16-31:12

Mr. Whiteis, Splat-R-Ball's VP of Development, and Mr. Chia, PTT's CEO, confirmed that Respondents [REDACTED] [REDACTED]. (Reply Mot., Ex. 63 (Chia Dep. Tr.) at 36:13-37:10 [REDACTED] [REDACTED]; *id.*, Ex. 64 (Whiteis Dep. Tr.) at 155:2-156:6 [REDACTED] [REDACTED]). Respondents did not dispute this. Thus, there is no genuine issue with respect to any material fact on this issue.

D. Respondents Did Not Dispute the Other Limitations of the Asserted Claims

1. Claim 1 of the '282 Patent

Claim 1 of the '282 patent recites: "Ammunition configured for use with a projectile launcher comprising: a plurality of soft-projectiles having the same shape, each soft projectile being formed from hydrated super absorbent polymer." (JXM-0001 at cl. 1.).

There is no dispute that the accused products are "projectile launchers." Respondents' expert, Mr. Delman, agreed that they are all projectile launchers. (Mot., Ex. 3 (Delman Dep. Tr.) at 63:13-15; SMF No. 25 (undisputed).). Nor is there any dispute that Respondents' ammunition comprises "a plurality of soft-projectiles having the same shape" when hydrated for use with the blasters, according to Respondents' own product instructions and witness testimony. (*See* SMF Nos. 37 (undisputed), 39 (undisputed), 41, 65 (undisputed).).

Furthermore, as discussed above in Sections V.C.1 and V.A, Respondents' ammunition are "soft-projectiles," and are formed from SAP that are either pre-hydrated or hydrated for use

after purchase, respectively.²²

Thus, there is no dispute that these limitations are met.

2. Claim 4 of the '282 Patent

Claim 4 of the '282 patent depends from claim 1 and further recites “wherein the soft-projectiles are substantially spherical.” (JXM-0001 at cl. 4.).

As discussed above in Section V.C.2, Respondents’ ammunition are “substantially spherical” when hydrated. Accordingly, there is no dispute that this limitation is met.

3. Claim 6 of the '282 Patent

Claim 6 of the '282 patent depends from claim 4 and further recites “wherein the soft-projectiles have a diameter greater than about 4 mm and less than about 9 mm.” (JXM-0001 at cl. 6.).

There is no dispute that Respondents’ ammunition have a diameter of 7.5mm when hydrated according to Respondents’ product instructions, which is greater than about 4 mm and less than about 9 mm. (*See* SMF Nos. 35, 37 (undisputed), 39 (undisputed), 41.). Therefore, there is no dispute that this limitation is met.

4. Claim 8 of the '282 Patent

Claim 8 of the '282 patent recites: “A projectile launcher including the ammunition of claim 1 disposed within a feed chamber of the projectile launcher, and wherein the projectile launcher is adapted to load a soft-projectile from the feed chamber to a firing position.” (JXM-0001 at cl. 8.).

²² Gel Blaster Respondents’ ammunition is already hydrated as imported and/or sold. (*See* SMF No. 29 (undisputed).). The PTT and Splat-R-Ball Respondents’ ammunition requires that the user place the ammunition in water before use. (*See* SMF Nos. 27-28 (undisputed).).

There is no dispute that the accused products are projectile launchers. (*See* Section V.D.1, *supra.*). Nor is there any dispute that the accused products include a feed chamber (such as a magazine or hopper) that stores the ammunition, or that the accused products load the ammunition from the feed chamber to a firing position so that it can be fired from the blaster. (*See* SMF Nos. 42 (undisputed), 43, 44-45 (undisputed), 46, 47-49 (disputed).). Respondents' expert, Mr. Delman, agreed that Respondents' accused products meet these claim requirements. (Mot., Ex. 3 (Delman Dep. Tr.) at 66:7-9, 68:15-18.).

Accordingly, there is no dispute that these limitations are met.

5. Claim 19 of the '282 Patent

Claim 19 of the '282 patent recites: "The projectile launcher of claim 8, further comprising: an air compression chamber; a piston disposed within and axially aligned with the air compression chamber; and a spring operatively arranged to bias the piston toward a rest position from a cocked position within the air compression chamber." (JXM-0001 at cl. 19.).

There is no dispute that the accused products include these features, which are used to launch the ammunition from the blaster—an air compression chamber, a piston disposed within and axially aligned with the air compression chamber, and a spring operatively arranged to bias the piston toward a rest position from a cocked position within the air compression chamber. (*See* SMF Nos. 50-59 (undisputed).). Respondents' expert, Mr. Delman, agreed that the accused products meet all of these claim requirements. (Mot., Ex. 3 (Delman Dep. Tr.) at 66:10-67:1, 67:15-20.).

Thus, there is no dispute that these limitations are met.

6. Claim 20 of the '282 Patent

Claim 20 of the '282 patent recites: "The projectile launcher of claim 19, further

comprising a smaller diameter tube in communication with the air compression chamber, and wherein a biasing force of the spring is sufficient to cause the piston to move from the cocked position to the rest position to force air from the air compression chamber into the smaller diameter tube and cause a soft-projectile located at the firing position to accelerate and be launched from the projectile launcher.” (JXM-0001 at cl. 20.).

There is no dispute that the accused products also include each of these claimed features. They include a smaller diameter tube in communication with the air compression chamber; they use a biasing force of the spring is sufficient to cause the piston to move from the cocked position to the rest position, which forces air from the air compression chamber into the smaller diameter tube; and this causes a soft-projectile located at the firing position to accelerate and be launched from the projectile launcher. (*See* SMF Nos. 60, 61-64 (undisputed).). Mr. Delman agreed that the accused products meet these requirements. (Mot., Ex. 3 (Delman Dep. Tr.) at 66:10-68:14; 68:19-23.).

Therefore, there is no dispute that these limitations are met.

7. Claim 1 of the '683 Patent

Claim 1 of the '683 patent recites: “A projectile launching system, comprising: ammunition comprising a plurality of substantially spherical soft-projectiles formed from hydrated super absorbent polymer; and a projectile launcher for launching the ammunition in free flight.” (JXM-0003 at cl. 1.).

There is no dispute that the accused products are projectile launching systems, or that the ammunition comprises a plurality of substantially spherical soft-projectiles. (*See* Sections V.C.1-2, *supra*; *see also* Mot., Ex. 3 (Delman Dep. Tr.) at 63:13-15, 63:16-22.). Nor is it

disputed that the accused products launch the ammunition in free flight. (*See* SMF Nos. 25-29 (undisputed); Mot., Ex. 3 (Delman Dep. Tr.) at 68:11-14.).

Additionally, as discussed above in Section V.A, there is no genuine dispute that Respondents' ammunition, when hydrated, is formed from hydrated SAP.

Thus, there is no dispute that these limitations are met.

8. Claim 5 of the '683 Patent

Claim 5 of the '683 patent recites the system of claim 1 "wherein the projectile launcher includes a feed chamber for loading the soft-projectiles within projectile launcher." (JXM-0003 at cl. 5.).

There is no dispute that the accused products are projectile launchers that include a feed chamber for loading the soft-projectiles within the projectile launcher. (*See* Section V.D.1, *supra*; *see also* Mot., Ex. 3 (Delman Dep. Tr.) at 66:7-9, 68:15-18; SMF Nos. 42 (undisputed), 43, 44-45 (undisputed), 46, 47-49 (disputed).). Accordingly, there is no dispute that this limitation is met.

9. Claim 11 of the '683 Patent

Claim 11 of the '683 patent recites the system of claim 1, "wherein the projectile launcher is designed to use air pressure to launch the soft-projectiles." (JXM-0003 at cl. 11.).

There is no dispute that the accused products are designed to use air pressure to launch the soft-projectiles. (*See* SMF Nos. 61-64 (undisputed).). Mr. Delman agreed that the accused products use air pressure to "launch[] the projectiles out of the barrel." (Mot., Ex. 3 (Delman Dep. Tr.) at 68:19-23.). Therefore, there is no dispute that this limitation is met.

VI. CONCLUSION

For the foregoing reasons, the evidence shows that there is no genuine issue with respect

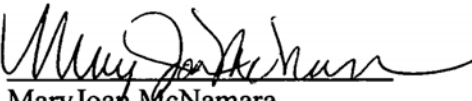
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to any material fact. Therefore, Complainants are entitled to summary determination of infringement as a matter of law. *See* 19 C.F.R. § 210.18(b).

Accordingly, Complainants' Motion for summary determination, Motion Docket No. 1325-017, is hereby ***granted***.

Within fourteen (14) days of the date of this document, each party shall submit to the Office of the Administrative Law Judges through McNamara337@usitc.gov a statement whether it seeks to have any confidential portion of this document redacted. That is the courtesy copy pursuant to Ground Rule 1.3.2. Any party seeking redactions to the public version must submit to this office through McNamara337@usitc.gov a copy of a proposed public version of this document pursuant to Ground Rule 1.10 with yellow highlighting clearly indicating any portion asserted to contain confidential business information.

SO ORDERED.


MaryJoan McNamara
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the parties listed have entered an appearance in the above captioned investigation, and a copy of the PUBLIC CERTIFICATE OF SERVICE was served upon the following parties via first class mail and air mail where necessary.

Document	Security	Document Type	Official Rec'd Date	Title
797520	Public	ID/RD - Other Than Final on Violation	05/31/2023 03:18 PM	Initial Determination Granting Complainants' Motion for Summary Determination of Infringement [Mo...

Service Date: May 31, 2023

/s/

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