

XIII. WAIVER OR WITHDRAWAL OF RESPONDENT'S DEFENSES

Jeisys and Cynosure did not raise in Respondents' Pre-Hearing Brief or offer any evidence during the Hearing to support their: (i) Fifth Affirmative Defense of Inequitable Conduct and Unclean Hands (Jeisys and Cynosure Resp. at ¶¶ 8-53); (ii) Seventh Affirmative Defense of Patent Exhaustion and/or First Sale Doctrine (*id.* at ¶ 56); (iii) Eighth Affirmative Defense of Prosecution History Estoppel (*id.* at ¶ 57); (iv) Ninth Affirmative Defense of Prosecution Laches (*id.* at ¶ 58); (v) Eleventh Affirmative Defense of Waiver and/or Estoppel (*id.* at ¶ 60); (vi) Thirteenth Affirmative Defense of Relief Sought Not in the Public Interest (*id.* at ¶ 62); and (vii) Fourteenth Affirmative Defense of Ensnarement of Prior Art (*id.* at ¶ 63). As noted above in Section II.A, Jeisys and Cynosure withdrew their Sixth Affirmative Defense of Express or Implied License.

EndyMed did not raise in Respondents' Pre-Hearing Brief or offer any evidence during the Hearing to support their: (i) Third Affirmative Defense of No Import Violation (EndyMed Resp. at ¶¶ 12.14, 12.15); (ii) Fifth Affirmative Defense of Inequitable Conduct (*id.* at ¶¶ 12.18-12.31); and (iii) Sixth Affirmative Defense of No Priority Claim (*id.* at ¶¶ 12.32, 12.33).

Consequently, it is a finding of this decision that Respondents have withdrawn, waived and/or abandoned these Affirmative Defense consistent with Ground Rules 7.2 and 10.1. *Kinik Co. v. Int'l Trade Comm'n*, 362 F.3d 1359, 1367 (Fed. Cir. 2004).

XIV. CONCLUSIONS OF FACT OR LAW: THIS INITIAL DETERMINATION FINDS A SECTION 337 VIOLATION BASED UPON INFRINGEMENT OF U.S. PATENT NO. 10,618,951

1. Jurisdiction and standing requirements are satisfied.
2. Claims 1, 9, and 22 of U.S. Patent No. 9,480,836; claims 11 and 16 of U.S. Patent No. 9,320,536; claim 14 of U.S. Patent No. 9,775,774; and claims 5, 13, and 18 of U.S. Patent

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No. 10,869,812 have been found to be directly and indirectly infringed.

3. Serendia's DI Products have been found to practice one or more claims of the Asserted Patents.

4. The Asserted Patents are valid and specifically have not been found to be invalid.

5. Serendia's domestic activities with respect to their DI Products have been found to satisfy the economic prong of the domestic industry requirement under 19 U.S.C. § 337(a)(3)(B).

6. A Limited Exclusion Order and Cease and Desist Orders are recommended based upon the evidence and findings of infringement.

7. A Bond is recommended.

The lack of discussion of any matter raised by the Parties, or any portion of the record, does not indicate that it has not been considered. Rather, any such matter(s) or portion(s) of the record has/have been determined to be irrelevant, immaterial, or meritless. Arguments made on briefs, which were otherwise unsupported by record evidence or legal precedent, have been accorded no weight.

XV. CONCLUSION AND ORDER

This Initial Determination on Violation of Section 337 of the Tariff Act of 1930 is certified to the Commission. All orders and documents, filed with the Secretary, including the exhibit lists enumerating the exhibits received into evidence in this Investigation, that are part of the record, as defined in 19 C.F.R. § 210.38(a), are not certified, since they are already in the Commission's possession in accordance with Commission Rules. *See* 19 C.F.R. § 210.38(a). In accordance with 19 C.F.R. § 210.39(c), all material found to be confidential under 19 C.F.R. § 210.5 is to be given *in camera* treatment.

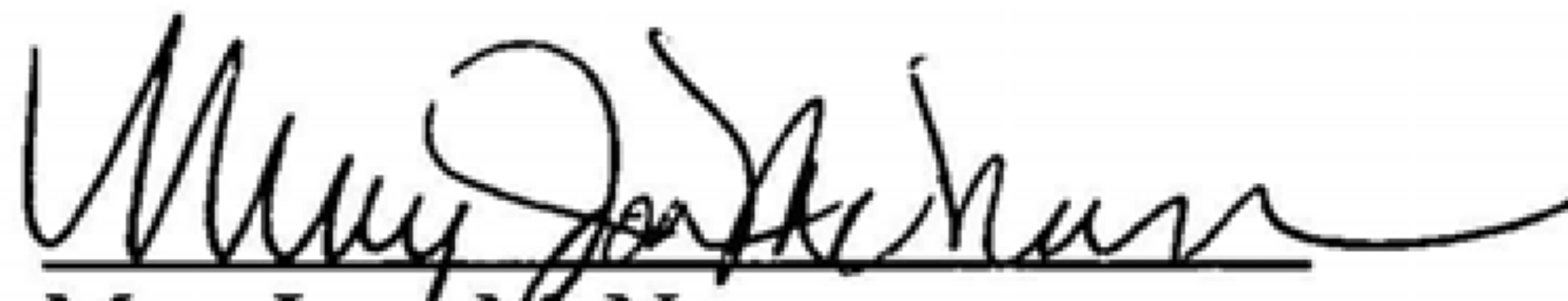
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After the Parties have provided proposed redactions of confidential business information (“CBI”) that have been evaluated and accepted, the Secretary shall serve a public version of this ID upon all parties of record. The Secretary shall serve a confidential version upon counsel who are signatories to the Protective Order (Order No. 1) issued in this Investigation.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review pursuant to 19 C.F.R. § 210.43(a) or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues therein.

Within fourteen (14) days of the date of this document, the Parties shall submit to the Office of Administrative Law Judges a joint statement whether they seek to have any portion of this document deleted from the public version. The Parties’ submission must include a copy of this ID with yellow highlighting, with or without red brackets, that indicate words, phrases, sentences, or paragraphs that they assert contain CBI and that they ask to be deleted from the public version. The Parties’ submission shall also include an index identifying the pages of this document where proposed redactions are located. The Parties’ submission concerning the public version of this document need not be filed with the Commission Secretary.

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	Title
840954	Public	ID/RD - Final on Violation	01/13/2025 03:22 PM	Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond

Service Date: January 13, 2025

/s

Lisa R. Barton
U.S. International Trade Commission
500 E Street, S.W.
Suite 112
Washington, D.C. 20436

CERTIFICATE OF SERVICE

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