Public Version

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN ORGANIC LIGHT-EMITTING DIODE DISPLAY MODULES AND COMPONENTS THEREOF**	**Inv. No. 337-TA-1378**

INITIAL DETERMINATION ON VIOLATION OF SECTION 337 AND RECOMMENDED DETERMINATION ON REMEDY AND BOND

Administrative Law Judge MaryJoan McNamara

(July 11, 2025)

Samsung Display Co., Ltd.
Exhibit 2008
Boe v. Samsung
IPR2025-01498
Ex. 2008-001

SELECTED SUMMARY FINDINGS

Pursuant to the Notice of Investigation, 88 Fed. Reg. 84829-30, dated December 6, 2023, this is the Initial Determination ("ID") of the Investigation in *Certain Organic Light-Emitting Diode Display Modules and Components Thereof*, United States International Trade Commission Investigation No. 337-TA-1378. *See* 19 C.F.R. § 210.42(a).

It is a finding of the ID that Complainant Samsung Display Co., Ltd. ("Complainant" or "SDC") has proven by a preponderance of evidence that Respondents BOE Technology Group Co., Ltd., Mianyang BOE Optoelectronics Technology Co., Ltd., Ordos Yuansheng Optoelectronics Co., Ltd., Chengdu BOE Optoelectronics Technology Co., Ltd., Chongqing BOE Optoelectronics Technology Co., Ltd., Wuhan BOE Optoelectronics Technology Co., Ltd., BMOT f/k/a Kunming BOE Display Technology,[1] and BOE Technology America, Inc. ("Respondents" or "BOE") have violated subsection (a)(1)(A)(i) of section 337 of the Tariff Act of 1930, in the importation into the United States, or in the sale of certain organic light-emitting diode display modules and components thereof by reason of misappropriation of trade secrets, the threat of which is to destroy or substantially injure a domestic industry or to prevent establishment of an industry in the United States. 19 U.S.C. § 1337(a)(1)(A)(i).

It is a finding of the ID that SDC has proven by a preponderance of evidence that it owns at least one protectible trade secret among its asserted trade secrets.

It is a finding of the ID that SDC has proven by a preponderance of evidence that

[1] On or about May 21, 2025, the Private Parties submitted a "Notice of Name Change," which was treated as a joint motion to amend the Complaint and Notice of Investigation ("NOI") pursuant to Commission Rule 210.14(b)(1). The Private Parties sought to replace the name of one Respondent BMOT f/k/a Kunming BOE Display Technology with Respondent Yunan Invensight Optoelectronics Technology Co., Ltd. (EDIS Doc. ID No. 851792 ("Joint Notice").). The Private Parties agreed that the entity changed its name in 2020. (Joint Notice at 1.). On May 28, 2025, an Initial Determination Amending the Complaint and Notice of Investigation to reflect the name change issued. (Order No. 63.).

Respondents misappropriated at least one of SDC's protectible trade secrets.

It is a finding of the ID that SDC has proven by a preponderance of evidence that Respondents' importation of at least one of SDC's misappropriated protectible trade secrets has injured and threatens to substantially injure a domestic industry in the United States under section 337(a)(1)(A)(i).

It is a finding of this ID that Respondents failed to prove by a preponderance of evidence that any misappropriated protectible trade secret, the importation of which has injured and threatens to substantially injure a domestic industry in the United States under section 337(a)(1)(A)(i), was independently developed.

It is a finding of this ID that Respondents failed to prove by a preponderance of evidence that every misappropriated protectible trade secret, the importation of which has injured and threatens to substantially injure a domestic industry in the United States under section 337(a)(1)(A)(i), is generally known or readily ascertainable.

This decision recommends: (1) a Limited Exclusion Order ("LEO") with a standard certification provision after a Commission determination on imported products that are manufactured without the use of the misappropriated trade secrets; (2) a Cease-and-Desist Order ("CDO") against each Respondent, both domestic and foreign; and (3) a bond of 100% during the Presidential Review Period ("PRP").

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ABBREVIATIONS

The following shorthand references to the parties, related U.S. agencies, and related proceedings are used in this Initial Determination:

Complainant or SDC	Samsung Display Co., Ltd.
Respondents or BOE	BOE Technology Group Co., Ltd., Mianyang BOE Optoelectronics Technology Co., Ltd., Ordos Yuansheng Optoelectronics Co., Ltd., Chengdu BOE Optoelectronics Technology Co., Ltd., Chongqing BOE Optoelectronics Technology Co., Ltd., Wuhan BOE Optoelectronics Technology Co., Ltd., BMOT f/k/a Kunming BOE Display Technology, and BOE Technology America, Inc.
Private Parties	Complainant and Respondents, collectively
Staff	Commission Investigative Staff
Parties	Private Parties and Staff, collectively
CBP	U.S. Customs and Border Protection
PTO	U.S. Patent and Trademark Office

The following abbreviations for pleadings, exhibits, briefs, transcripts, and Orders are used in this Initial Determination:

Compl.	Complaint
Resp.	Response of Respondents to the Notice of Investigation and Complaint Under Section 337 of the Tariff Act of 1930, as Amended
CX	Complainant's exhibit
CDX	Complainant's demonstrative exhibit
CPX	Complainant's physical exhibit
CPBr.	Complainant's Pre-Hearing Brief

CBr.	Complainant's Initial Post-Hearing Brief
CRBr.	Complainant's Post-Hearing Reply Brief
CPSt.	Complainant's Pre-Hearing Statement
JX	Joint exhibit
RX	Respondents' exhibit
RDX	Respondents' demonstrative exhibit
RPX	Respondents' physical exhibit
RPBr.	Respondents' Pre-Hearing Brief
RBr.	Respondents' Initial Post-Hearing Brief
RRBr.	Respondents' Post-Hearing Reply Brief
RPSt.	Respondents' Pre-Hearing Statement
SX	Staff's exhibit
SDX	Staff's demonstrative exhibit
SPX	Staff's physical exhibit
SPBr.	Staff's Pre-Hearing Brief
SBr.	Staff's Initial Post-Hearing Brief
SPSt.	Staff's Pre-Hearing Statement
SRBr.	Staff's Post-Hearing Reply Brief
Tr.	Evidentiary hearing transcript
Dep. Tr.	Deposition transcript

I. INITIAL DETERMINATION ON VIOLATION OF SECTION 337, AND RECOMMENDED DETERMINATION ON REMEDY AND BOND

A. Overview

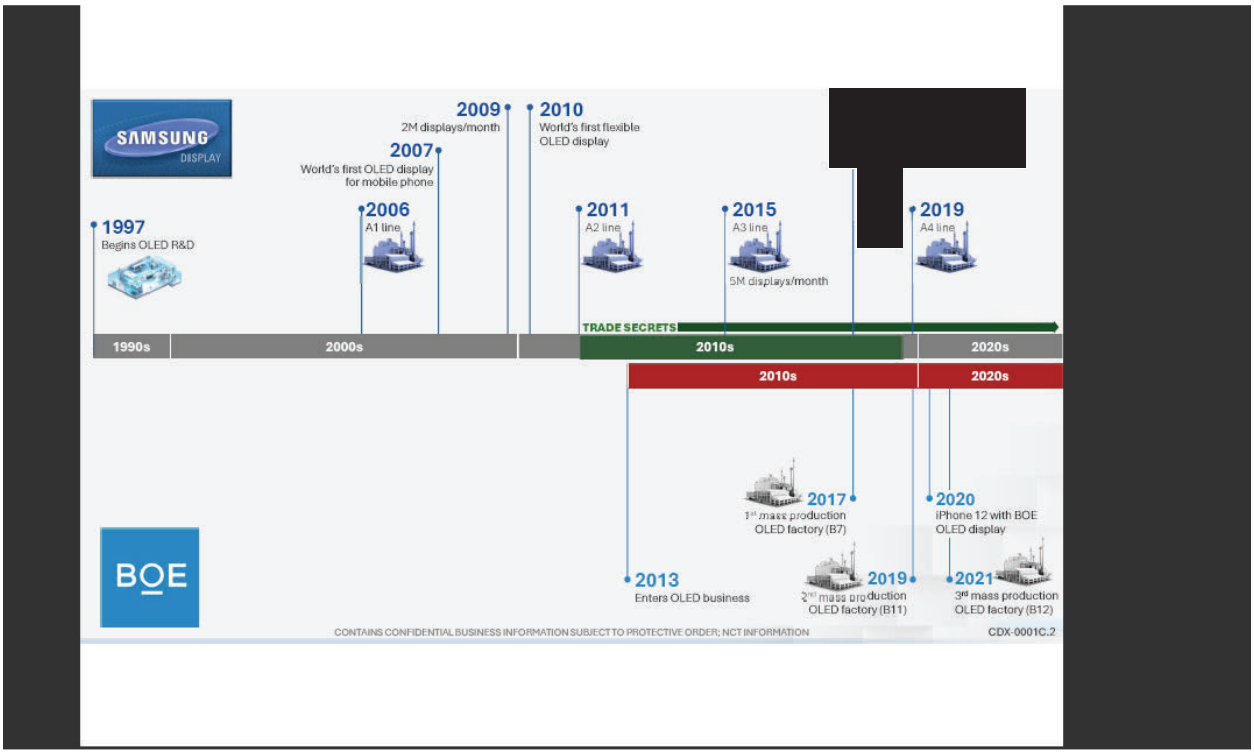
This is an Investigation in which SDC has alleged, and has proven by a preponderance of evidence, that the Respondents have engaged in a misappropriation of certain of SDC's trade secrets across seven (7) distinct categories of trade secrets. The lone exception to Respondents' misappropriation is TS III.l.h+s.

SDC's trade secrets relate to SDC's development and manufacture of Organic Light Emitting Diodes ("OLEDs"), including micro-OLEDs. (*See* Section III (Overview of Relevant Technology).). OLEDs are made of carbon-based materials that consist of thin organic films, sometimes described as sheets or panels, that are sandwiched between conductive electrodes. When electricity is applied to the films or panels during the manufacturing process, light is emitted which leads to self-illuminating pixels that are considered deeper and richer and with wider angles than those in LED screens. OLEDs are now widely used in televisions, computer monitors, smart phones, and gaming consoles. OLEDs can offer high resolution and rich color without spotting or degradation, depending upon the manufacturing process.

SDC began pioneering its research and development ("R&D") of OLEDs in or about 1997. At the time SDC began its R&D into developing OLEDs, there appears to have been only one other player in the OLED marketplace. Respondents moved into the OLED marketplace some 16 years after SDC—and only after SDC had already spent millions of dollars to develop its OLEDs. Reflected below in Figure 1, as taken from a demonstrative, CDX-0001C.0084, is a timeline that reflects SDC's development of OLEDs with Respondents' much later entry into the OLED marketplace. The significant issue that is not reflected in the timeline below is that

because of discovery and evidentiary findings, it became apparent that Respondents had performed little or no independent development of their own competing OLEDs at the time they entered the OLED market and began shopping their products to prospective buyers such as [redacted].

Figure 1: Timeline of SDC's Development of OLEDs vs. Respondents' Entrance into the Market



(CDX-0001C.0084.).

Since 1997, by its own estimates, SDC has invested "hundreds of millions of dollars" into OLED R&D and into its protected OLED manufacturing processes. (Section VII.A, *infra*.). Since 2020 alone, SDC and through its subsidiaries, SDAL and eMagin, have invested more than [redacted] in R&D and in facilities in just the United States. (*Id.*). SDC spent another $218 million in 2023 in the United States just to acquire eMagin. (*Id.*). As of the date of SDC's eMagin acquisition, eMagin was the sole source of OLED research and development in the

United States. (*Id*.).

The conclusion that has been reached in this Recommended Initial Determination ("RID") is the same that Staff reached, and that Staff described in a summary paragraph in Staff's Post-Hearing Reply Brief:

> The evidence in this investigation demonstrates that BOE conducted a widespread campaign to target and obtain SDC's OLED manufacturing processes in order to achieve higher manufacturing yields and quality, while also reducing the amount of time required to manufacture. This enabled BOE's rapid expansion into the U.S. market for smartphone and micro-OLEDs with large supply capacity and prices below SDC's and has resulted in billions of dollars in revenue at SDC's expense.

(SRBr. at 1.).

Respondents' methods for acquiring SDC's technology included hiring key SDC employees and targeting third-party vendors whom SDC had used to help build its manufacturing capabilities in facilities in South Korean and Vietnam. (*See generally* Sections VI.B-H, *infra*.).[2]

With respect to SDC's employees, Respondents acknowledged in discovery answers that [redacted] (CX-1831C.0056-58, Respondents' Eleventh Supplemental Responses to Interrogatories).). With

[2] It should be clear that companies conduct "intelligence" on other competing companies. SDC has certainly acknowledged that it follows what Respondents do. (*See* RX-1453C (C. Park Dep. Tr.) (as reflected in RDX-0002C.0018).). That is not the issue. There is specific evidence in this Investigation that SDC's former employees did not merely use their skill and knowledge when they went to work for Respondents. *Certain Activity Tracking Devices Systems and Components Thereof*, Inv. No. 337-TA-963, FID, 2016 WL 11596099, at *25, 17-24 (Aug. 23, 2016) ("[F]ormer employees are entitled to exploit their general skill, knowledge, training, and experience, even when acquired or enhanced through the resources of the former employer."). Similarly, Respondents used an interesting graphic demonstrative that depicts the overlap in the third-party vendors that SDC and Respondents and other companies such as [redacted] also use. (RDX-0002C.0023.). That companies use overlapping vendors is also not the issue. SDC provided circumstantial and direct evidence that certain of its third-party vendors such as TTS and Toptec/FAI appeared to have shared SDC's trade secrets without SDC's permission despite NDAs that SDC had with those, and other third-party vendors. (Sections VI.B-F.).

their knowledge of SDC's trade secrets, and despite having signed Non-Disclosure Agreements ("NDA") that contained, by SDC's regular practice, time-limited non-competition provisions, key SDC employees went to work for one or more of the Respondents and performed for Respondents the same or strikingly similar jobs as they had performed at SDC. Those jobs involved the same or similar OLED processes. Examples can be found at CX-1831C.0056-58, which show precisely the types of OLED manufacturing processes those former SDC employees worked on for Respondents. The processes these former employees worked on for Respondents were the same types of processes SDC used: the lamination line, the evaporation/encapsulation manufacturing process, factory and equipment design, and CVD or chemical vapor deposition, among others. (CX-1831C.0056-58.).

Additionally, Respondents offered one or more (and it is not clear how many) of SDC's former employees [redacted] to work for Respondents. (*See, e.g.,* Section VI.E.3 (Mr. Mr. Chang Soon Ji).). While hiring another company's employees by itself does not signal a misappropriation of trade secrets or proprietary information, the time within which Respondents were able to quickly create and scale up their manufacturing processes for OLEDs with the help of former SDC employees, and without providing any evidence of their own original R&D of OLEDS, was striking. (Sections VI.B-H.).

In addition to hiring SDC key employees and paying some of them hefty salaries or bonuses, Respondents or their agents specifically identified, and it appears hired, several third-party vendors who had manufactured equipment for SDC—such as Toptec/FAI, [redacted] and others, with whom SDC had NDAs.[3]

[3] SDC had NDAs with its third-party vendors. Exhibits containing NDAs include, but are not limited to,

There is compelling evidence, some of it direct and some circumstantial, that Respondents and/or their agents reached out to many of SDC's vendors, and others, to learn specifically what SDC's protected OLED processes were so that Respondents could turbo-charge their own OLED manufacturing processes to compete with SDC. (*See, e.g.*, RPBr. at 2; *id*. at 8, 16, 29, 32-33, 53-60.). By contrast, Respondents failed to produce during discovery evidence that they had invested ***any*** money into the R&D of their own OLEDs, let alone along a timeline that might have proven that they independently developed OLEDs without the benefit of at least some of SDC's former staff and certain of SDC's trade secrets. (*See, e.g.*, Sections VI.B-H.).

It should be noted that the South Korean government conducted both civil[4] and criminal[5] investigations into the theft of certain of SDC's trade secrets or violation of labor contracts (i.e. confidentiality and/or non-competition pledges) under certain South Korean laws. Criminal

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the NDAs SDC executed with Toptec (CX-0574C; CX-0609C; CX-0610C); [redacted] (CX-0789C; CX-0984C); [redacted] (CX-0565C); [redacted] (CX-0582C; CX-0583C; CX-0731C); [redacted] (CX-0843C); [redacted] (CX-0571C; CX-0585C); [redacted] (CX-0841C; CX-0838C); [redacted] (CX-0983C; CX-0573C; CX-0587C); [redacted] (CX-0540C; CX-0555C; CX-0541C; CX-0542C); and [redacted] (CX-0566C; CX-0598C). Each of these have similar provisions on confidentiality.

[4] The civil proceeding decision is Suwon District Court Civil Division No. 31 (July 4, 2018), CX-0680C ("Suwon Civil Division Decision"). The court investigated the [redacted], was found to have breached. According to the Suwon Civil Division Decision, an "[redacted] (Suwon Civil Division Decision at CX-0680C.0008.).

[5] The criminal investigations were conducted under South Korea's: (A) Unfair Competition and Trade Secret Protection Act ("UCPA"); (B) Act on Prevention of Divulgence and Protection of Industrial Technology; (C) Unfair Competition Prevention Act and Trade Secret Protection Act (Leaking Trade Secrets Overseas, etc.); and (D) Act on the Aggravated Punishment of Specific Economic Crimes (Breach of Trust) (Revised Count: Occupational Breach of Trust). The criminal investigation resulted in a final decision, that is the Suwon High Court of Justice Criminal Division Number 2-3 Decision (Mar. 9, 2023) ("Suwon High Court Decision"). (CX-0454C (Suwon High Court Decision Part 1); CX-0455C (Suwon High Court Decision Part 2)).

indictments and proceedings led to criminal convictions of several individuals and most notably, Toptec/FAI, a third-party vendor who has been found in this Investigation to have been involved in the theft of SDC's TS I and TS II. Convictions in the South Korean criminal proceedings resulted in jail terms for some and fines for others, such as Toptec/FAI, for the illegal use of certain of SDC's trade secrets without SDC's "explicit or implicit approval." (CX-0454C.0064.). The trade thefts, under various South Korean statutes, involved SDC's 3D lamination line (TS I.1.a Lamination Line) and its EV/EN, i.e., evaporation and encapsulation process (TS IV), among others. What is significant about the South Korean High Court findings for these purposes is that when court documents were unsealed, they revealed to SDC the scope of the trade thefts that had occurred within South Korea and that led to SDC's efforts to investigate further, and to SDC's Complaint filing here. Section VIII explains that SDC did not violate a statute of limitations in bringing this suit to the Commission when it did, based in part on when the South Korean court evidence became public. The Suwon Civil Division Decision also reflects how certain of the BOE Respondents [redacted] (*See* Sections VI.H.3.b)–VI.H.3.d).).

Independently of the South Korean court findings, SDC has proven trade theft under the Commission's statutory framework, as established in thorough detail in this ID.

B. Summary of Findings

A summary of this decision's finding is summarized below.

Table No. 1: Summary of Findings

Trade Secret	Ownership	Protectible	Disclosure Under Confidentiality or Wrongful Taking by Unfair Means	Use or Disclosure Causing Injury or Threat to Injury of a Domestic Industry
I.1.a (Lamination Line)	Proven	Yes	Yes	Yes
I.2.a (Vacuum Chamber)	Proven	Yes	Yes	Yes
II.1 (Glass Separation and Movement)	Proven	Yes	Yes	Yes
III.1.h+s ([redacted])	Proven	No	No	No
IV.1.d and IV.1.e ([redacted])	Proven	Yes	Yes	Yes
IV.2.b and IV.2.c (Defect Detection)	Proven	Yes	Yes	Yes
IV.3.a, IV.3.m, and IV.3.s.xiii (Evaporation and Encapsulation Equipment)	Proven	Yes	Yes	Yes
VII.1.f and VII.1.r (Glass Removal)	Proven	Yes	Yes	Yes

II. BACKGROUND

A. Institution and Selected Procedural History

On October 31, 2023, Samsung Display Co., Ltd. ("Complainant" or "SDC") filed a

complaint ("Complaint") under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in which it alleged unfair methods of competition and unfair acts in the importation of articles into the United States due to Respondents BOE Technology Group Co., Ltd., Mianyang BOE Optoelectronics Technology Co., Ltd., Ordos Yuansheng Optoelectronics Co., Ltd., Chengdu BOE Optoelectronics Technology Co., Ltd., Chongqing BOE Optoelectronics Technology Co., Ltd., Wuhan BOE Optoelectronics Technology Co., Ltd., BMOT f/k/a Kunming BOE Display Technology, and BOE Technology America, Inc.'s ("Respondents" or "BOE") misappropriation of trade secrets. (EDIS Doc. ID No. 807334, Attachment ID 2062681 (Oct. 30, 2023);[6] Compl. at ¶ 2.).

On November 30, 2023, the Commission issued a Notice of Institution (EDIS Doc. ID No. 809571 ("NOI")), and on December 6, 2024, this Investigation was instituted 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)(A) of section 337 in the importation into the United States, or in the sale of certain products identified in paragraph (2) by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry or to prevent the establishment of an industry in the United States[.]

88 Fed. Reg. 84829 (Dec. 6, 2023).

The NOI names as complainant: Samsung Display Company, Ltd. of the Republic of Korea. *Id.* The NOI names as respondents: BOE Technology Group Co., Ltd. of Beijing, China; Mianyang BOE Optoelectronics Technology Co., Ltd. of Sichuan, China; Ordos Yuansheng Optoelectronics Co., Ltd. of Inner Mongolia Autonomous Region, China; Chengdu BOE Optoelectronics Technology Co., Ltd. of Sichuan, China; Chongqing BOE Optoelectronics

[6] The Complaint is dated October 30, 2023, but it was not officially received by the Commission until October 31, 2023.

Technology Co., Ltd. of Shuitu Hi-tech Industrial Zone, Chongqing, China; Wuhan BOE Optoelectronics Technology Co., Ltd. of Hubei, China; BMOT f/k/a Kunming BOE Display Technology of Da Ban Qiao subdistrict office of Yunnan Dianzhong New Area, China; and BOE Technology America, Inc of Santa Clara, CA. *Id.* at 84830. The Office of Unfair Import Investigations ("Staff") is also a named party in this Investigation. *Id.*

On December 27, 2023, Respondents filed a response to the Complaint and NOI ("Response"). (EDIS Doc. ID No. 811058.).

On May 2, 2024, a management conference ("May 2 MC") was held, during which the Private Parties were ordered to provide certain discovery (e.g., declarations, supplementation). (EDIS Doc. ID No. 820381 at 10:6-13, 11:21-12:9, 22:7-23:6, 23:16-24:2, 28:33:16-34:2 (May 3, 2024).). During the next management conference held on July 31, 2024 ("July 31 MC"), Respondents were ordered to, *inter alia*, submit a declaration that all discovery in response to SDC's interrogatories and requests for production of documents on the topic of OLEDs, including micro-OLEDs, was produced, as well some additional supplementation. (EDIS Doc. ID No. 827983 at 23:8-24:2 (Aug. 1, 2024).).

On May 24, 2024, pursuant to Order No. 7, SDC filed its Final Identification of Trade secrets ("FITS"). (EDIS Doc. ID No. 822288.).

On June 5, 2024, SDC filed a motion to enforce the May 2, 2024 order ("May 2 Order"), which included a request for Respondents to immediately provide the discovery discussed during the May 2 MC, and for sanctions for Respondents' failure to comply with the May 2 Order issued during the May 2 MC ("SDC's Motion to Enforce"). (Motion Docket No. 1378-037.).

On June 10, 2024, Respondents filed a motion to reduce the number of trade secrets, which was denied without prejudice. (Motion Docket No. 1378-038; Order No. 35 ("Staff's and

SDC's argument is correct, i.e., that whether SDC's description of its asserted trade secrets is sufficiently particularized, is a substantive issue that goes to the ***merits and sufficiency*** of SDC's trade secret misappropriation claim.") (emphasis in original).).

On June 17, 2024, Respondents filed a notice of withdrawal ("First Notice of Withdrawal") of certain defenses without prejudice. (EDIS Doc. ID No. 823810.).

On June 17, 2024, Respondents filed a motion to enforce the May 2, 2024 order and for sanctions ("Respondents' Motion to Enforce"). (Motion Docket No. 1378-040.).

On August 14, 2024, the Private Parties were ordered to narrow the scope of this Investigation according to the following schedule:

Event	**Deadline**
Respondents reduced the number of independent development and/or public availability references to no more than 300	Thursday, August 15, 2024
SDC reduced the number of asserted trade secrets to no more than 50	Friday, August 23, 2024
Respondents reduced the number of independent development and/or public availability references to no more than 150	Friday, August 30, 2024
SDC reduced the number of asserted trade secrets to no more than 20	Friday, September 6, 2024
Respondents reduced the number of independent development and/or public availability references to no more than 60	Wednesday, September 11, 2024

(Order No. 36.).

On August 22, 2024, Respondents filed a pre-hearing motion to strike SDC's "new combination trade secrets as untimely and unduly prejudicial," which Respondents withdrew on September 9, 2024. (Motion Docket No. 1378-043 at 1; EDIS Doc. ID No. 831746.).

On September 4, 2024, SDC filed a second motion for sanctions, this time for alleged "spoliation of highly relevant communications with vendors, the destruction of which has

severely prejudiced SDC." (Motion Docket No. 1378-045 at 1.). On September 10, 2024, SDC withdrew that motion (EDIS Doc. ID No. 831829) and filed a third motion for sanctions based on the same spoilation argument it raised in the sanctions motion filed on September 4, 2024 ("Spoliation Motion"). (Motion Docket No. 1378-048, Spoliation Motion.). In the Spoilation Motion, SDC sought non-monetary sanctions in the form of precluding Respondents from raising the following arguments:

1. "a non-monetary sanction precluding Respondents from arguing that it or the following shared vendors between BOE and SDC independently developed their own designs with respect to the asserted trade secrets I.1, I.2, I.4, I.8, I.10, II.1, III.1, IV.1, IV.2, IV.3, and V.1: [redacted] and Toptec/FAI"; and
2. "a non-monetary sanction precluding BOE from arguing that it did not know that [redacted] and Toptec/FAI were SDC vendors, that it was unaware that the equipment or designs received from these vendors disclosed SDC trade secrets, or that it was a good faith 'bona fide purchaser' from these vendors (or any of their subsidiaries)." (Spoliation Motion at 1-2.).

(*Id.* at 1-2.).

SDC also requested monetary sanctions associated with the cost of bringing the Spoliation Motion, including attorneys' fees. (*Id.* at 2.). On October 23, 2024, the first day of the evidentiary hearing ("Hearing"), SDC's Spoliation Motion was orally granted in-part. (Tr. at 10:24-11:5.). Specifically, SDC's request for non-monetary sanctions was granted. (*Id.* at 11:6-16, 13:5-19.). SDC's request for monetary sanctions was denied. (*Id.* at 14:13-16.).

On September 10, 2024, Respondents filed another notice of withdrawal of certain defenses. (EDIS Doc. ID No. 831834 ("Second Notice of Withdrawal").). Respondents' Second Notice of Withdrawal withdrew three of their defenses.

On September 12, 2024, the Private Parties filed a joint statement regarding discovery

compliance ("Joint Statement Regarding Discovery Compliance"). (EDIS Doc. ID No. 832067.).

On September 13, 2024, SDC filed: 1) SDC's Pre-Hearing Statement ("CPSt.") (EDIS Doc. ID No. 832288); and 2) SDC's Pre-Hearing Brief (EDIS Doc. ID No. 832289.). On September 16, 2024, Respondents filed: 1) Respondents' Pre-Hearing Statement ("RPSt.") (EDIS Doc. ID No. 832314 (Sept. 13, 2024)[7]; and 2) Respondents' Pre-Hearing Brief ("RPBr.") (EDIS Doc. ID No. 832301 (Sept. 14, 2024)[8].).

On September 16, 2024, the Private Parties filed a joint unopposed motion for leave to file or accept for filing corrected Pre-Hearing Briefs out of time. (Motion Docket No. 1378-051.). That motion was granted. (Order No. 42.).

On September 18, 2024, SDC filed its Corrected Pre-Hearing Brief ("CPBr."). (EDIS Doc. ID No. 832615 (Sept. 13, 2024)[9].).

Also on September 18, 2024, Respondents filed a supplement to the Joint Statement Regarding Discovery Compliance. (EDIS Doc. ID No. 832612.).

On October 4, 2024, Respondents filed two (2) motions *in limine* ("MIL"). (Motion Docket No. 1378-055 ("Respondents' MIL 1"); Motion Docket No. 1378-056 ("Respondents' MIL 2").). On October 7, 2024, SDC also filed two (2) MILs. (Motion Docket No. 1378-057

[7] Respondents filed an unopposed motion to accept their late-filed Pre-Hearing Statement out of time. (Motion Docket No. 1378-050.). That motion was granted. (Order No. 44.).

[8] This version of Respondents Pre-Hearing Brief is dated September 14, 2024, but it was not officially received by the Commission until September 15, 2024.

[9] Although the document is dated September 13, 2024, it was not filed with the Commission until September 18, 2024.

("SDC's MIL 1"); Motion Docket No. 1378-059 ("SDC's MIL 2").).[10] On October 11, 2024, the Private Parties filed respective oppositions to the MILs. (EDIS Doc. ID Nos. 834667, 834664, 834668, 834661.). Staff also filed an omnibus response to the Private Parties' MILs on October 11, 2024. (EDIS Doc. ID No. 834651.).

The Private Parties' MILs, and the rulings on these motions, are summarized in Table No. 2 below.

Table No. 2: Private Parties' MILs

MIL	Issue	Ruling
Respondents' MIL 1 (Motion Docket No. 1378-055)	Motion seeking to exclude certain improper expert opinions of SDC's expert witnesses, Dr. Katona, Dr. Lebby, Dr. Jokerst, and Mr. Pooley	Denied without prejudice. (Tr. at 39:13-40:13.).
Respondents' MIL 2 (Motion Docket No. 1378-056)	Motion seeking to exclude new theories and documents relied on by SDC in its expert reports and Pre-Hearing Brief that were not timely disclosed in SDC's Final Identification of Trade Secrets or Final Contentions, as well as certain opinions of SDC's experts that lack evidentiary support	Denied in-part. (Tr. at 40:14-41:10.). Respondents' MIL 2 was denied except for SDC's new contention that TS IV.1.e "is an application of" TS IV.1.d. (*Id.* at 40:22-25.).
SDC's MIL 1 (Motion Docket No. 1378-057)	Motion seeking to: (i) preclude Respondents from introducing any argument, testimony, or other evidence not identified in certain interrogatory responses	Granted in-part, denied in-part. (Tr. at 42:7-8.). Categories (i), (ii), and (iii) were granted. (*Id.* at 42:7-43:22.). As a result, category (iv) was also granted because categories (i), (ii), and (iii)

[10] SDC also filed an unopposed motion for leave to accept SDC's MILs out of time, which was granted. (Motion Docket No. 1378-060; Order No. 68.).

MIL	Issue	Ruling
	relevant to the current implementation or historical development of any accused OLED line, including micro-OLED lines; (ii) preclude Respondents from introducing argument, testimony, and other purported evidence that the manufacturing processes used for Respondents' micro-OLED lines materially differ in their current or historical implementations from its main OLED lines; (iii) strike any opinions from Respondents' experts that the manufacturing processes used for Respondents' micro-OLED lines materially differ in their current or historical implementations from its main OLED lines; and (iv) preclude Respondents from relying upon or introducing into evidence any micro-OLED documents produced after the deadlines imposed by the ALJ's May 2, 2024 order	cumulatively subsumed category (iv). (*Id.* at 43:13-22.).
SDC's MIL 2 (Motion Docket No. 1378-059)	Motion seeking to preclude Respondents from: (i) advancing independent development and/ public availability arguments based on documents not disclosed in response to certain interrogatories; (ii) advancing independent development and public	Granted in-part, denied in-part. (i) RX-2476 is precluded (ii) RX-0531 not precluded (iii) RX-0078, RX-0266, RX-1896, RX-1897, RX-0078, RX-0266, RX-1085, and RX-2463 are not precluded

MIL	Issue	Ruling
	availability arguments based on documents not identified in Respondents' Third Narrowing of independent development and/or public availability references; and (iii) advancing argument raised for the first time in BOE's Pre-Hearing Brief	(iv) RX-0238, RX-0242, RX-0251, CX-0789/RX-2219, CX-0237 are precluded (v) RX-1159 is not precluded (Tr. at 43:23-45:22.).

On October 8, 2024, Staff filed its Pre-Hearing Statement (EDIS Doc. ID No. 834306 ("SPSt.")), and its Pre-Hearing Brief (EDIS Doc. ID No. 834314 ("SPBr.")).

On October 11, 2024, the Parties filed a joint notice of mooted issues. (EDIS Doc. ID No. 834633.). Pursuant thereto, the following trade secrets were withdrawn from this Investigation: TS I.1.e, TS V.1.g, IV.1.a, and TS VII.1.k.

On October 16, 2024, the Parties filed their joint outline of issues from Pre-Hearing Briefs pursuant to Ground Rule 7.3. (EDIS Doc. ID No. 834930.).

On October 18, 2024, SDC filed a notice of mooted issues with respect to their Motion to Enforce. (EDIS Doc. ID No. 835056.). To streamline the remaining issues in the Investigation, SDC withdrew as moot the following requested discovery relief:

- an order requiring Respondents to provide, for each asserted trade secret, documents and interrogatory responses sufficient to show BOE's current and historical implementation for each accused OLED display and/or line;
- an order requiring Respondents to provide, for each asserted trade secret, documents and interrogatory responses sufficient to show BOE's historical development for each accused OLED display and/or line;
- an order requiring Respondents to provide a complete list of BOE agents who have been hired to approach SDC's vendors;
- an order requiring Respondents to provide documents and interrogatory responses sufficient to show all [redacted]-related discovery sought in SDC's April 18 letter

brief (Interrogatory Nos. 12, 13, 67 and RFP Nos. 1-2, 53-54, 165, and 167);

- an order requiring Respondents to provide documents and interrogatory response sufficient to show all micro-OLED-related discovery requested in SDC's April 18 letter brief (Interrogatory Nos. 1-8, 11-13, 51, 65, 67 and RFP Nos. 1-2, 5, 8-11, 15, 18-22, 24-26, 28-30, 68, 76, 89, 100-115, 117-128, 133, 138, 148, 161-163, 165-168, 171-205, 212-316); and
- an order requiring Respondents to produce documents sufficient to show all work performed for BOE by former SDC employees related to each of the asserted trade secrets (responsive to RFP Nos. 57-59.).

(*Id.* at 1-2.).

On October 21, 2024, the Private Parties filed a pre-hearing stipulation regarding exhibit lists and exhibits, deposition designations, demonstratives and exhibits to be used during cross examination or redirect, and practical matters concerning the upcoming Hearing, including, *inter alia*, witness appearances, division of trial time, timekeeping, binders, and closing arguments. (EDIS Doc. ID No. 835121 (Oct. 18, 2024)[11].).

The Hearing was held on October 23, 24, 25, 28, 29, and 30, 2024. (Day 1, October 23, 2024 Hearing Transcript (EDIS Doc. ID No. 835582 (closed)) (EDIS Doc. ID No. 835585 (open)); Day 2, October 24, 2024 Hearing Transcript (EDIS Doc. ID No. 835626 (closed)) (EDIS Doc ID No. 835625 (open)); Day 3, October 25, 2024 Hearing Transcript) (EDIS Doc. ID No. 835730 (closed)) (EDIS Doc ID No. 835728 (open)); Day 4, October 28, 2024 Hearing Transcript (EDIS Doc. ID No. 835974 (closed) (EDIS Doc. ID No. 835973 (open)); Day 5, October 29, 2024 Hearing Transcript (EDIS Doc ID No. 835984 (closed) (EDIS Doc ID No. 835976 (open)); and Day 6, October 30, 2024 Hearing Transcript (EDIS Doc. ID No. 836116 (closed)) (EDIS Doc. ID No. 836108 (open)).). On November 12, 2024, the Private Parties filed

[11] The document is dated October 18, 2024, but it was not received by the Commission until October 21, 2024.

a joint unopposed motion to correct the trial transcript (Motion Docket No. 1378-070), which was granted (Order No. 53.).

On November 6, 2024, the Private Parties filed several post-hearing motions to strike ("MTS"). On November 13, 2024, the Private Parties filed respective oppositions to the MTSs. (EDIS Doc. ID Nos. 837142, 837174, 837172, 837139.). Staff also filed an omnibus response to the Private Parties' MTSs on November 13, 2024. (EDIS Doc. ID No. 837132.).

The Private Parties' MTSs, and the rulings on these motions, are summarized in Table No. 3 below.

Table No. 3: Private Parties' Post-Hearing MTSs

MTS	Issue	Ruling
SDC's MTS (Motion Docket No. 1378-065)	Motion seeking to strike certain cross-examination Hearing testimony of Complainant's expert, Dr. Jokerst	Granted. (Order No. 54.) "Dr. Jokerst's testimony at 929:13-932:5 is stricken. This is not a decision on the merits of any issue." (*Id.* at 5.)
Respondents' MTS (Motion Docket No. 1378-067)	Motion seeking to strike certain exhibits and testimony that SDC introduced during the Hearing	Denied. (Order No. 56.)
SDC's MTS (Motion Docket No. 1378-068)	Motion seeking to strike certain Hearing testimony of Dr. D'Andrade	Granted. (Order No. 57.) "As SDC has requested, the following testimony and/or references are stricken: Dr. D'Andrade's Hearing testimony from the October 29, 2024 Hearing Transcript ("Tr.") at Tr. at 1175:23-1176:6 and RDX-0003C.0043-0045 (TS I.1/I.2); Oct. 29, 2024 Tr. at 1191:25-1192:5, 1192:24-25, 1197:23-1198:14, 1198:19-23, and RDX-0003C.0067-0068 (TS IV.1(d) and (e)); Oct. 29, 2024 Tr. at 1207:20-1209:1 and RDX-

MTS	Issue	Ruling
		0003C.0075, 0077 (TS IV.2); and Oct. 29, 2024 Tr. at 1225:22-1226:16, 1213:12-1214:1 and RDX-0003C.0082-0083, 0094-0095 (TS IV.3(a), (m) and (s.xiii)).” (*Id.* at 9.)
SDC’s MTS (Motion Docket No. 1378-069)	Motion seeking to strike certain with respect to WeChat messages	Granted. (Order No. 58.) “The Ji Hearing testimony at Tr. at 307:13-15, 308:4-309:3, and the Wang Hearing testimony at Tr. at 1144:10-1144:13, 1145:2-1146:7 is stricken.” (*Id.* at 5.)

Respondents also filed an offer of proof on November 6, 2024 (“Offer of Proof”) seeking to have admitted into evidence certain unsworn, post-hearing statements given in question-and-answer format by: Dr. Franky So, Dr. Yuhao Li, and Dr. Brian D’Andrade, with respect to micro-OLEDs, which were attached as Exhibits 1, 2, and 3 to the Offer of Proof, respectively. (EDIS Doc. ID No. 836598.). Additionally, Respondents sought to have admitted into evidence post-hearing testimony, also given in unsworn statements in question- and- answer format, by: Messrs. Jailin Wang, Fei Xi, and Kunxian Lin, attached as Exhibits 4, 5, and 6, respectively to the Offer of Proof, which concerned WeChat messages, and which were precluded by oral Orders during a pre-Hearing conference I held on October 23, 2024. (*Id.*). Respondents’ Offer of Proof was denied. (Order No. 60.).

The Private Parties filed their initial Post-Hearing Briefs on November 29, 2024. (EDIS Doc. ID No. 838297 (SDC’s Initial Post-Hearing Brief (“CBr.”)); EDIS Doc. ID No. 838294 (Respondents’ Initial Post-Hearing Brief (“RBr.”).). Staff filed its initial Post-Hearing Brief on December 6, 2024. (EDIS Doc. ID No. 838749 (Staff’s Initial Post-Hearing Brief (“SBr.”)).)

The Private Parties filed their Post-Hearing Reply Briefs on December 13, 2024. (EDIS

Doc. ID No. 839273 (SDC's Post-Hearing Reply Brief ("CRBr.")); EDIS Doc. ID No. 839279 (Respondents' Post-Hearing Reply Brief ("RRBr.").). Staff filed its Post-Hearing Reply Brief on December 20, 2024. (EDIS Doc. ID No. 839785 (Staff's Post-Hearing Reply Brief ("SRBr.")).).

In accordance with Order No. 50, the Private Parties filed a joint statement of undisputed issues ("Joint Statement of Undisputed Issues"). (EDIS Doc. ID No. 839842.). In the Joint Statement of Undisputed Issues, the Private Parties stated the following: (i) "[w]ith respect to pending issues on which Respondents bears the burden of proof (independent development and statute of limitations), it is undisputed, for purposes of this investigation only, that Respondents did not independently develop the following trade secrets: TS I.1.a, TS I.2.a, TS II.1.a, TS II.1.y, TS III.1.h+s, TS IV.2.b, TS IV.3.a, TS IV.3.m, TS IV.3.s.xiii"; and (ii) "[w]ith respect to pending issues on which SDC bears the burden of proof, the aspects listed in accompanying 'Respondents' List of Undisputed Issues' are undisputed," which the Private Parties attached to the Joint Statement of Undisputed Issues. (*Id.* at 1.).

The Asserted Trade Secrets in this Investigation are:

1) TS I.1.a ("Lamination Line") and TS I.2.a ("Vacuum Chamber");

2) TS II.1.a, TS II.1.b, TS II.1.c, and TS II.1.y (collectively, "Glass Separation and Movement");

3) TS III.1.h+s ("[redacted]");

4) TS IV.1.d and TS IV.1.e (collectively, "[redacted]");

5) TS IV.2.b and TS IV.2.c (collectively, "Defect Detection");

6) TS IV.3.a, TS IV.3.m, and TS IV.3.s.xiii (collectively, "EVEN Equipment"); and

7) TS VII.1.f and TS VII.1.r (collectively, "Glass Removal Process").

B. The Parties

1. Complainant Samsung Display Company, Limited

Complainant Samsung Display Corporation, Ltd. ("SDC") is a Korean corporation that is the largest manufacturer of Organic Light Emitting Diode ("OLED") panels in the world. (CX-0509; CX-0847.). [redacted]. (CDX-0083C.0021; CX-1917C.). [redacted] (*Id.*).

SDC owns eMagin, the only US producer of micro-OLED panels. (CX-0874.0006; CX-0685C; CX-0771C; CX-0781C; CX-1057C; CX-1086C; CX-1664; CX-1665C; CX-1931C; CX-2039C; CX-2040C; RX-2186C.). SDC paid over $200 million to acquire eMagin in October 2023. eMagin manufactures and performs R&D work on micro-OLEDs at its headquarters in Hopewell Junction, New York.

SDC also owns Samsung Display America Lab ("SDAL"), which was established in 2012. SDAL performs research and development for OLED displays on behalf of SDC. (CX-0684C.). SDAL's R&D facility is located in San Jose, California. SDAL is fully and exclusively funded by SDC.

2. Respondents

Respondents BOE Technology Group Co., Ltd., Mianyang BOE Optoelectronics Technology Co., Ltd., Ordos Yuansheng Optoelectronics Co., Ltd., Chengdu BOE Optoelectronics Technology Co., Ltd., Chongqing BOE Optoelectronics Technology Co., Ltd., Wuhan BOE Optoelectronics Technology Co., Ltd., and BMOT f/k/a Kunming BOE Display

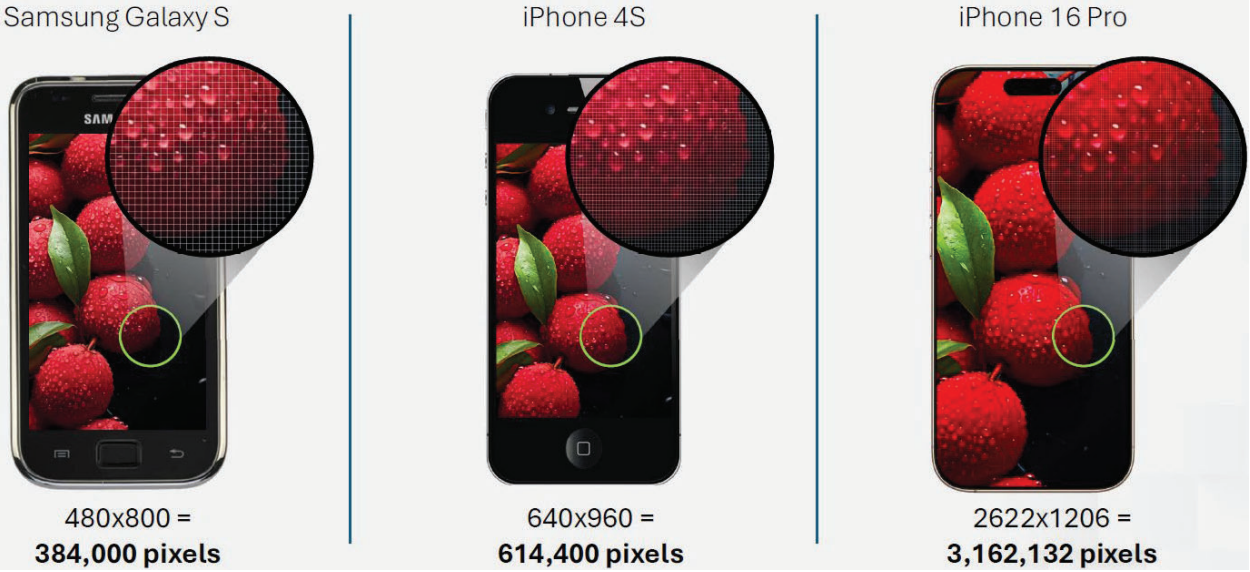
Technology[12] are Chinese corporations. (Response, ¶¶ 13-19.). Respondent BOE Technology America, Inc. is a California corporation that is indirectly owned by BOE Technology Group Co., Ltd. (Response, ¶ 20.).

III. OVERVIEW OF THE RELEVANT TECHNOLOGY

The technology at issue in this Investigation is the manufacturing of Organic Light Emitting Diode ("OLED") display panels, or OLED sheets that appear for example, on TV screens, computer monitors, and more recently, with micro-OLEDS, on smaller devices such as smart phones and game consoles. An OLED panel consists of an organic light-emitting material that has numerous pixels that emit light based on application of current to the organic light-emitting material. (Compl., ¶ 26.). Over time, as OLED technology developed in ever more sophistication, the number of pixels per unit area has grown, which thereby enhanced the quality of images, as illustrated in Figure 2 below.

[12] On or about May 21, 2025, the Private Parties submitted a "Notice of Name Change," which was treated as a joint motion to amend the Complaint and Notice of Investigation ("NOI") pursuant to Commission Rule 210.14(b)(1). The Private Parties sought to replace the name of one Respondent BMOT f/k/a Kunming BOE Display Technology with Respondent Yunan Invensight Optoelectronics Technology Co., Ltd. (EDIS Doc. ID No. 851792 ("Joint Notice").). The Private Parties agreed that the entity changed its name in 2020. (Joint Notice at 1.). On May 28, 2025, an Initial Determination Amending the Complaint and Notice of Investigation to reflect the name change issued. (Order No. 63.).

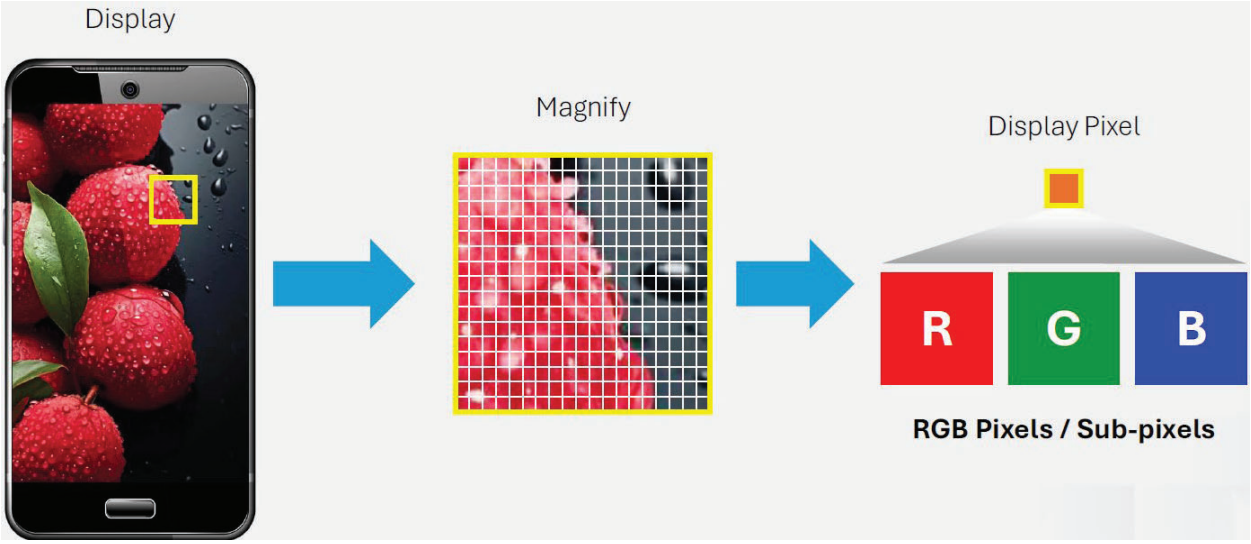
Figure 2: Increase in Pixel Density of OLEDs Over Time



(CDX-0001C.0004.).

Each pixel includes separate subpixels that emit their own red, green, or blue light in response to an electric current, as illustrated in Figure 3 below. (Compl., ¶ 26.). According to one of the SDC's identified trade secrets, the so-called "deposition process" is a process of forming thin film on a glass substrate. The sequence in which the color is laid onto the glass, along with other techniques, affects the quality of the glass panel that becomes the OLED display.

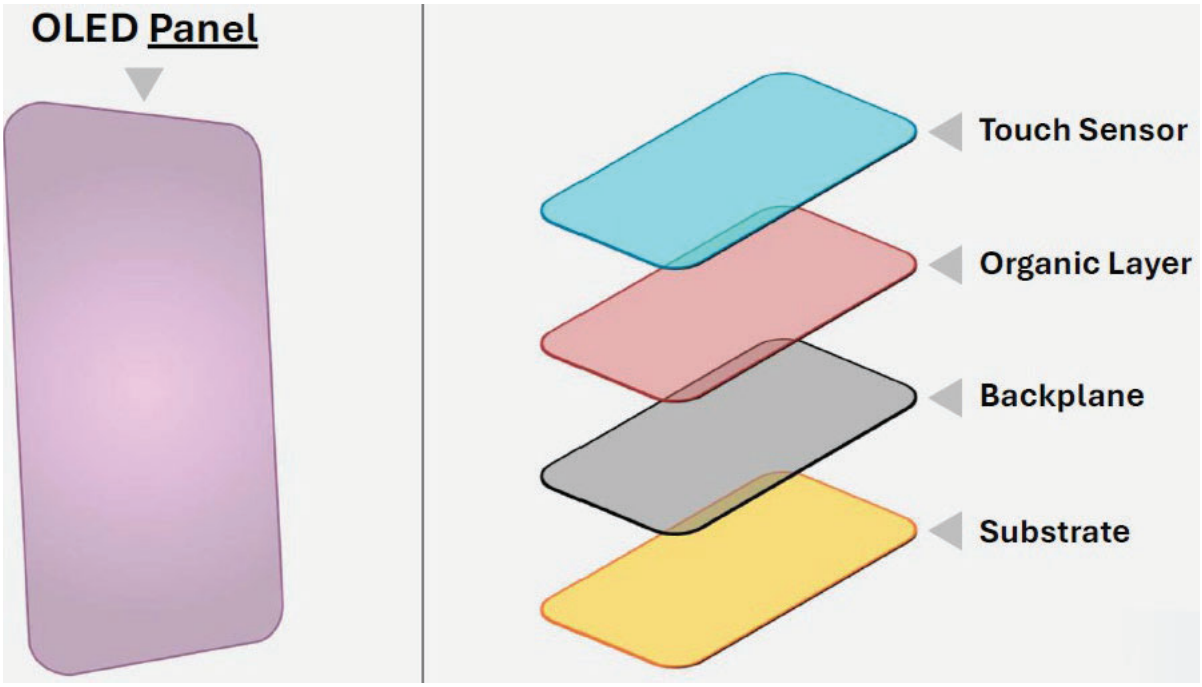
Figure 3: Red, Green, and Blue Subpixels in an OLED Display



(CDX-0001C.0007.).

An OLED Panel consists of a substrate, a backplane, the organic layer comprising the light-emitting pixels, and typically a touch sensor layer for touch input, as depicted in Figure 4 below. (Compl., ¶ 28.).

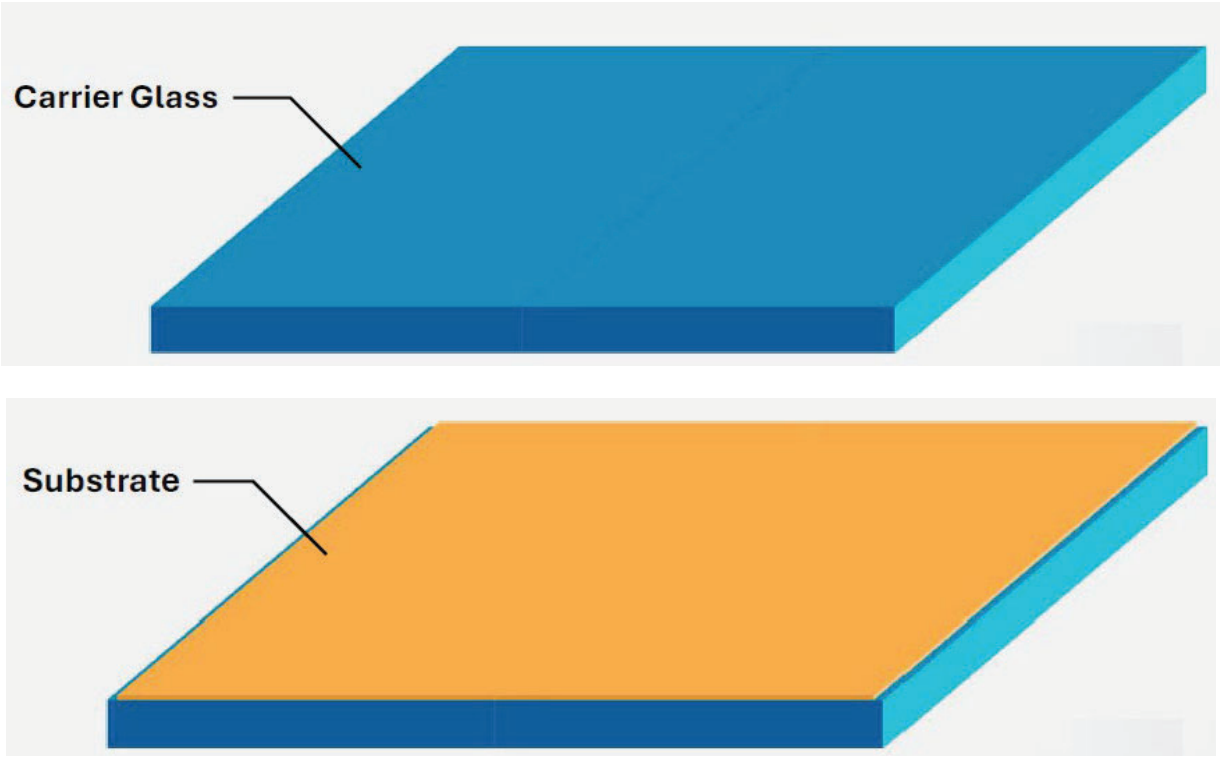
Figure 4: Layers of an OLED Panel



(CDX-0001C.0008.).

A carrier glass, which is later removed during the OLED manufacturing process, is used as a support to apply the substrate, as depicted in Figure 5 below. (Tr. (SDC's Opening Statement) at 77:10-23.).

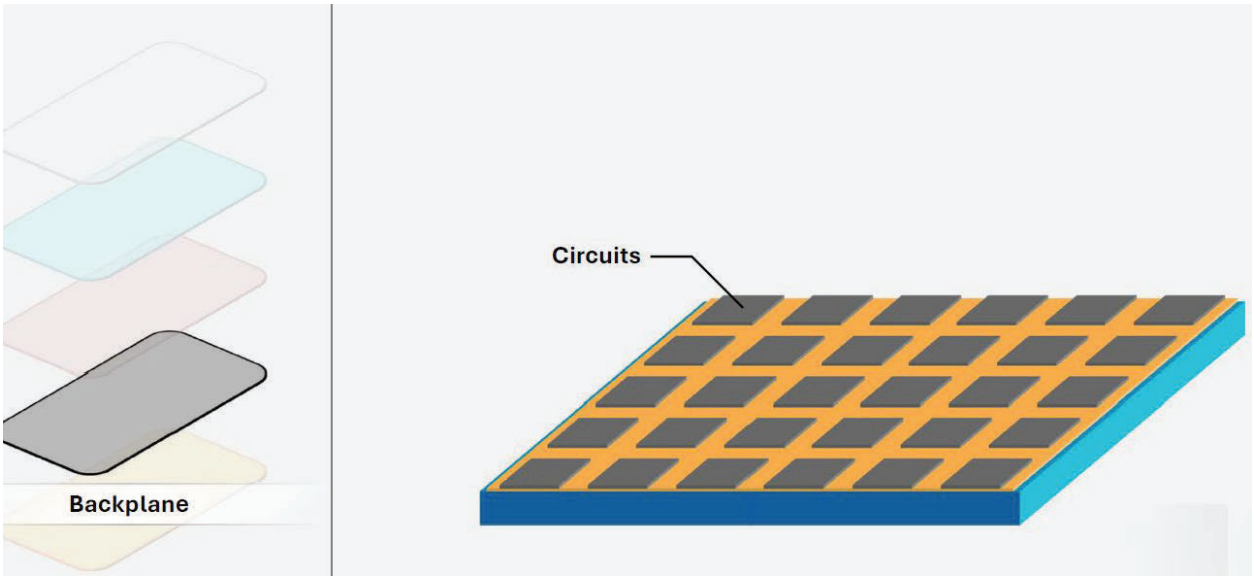
Figure 5: Carrier Glass and Substrate



(CDX-0001C.0010-0011.).

The backplate contains circuitry for the OLED panel, as depicted in Figure 6 below.

Figure 6: Backplane Comprising Circuits



(CDX-0001C.0010.).

In some OLED manufacturing processes, including SDC's, the carrier glass [redacted] as depicted in Figure 7 below.

Figure 7: [redacted]



(CDX-0001C.0013.).

The organic material layer comprises multiple individual color layers, as depicted in

Figure 8 below. [redacted]

[redacted].

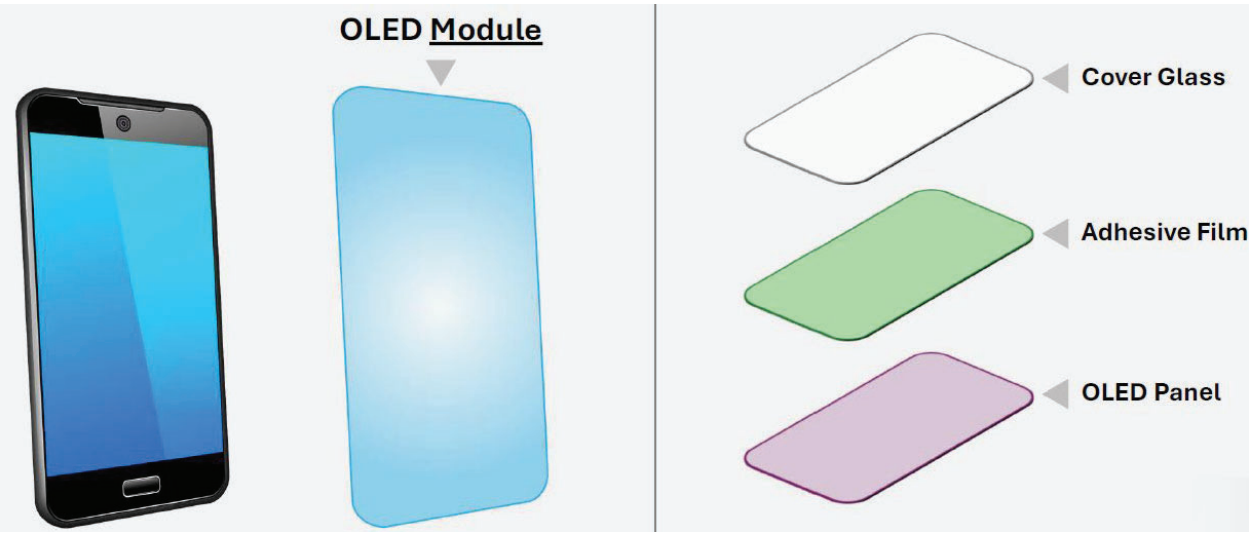
Figure 8: [redacted]

[redacted]

(CDX-0001C.0013.).

Before installing the OLED Panel into a device such as a smartphone, an adhesive film and cover glass are attached to protect the OLED Panel. The result is referred to as an OLED Module, as depicted in Figure 9 below.

Figure 9: OLED Module



(CDX-0001C.0009.).

IV. THE ACCUSED PRODUCTS

The products that are within the defined scope of this Investigation are: "OLED display modules, OLED display panels, and components of OLED display modules or panels" (the "Accused Products") that are sold or imported by one or more of the Respondents. (NOI; *see also* Compl., ¶ 24.).

SDC did not submit a list of accused products by model name or number. However, the evidence admitted during the Hearing established that Respondents imported products within the defined scope of this Investigation, *i.e.* Accused Products, for the purpose of providing samples to [redacted]. (CX-1838C.0010; *see also* Respondents' invoices for samples sent to [redacted]: CX-1024C; CX-1015C to CX-1020C; CX-1027C; CX-1028C.).

The evidence admitted during the Hearing also established that Respondents have sold [redacted] products within the defined scope of this Investigation, *i.e.* the Accused products, to [redacted]. (CX-1774C (Mu Dep. Tr. Vol. 2) at 285:13-286:8, 288:15-22;[13] CX-1916C to CX-1924C; CX-1926; CX-1928C.). Moreover, Respondents admitted in their discovery responses that their OLED displays have been incorporated into products imported into the United States. (CX-1831C.0006-.0007 [redacted]

[13] When he provided his deposition testimony on June 10, 2024, Mr. Binbin Mu was an employee of Respondents. (CX-1773C (Mu Dep. Tr. Vol. 1) at 9:13-16, 19:18-20:2.). [redacted], Mr. Mu [redacted] (*Id.* at 27:10-17; *see also id.* at 28:3-6 [redacted].

[redacted], CX-1831C.0010-.0011 [redacted], [redacted], [redacted], [redacted], [redacted] [redacted] [redacted] [redacted] [redacted]

V. STATUTORY AUTHORITY AND IMPORTATION

The Commission "is a creature of statute." *Kyocera v. Int'l Trade Comm'n*, 545 F.3d 1340, 1355 (Fed. Cir. 2008.). The Commission's authority to investigate an alleged violation of Section 337 is statutory, rather than constitutional. *Certain Compact Wallets and Components Thereof*, Inv. No. 337-TA-1355, Comm'n Op. (EDIS Doc. ID No. 827428) at 9-12 (U.S.I.T.C. July 29, 2024.).

A. Commission Statutory Authority

Subsection (a)(1)(A) of Section 337 prohibits "[u]nfair methods of competition and unfair acts in the importation of articles . . . into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is . . . to destroy or substantially injure an industry in the United States." 19 U.S.C. § 1337(a)(1)(A). SDC's complaint alleges a violation of Section 337 the alleged misappropriation of trade secrets by BOE. *See* Compl, ¶¶ 1-2, 127. The Commission considers trade secret misappropriation, if established, to be an unfair method of competition and/or an unfair act falling under section 337(a)(1)(A). *See, e.g., Certain Crawler Cranes and Components Thereof*, Inv. No. 337-TA-887 ("*Crawler Cranes*"), Comm'n Op. (May 6, 2015). Accordingly, the Commission has statutory authority to investigate SDC's allegations of trade secret misappropriation. *See Certain Raised Garden Beds and Components Thereof*, Inv. No. 337-TA-1334 ("*Raised Garden Beds*"),

Comm'n Op. at 10-19 (Apr. 1, 2024).

B. Importation

Title 19 of the United States Code, section 1337, subsection (b) authorizes the Commission to "investigate any alleged violation of this section on complaint under oath or upon its initiative." 19 U.S.C. § 1337(b)(1). Section 1337, subsection (a) declares unlawful "unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), (D), and (E)) into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is to destroy or substantially injure an industry in the United States. 19 U.S.C. § 1337(a)(1)(A)(i). The Federal Circuit has recognized that section 337 applies to trade secret misappropriation. *TianRui Grp. Co. Ltd. v. Int'l Trade Comm'n*, 661 F.3d 1322, 1326, 1332 (Fed. Cir. 2011.).

SDC introduced uncontested and irrefutable evidence that Respondents have imported into the United States samples of accused OLED and micro-OLED displays [redacted]. (CBr. at 9; CX-1831C; CX-1838C.). Respondents did not contest that this evidence of importation is sufficient for the Commission to exercise its statutory authority under section 337 to investigate Respondents' alleged trade secret misappropriation. (RBr. at 4 ("BOE does not contest that the Commission has statutory authority to the extent that BOE has imported samples of the accused products (phone-sized OLEDs and micro-OLEDs) into the United States")). Staff agreed with SDC that the Commission has statutory authority over this Investigation due to Respondents' importation. (SBr. at 6-7.).

However, Respondents argued that their [redacted]

[redacted] (RBr. at 7.).

Respondents' statement as quoted contradicts the evidence. Respondents admitted in their Pre-Hearing Brief that they manufactured the OLED panel used in [redacted], which was offered for sale in the United States in [redacted] (RPBr. at 165.). Respondents' discovery responses, as submitted into evidence, identified several commercial phone products that are imported into the United States and that incorporate Respondents' OLED displays. These include [redacted]. *See, e.g.,* CX-1831C.0006-.0007 [redacted] *id*. at .10-11 [redacted]. Additionally, among the OLED panels Respondents imported into the United States are [redacted] (CX-1838C.0010; *see also* [redacted]: CX-1024C; CX-1015C to CX-1020C; CX-1027C; CX-1028C.).

Staff's view is that the scope the Commission's statutory authority extends to Respondents' commercial sales for importation, even if those sales occurred outside of the United States. (SBr. at 7-8.).

Respondents' argument about importation or sale for importation is incorrect. The Commission's Section 337 authority extends to overseas sales for importation into the U.S. 19

U.S.C. § 1337(a)(1)(A) (declaring unlawful unfair methods of competition and unfair acts in the importation of certain articles into the United States "or in the sale of such articles by the owner, importer, or consignee"); *see also Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 10-14 (affirming ID's finding that Respondents sold for importation into the United States at least one accused product, holding that a contract for the future sale of goods can qualify as a "sale for importation" under Section 337).

VI. TRADE SECRET MISAPPROPRIATION

A. Legal Standard

The Commission has identified the elements of trade secret misappropriation in a Section 337 Investigation as follows:

1) The existence of a process that is a protectable trade secret;
2) That complainant is the owner of the trade secret;
3) That the complainant disclosed the trade secret to respondent while in a confidential relationship or that the respondent wrongfully took the trade secret by unfair means; and
4) That the respondent has used or disclosed the trade secret causing injury to the complainant.

Raised Garden Beds, Inv. No. 337-TA-1334, Comm'n Op. at 21 (citing *Certain Rubber Resins & Processes for Mfg. Same* ("*Rubber Resins*"), Inv. No. 337-TA-849, Comm'n Op. at 10 (Feb. 26, 2014).).

To find the existence of a process that is a protectible trade secret, there must be evidence that the alleged trade secret is: (a) of economic value; (b) not generally known or readily ascertainable; and (c) that the complainant has taken reasonable precautions to maintain its secrecy. *Id.*

The Commission applies the following six (6) factors to determine whether a trade secret exists ("the Sausage Casings Factors"):

1) The extent to which the information is known outside of complainant's business;
2) The extent to which it is known by employees and others involved in complainant's

business;
3) The extent of measures taken by complainant to guard the secrecy of the information;
4) The value of the information to complainant and his competitors;
5) The amount of effort or money expended by complainant in developing the information; and
6) The ease or difficulty with which the information could be properly acquired or duplicated by others.

Certain Processes for the Manufacture of Skinless Sausage Casings & Resulting Products ("*Sausage Casings*"), Inv. No. 337-TA-148/169, FID at 245-46 (July 31, 1984), *unreviewed in relevant part*, USITC Pub. No. 1624 (Dec. 1984).

The Sausage Casings factors are "instructive guidelines," not a six-pronged test. *Certain Bone Cements and Components Thereof* ("*Bone Cements*"), Inv. No. 337-TA-1153, Comm'n Op. at 7 (Jan. 25, 2021.).

The Commission has held that an asserted trade secret must be described with a "reasonable degree of precision and specificity [as] appropriate." *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 44 (internal citations and quotations omitted). The description of the trade secret "must be specific enough to allow the meaningful comparison of the putative trade secret with information that is generally known and ascertainable in the relevant field or industry." *Id.* (internal citations and quotations omitted).

B. Trade Secret I.1 (Lamination Line) and I.2 (Vacuum Chamber)[14]

1. SDC Adequately Described TS I.1.a and TS I.2.a

a) TS I.1.a (Lamination Line)

SDC defined TS I.1.a as follows:

[redacted]

[14] TS I.1.e was withdrawn. (Joint Notice at 1-2.).

[redacted]

a. [redacted]

(FITS at 4.).

Respondents did not present any argument or evidence in their Post-Hearing Briefs that TS I.1.a is not described with sufficient particularity.[15] (RBr. at 13-31; RRBr. at 1-8.). Thus, under Ground Rule 10.1, Respondents have waived or abandoned any argument on this issue for purposes of appeal. Accordingly, the only issue remaining is whether SDC satisfied its burden to prove, by a preponderance of evidence, that TS I.1.a was described with sufficient particularity.

A trade secret should be described with a "reasonable degree of precision and specificity" and "must be specific enough to allow the meaningful comparison of the putative trade secret with information that is generally known and ascertainable in the relevant field or industry." *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 44-46 (finding asserted trade secret described with sufficient specificity because the evidence proved that engineers in the field understood the advantages of the trade secret technology over existing technology). Where the

[15] Respondents did not concede in the Parties' Joint Statement of Undisputed Issues that they no longer dispute that TS I.1.a and I.2.a satisfy the legal requirement of specificity. Similarly, Respondents did not concede that argument in their Post-Hearing Briefs. (RBr. at 13-31; RRBr. at 1-8.). However, there is no argument that TS I.1.a and TS I.2.a are insufficiently specific in Respondents' Post-Hearing Briefs. Instead, Respondents contended that SDC did not carry its burden of proof. Respondents argued that SDC had a "failure of proof" on the issue of "use or disclosure" because SDC did not rely on the documents identified in its definitions of the trade secrets at issue to compare the trade secrets at issue with Respondents' equipment. According to Respondents, because SDC compared Respondents' equipment and process to SDC's equipment and process, as described in documents other than the documents cited in SDC's description of trade secrets, SDC failed to demonstrate that Respondents' equipment and process are the same as SDC's trade secret equipment and process. (RBr. at 14-16.). Respondents also argued that SDC misrepresented TS I.1.a and TS I.2.a by changing the definition of those trade secrets in SDC's Post-Hearing Brief. (RRBr. at 1-6.). These arguments are addressed in the appropriate Section of this ID below on "use or disclosure." (*See* Section VI.B.4.).

trade secret owner presents evidence that they developed the trade secret information and the information is unique from what was already publicly known, the trade secret owner has sustained its burden of proving that the trade secret is defined with sufficient particularity. *Caudill Seed & Warehouse Co. v. Jarrow Formulas, Inc.*, 53 F.4th 368, 382 (6th Cir. 2022).

SDC's expert, Dr. Nan Marie Jokerst,[16] testified that TS I.1.a is directed to SDC's current generation 3D lamination line equipment, including equipment lists, equipment specifications, equipment configurations, the line design, line layout, and the process flows, as described in CX-0513C ( ); CX-0540C ( ); CX-0430C.0231 ( )

[16] Dr. Nan Marie Jokerst appeared during the Hearing as SDC's expert witness with respect to SDC's lamination equipment trade secrets. (Tr. (Jokerst) at 881:18-24.). Dr. Jokerst holds a B.S. degree in physics, an M.S. degree in electrical engineering, and a Ph. D in electrical engineering. (*Id.* at 878:10-16.). At the time of the Hearing, Dr. Jokerst was a distinguished professor of electrical and computer engineering at Duke University, a role which she held for 21 years. (*Id.* at 878:17-879:6.). She was also the director of Duke University's Shared Materials Instrumentation Facility. (*Id.*). Before her position at Duke University, she served on the faculty of Georgia Tech for 14 years. (*Id.*). She was also a fellow of IEEE and on the governing board of the IEEE Photonics Society for six (6) years, including two (2) years as the vice president of technical affairs. (*Id.*). She has published hundreds of papers in the areas of optical electronics, optical electronic packaging, and the bonding of optoelectronics to dissimilar host substrates such as glass and flexible substrates. (*Id.* at 879:7-880:6.). She was the co-leader of the optoelectronics and high-speed packaging group at the National Science Foundation Packaging Research Center. (*Id.*). SDC offered Dr. Jokerst as an expert in the field of optoelectronics packaging and the bonding or lamination of optoelectronics, including bonding and lamination for the development, analysis, and use of equipment for mass production of products. (Tr. (Jokerst) at 880:23-881:3.).

Respondents objected to the extent that SDC offered Dr. Jokerst as an expert on OLEDs and OLED displays or the lamination of cover glasses on any display devices. While Respondents questioned Dr. Jokerst on *voir dire*, a decision with respect to Dr. Jokerst's qualifications on the narrower topics of OLEDs and lamination of cover glass are for an ALJ to determine. (*Id.* at 881:4-11.). Staff did not object to SDC's proffer of Dr. Jokerst as an expert on any of the subjects for which SDC called her to testify. (*Id.* at 881:12-15.). On cross-examination, Respondents' counsel established that Dr. Jokerst had not conducted research specifically on OLEDs. She had not conducted research or consulted on micro-OLEDs. Moreover, Dr. Jokerst had not consulted for any companies on lamination of cover glass for displays, or with respect to the same on mobile devices. (Tr. (Jokerst) at 906:5-907:2.). However, Respondents did not renew their objection to Dr. Jokerst's qualifications. Therefore, Dr. Jokerst has been accepted as an expert witness on the topics for which she was called to testify. Her qualifications were considered, as all experts' qualifications are, when determining the proper weight to give her testimony.

[redacted]); CX-0541C [redacted]). (Tr. (Jokerst) at 885:17-886:2; CDX-0009C.0007.).

Dr. Jokerst testified that CX-0540C depicts [redacted] for its 3D Lamination Line trade secrets. (CX-0540C.0003; Tr. (Jokerst) at 883:9-11, 884:15-885:16; CDX-0009C.0006.). The [redacted]s for its 3D Lamination Line trade secrets from CX-0540C is reproduced in Figure 10 below.

Figure 10: [redacted] for SDC's 3D Lamination Line Trade Secrets

[redacted]

(CX-0540C.0003; Tr. (Jokerst) at 883:9-11, 884:15-885:16; CDX-0009C.0006.).

The first process in SDC's 3D lamination line process is called the [redacted]. (Tr. (Jokerst) at 884:15-23.). [redacted]

[redacted]

SDC argued that its TS I.1.a was described with sufficient particularity. (CBr. at 17-18.). Staff agreed. (SBr. at 14-15). SDC's expert, Dr. Jokerst, testified that TS I.1.a is not available to the public, which neither Respondents nor their expert disputed. (Tr. (Jokerst) at 889:19-890:12.). That undisputed testimony demonstrates that TS I.1.a can be meaningfully distinguished from what is generally known to the public, and therefore, it is a protected trade secret. SDC's identification of TS I.1.a is at least as specific and definitive as trade secret descriptions that have been found sufficient in previous investigations. *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 44-46.

In past investigations where the Commission has found a trade secret description insufficiently specific, the trade secret has been identified in multiple contradictory ways. *See,*

e.g., *Certain Activity Tracking Devices, Sys., and Components Thereof* ("*Activity Tracking Devices*"), 337-TA-963, Final ID at 28-32 (Aug. 23, 2016), *not reviewed*, Comm'n Notice, EDIS Doc. ID No. 593177 (Oct. 20, 2016). That is not the case here. SDC's description of TS I.1.a and Dr. Jokerst's undisputed and unequivocal testimony, together with the undisputed documentary evidence presented and summarized above, prove that SDC's description of TS I.1.a is sufficiently specific and precise. Accordingly, SDC has met its burden of proof by a preponderance of evidence.

b) TS I.2.a (Vacuum Chamber)

SDC defined TS I.2.a as follows:

Pilot Unit No. 2/Vacuum Chamber: [redacted]

y. [redacted]

(FITS at 7-8.).

Respondents did not present argument or evidence in their Post-Hearing Briefs that TS I.2.a is not described with sufficient particularity. (RBr. at 13-31; RRBr. at 1-8.). Under Ground Rule 10.1, Respondents waived, withdrew or abandoned any argument on this issue for appeal purposes. Therefore, the only issue is whether SDC has sustained its burden of proof.

SDC's expert, Dr. Jokerst, testified that TS I.2.a is directed to the specifications and configurations for the vacuum chamber used in SDC's 3D lamination equipment and its components, which are based on SDC's Pilot Unit 2 prototype, as described in CX-0432C.0078, .0080 (Suwon District Prosecutor's Office Witness Record); CX-0508C ([redacted]); CX-0509C.0004 ([redacted]); CX-0510C ([redacted]); CX-0514C ([redacted]); CX-0515C ([redacted]); CX-0516C ([redacted]); CX-0517C ([redacted]); CX-0542C ([redacted]); CX-0544C ([redacted]); CX-0545C ([redacted]). (Tr. (Jokerst) at 886:3-21; CDX-0009C.0007).

As described above for TS I.1.a, the vacuum chamber used in SDC's 3D lamination equipment is [redacted] . The vacuum chamber is depicted in SDC's "[redacted]" documentation, depicted in Figure 11, below.

Figure 11: SDC's 3D Lamination Vacuum Chamber Based on Pilot Unit 2 Prototype



(CX-0509C.0002.).

SDC argued that it described TS I.2.a with sufficient particularity. (CBr. at 17-18.). Staff agreed. (SBr. at 15-16.). Dr. Jokerst testified, which neither Respondents nor their expert disputed, that TS I.2.a is not available to the public. (Tr. (Jokerst) at 889:19-890:12.). The undisputed testimony demonstrates that TS I.2.a can be meaningfully distinguished from what is generally known to the public, and therefore, it is a protected trade secret.

Based upon SDC's description of TS I.2.a, and Dr. Jokerst's undisputed and unequivocal testimony, together with the undisputed documentary evidence presented, it is a finding of this

ID that SDC's description of TS I.2.a is sufficiently specific and precise. Accordingly, SDC has met its burden of proof by a preponderance of evidence. *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 44-46.

2. SDC Proved Existence of a Protectible Trade Secret

a) TS I.1.a and TS I.2.a Are Neither Generally Known Nor Readily Ascertainable

Respondents presented neither argument nor evidence that TS I.1.a and TS I.2.a are generally known or readily ascertainable. (RBr. at 13-31; RRBr. at 1-8.).[17] Therefore, the only issue is whether SDC has proven by a preponderance of evidence that TS I.1.a and TS I.2.a are neither generally known nor readily ascertainable.

To defeat trade secret protection, a person in the industry must be able to ***readily*** ascertain it or ***duplicate*** it. *Crawler Cranes*, Inv. No. 337-TA-887, FID at 24 (emphasis added).

SDC introduced undisputed, unrebutted, and incontestable evidence in the form of expert testimony by Dr. Jokerst that neither TS I.1.a nor TS I.2.a is publicly known or could be readily determined from public information. (Tr. (Jokerst) at 889:19-890:12.).

Based on Dr. Jokerst's undisputed testimony and the lack of any contrary argument or evidence from Respondents, it is a finding of this ID that SDC has proven by a preponderance of evidence that neither TS I.1.a nor TS I.2.a is publicly known or readily ascertainable.

b) TS I.1.a and TS I.2.a Have Economic Value

Respondents conceded that SDC has proven by a preponderance of evidence that TS I.1.a and TS I.2.a have economic value. (RBr. at 13-31; RRBr. at 1-8; JSUI at 1-2.). Therefore, the

[17] In the Parties' JSUI, Respondents did not concede that SDC had proven by a preponderance of evidence that neither TS I.1.a nor TS I.2.a is generally known or readily ascertainable. However, by failing to raise the argument in their Post-Hearing Briefs, Respondents have waived, withdrawn, and/or abandoned it under Ground Rule 10.1.

only issue is whether SDC presented evidence sufficient to prove by a preponderance of evidence that TS I.1.a and TS I.2.a have economic value.

A trade secret satisfies this requirement when it "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use." Uniform Trade Secrets Act (UTSA) § 1(4). One way that information may derive independent economic value from not being generally known or readily ascertainable is by conferring a competitive advantage to the trade secret holder. *See, e.g.*, *Raised Garden Beds*, Inv. No. 337-TA-1334, FID at 33-34 ("[t]he evidence shows that Vega Garden's research and development . . . likely afforded Vega Garden a competitive advantage").

"The standard to show that trade secrets derive independent economic value is not a high standard." *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same*, Inv. No. 337-TA-1352, FID at 82 (Oct. 3, 2024), *aff'd in rel. part*, Comm'n Op. at 1-2 (May 29, 2025). One of the relevant factors is "the value of the information to complainant and to his competitors." *Certain Botulinum Toxin Prods., Processes for Mfg. or Relating to Same & Certain Prods. Containing Same*, Inv. No. 337-TA-1145, Comm'n Op., 2021 WL 141507, at *6 (Jan. 13, 2021).

Mr. Sangcheol Kim,[18] one of SDC's fact witnesses and an engineer who worked on SDC's lamination line, testified about CX-0509C, which is [redacted]. (Tr. (S. Kim) at 658:12-

[18] At the time of the Hearing, Mr. Sangcheol Kim was a principal engineer for SDC. (Tr. (Kim) at 652:18-20.). He was part of the equipment development team and was responsible for planning equipment used for development and for mass production purposes, including lamination equipment. (*Id.* at 652:21-653:7.).

24). CX-0509C contains [redacted]. (*Id.*). [redacted] (Tr. (S. Kim) at 654:9-657:4, 658:25-659:12; CX-0515C; CX-0509C.0003.). On page 2 of CX-0509C, [redacted], as depicted in Figure 12 below:

Figure 12: Development History of SDC's 3D Lamination Equipment

[redacted]

(CX-0509C.0002; Tr. (S. Kim) at 670:11-20.).

Mr. Kim testified that [redacted] represents SDC's most recent mass-production facility. (Tr. (S. Kim) at 672:19-24.). Mr. Kim testified that production yield, which refers to the product pass rate, underwent an "extremely significant improvement," from [redacted] at the [redacted] stage to [redacted] at the [redacted] stage. (*Id.* at 673:7-674:25.).

Mr. Kim's testimony is undisputed, unrebutted, and corroborated by documentary evidence in the record of this Investigation. Therefore, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS I.1.a and TS I.2.a have economic value.

3. SDC Proved Respondents Acquired TS I.1.a and TS I.2.a Through Improper Means

The issue is whether Respondents used improper means to acquire some or all of SDC's trade secrets from Toptec.

"Improper means" of acquisition refers to "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means." *Crawler Cranes*, Inv. No. 337-887, Comm'n Op. at 68. The short answer here is that Respondents unequivocally used improper means to acquire information about SDC's trade secrets TS I.1.a and TS 1.2.a.

To prove that Respondents used improper means to steal SDC's trade secrets TS I.1.a and I.2.a, and specifically SDC's 3D lamination line, vacuum chamber and BECA line equipment, and their specifications, SDC presented an abundance of uncontested documentary and testimonial evidence. SDC presented a document, produced by Respondents in this Investigation, titled [redacted] (CX-0013C.0003.). [redacted]

SDC convincingly argued that Respondents specifically targeted Toptec as a vendor because Respondents knew Toptec was an SDC vendor who had access to SDC's confidential information. (CBr. at 23-24; CX-0021C.0003; (CX-0026C.0002.). The foregoing is evidence that Respondents intentionally targeted SDC vendor Toptec because they knew Toptec was SDC's vendor.

There is additional compelling testimonial and documentary evidence that Respondents explicitly targeted Toptec for its knowledge of SDC's 3D lamination processes and equipment. (CX-1778C (J. Wang Dep. Tr. Vol. 2)[20] at 185:18-187:9); CX-0004C.0002

[19] In their documents, . *See, e.g.,* Tr. (Chang Soon Ji) at 287:5-12.). Mr. Chang Soon Ji (*Id.* at 272:18-273:2.).

[20] At the time of the Hearing, Wang was Respondents' (Tr. (J. Wang) at 1133:22-1134:1.). Wang testified that

[redacted] CX-1778C (J. Wang Dep. Tr. Vol. 2) at 189:10-191:11, 192:14-195:1.).

Dr. Jokerst testified that a proposal Toptec/FAI[21] submitted to Respondents demonstrated that Respondents' [redacted] was substantially similar to SDC's [redacted] 3D lamination line. (*See* Tr. (Jokerst) at 893:4-894:4 (discussing CDX-0009C.0013 and comparing CX-0999C to CX-0019C.). Ultimately, Toptec/FAI did supply lamination line equipment to one of the BOE Respondents. (CX-0003C, [redacted] I [redacted]

There was additional incontrovertible evidence from a decision of the Suwon High Court

(*Id.* at 1136:12-13.).

[21] Toptec created a separate entity, FAI, in an apparent effort to conceal Toptec's lamination equipment sale to one of the BOE Respondents after SDC rejected Toptec's request to do so based upon an agreement between SDC and Toptec. (*See* CX-0734C.). That agreement contains, *inter alia*, an express provision that prohibited Toptec from "engag[ing] in manufacturing or sale of components that may infringe Samsung's intellectual property rights and ***trade secrets***, nor allow a 3rd party to do the same," unless "Samsung provided an advance written consent." (CX-0734C.0021.).

It is a reasonable conclusion that BOE knew or at least should have known that it was improperly acquiring SDC's trade secrets. (*See* CX-0454.0026 ("FAI is a so-called paper company, created with the purpose of facilitating the export of the 3D lamination equipment to Chinese suppliers on behalf of TOPTEC. This arrangement was necessitated by the challenging circumstances faced by TOPTEC in directly exporting the aforementioned equipment to China, given its relationship with SDC."); CX-0454.0029 (describing that FAI was established to export to "Chinese suppliers. including BOE[.]"). Indeed, certain of the Respondent BOE entitites conducted meetings with (and obtained SDC confidential information from) Toptec (*see, e.g.*, CX-0004, CX-0013, CX-0026, CX-0021), but ultimately contracted with FAI to purchase the Toptec 3D lamination line. (*See* CX-0003 ([redacted] *see also*, CX-1777 (J. Wang Dep. Tr. Day 1) at 110:2-9 [redacted] 111:11-18 [redacted]

of Justice, Criminal Division 2-3 ("Suwon High Court Decision"), (CX-0454C (Suwon High Court Decision Part 1); CX-0455C (Suwon High Court Decision Part 2)). The Suwon High Court Decision found that Respondents' employees used the WeChat application to communicate with vendors to obtain information explicitly about SDC's lamination processes in TS I.1.a and TS I.2a. In the Suwon High Court Decision, there was a finding that through using the WeChat application, Respondents (and other Chinese companies) "repeatedly demanded SDC's trade secret data, such as 'Samsung's Lami equipment and washer standards,' [SDC's] actual time standard, and [SDC's] PO specs, plan documents, and test data." (CX-0455C.0001 (Suwon High Court Decision); CX-0456C.0005-0006 (WeChat messages, Suwon High Court Decision); CX-0457C.0025 (WeChat messages, Suwon High Court Decision).).

In one such example of a WeChat message that the Suwon High Court Decision found reflected Respondents' theft of SDC's trade secrets related to SDC's Lamination Line, an employee of one of the BOE Respondents named [redacted], who communicated using the alias [redacted] was also a former SDC employee. According to the Suwon High Court Decision record evidence, [redacted]

To corroborate the link between "[redacted] and Respondents that the Suwon High Court Decision found existed, SDC also provided testimony from Mr. Wang's deposition, who as noted above, was one of Respondents' engineers. Specifically, Mr. Wang testified and confirmed that [redacted] (CX-1777C (J. Wang Dep. Tr. Vol. 1) at 64:20-65:23, 66:12-14.).

Taken from the Suwon High Court Decision, and reflected below in Figure 13, is part of a WeChat exchange between Respondents' employee [redacted] and Toptec/FAI's employee, Mr. Dong, in which [redacted] Included in the information requested, and apparently provided, were [redacted] (*Id.*). Among other exchanges, Mr. Dong specifically [redacted]. There was no question that "S" referred to SDC. (*See* CX-0454C, Suwon High Court Decision, generally for the breadth of findings by the South Korean Court on the theft of SDC's trade secrets.).

Figure 13: WeChat Messages Between Respondents' Employee [redacted] and Toptec/Fai's Employee Mr. Dong

Sender	Date	Content	Content
[redacted]	2018-05-18 PM 02:16:19	When you were at Samsung, what were Samsung's Lami equipment and standard dimensions?	When you were at Samsung, what were Samsung's Lami equipment and standard dimensions?
	2018-05-18 PM	We need information for partnership later. Please prepare well. Our work cycle is fast. If you cannot get used to it, then adjust things for the other equipment for earlier schedule.	We need information for partnership later. Please prepare well. Our work cycle is fast. If you cannot get used to it, then adjust things for the other equipment for earlier schedule.
	2018-05-18 PM 02:18:04	I will ask the Tech team after I get off the bus. It is too slow a process to ask them questions one-by-one, one after another.	I will ask the Tech team after I get off the bus. It is too slow a process to ask them questions one-by-one, one after another.
	2018-05-18 PM 02:18:14	OK	OK
	2018-05-18 PM 03:51:05		
	2018-05-18 PM 03:52:32	This is the standard dimensions of Company S you asked for.	This is the standard dimensions of Company S you asked for.
	2018-05-18 PM 03:53:08	OK.	OK.
	2018-05-18 PM 03:53:37	Please check again. The dimension for the standard washer.	Please check again. The dimension for the standard washer.
	2018-05-18 PM 03:54:01	Samsung's Lami equipment and dimensions for a standard washer	Samsung's Lami equipment and dimensions for a standard washer
	2018-05-18 PM 03:59:41	I've already asked about them to the Tech team. I'll let you know as soon as I get a reply.	I've already asked about them to the Tech team. I'll let you know as soon as I get a reply.
	2018-05-18 PM 03:59:53	OK	OK
Sender	Date	Content	Content

[redacted]	2018-05-18 PM 03:59:53	OK	OK
	2018-05-18 PM 04:31:35	Company S says they [redacted]	Company S says they [redacted]
	2018-05-18 PM 04:36:35	And the length?	And the length?
	2018-05-18 PM 04:50:38	[redacted]	[redacted]
	2018-05-18 PM 04:51:04	Are they all that [redacted]? There are [redacted]?	Are they all that [redacted]? There are [redacted]
	2018-05-18 PM 04:51:42	The other line I sent to your design department needs to be redone.	The other line I sent to your design department needs to be redone.
	2018-05-23 PM 05:22:33	I have another question. About [redacted]	I have another question. About [redacted]
	2018-05-23 PM 05:22:44		
	2018-05-23 PM 05:23:06		
	2018-05-23 PM	The changed are all similar, but the time difference is so big. Could you ask this matter to General Manager Shin?	The changed are all similar, but the time difference is so big. Could you ask this matter to General Manager Shin?

Sender	Date	Content	Content
[redacted]	2018-05-23 PM 06:12:59	The above material is based on Company S's actual time. Changing A to B is a simple model change, so we just need to the horizontal level. But [redacted] requires the entire equipment, which is time-consuming because of different vision and equipment conditions. All are based on the actual change time. Please refer to what General Manager Shin says:	The above material is based on Company S's actual time. Changing A to B is a simple model change, so we just need to the horizontal level. But [redacted] requires the entire equipment, which is time-consuming because of different vision and equipment conditions. All are based on the actual change time. Please refer to what General Manager Shin says:
	2018-06-13 PM 04:56:21	Please share Company S's Po Spec, plan, and test data next time you come. This meeting and emails are confidential, so only General Manager Choi and I will attend from our side. Only the two of us will pick you up.	Please share Company S's Po Spec, plan, and test data next time you come. This meeting and emails are confidential, so only General Manager Choi and I will attend from our side. Only the two of us will pick you up.
	2018-06-21 PM	Deputy General Manager Huh, I need to attend a very important meeting on 29 June. Can we change it to 28?	Deputy General Manager Huh, I need to attend a very important meeting on 29 June. Can we change it to 28?
	2018-06-21 PM 08:23:37	And, do we need to change the meeting date for the 29 meeting only? Or do we also need to change the information exchange on Company S?	And, do we need to change the meeting date for the 29 meeting only? Or do we also need to change the information exchange on Company S?
	2018-06-21 PM 08:24:28	Just a meeting date.	Just a meeting date.
	2018-07-05 PM 01:45:01	I sent you the resources for Company S's standard.	I sent you the resources for Company S's standard.
	2018-07-05 PM 01:48:45	Head Manager definitely said he received the resource yesterday, didn't he? Was it Company S's resource?	Head Manager definitely said he received the resource yesterday, didn't he? Was it Company S's resource?

(CX-0456C.0004-0005.)

Throughout their exchanges, copied verbatim from the Suwon High Court Decision, the two (2) men clearly identified either "Samsung" or "Company S." They also confirmed that their exchange is "confidential." There can be little doubt that Respondents were asking about

and obtaining information about SDC's lamination process and equipment through Toptec's subsidiary, FAI.

The content of the WeChat messages reproduced above clearly show that they relate to TS I.1.a and TS I.2.a because they refer to "Samsung's ***Lami*** equipment and washer standards" (CX-0455C.0001 (emphasis added)), SDC's "***Lami*** equipment and standard dimensions" (CX-0456C.0004 (emphasis added)), and involve correspondence with [redacted] (CX-1777C (J. Wang Dep. Tr. Vol. 1) at 64:20-65:23, 66:12-1 (emphasis added).). Respondents did not contradict that the WeChat messages reproduced above are not what they appear to be. Indeed, it would have been difficult for Respondents to do so because the exchange is part of the factual findings of the Suwon High Court Decision.

Moreover, Respondents' expert Dr. D'Andrade conceded during the Hearing that the Suwon High Court Decision explicitly found that SDC's lamination line constituted a trade secret that had been misappropriated. (Tr. (D'Andrade) at 1254:3-13.). The Suwon High Court Decision also explicitly found that Respondents were involved in the misappropriation. (CX-0455C.0001-.0005 (replete with references to Respondents' involvement, including for example "[BOE] repeatedly demanded SDC's trade secret data").).

Staff agreed that the content of the WeChat message reproduced above prove that "BOE was not at all blind to obtaining SDC's trade secrets, and in fact, ***affirmatively requested SDC's confidential information***." (SBr. at 27 (emphasis in original).). Moreover, Staff argued that the documents SDC presented, where Respondents expressly stated that they were considering Toptec because of Toptec's experience with SDC, constitute evidence that Respondents knew, or should have known, that the 3D lamination equipment they obtained from Toptec was developed for SDC and only for use by SDC. (SBr. at 24-25.).

Against SDC's compelling evidence and the persuasive arguments and evidence, including the Suwon High Court Decision, Respondents argued that Toptec was selected primarily because of its track record of technical competence, which just happened, not coincidentally, to include providing equipment to SDC. (RRBr. at 6-7.). According to Respondents, Mr. Wang, Respondents' engineer identified above, testified that [redacted] (CX-1777C (J. Wang Dep. Tr. Vol. 1) at 150:4-12; *see also* CX-1778C (J. Wang Dep. Tr. Vol. 2) at 194:12-18 ([redacted]

However, the weight of the evidence unequivocally proves that Toptec affirmatively represented that it would rely on SDC's technology to fulfill Respondents' requests. (CX-0004C.0002 ([redacted].).

Moreover, Respondents' argument, again, is undermined by the content of the WeChat messages taken from the Suwon High Court Decision. While it may have been true that Respondents chose Toptec for its expertise, clearly that expertise appears to have included passing on SDC's confidential information. The record proves that Toptec's and Respondents' actions were not benign.

With respect to the WeChat messages reproduced above from the Suwon High Court Decision, Respondents argued that they should not be afforded any evidentiary weight because

they "have no indicia of reliability." (RBr. at 24.).[22] Respondents argued that there was a lack of evidence with respect to how the WeChat messages were collected, how the messages displayed were selected, their relation to the alleged trade secrets or to each other, and how they were summarized. (*Id.*). Essentially, Respondents argued that the Commission should not apply comity principles to recognize the Suwon High Court Decision. Yet, the Commission and the Federal Circuit do recognize other court decisions. *See, e.g., Certain Semiconductor Integrated Cirs. & Prods. Containing Same*, FID, USITC Inv. No. 337-TA-665, 2009 WL 5942422 ("*Semiconductor Integrated Circuits*"), at *22-24 (Oct. 14, 2009) (applying international comity and determining that an order of German court would govern ownership of the patents in suit).

Moreover, as part of their own rejoinder, Respondents argued that the decision of the Suwon District Court, 12th Criminal Division, (RX-0058C ("Suwon Lower Court Decision")), found that Toptec did not misappropriate SDC's lamination line trade secrets. (RBr. at 22-25.). Because of that decision, Respondents claimed that they had a good faith belief that Toptec owned its 3D lamination equipment, and therefore, could do with it what it chose. (*Id.*). In support of their 'good faith belief' argument, Respondents added that they also relied upon an agreement, between Toptec/FAI and a BOE Respondent, in which Toptec represented and warranted that using, selling, offering for sale, exporting, and/or importing the lamination line equipment and related technologies "will not infringe, or misappropriate any IPR[23] of any third party under the laws of any jurisdiction." (CX-0003C.0021 ([redacted]

[22] Respondents' argument is a makeweight. The bottom line is that the Suwon High Court District found that Respondents, among many others, got caught in their widespread criminal efforts to steal trade secrets. The Suwon High Court Decision presented a record of its findings from a collection of evidence by the Korean prosecutors. (CX-0455.0001-.0005 ([redacted]

[23] "IPR" in CX-0003C stands for Intellectual Property Rights. (CX-0003C.0021.).

[redacted]

There are significant problems with both of Respondents' arguments. First, although the Suwon High Court Decision did not issue until 2023, it overturned in its entirety the Suwon Lower Court Decision. (RX-0058C; CX-0454C.0004.). The Suwon High Court Decision expressly states: "The original decisions are hereby reversed." (CX-0454C.0004.).

Second, whether Toptec/FAI was a joint owner with SDC of certain aspects of SDC's trade secrets does not defeat or overcome the compelling evidence that Respondents knowingly sought out SDC's trade secrets I.1.and I.2.a from Toptec/FAI. (Section VI.I, *infra*.). The evidence of Respondents' exchanges between Toptec/FAI cannot be more blatant or bold in their direct requests for SDC's trade secrets.

To the extent that Toptec/FAI had ownership rights, the evidence demonstrates that those ownership rights did not permit Toptec/FAI to sell or share SDC's protected 3D lamination line equipment or processes without first obtaining SDC's approval—restrictions of which Toptec/FAI was fully aware. (*See* SBr. at 27-29.). Moreover, Toptec explicitly created FAI in an apparent attempt to circumvent its agreements with SDC and to hide its own identity in what was, quite clearly, designed to be an unlawful transfer of information to Respondents, and others.

The same Article of the SDC-Toptec Master Agreement upon which Respondents rely to support their joint ownership argument expressly prohibited Toptec from "[redacted]," unless "[redacted]" (CX-0734.0021 (Article 37(4)) (emphasis added); *see* RRBr. at 6 n.10 (relying on Article 37.1 and 37.4).).

The Suwon High Court Decision cited to a number of provisions in the SDC/Toptec

Master Agreement that expressly prohibited the use or disclosure of the other's intellectual property, including trade secrets, without express permission. Quoted below are two (2) provisions on "Confidentiality" taken from the SDC/Toptec Master Agreement, dated November 23, 2016 (Evidence No. 705), that the Suwon High Court Decision cited:

> Article 36 (Confidentiality)
>
> ①SDC and Defendant TOPTEC shall not disclose any trade secrets of the other party to third parties, whether obtained this Master Agreement and any Individual Agreements, both during and after the termination of this Agreement.
>
> ② Defendant TOPTEC is obliged to ensure that any employees of TOPTEC who acquire SDC's confidential information during the term either directly or indirectly, do not assume positions at a competitor or within the same industry without obtaining SDC's prior written consent. Defendant TOPTEC's employees are prohibited from collaborating with other competitors or industry participants, whether through advising, counseling or any similar activities.

(CX-0454C.0042; *see also* CX-0445C.).

Other provisions in the SDC/Toptec Master Agreement to which the Suwon High Court Decision cited make it clear that neither SDC nor Toptec could divulge either party's intellectual property without the express approval of the other. (CX-0454C.0039, .0040, 0042., .0044, .0064.). The Suwon High Court Decision specifically found that some seven (7) Toptec/FAI employees downloaded SDC documents on its 3D lamination equipment and gave that information to Toptec/FAI:

> …by colluding and disclosing the entirety of the information for individual materials and the organic identity of the 3D Lamination technology excluding a) above, derived from Crimes List 1, jointly owned by SDC and the Defendant TOPTEC to the third party, Defendant FAI without SDC's explicit or implicit approval, are in violation of trade secrets as defined in Article 18, Clause 2 of the Previously Unfair Competition Prevention Act.

(CX-0454C.0064.).

Another finding of the Suwon High Court Decision, places Respondents at the center of

efforts to steal SDC's trade secrets with respect to its 3D lamination line and other processes protected by SDC's TS I.1a. and I.2.a.

> ① SDC's competitors, including Chinese display manufacturers, such as CSOT, GVO (Visionox), hereinafter referred to as 'GVO'), BEO (Beijing Orient Electronics, hereinafter referred to as 'BOE') have consistently sought SDC's 3D Lamination Technology in question, the technology related to the 3D Lamination equipment where this technology is implemented and the associated trade secrets from Defendant TOPTEC and FAI. It seems evident that the above-listed Defendants were well aware of the situation.
>
> (a) As examined earlier, CSOT was consistently seeking SDC's 3D Lamination Technology in question, the 3D Lamination equipment related technology where such technology was implemented, and trade secrets from Defendants TOPTEC and FAI.

(CX-0454C.0071.).

Yet another finding of the Suwon High Court Decision is as follows:

> (5) In this context, CEO Jaehwan Lee of Defendant TOPTEC, Defendants Inbok Bang and Junghwan Lee engaged in discussions with SDC's employees Gwangsu Lee, Dongeok Kwak, Hyungryul Kim and Shiho Yang regarding 'the potential export of the 3D Lamination equipment from Defendant TOPTEC to Chinese display manufacturers' for two days on March 8 and March 9, 2018. Throughout the meetings, SDC strongly opposed TOPTEC's proposal to export the 3D Lamination equipment and expressed explicit disagreement. In response, Jaehwan Lee assured SDC, stating "We will not engage in the curvature sealer (3D Lamination equipment) business with China. If you have any investment plans in the future, please consider us as the top priority." and [sic] concluded the meeting.

(CX-0454C.0067.).

Respondents could not have had a "good faith belief" that they were not receiving stolen trade secrets. They knew, without a doubt that they were.

Based upon the totality of the evidence, it is a finding of this ID that SDC has proven by a preponderance of evidence that Respondents acquired TS I.1.a and TS I.2.a by improper means.

4. SDC Proved Respondents' Used TS I.1.a and TS I.2.a

The issue is whether SDC has proven by a preponderance of evidence that the lamination

equipment Respondents use, "the BECA equipment," incorporates the specific trade secrets at issue, TS I.1.a and TS I.2.a.[24] "Use" of a trade secret occurs when "the trade secret is employed in manufacturing or production, or it is relied on to assist or accelerate research or development." *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 52-53, 68-69 (citing Restatement (Third) of Unfair Competition § 40 cmt. c); *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 13.

a) Respondents' Use of the

SDC presented uncontested and unrebutted evidence that

(CX-1777C (J. Wang Dep. Tr. Vol. 1) at 127:5-128:1; CX-0019C.).

(CX-0003C.0027.). By Respondents' own admission,

(CX-1777C (J. Wang Dep. Tr. Vol. 1) at 107:22-24.).

Dr. Jokerst compared the individual components of the equipment described in Toptec's proposal to SDC against the equipment described in Toptec's

(Tr. (Jokerst) at 893:4-24.). Dr. Jokerst concluded that the components, including the vacuum

[24] Respondents argued that TS I.1.a and TS I.2.a are not applicable to their micro-OLED products, but that argument was prohibited in an oral Order that granted SDC's Motion *in Limine* No. (Motion Docket No. 1378-057), to the extent it relies on introducing any argument or evidence that the manufacturing processes for Respondents' micro-OLED products materially differ from their main OLED lines. (Tr. at 41:11-43:22 (precluding Respondents from introducing "argument, testimony, and other evidence that the manufacturing processes used for the BOE Respondents' micro-OLED lines materially differ in their current or historical development from its main OLED lines").). The oral order was based upon months of oral orders that were given to Respondents to provide information on Respondents' manufacturing processes for its micro-OLED lines. (*See, e.g.,* May 2, 2024 Case Management Conference, (EDIS Doc. ID No. 820381 ("May 2, 2024 CMC Tr.")) at 42:24-43:8, 47:3-6, 50:4-8).).

lamination chamber, "are essentially the same." (*Id.*; *see also* CDX-0009C.0013; CX-0999C; CX-0019C.). Excerpts of Dr. Jokerst's comparisons of the Toptec's two (2) equipment proposals that Toptec proposed providing to Respondents are reflected in her demonstrative, which is reproduced in pertinent part below in Figure 14.

Figure 14: Dr. Jokerst's Demonstrative Comparing Toptec's [redacted] to BOE and Toptec's [redacted] Equipment Proposal to SDC



(CDX-0009C.0013; Tr. (Jokerst) at 894:1-14 (testifying that th[redacted] all "looks the same").).

The Suwon High Court Decision also found that Toptec employees confirmed that the structure and operation of the lamination equipment that Toptec supplied to SDC and the lamination equipment Toptec supplied to BOE were "the same." (CX-0455C.0001-.0002;[25] *see*

[25] CX-0455C contains the following findings:
"The defendant, Shin Yong-wook, told the investigating agency, 'The equipment configuration and operating principle are all the same, and some parts (pressure measurements parts during cementation) have been changed, but the Main Lami design has not been renewed. The structure and operation of the Main Lami supplied to SDC, and the Main Lami supplied to Chinese customers (BOE, EDO, GVO) are

also Tr. (Jokerst) at 895:9-19; CDX-0009C.0014.).

In addition to presenting affirmative evidence and arguments, SDC contended that the lack of evidence of Toptec's and Respondents' independent development of the [redacted] serves as sufficient proof that the [redacted] must have been copied from SDC's [redacted] lamination equipment. (CBr. at 26.).

There is substantial evidence in the record that neither Toptec nor Respondents developed the [redacted] independently. Notably, Toptec was able to deliver the [redacted] to Respondents only 10 days after Respondents executed a purchase order. (CX-0003C.0027.). Dr. Jokerst credibly testified that 10 days from the purchase order to delivery of the equipment is a virtually impossible timeframe to design and complete manufacturing. (Tr. (Jokerst) at 890:15-891:21, 900:10-13; *see also* CX-1778C (J. Wang Dep. Tr. Vol. 2) at 248:4-14 (testifying that the probability is "very low" that the process of designing and manufacturing the [redacted] could have occurred in ten days).). Based upon the stunning speed with which Toptec provided

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the same. The Main Lami delivered almost the exact drawings of the SDC curved surface cementer (3D lamination facility) to the defendant FAI, and the Sub Lami side prepared about 70% of the drawings for the defendant Nam Dae-woon and delivered them to the defendant FAI and it is understood that the design team defendant Ahn Chi-hong made about 30%.'" (CX-0455C.0001-.0002.).
"B. Kim Manhong (employee of the defendant Toptec) told the investigating agency, 'I personally went and saw the equipment (in relation to the 3D lamination equipment exported to a Chinese display company). When I saw that the equipment frame was operated without putting the product in, it had the same operation method as the SDV equipment (SDC 3D Lamination Facility), and the operation method is the same, which means that it was assembled in the same way as the SDV facility.'" (CX-0455C.0002.).
"The defendant, Cho Sang-sik, told the investigating agency, 'There was almost no change in the Main Lami (regarding the 3D lamination equipment of the CSOT, BOE, GVO, and EDO in China), so there was no need for me.'" (*Id.*).
"The defendant, Nam Dae-woon, told the investigating agency, 'I made the basic drawings of Sub Lami and the logistics equipment according to the specifications of the four Chinese companies and provided them to the defendant FAI, and Main Lami provided the basic drawings of the existing SDV B3 (SDC 3rd generation facility) as they were.'" (*Id.*).
"As such it is highly probable that the above defendants manufactured 3D lamination equipment for sale to Chinese companies CSOT, BOE, GVO, and EDO using . . . SDC's trade secret." (*Id.* at .0003.).
Daewoon Nam, Sangshik Cho, and Yongwook Shin are all employees of Toptec. (CX-0454C.0008.).

the [redacted] to Respondents, the evidence more than supports an inference that Toptec did not produce the equipment on its own.

Respondents argued that SDC failed to sustain its burden to prove by a preponderance of evidence that Respondents' [redacted] uses TS I.1.a and TS I.2.a. (RBr. at 14-16.). Specifically, Respondents asserted that SDC failed its burden of proving that the equipment described in SDC's definitions of TS I.1.a and TS I.2.a is the same as Respondents' [redacted] (*Id.*).

According to Respondents, to sustain its burden of proof, SDC had to compare the [redacted] to the equipment described in the documents cited in SDC's definitions of TS I.1.a and I.2.a. (*Id.*). On this point, Dr. Jokerst acknowledged that she did not compare the documents SDC cited in its trade secret definitions with the equipment that Toptec sold to Respondents, i.e., the BECA Equipment. (RBr. at 14-15 (citing Tr. (Jokerst) at 920:2-25); Tr. (Brian D'Andrade)[26] at 1165:1167:7).). However, Dr. Jokerst did compare the "[redacted] equipment" described in Toptec's proposal to SDC (CX-0999C) with the [redacted] described in Toptec's proposal to

[26] Dr. Brian D'Andrade was Respondents' expert witness on the technical aspects of the Lamination Line Trade Secrets and the Evaporation and Encapsulation Trade Secrets. (Tr. (D'Andrade) at 1152:2-12; RDX-0003C.0007.). Dr. D'Andrade holds a B.S. degree in electrical engineering from Pennsylvania State University, and an M.A. in electrical engineering and a Ph.D. in electrical engineering from Princeton University (RPSt. at Ex. A; Tr. (D'Andrade) at 1149:9-13; RDX-0003C.0002.). He is a licensed professional engineer ("PE"), a certified reliability engineer ("CRE"), and a certified project management professional ("PRP"). (Tr. (D'Andrade) at 1149:14-24; RDX-0003C.0003.). From 2004 to 2008 Dr. D'Andrade was a Senior Scientist at Universal Display Corporation, a company that specializes in the research and development of energy-efficient OLED technology. From 2008-2023 he worked for Exponent, Inc. on failure analysis of electrical, electronics, and computer systems. (Tr. (D'Andrade) at 1149:25-1150:10; RDX-0003C.0004.). He is a named inventor on more than 20 U.S. patents on OLED technology. (Tr. (D'Andrade) at 1150:13-22; RDX-0003C.0005.). He is also named as an author on more than 60 papers related to OLED technologies. (Tr. (D'Andrade) at 1150:23-1151:8; RDX-0003C.0007.). Respondents offered Dr. D'Andrade as an expert in the field of electronic products, including OLED design, OLED panel manufacturing and display processing, Respondents also offered Dr. D'Andrade's expertise in project management "concerning development, scheduling, and timeline." (Tr. (D'Andrade) at 1151:9-15.). There was no objection from SDC or Staff. Dr. D'Andrade was accepted as a witness for the subject matter upon which he had been called to testify. (*Id.* at 1151:17-25.).

Respondents (CX-0019C.).

As Staff pointed out, SDC is not legally required to prove that the [redacted] is identical to SDC's equipment or identical to SDC's defined TS I.1.a and I.2.a. (SBr. at 31-32.). Rather, all that is required is for SDC to prove substantial use, which encompasses modifications or improvements. (*Id.* at 32.). There is no precedent for Respondents' stringent requirement that SDC compare the [redacted] to the particular drawing and specifications identified in SDC's trade secret definitions. *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 48 (Feb. 26, 2014) (rejecting the respondents' failure of proof argument based on the Complainant's failure to compare their process to Respondents').).

In *Rubber Resins*, the complainant's expert testified in detail about the details of respondents' process. *Rubber Resins*, Inv. No. 337-TA-849, FID at 472-80, *aff'd*, Comm'n Op. at 48. The Commission found the expert's testimony sufficient to prove that the respondents' process used the asserted trade secret. *Id.* The Commission found that the respondents' argument was "frivolous when they complain that Dr. Chao fails to provide a side-by-side comparison." *Id.* The Commission noted that the respondents did not introduce "any credible evidence to support a conclusion that it independently developed the use of the alleged trade secret at issue in this Investigation." *Id.*

Here, as in *Rubber Resins*, SDC's expert, Dr. Jokerst described Respondents' [redacted] and how it uses TS I.1.a and TS I.2.a. (Tr. (Jokerst) at 893:4-894:14). Dr. Jokerst compared the individual components of the equipment that is described in Toptec's [redacted] proposal to SDC and the equipment that is described in Toptec's [redacted] to Respondents. Dr. Jokerst concluded that "they are essentially the same." (*Id.* at 893:4-24; CDX-0009C.0013; CX-0999C; CX-0019C.). Testimony from Toptec employees that apparently was provided in the

Suwon High Court criminal proceedings supports Dr. Jokerst's evaluation and opinion because the testimony confirms that the structure and operation of the [redacted] lamination equipment that Toptec supplied to SDC and the [redacted] Toptec supplied to BOE were "the same." (CX-0455C.0001-.0002; Tr. (Jokerst) at 895:9-19; CDX-0009C.0014.). Additionally, like *Rubber Resins*, Respondents did not identify a single difference between their [redacted] and SDC's [redacted] equipment.

With respect to Toptec's inexplicably rapid 10-day production of the [redacted] to Respondents, Respondents did not provide any evidence that the [redacted] was developed independently of SDC's development of and work on its [redacted] equipment. (Tr. (Jokerst) at 890:15-891:21, 900:10-13; CX-1778C (J. Wang Dep. Tr. Vol. 2) at 248:4-14.).

Given the weight of the evidence of SDC's [redacted] line's similarity to the [redacted], and the lack of independent development evidence from Respondents that it is they who developed the [redacted], it is a finding here that SDC has proven by a preponderance of evidence that Respondents copied and used SDC's trade secrets, TS I.1.a and TS I.2.a, by manufacturing the Accused Products on the [redacted] at Respondents' B11 factory.

b) Respondents' 2D and 2.5D Lamination Processes

The primary issue is whether Respondents' misappropriation of SDC's TS I.1.a and TS I.2.a extends to Respondents' 2D and 2.5D lamination processes, which allegedly use different equipment than the [redacted].[27] The "use" requirement of trade secret misappropriation is satisfied, notwithstanding that there have been modifications and/or improvements to the trade

[27] Respondents asserted, without citation or reference to evidence, that "the 3D lamination line designed by Toptec/FAI and purchased by BOE is not used to laminate the 2D and 2.5D displays that are at issue in this investigation." (RBr. at 25.). This is purely conclusory attorney argument. As such, it is not entitled to be given evidentiary weight. *See, e.g.*, *Invitrogen Corp. v. Clonetech Labs., Inc.*, 429 F.3d 1052, 1068 (Fed. Cir. 2005).

secret, as long as the use is derived from the trade secret information. *Certain Steel Railway Wheels, Processes for Manufacturing or Relating to Same and Certain Prods. Containing Same* ("*Steel Railway Wheels*"), Inv. No. 337-TA-655, ID at 22 (Oct. 16, 2009) ("a claim of trade secret misappropriation is broad enough to encompass modifications or improvements to a product or process, when such modifications or improvements are derived from the asserted trade secrets") (citing and quoting *Mangren Research and Dev. Corp. v. National Chemical Co., Inc.*, 87 F.3d 937, 944 (7th Cir. 1996)), *not rev'd in relevant part*, Comm'n Notice (Dec. 17, 2009).).

SDC provided persuasive evidence that Respondents' 2D and 2.5D lamination processes were derived from Respondents' unlawful use of SDC technology. For example, SDC provided a J [redacted] (CX-0025C.0010; Tr. (J. Wang) at 1141:14-21 [redacted] CX-1777C (J. Wang Dep. Tr. Vol. 1) at 112:5-114:4 [redacted]

SDC provided an attachment to Respondents' purchase order for the [redacted] that Mr. Wang signed, which states that the [redacted] (CX-0002C.0141, .0144; CX-1778C (Wang Dep. Tr. Vol. 2) at 249:24-250:5 (confirmed that he signed this document).). [redacted]

Figure 15: [redacted]



(CX-0002C.0141, .0144 (highlighting added by ALJ); CX-1778C (J. Wang Dep. Tr. Vol. 2) at 249:24-250:5.).

[redacted]. (CX-002C.0141, .0144.).

SDC also provided CX-0021C.0003, [redacted]

[redacted] (CX-0021C.0003.).

SDC's evidence summarized above clearly and unambiguously demonstrates that Respondents' 2D and 2.5D lamination lines are derived from the Toptec [redacted] As explained below, none of Respondents' counterarguments is supported by the record.

Respondents argued that SDC failed to prove by a preponderance of evidence that TS I.1.a and TS I.2.a are applicable to laminating 2D and 2.5D displays. (RBr. at 25-26.). Respondents introduced evidence that there are differences between 3D lamination technology and both 2D and 2.5D lamination technology. For example, Mr. Wang testified about some of the differences between 3D lamination and 2D and 2.5D lamination. (Tr. (Wang) at 1134:6-1135:1.). Perhaps most importantly, Mr. Wang testified that the 3D lamination equipment Toptec provided could not be converted to be used in a 2D or 2.5D lamination process. (*Id.* at 1136:12-1137:1.). Mr. Wang also introduced a proposal from Respondents' supplier [redacted] (Tr. (Wang) at 1137:2-11; CX-1179C.0004.). [redacted]:

Figure 16: [redacted]



(Tr. (Wang) at 1137:15-1138:5; CX-1179C.0006.).

[redacted]

Figure 17:



(Tr. (J. Wang) at 1138:6-1139:6; CX-1179C.0007.).

Mr. Wang . (Tr. (J. Wang) at 1138:14-1139:5.). (*Id.*). (*Id.* at 1139:7-15.). Mr. Wang testified that . (*Id.* at 1140:7-11.).

Dr. D'Andrade agreed with Mr. Wang that 3D lamination equipment, of which is an example, required modifications to be adapted for 2D and 2.5D manufacturing. (Tr. (D'Andrade) at 1175:8-18.). In addition to the modifications Mr. Wang described, Dr.

D'Andrade testified there is a difference in how and where in the manufacturing process the [redacted] is applied. (*Id.* at 1170:11-1171:5.). Specifically, Dr. D'Andrade testified that [redacted]. (*Id*.). Therefore, to change a 3D process to a 2D or 2.5D process, [redacted]. That would then change the overall layout and process flow of the manufacturing line. (*Id.*; RDX-0003C.0039.).

Figure 18: [redacted] for SDC's 3D Lamination Line Trade Secrets

[redacted]

(CX-0540C.0003.).

Dr. Jokerst agreed with Dr. D'Andrade on this point. (Tr. (Jokerst) at 924:10-925:2, 926:23-927:8, 937:20-938:8.).

There can be little if any doubt from the testimony given corroboratively by Mr. Wang, Dr. D'Andrade, and Dr. Jokerst that equipment designed for 3D lamination had to be modified to

be adapted for 2D and 2.5D manufacturing that the Respondents sought. Therefore, according to Respondents' argument, their 2D and 2.5D manufacturing processes do not "use" TS I.1.a and TS I.2.a because their [redacted] had to be modified to be used in those 2D and 2.5D manufacturing processes.

Staff's view was that there is insufficient evidence for a determination whether Respondents' 2D and 2.5D lamination lines use, or are derived from, SDC's trade secrets TS I.1.a and TS I.2.a. (SBr. at 34-36.). Staff argued that if Respondents intend to continue importing and selling 2D and 2.5D products, Respondents should "present evidence and obtain a ruling from the Commission in an ancillary proceeding." (SBr. at 36 (citing *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 53-54).).

It is a finding of this ID that Respondents have proven by a preponderance of evidence that 2D and 2.5D lamination lines are different than 3D lamination lines. However, Respondents' defense nonetheless fails because the legal issue is whether Respondents' 2D and 2.5D lamination lines are "derived from" SDC's trade secrets. *Steel Railway Wheels*, Inv. No. 337-TA-655, ID at 22.

Respondents' 2D and 2.5D processes that were implemented on the [redacted] are derived from SDC's trade secrets because Respondents' supplier stated that its 3D lamination equipment [redacted] (CX-0025C.0010; Tr. (J. Wang) at 1141:14-21; CX-1777C (J. Wang Dep. Tr. Vol. 1) at 112:5-114:4.). [redacted] (CX-1179C.0004, .0006, .0007; Tr. (J. Wang) at 1137:2-1139:6.). [redacted]

(CX-0002C.0141, .0144; CX-1778C (J. Wang Dep. Tr. Vol. 2) at 249:24-250:5.). Respondents did not introduce evidence or argument that their 2D and 2.5D process equipment was developed independently of, i.e., without being derived from, the [redacted].

An ancillary proceeding is not necessary. It is a well-supported conclusion given the weight of the testimonial and documentary evidence that the [redacted] was made using SDC's misappropriated trade secrets. As a result, any 2D and 2.5D lines that were made by modifying the [redacted] have been derived from TS I.1.a and TS I.2.a and therefore "use" TS I.1.a and TS I.2.a. *Steel Railway Wheels*, Inv. No. 337-TA-655, ID at 22.

For the foregoing reasons, it is a finding of this ID that SDC has proven by a preponderance of evidence that any 2D and 2.5D processes using modified [redacted] are derived from the Toptec/[redacted]. Accordingly, Respondents' 2D and 2.5D lines that are made by modifying the [redacted] fall within the scope of Respondents' misappropriation of SDC's TS I.1.a and TS I.2.a.

5. Respondents Conceded That They Did Not Independently Develop TS I.1.a or TS I.2.a

Respondents conceded that they did not independently develop TS I.1.a or TS I.2.a. (JSUI at 1.).

Therefore, it is a finding of this ID that Respondents have not carried their burden to prove by a preponderance of evidence that they independently developed TS I.1.a or TS I.2.a. *Rubber Resins*, USITC Inv. No. 337-TA-849, FID, 2013 WL 4495127, at *202-213 (June 17, 2013) (once misappropriation is established by a preponderance of evidence, the burden shifts to the respondent to prove the affirmative defense of independent development, and the respondent "bears a heavy burden of persuasion to show that independent development.").

C. Trade Secret II.1 (Glass Separation and Movement)

1. SDC Adequately Described the Glass Separation and Movement Trade Secrets

a) TS II.1.a ( )

SDC defined TS II.1.a as follows:



(FITS at 39.).

Respondents argued through their expert, Dr. Alexander Glew,[28] without corroborating

[28] Dr. Alexander Glew was Respondents' expert regarding Respondents' alleged independent development of a " " to , as relevant to the Category II Trade Secrets, Respondents' alleged independent development of parameters such as for the Category VII Trade Secrets, and Respondents' alleged misappropriation of the Category II, Category III, and Category VIII Trade Secrets. (Tr. (Glew) at 1275:25-1276:2; RDX-0004C.0009-0012.). At the time of the Hearing, Dr. Glew was the Founder, President, and CEO of Glew Engineering Consulting, Inc. (Tr. (Glew) at 1277:9-12; RDX-0004C.0005.). Dr. Glew holds a bachelor's degree and master's degree in mechanical engineering, and he holds a bachelor's degree and master's degree in material science engineering. (Tr. (Glew) at 1276:8-12; RDX-0004C.0003; RX-1730.). Dr.

documentary evidence, that SDC failed to prove that the [redacted] required by this trade secret accomplishes the goal of this trade secret, which is "[redacted]" (RBr. at 36; FITS at 39.). Respondents also argued, without supporting evidence, that the [redacted] is impossible to implement. (RRBr. at 9.). Therefore, the issue is whether trade secret protection can be lost when the accused misappropriator's expert's opinion that a trade secret is non-functional or impossible is sufficient, without supporting evidence, to remove trade secret protection.

An attorney's arguments parroted through the conclusory opinion testimony of an expert are generally unpersuasive and entitled to little if any weight. *See, e.g., Garmin Int'l, Inc. v. LoganTree, LP*, 825 Fed. App'x 894, 898 n.5 (Fed. Cir. 2020) (holding that the Board correctly found that the patent challenger's expert's opinion testimony "merely parroted attorney argument without supporting evidence," and was therefore unpersuasive).

Here, the weight of the evidence supports SDC's position. SDC argued, with citation to supporting documentary evidence and testimony, that TS II.1.a was described with sufficient particularity. (CBr. at 31-32.). SDC cited to the testimony of Mr. Heung Won Lee,[29] who

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Glew is a named inventor on patents related to display manufacturing technology. (Tr. (Glew) at 1276:25-1277:8.). Dr. Glew worked for Applied Materials for ten years in equipment and processing equipment for making thin films. (Tr. (Glew) at 1277:9-1278:9; RDX-0004C.0006.). In 1997, Dr. Glew left Applied Materials to start his own consulting company, Glew Engineering Consulting, Inc. (Tr. (Glew) at 1277:16-19; RDX-0004C.0005.). In connection with his consulting company, Dr. Glew served as a subject matter expert for the Antitrust Division of the Department of Justice related to a merger between Applied Materials and Tokyo Electron, worked with glass manufacturers and designed process chambers. (Tr. (Glew) at 1278:10-1279:9; RDX-0004C.0005, .0007; RX-1730.). Respondents offered Dr. Glew as an expert in "OLED, thin film, and other display manufacturing processes and equipment." (Tr. (Glew) at 1279:10-12.). Neither SDC nor Staff objected to Respondents' offer. (*Id.*at 1279:13-17.). Dr. Glew was accepted as an expert for the subject matter upon which he has been called to testify. (*Id.* at 1279:18-21.).

[29] At the time of the Hearing, Mr. Heung Won Lee was an SDC engineer in the logistics automation and equipment department. (Tr. (H. Lee) at 243:25-244:4, 244:19-245:4.).

testified that [redacted]. (Tr. (H. Lee) at 246:14-23.). The [redacted] are depicted in an SDC presentation titled "[redacted]" an excerpt of which is reproduced in Figure 19 below. The cassette containing the [redacted] is depicted on the right of the figure below.

Figure 19: [redacted] and [redacted] Used to Make SDC's OLED Products

[redacted]

(CX-0563C.0005; Tr. (H. Lee) at 246:24-247:20.).

Mr. Lee testified that [redacted]. (*Id.* at 247:23-248:12.). After [redacted], SDC's Y-OCTA process occurs, which incorporates touch circuits into the panel circuitry to reduce the thickness of the display.[30] (*Id.* at 248:13-21.).

[30] The present record is light on details about SDC's Y-OCTA process. "Y-OCTA" stands for "Youm – On Cell Touch AMOLED." (Tr. (Katona) at 355:11-356:1.). "AMOLED" stands for "Active Matrix

Mr. Lee testified that the [redacted] used in SDC's Y-OCTA process, which [redacted] (Tr. (J. Park) at 201:11-14, 204:2-23),[31] is [redacted]. (Tr. (H. Lee) at 249:8-250:6.). However, as Mr. Lee explained, [redacted]. (*Id.* at 250:7-23.). The [redacted] is also depicted in SDC's "[redacted]" presentation, which is reproduced below:

OLED." (*Id.*). Y-OCTA is SDC's process for enabling touch-sensitive input on its OLED displays, *i.e.* touchscreens, while minimizing the thickness of the display. (Tr. at 88:15-22; Tr. (Katona) at 351:21-352:10, 355:11-356:1.).

[31] At the time of the Hearing, Mr. Jaemork Park was a principal engineer at the IT technology team of SDC with responsibilities related to EV. (Tr. (J. Park) at 182:14-183:3.). Mr. Park has worked for SDC for 19 years. (*Id.* at 182:20-22.).

Figure 20: The [redacted] for SDC's Y-OCTA Process



(CX-0563C.0011; Tr. (H. Lee) at 250:24-251:8.).

As depicted in Figure 20 above, a [redacted] as described in SDC's description of TS II.1.a. Both SDC's fact witness Mr. Lee and SDC's expert witness Dr. Thomas Katona,[32] testified and pointed to documentary evidence that the [redacted]

[32] At the time of the Hearing, Dr. Thomas Katona was a professor at California Polytechnic State University and appeared to testify as SDC's expert regarding technical aspects of TS II.1, TS III.1, TS IV.1, and TS IV.2. (Tr. (Katona) at 324:4-7; CDX-0002C.0001, .0005.). Dr. Katona earned a bachelor's degree in physics, a master's degree in electrical and computer engineering, and a Ph.D. in electrical and computer engineering. (Tr. (Katona) at 325:1-12; CDX-0002C.0002.). He worked for ten years at the California Polytechnic State University and, at the time of the Hearing, was an associate professor of Innovation and Entrepreneurship. (Tr. (Katona) at 325:13-23; CDX-0002C.0003.). After earning his Ph.D., Dr. Katona worked at Sensor Electronic Technology on the application of deep ultraviolet light-emitting diodes, on R&D for four-inch chemical vapor deposition (CVD) chambers for semiconductor growth, and he helped build a pilot fabrication line for semiconductor wafers. (Tr. (Katona) at 325:24-327:7.). After that, Dr. Katona joined Soraa as their acting director of device engineering and, after that, Dr. Katona was the VP of products at NEXT Lightning, where his role was running the engineering and product teams for end lighting products that go in the ceiling. (*Id.* at 327:8-22.). Dr. Katona is also

[redacted]. (CX-0563C.0011 ([redacted]); CX-0555C.0003 (same); Tr (H. Lee) at 250:7-252:7 (testifying that [redacted]); Tr. (Katona) at 356:16-357:13 (testifying that [redacted]). The foregoing testimony by both Mr. Lee and Dr. Katona is credible because it is corroborated by documentary evidence.

In contrast, Respondents argued without citation to evidence, that SDC's description is vague and ambiguous because SDC "failed to show that the [redacted] as required by II.1.a."[33] (RBr.

familiar with security policies and technologies used by the United States government because much of his work involved government contracts. (*Id.* at 327:23-328:5.). Dr. Katona's experience with light-emitting diodes is relevant to this Investigation because the technology at issue is related to organic light emitting diodes (i.e., OLEDs). (*Id.* at 328:6-329:3.). SDC moved to tender Dr. Katona as an expert in "engineering, including the manufacture of light-emitting devices." (*Id.* at 329:4-7.). Respondents stated that they had no objection to SDC's motion to tender Dr. Katona as an expert. (*Id.* at 329:9.). Staff also stated they had no objection to SDC's motion to tender Dr. Katona as an expert. (*Id.* at 329:11.).

[33] Respondents also argued that SDC "has not established how a [redacted]" (RBr. at 36.). As a threshold matter, Respondents' argument is inapposite because the trade secret definition refers to "[redacted]

at 36.). Thus, Respondents' argument constitutes unsupported, conclusory attorney argument. *See, e.g.*, *Invitrogen*, 429 F.3d at 1068. Respondents' argument also defies logic. [redacted]. Indeed, contrary to Respondents' assertion that SDC did not show that [redacted], Mr. Lee testified that the [redacted]. (Tr. (H. Lee) at 250:7-23.). Moreover, SDC's description of the trade secret is also explicit that it was designed for "[redacted]."

Respondents also contended that among the documents cited in SDC's description of TS II.1.a, only two (2) of those documents show [redacted]. (RRBr. at 9.). Respondents pointed out that in one of those two (2) documents, the [redacted]. (*Id.* (citing

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[redacted]," not "[redacted]" (FITS at 39.). Moreover, the testimony Respondents cited for their argument does not say that SDC's [redacted]. (RBr. at 36 (citing Tr. (Glew) at 1294:1-15, 1306:1-6).). Thus, the testimony Respondents cited does not support their argument. In his testimony, Dr. Glew opined that the [redacted] (Tr. (Glew) at 1293:2-6.). However, Dr. Glew did not present any corroborating documentary evidence for his opinion. Accordingly, his testimony is given little, if any, weight.

On the other hand, as discussed in the text above, SDC presented expert and fact witness testimony, with corroborating documentation, that supported SDC's and Dr. Katona's arguments that [redacted]. (CX-563C.0011; CX-0555C.0003; Tr. (H. Lee) at 250:7-252:7; Tr. (Katona) at 356:16-357:13.). Both Dr. Katona and Mr. Lee cited corroborating documentary evidence for their testimony while Dr. Glew did not. (CX-0563C.0003, .0011; CX-0555C.0003). For this reason, Dr. Katona's testimony and Mr. Lee's testimony are both more credible than Dr. Glew's.

Moreover, it is difficult to make sense of Respondents' argument because [redacted]. None of the testimony Respondents cited for their argument mentions a [redacted]. (RBr. at 36 (citing Tr. (Glew) at 1294:1-15, 1306:1-6; Tr. (Lin) at 1270:9-13).). In their Reply Brief, Respondents did not mention a [redacted], and thus appear to have abandoned the argument. (RRBr. at 8-9.). Additionally, Respondents did not make an argument based on a [redacted] in their Pre-Hearing Brief. (RPBr. at 29-32.). Accordingly, Respondents waived any argument on this issue for all appeal purposes under Ground Rule 7.2.

CX-0830C).). With respect to the other document, Respondents alleged that the [redacted] depicted is "impossible" to implement because there is no [redacted] that is depicted in SDC's documentation that would [redacted]. (*Id.* (citing CX-0563C).). Again, Respondents did not cite to evidence for the argument that SDC's [redacted] is impossible to implement. Respondents' arguments are conclusory attorney arguments and, therefore, they are afforded no weight. *Certain Elec. Devices, Including Mobile Phones & Tablet Computers, & Components Thereof* ("*Electronic Devices*"), Inv. No. 337-TA-847, FID, 2013 WL 5822559, at *126 (Sept. 23, 2013) ("HTC relies only on conclusory attorney argument, which I give zero weight"), *determination to review in part*, Comm'n Notice, 2013 WL 12313125 (Dec. 9, 2013), *determination to terminate investigation based on settlement*, Comm'n Notice, 2014 WL 1010423 (Mar. 7, 2014).

Moreover, Respondents' argument that SDC's [redacted] is impossible to implement was not asserted in Respondents' Pre-Hearing Brief. (RPBr. at 29-31.). Thus, in addition to a failure of evidentiary support for their argument, Respondents waived, withdrew or abandoned that argument for all appeal purposes under Ground Rule 7.2.

For the foregoing reasons, it is a finding of this ID that SDC has proven by a preponderance of evidence, both testimonial and documentary, that its definition of TS II.1.a is described with reasonable particularity.

b) TS II.1.b ([redacted])

SDC defined TS II.1.b as follows:

[redacted]



(FITS at 40.).

Respondents did not dispute that SDC described TS II.1.b with sufficient particularity. (JSUI at 1-2.). Therefore, the only issue is whether SDC has carried its burden of proving by a preponderance of evidence that its definition of TS II.1.b is described with sufficient particularity.

SDC introduced into evidence an SDC presentation titled "[redacted]" dated [redacted]. (CX-0555C.0002.). Mr. Lee, again an engineer and SDC fact witness, and Dr. Katona. SDC's expert witness, testified that CX-0555C.0003 depicts SDC's [redacted] in accordance with SDC's description of TS II.1.b. (CX-0555C.0003; Tr. (H. Lee) at 250:7-23; Tr. (Katona) at 356:16-357:13). CX-0555C.0003 is reproduced in Figure 21 below.

Figure 21: SDC's



(CX-0555C.0003; Tr. (H. Lee) at 250:7-23, Tr. (Katona) at 356:16-357:13.).

In the top center of CX-0555C.0003, there is a picture of . (CX-0555C.0003.). In the upper right of the same exhibit, there are (*Id.*). One comment states that the while the other comment states that the (*Id.*). The lower right of CX-0555C.0003 depicts as shown on the right, as described in SDC's description of TS II.1.b. (*Id.*).

Given the undisputed evidence of SDC's in SDC's

[redacted], it is a finding of this ID that SDC has proven by a preponderance of evidence that its definition of TS II.1.b is described with sufficient particularity.

c) TS II.1.c ([redacted])

SDC defined TS II.1.c as follows:

[redacted]

(FITS at 40.).

Respondents' arguments focused on Respondents' theory that SDC failed to sufficiently describe how the [redacted]. (RBr. at 45; RRBr. at 9.). As explained below, Respondents' arguments are not supported by the evidence.

SDC argued, with citation to testimonial and documentary evidence, that TS II.1.c is described with sufficient particularity. (CBr. at 31-32.). SDC relied on the presentation titled "[redacted]," which SDC also relied on to describe TS II.1.b. (CX-0555C.0003.). Dr. Katona testified that CX-0555C.0003 reflects SDC's [redacted]. (Tr. (Katona) at 356:16-357:13; CX-0555C.0003.). CX-0555C.0003 (Figure 21, *supra*) and Dr. Katona's testimony with respect to CX-0555C.0003 is discussed in Section VI.C(1), above.

SDC also relied upon CX-0563C, which is an SDC presentation titled "[redacted]. (CRBr. at 15; CX-0563C.0002.). SDC's witness, Mr. Lee, testified that CX-0563C.0011 reflects [redacted]. (Tr. (H. Lee) at 250:24-251:21; CX-0563C.0011.).

Respondents argued that it is unclear from SDC's description "how a [redacted]." (RBr. at 45.). Respondents also contended that the only document cited in SDC's description, CX-0563C, "makes ***no*** mention of [redacted], and does not support the notion that SDC's [redacted] because, as noted above, SDC [redacted]" (*Id.* (emphasis in original).).

Staff's view is that, regardless of what SDC's documents say about the value of the [redacted], the narrative description of TS II.1.c plainly provides a [redacted], which is sufficiently clear. (SBr. at 39.).

For the reasons discussed above, it is a finding of this ID that Respondents did not cite evidence to support their argument that it is unclear how a [redacted]. It is therefore conclusory attorney argument and given no weight. *Electronic Devices*, Inv. No. 337-TA-847, FID, 2013 WL 5822559, at *126.

Respondents also argued that SDC's description is not sufficiently clear because it requires the [redacted]. (RRBr. at 9.). According to Respondents, the value of the [redacted]. (*Id.*).

Respondents appear to have misunderstood SDC's description of TS II.1.c. According to

SDC's description of TS II.1.c, [redacted]. (FITS at 40.). For [redacted]. Therefore, SDC's description of TS II.1.c is not inconsistent.

Finally, Respondents contended that TS II.1.c's recitation of [redacted] contradicts TS II.1.a's requirement for a [redacted]. (RRBr. at 9-10.). However, Respondents' contention is also incorrect. TS II.1.c requires the [redacted]. TS II.1.a requires the [redacted], which is [redacted]. In other words, the two trade secrets have overlapping scope and thus are consistent with each other.

None of Respondents' arguments are supported by either credible documentary or testimonial evidence. The evidence Respondents cited is testimony by their expert, Dr. Glew, who testified that CX-0563C.0011 only depicts a [redacted]. (Tr. (Glew) at 1305:8-20; CX-0563C.0011.). The problem with Respondents' reliance on this testimony by Dr. Glew is that the depiction of a [redacted] in CX-0563C.0011 is [redacted] in SDC's description of the trade secret. There is nothing inconsistent between SDC's text description and the documents SDC relies on in its description.

Dr. Glew also testified as follows with respect to the depiction shown in CX-0563C.0011:

Q. Does SDC's [redacted]

[redacted]?

A. In this type of arrangement where the [redacted]

(Tr. (Glew) at 1306:1-11.).

CX-0563C.0011 is reproduced in Figure 22 below. A [redacted] is clearly depicted in the upper right.

Figure 22: CX-0563C.0011 Which Dr. Glew Claims Depicts a [redacted]



(CX-0563C.0011.).

The problem with Dr. Glew's testimony is that it is vague and conclusory. Dr. Glew stated that "it" can [redacted]. It is not clear what "it" he is referring to. Presumably his intent was to assert that the [redacted]. However, it is impossible to tell because Dr. Glew did not explain why or how the [redacted]

Dr. Glew's testimony also fails to account for the context provided by the entire record in this Investigation. There is no evidence in the present record that the purpose of the depiction on CX-0563C.0011 is to show how or whether there can be movement of any component. To the contrary, Mr. Lee testified that CX-0563C.0011 shows how SDC's testing proved that an [redacted] between the [redacted], *i.e.* [redacted], would cause [redacted]. (Tr. (H. Lee) at 250:24-251:21; CX-0563C.0011.).

For the foregoing reasons, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS II.1.c is described with sufficient particularity.

d) TS II.1.y ([redacted])

SDC defined TS II.1.y as follows:

[redacted]

(FITS at 45.).

Respondents again argued through their expert, Dr. Glew, without corroborating evidence, that SDC's description of TS II.1.y is unclear. However, as explained below,

Respondents' expert did not explain what exactly was unclear. In contrast, SDC's fact and expert witnesses testified persuasively that SDC's description of TS II.1.y is clear.

Mr. Lee, again an SDC fact witness, testified that to be used in SDC's EV/EN[34] process, the [redacted]. (CBr. at 32; Tr. (H. Lee) at 247:23-248:12.). He explained that [redacted]. (*Id.* at 248:13-250:6.). Dr. Katona, SDC's expert, also described this process. (Tr. (Katona) at 353:25-354:18.). Dr. Katona explained that first, [redacted]. (*Id.*). Then, [redacted]. (*Id.*). Dr. Katona's demonstrative, CDX-0002C.0033, is reproduced in Figure 23 below.

[34] "EVEN" or "EV/EN" stands for "evaporation and encapsulation."

Figure 23: Dr. Katona's Demonstrative That Depicts the Process Involved in TS II.1.y



(CDX-0002C.0033; Tr. (Katona) at 353:25-354:18.).

Respondents argued that SDC's description of TS II.1.y is "vague and undefined" because the four documents cited in the description are "vague and unrelated to SDC's II.1.y assertions." (RBr. at 47-48.). When asked whether SDC's description of this trade secret made sense to him, Dr. Glew responded "not really." (Tr. (Glew) at 1308:5-7.). Dr. Glew testified that he understood parts of it such as , the EV/EN process, and that there is a trade-named Y-OCTA process. (*Id.* at 1308:8-15.). However, Dr. Glew also testified that "the documentation creates a lot of confusion with respect to this trade secret." (*Id.* at 1308:10-15.). Notably, Dr. Glew did not specify which aspects of the documentation he found confusing. (*Id.* at 1308:16-1309:6.). Neither did he explain why he found SDC's description to be confusing.

Dr. Glew's failure to explain what was confusing about the documentation cited in SDC's description of TS II.1.y renders his opinion conclusory and is, therefore, entitled to little, if any, weight. *See, e.g.*, *Magnetic Tape Cartridges*, Inv. No. 337-TA-1058, Comm'n Op. at 11 (Apr. 9,

2019); *TQ Delta, LLC v. CISCO Sys., Inc.*, 942 F.3d 1352, 1361 (Fed. Cir. 2019). Moreover, neither SDC's witness, Mr. Lee, nor SDC's expert, Dr. Katona, expressed any uncertainty in their testimonies about the meaning of TS II.1.y. On this issue, Respondents' counsel did not even attempt to undermine Mr. Lee's and Dr. Katona's testimonies during cross-examination.

For the foregoing reasons, it is a finding of this ID that SDC proved by a preponderance of evidence that it described TS II.1.y with sufficient particularity.

2. SDC Proved Existence of a Protectible Trade Secret

a) The Glass Separation and Movement Trade Secrets Are Neither Generally Known Nor Readily Ascertainable

(i) TS II.1.a

In their Post-Hearing Briefs, Respondents did not argue that TS II.1.a is generally known or readily ascertainable. (RBr. at 31-53; RRBr. at 8-20.). Therefore, Respondents waived, withdrew, or abandoned any argument on this issue under Ground Rule 10.1. Thus, the only issue is whether SDC has met its burden of proof. "[W]hether or not a matter is generally known or readily ascertainable is a factor that must be considered in determining whether or not a prima facie case has been made that a trade secret exists." *Rubber Resins*, Inv. No. 337-TA-849, ID at 61 (Aug. 16, 2013).

Dr. Katona testified that it would not have been possible to reverse engineer SDC's [redacted]. (Tr. (Katona) at 362:16-25.). He also testified that he had not seen evidence that the [redacted] had been disclosed in any publicly available publication because SDC does not publish photographs or specifications, there were no public disclosures such as patents or papers, and it would not be possible to reverse-engineer it from an end product. (*Id.*; CDX-0002C.0043.).

Staff agreed with SDC that TS II.1.a is not generally known or readily ascertainable.

(SBr. at 41.).

Given the undisputed evidence and the lack of any counterargument from Respondents, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS II.1.a is neither generally known nor readily ascertainable.

(ii) TS II.1.b, and TS II.1.c

The only dispute is whether SDC's [redacted] that is the subject of TS II.1.b and TS II.1.c is generally known or readily ascertainable from public sources. "Matters that are generally or commonly known within the industry are considered readily ascertainable, and conversely, information that would be difficult or impossible to independently recreate is not readily ascertainable. *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Mfg. or Relating to Same, & Prods. Containing Same* ("*Selective Thyroid Hormone*"), Inv. No. 337-TA-1352, ID at 80 (Oct. 3, 2024), *Comm'n Determination to Review*, EDIS Doc. ID No. 843895; 90 Fed. Reg. 9910-13 (Feb. 19, 2025). "Even if there is publicly available information about the matter, the matter is not readily ascertainable unless that information would allow a skilled member of the industry to easily reverse engineer and reproduce all elements of the matter." *Id.*

Dr. Katona testified that it would not have been possible to reverse engineer SDC's [redacted] or SDC's [redacted]. (Tr. (Katona) at 362:16-25.). He also testified that he had not seen evidence that any of the foregoing had been disclosed in any publicly available publication. (*Id.*).

Respondents argued that SDC's [redacted] is a "simple solution" and "constitutes a straightforward solution that could have been readily conceived not only by a skilled OLED display engineer, but by an ordinary layperson." (RRBr. at 12.). In support of their argument,

Respondents cited the following testimony Dr. Glew provided while describing his demonstrative, which is quoted below. The demonstrative Dr. Glew described in his testimony is reproduced in Figure 24 below.

> Q. Let's turn now to slide RDX-0004.0024. What does this image depict?
>
> A. This depicts in a simple, schematic way generally the problem, which is that [redacted] This is, I think, a solution that most people can envision in their head.

(Tr. (Glew) at 1289:25-1290:10.).

Figure 24: Dr. Glew's Depiction of a [redacted] From RDX-0004C.0024



(RDX-0004C.0024.).

Aside from the fact that their exhibit is not precise, and more of a rough sketch or caricature, even if Respondents' and Dr. Glew's argument is correct, it is insufficient on its own

to prove that TS II.1.b and TS II.1.c are generally known or readily ascertainable. Assuming, *arguendo*, that upon seeing the problem depicted on the left of RDX-0004C.0024, one could readily envision the solution depicted on the right of RDX-0004C.0024, that still does not prove that the problem depicted on the left of RDX-0004C.0024 was generally known or readily ascertainable. Neither Dr. Glew nor Respondents presented evidence that the problem depicted on the left is publicly known or readily ascertainable. More broadly, neither Respondents nor Dr. Glew cited a single publicly available source of information relevant to SDC's [redacted] design. Respondents' argument is therefore not supported by sufficient evidence.

Respondents also argued that SDC's [redacted] design originated from SDC vendor Naeil System ("Naeil").[35] (RRBr. at 12.). Respondents cited testimony by Mr. Lee, elicited on re-cross examination, about CX-0789C. (*Id.*). CX-0789C is a document authored by Naeil dated [redacted]. (CX-0789C.). Mr. Lee testified on re-cross examination that CX-0789C depicts a "[redacted]" (Tr. (H. Lee) at 270:15-261:2.).

The problem with Respondents' argument is that CX-0789C was precluded from evidence during the Pre-Hearing Conference rulings on SDC's Motion *in Limine* No. 2 because it was not timely disclosed during discovery. (Tr. at 43:23-45:14.).

Even if CX-0789C had been allowed into evidence, it does not demonstrate that TS II.1.b or TS II.1.c are generally known or readily ascertainable. Respondents did not produce evidence that CX-0789C was ever publicly available. Respondents also did not produce evidence that the

[35] SDC used Naeil to manufacture the [redacted] that are the subject of the Category II trade secrets. (Tr. (H. Lee) at 253:8-12, 256:15-257:1.). Naeil was not involved in the design process for SDC's [redacted] and [redacted]. (*Id.* at 265:24-266:21, 268:4-9, 268:15-269:2.).

content of CX-0789C was derived from public sources or from general knowledge. Finally, even if the content of CX-0789C were generally known or readily ascertainable, Mr. Lee testified that CX-0789C is related to [redacted], not [redacted] that are the subject of SDC's category II.1 trade secrets. (Tr. (H. Lee) at 270:15-271:2.). Moreover, neither Respondents nor Dr. Glew explained how the design of [redacted] as depicted in CX-0789C relates to the design of [redacted] as described for TS II.1.b and TS II.1.c.

For the reasons explained in the preceding paragraphs of this Section, it is a finding of this ID that Respondents failed to rebut SDC's proof that TS II.1.b is neither generally known nor readily ascertainable. Staff also agreed that Respondents did not sufficiently substantiate their arguments that TS II.1.b is generally known or readily ascertainable. (SBr. at 42.).

With respect to TS II.1.c, Respondents did raise any arguments, and did not present any evidence, that a [redacted] is publicly known or readily ascertainable. (RBr. at 31-53; RRBr. at 12-13.). For this reason and the reasons explained in the preceding paragraphs of this Section, it is a finding of this ID that Respondents failed to rebut SDC's proof that TS II.1.c is neither generally known nor readily ascertainable. Staff also agreed that Respondents did not sufficiently substantiate their arguments that TS II.1.c is generally known or readily ascertainable. (SBr. at 42.).

(iii) TS II.1.y

The only dispute is whether the [redacted] as described in TS II.1.y was generally known or readily ascertainable. *Selective Thyroid Hormone*, Inv. No. 337-TA-1352, ID at 80 ("Matters that are generally or commonly known within the industry are considered readily ascertainable."). Public information alone is insufficient. *Id.* ("The matter is

not readily ascertainable unless that information would allow a skilled member of the industry to easily reverse engineer and reproduce all elements of the matter.").

Dr. Katona testified that: (i) it would not be possible to reverse engineer the process described in TS II.1.y from an end product; and (ii) TS II.1.y is not disclosed in any publicly available source. (Tr. (Katona) at 362:16-25.).

Respondents argued that between [redacted]. (RBr. at 48; Tr. (Glew) at 1309:12-1310:2.). Respondents also asserted that [redacted]. (RBr. at 48; Tr. (Glew) at 1309:12-1310:2.). Therefore, Respondents contended that the [redacted], as recited in TS II.1.y, was "publicly known and would have been readily ascertainable to a skilled OLED manufacturing engineer." (RBr. at 48.).

One obvious problem with Respondents' and Dr. Glew's argument is that it is conclusory. Neither Dr. Glew nor Respondents presented documentary evidence that OLED manufacturers were [redacted]. If that public information was available, surely Dr. Glew and Respondents would have produced it. To the contrary, Dr. Katona testified that the [redacted]. (Tr. (Katona) at 355:7-10.). Also, neither Respondents nor Dr. Glew presented documentary evidence that [redacted]

[redacted]. Ultimately, neither Respondents nor Dr. Glew presented documentary evidence that [redacted] was generally or commonly known in the industry. Dr. Glew's opinion is too conclusory to prove that [redacted] is generally or commonly known in the industry. Accordingly, his testimony has been given, little, if any weight. *See, e.g.*, *Magnetic Tape Cartridges*, Inv. No. 337-TA-1058, Comm'n Op. at 11; *TQ Delta*, 942 F.3d at 1361.

Staff also agreed that Respondents failed to cite documentary evidence of public availability. (SBr. at 42.).

For the reasons discussed above, it is a finding of this ID that SDC proved by a preponderance of evidence that TS II.1.y is not generally known or readily ascertainable.

b) The Glass Separation and Movement Trade Secrets Have Economic Value

SDC argued that the Category II Trade Secrets have economic value because they enable [redacted]. (CBr. at 33; Tr. (H. Lee) at 248:22-249:7, 249:18-251:21, 250:18-23; CX-0555C.0003 ([redacted]); CX-0563C.0010, .0011 (same).).

Respondents contended that SDC did not prove that TS II.1.a has economic value because the [redacted] depicted in SDC's evidence (CX-0563C.0011 and CX-0555C.0003): (i) have [redacted]; (ii) [redacted]; and (iii) [redacted]. (RBr. at 34.). Because these arguments were not raised in Respondents' Pre-Hearing Brief, Respondents waived, withdrew or abandoned them for all appeal purposes under Ground Rule 7.2. (RPBr. at 30-31.).

Even if they have not been waived, Respondents' arguments fail because they do not comport with the evidence, and in particular, Dr. Glew's testimony upon which Respondents relied. Dr. Glew testified as follows:

> Q. What does the first document SDC cites in its description of category II.1.a show?
>
> A. If we view the image in the middle of CX-0563 at 11, what we see – can we blow that up?
>
> Q. Sure. Let's turn to slide RDX-0004.0023.
>
> A. What we see is [redacted], but this is an illustration.

(Tr. (Glew) at 1288:24-1289:15.).

Dr. Glew's testimony does not support Respondents' arguments because Dr. Glew admitted that in the image upon which his testimony relies the dimensions do not line up because the image "is just an illustration." (*Id.*). Moreover, as SDC noted in its Reply Post-Hearing Brief, when the image depicted in CX-0563C.0011 is enlarged, [redacted] is clearly shown, and the [redacted]. (CRBr. at 11.).

Respondents also asserted that SDC [redacted]. (RBr. at 35; Tr. (Glew) at 1292:11-1293:6.). However, Dr. Glew acknowledged that CX-0563C.0011, which [redacted] as recited in TS II.1.a, has [redacted], whereas CX-0830C [redacted]. (*Id.* at 1293:7-23.).

Respondents' argument that SDC [redacted] thereby undermining if not eliminating the value of the [redacted] is not supported by the evidence. Mr. Lee testified

that [redacted] (RX-1491C (H. Lee Dep. Tr.) at 198:17-19.). Additionally, the fact that the economic benefits of using a [redacted] can also be obtained [redacted] does not mean [redacted] has no economic value. Clearly, the [redacted] has value to SDC because SDC uses it. The [redacted] also has value to SDC's competitors because, as explained below, Respondents use SDC's [redacted] trade secret.

For the foregoing reasons, it is a finding of this ID that SDC proved by a preponderance of evidence that the Glass Separation and Movement Trade Secrets have economic value.

3. SDC Proved Respondents Acquired the Glass Separation and Movement Trade Secrets Through Improper Means

Respondents argued that they did not use improper means to acquire SDC's Glass Separation and Movement Trade Secrets because Respondents [redacted] (RRBr. at 17-18.). Therefore, the issue is whether there is sufficient direct or circumstantial evidence that Respondents acquired SDC's TS II by an improper means.

SDC argued that Respondents used two (2) methods to improperly acquire SDC's TS II. The first of these was through former SDC employees who went to work for Respondents. With respect to that method of acquiring a competitor's trade secret, Courts have found that when an employee had access to the trade secrets, leaves, and is hired by the defendant competitor in a nearly identical position as he or she held when he or she worked for the trade secret owner, there is a high likelihood of misappropriation. (SBr. at 49 (citing *Comput. Assocs. Int'l v. Quest Software, Inc.*, 333 F. Supp. 2d 688, 696-97 (N.D. Ill. 2004); *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 41-42).).

SDC contended that the evidence supports a finding that the Glass Separation and Movement trade secrets were obtained by improper means because a former SDC employee, [redacted] Glass Separation and Movement trade secrets [redacted]. (CX-0680C.0008.).

[redacted] (CX-1783C ([redacted] Dep. Tr. Vol. 1) at 28:18-22.). [redacted] (*Id*. at 31:3-32: 8; 35:17-36:10.). [redacted] (Tr. (H. Lee) at 251:22-252:14; CX-0563C.0011; CX-2477C.0001-0002.).) [redacted] (CX-1783C

[36] [redacted] (Tr. (H. Lee) at 265:14-18.). While he was with SDC, [redacted] oversaw the design team that developed SDC's category II.1 trade secrets. (*Id.* at 265:24-266:11; Tr. (Katona) at 356:2-12, 432:13-21.). [redacted] testimony was introduced through his deposition. (CX-1783C ([redacted] Dep. Tr. Vol. 1) at 169:20-170:2.). After leaving SDC, [redacted] eventually joined Respondents. (*Id.* at 14:4-5, 137:23-139:12.).

(Dep. Tr. Vol. 1) at 135:18-137:16.). (*Id.* at 137:21-22.). (*Id.* at 14:4-5, 137:23-139:12.). (CX-0379C.0010-0018 CX-2482C.0005

Respondents argued that did not have access to the completed trade secrets because he left SDC in , which was . (RRBr. at 18.). However, Respondents' assertion that left is not supported by the evidence. One of Respondents' documents, CX-0563C, dated January 29, 2015, and titled " , identifies . (CX-0563C.0001-0011.). Moreover, CX-2477C.0001-0002 is a document that contains (CX-2477C.0001-0002.). SDC's Y-OCTA process and the . (*Id.*). Moreover, (CX-1783C (Dep. Tr. Vol. 1) at 113:25-114:6.).

In sum, Respondents' asserted timeline for [redacted] employment at SDC, and Respondents' argument that [redacted] was not sufficiently involved with the Glass Separation and Movement trade secrets, does not comport with the evidence. The substantial weight of the circumstantial evidence suggests that Respondents acquired certain of its glass processes of TS II by improper means. (Tr. (H. Lee) at 251:22-252:14; CX-0563C.0011; CX-2477C.0001-0002; CX-0680C.0008; CX-1783C ([redacted] Dep. Tr. Vol. 1) at 14:4-5, 35:7-16, 135:18-139:12; CX-0379C.0010-0018; CX-2482C.0005; CX-0379C.0010-0018; Tr. (Katona) at 367:13-368:23.). Therefore, it is a finding of this ID that SDC proved by a preponderance of evidence that Respondents acquired the Category II Trade Secrets by improper means.

4. SDC Proved Respondents Used the Glass Separation and Movement Trade Secrets

a) TS II.1.a

The only issue is whether, when Respondents [redacted], as required by TS II.1.a. SDC adduced documentary and testimonial evidence that [redacted]. [redacted] e [redacted] h [redacted]. (CX-0107C.0004; Tr. (Katona) at 364:7-365:16; CX-1772C (Lin Dep. Tr. Vol. 2)[37] at 213:7-216:14.). [redacted]

[37] At the time of the Hearing, Mr. Kunxian Lin [redacted] (Tr. (Lin) at 1262:22-24.).

.

Figure 25:



(CX-0107C.0004; *see also* Tr. (Katona) at 364:7-365:16; CX-1772C (Lin Dep. Tr. Vol. 2) at 213:7-216:14

(RX-0094C.0017; CX-0099C.0001.).

. (Tr. (Lin) at 1268:25-1269:4.). It looks like a of the type that SDC uses.

Figure 26: [redacted]



(RX-0094C.0017.).

Figure 27: [redacted][38]



(CX-0099C.0001.).

Respondents argued that, despite the language of their schematics, they do not "use" TS II.1.a because [redacted]. (RBr. at 13-14.).

[38] [redacted] "[redacted]" [redacted]

[redacted]. ([redacted]

[redacted]

[redacted]' [redacted] (Tr. (Lin) at 1268:5-24; CX-0096C.0002.).

[redacted] (Tr. (Lin) at 1263:11-20.). [redacted]. (*Id.* at 1263:21-1264:24.). [redacted]. (*Id.*at 1264:25-1268:2.). [redacted] (Tr. (Pooley) at 733:24-734:9),[40] [redacted]

[redacted]

[39] [redacted]'. (Tr. (Glew) at 1293:7-12, 1300:4-19, 1303:16-19.). [redacted]. (*Id.* at 1310:3-23.).

[40] When he was called to testify on SDC's behalf on October 28, 2024, Mr. James Pooley described himself as an expert on "trade secret management and protection systems." (Tr. (Pooley) at 721:1:4.). SDC offered Mr. Pooley as an industry expert related to reasonable measures to protect trade secrets and relevant industry standards…" without objection. (*Id*. at 723: 13-25.). Among his other qualifications, Mr. Pooley says he has authored "hundreds of articles and several books." One of those publications is the "Trade Secret Case Management Guide" which Mr. Pooley co-authored in 2023 for the Federal Judicial Center. Mr. Pooley also testified that he has advised many companies on their security measures, among them 3M, GE, and Phillips. (*Id*. at 725:25-726: 6.). Mr. Pooley was appointed by the White House to be the Senior Diplomat for Intellectual Property at the United Nations to run the International Patent System at the World Intellectual Property Organization ("WIPO"). (*Id.* at 5-13.). He founded the Sedona Conference Working Group on Trade Secrets, of which he is the Chair Emeritus. (*Id.* at 721: 15-16.).

(*Id.* at 1268:5-24; CX-0096C.0002.).

.

Figure 28:



(CX-0096C.0002; Tr. (Lin) at 1268:5-24.).

. (Tr. (Lin) at 1268:25-1269:4.).

(*Id.* at 1269:5-15.).

. (*Id.* at 1269:16-1270:13.).

. (*Id.* at 1270:14-24; *see also* Tr. (Glew) at 1293:24-1294:15.).

[41] . (Tr. (Katona) at 367:13-368:6.).

[redacted] *Id.* at 1270:25-1271:12.).

Staff and SDC both [redacted]. (SBr. at 51; CRBr. at 12.). [redacted]. (SBr. at 51; CRBr. at 12.).

Respondents' argument, and Mr. Lin's testimony during the Hearing, that [redacted], is belied by the documentary evidence and Mr. Lin's prior deposition testimony. (CX-0107C.0004; CX-1772C (Lin Dep. Tr. Vol. 2) at 213:7-216:14 [redacted]); *see also* Tr. (Katona) at 364:7-365:16.). Neither Respondents nor their expert addressed [redacted] which depicts a [redacted]. (CX-0107C.0004; Tr. (Katona) at 364:7-365:16; CX-1772C (Lin Dep. Tr. Vol. 2) at 213:7-216:14.). CX-0107C.0004 thus constitutes undisputed evidence that Respondents use the [redacted] described in TS II.1.a. Moreover, additional documentary evidence, which Respondents and their expert also did not address, depict [redacted]. (*See, e.g.*, RX-0094C.0017; CX-0099C.0001.). [redacted], [redacted] "[redacted]."

Even more significantly, with respect to dimension, [redacted]

[redacted] (CX-0096C.0002.). To demonstrate how CX-0096C.0002 depicts Respondents' [redacted], Staff created an annotated version of [redacted]. (SBr. at 51.). Staff's annotated version contains annotations that are superimposed on [redacted]. (*Id.*). Staff's annotated version of [redacted] is reproduced in Figure 29 below. Staff's annotated figure depicts [redacted]

Figure 29: [redacted]



(SBr. at 51 (citing CX-0096C.0002 (annotated)).).

Respondents did not explain why the [redacted] when all of Respondents' documentation depicts a [redacted] Moreover, Respondents' argument and Mr. Lin's testimony that the [redacted]

[redacted] contradicts Respondents' own documentary evidence and Mr. Lin's own previous testimony.

Therefore, it is a finding of this ID that SDC proved, by a preponderance of evidence, that SDC proved by a preponderance of evidence that Respondents use TS II.1.a.

b) TS II.1.b and TS II.1.c

The issue is whether the [redacted], constitute [redacted] as required by TS II.1.b and TS II.1.c. Use of modifications and/or improvements to a trade secret do not negate use of the trade secret if such modifications and/or improvements are derived from the trade secret information. *Steel Railway Wheels*, Inv. No. 337-TA-655, ID at 22 ("a claim of trade secret misappropriation is broad enough to encompass modifications or improvements to a product or process, when such modifications or improvements are derived from the asserted trade secrets") (citing and quoting *Mangren Research and Dev. Corp. v. Nat'l Chem. Co., Inc.*, 87 F.3d 937, 944 (7th Cir. 1996)), *not rev'd in relevant part*, Comm'n Notice (Dec. 17, 2009)).

SDC argued that Respondents use a [redacted] (that Respondents' have called a [redacted]) that is required by TS II.1.b and II.1.c. SDC relied upon on the same evidence as it relied upon to support its argument with respect to Respondents' misappropriation of TS II.1.a. (CBr. at 39-40 (citing CX-0107C.0004; CX-0096C; CX-1772C (Lin Dep. Tr. Vol. 2) at 69:15-70:14); *see also* CX-1772C (Lin Dep. Tr. Vol. 2) at 216:15-217:5 (describing Respondents' [redacted]

Respondents argued that they created and used a "fundamentally different, [redacted] (RBr. at 38.). To that point, Respondents argued that their [redacted] is important and fundamentally different from

SDC's [redacted] because [redacted]. (*Id.*). According to Respondents, the [redacted]. (*Id.*). In distinguishing their [redacted] Respondents described SDC's [redacted] (*Id.*). [redacted]. (*Id.* at 39.).

For evidentiary support, Respondents relied on Dr. Glew, who testified that [redacted]. (Tr. (Glew) at 1360:14-1361:6.). He explained that because SDC's [redacted]. (*Id.*). Dr. Glew also testified that [redacted] (*Id.* at 1302:15-23; RDX-0004C.0034, .0036.). Respondents argued that these "fundamental differences in both the design and application of the [redacted] established in evidence presented at the Evidentiary Hearing" mean that SDC failed to prove that Respondents use TS II.1.b. (RBr. at 39.).

Staff argued that Respondents' [redacted] does not negate the fact that Respondents use SDC's trade secret because Respondents' [redacted] was developed based

on a modification to SDC's [redacted] trade secret. (SBr. at 53 (citing *Bone Cements*, Inv. No. 337-TA-1175, Comm'n Op. at 21 ("[A]n actor is liable for using the trade secret with independently created improvements or modifications if the result is substantially derived from the trade secret.") (citation omitted); *Steel Railway Wheels*, Inv. No. 337-TA-655, ID at 46, *unreviewed in relevant part*).). To that point, Dr. Katona testified that in his opinion, the [redacted] appeared to be no more than a derivation of SDC's trade secret. (Tr. (Katona) at 364:21-365:3.).

The problem with Respondents' argument is that [redacted], exactly as required by TS II.1.b. (CX-0107C.0004; CX-0096C; CX-1772C (Lin Dep. Tr. Vol. 2) at 69:15-70:14); *see also* CX-1772C (Lin Dep. Tr. Vol. 2) at 216:15-217:5.). Although Respondents' [redacted] was modified to include a [redacted] is not prohibited by SDC's trade secret descriptions. Respondents' [redacted] is quite obviously a modification of SDC's [redacted]. That it is a modification of SDC's trade secret places it squarely within the scope of Commission precedent that a modification or derivation from a trade secret falls within the scope of "use." *Steel Railway Wheels*, Inv. No. 337-TA-655, ID at 22 (Oct. 16, 2009); *Bone Cements*, Inv. No. 337-TA-1175, Comm'n Op. at 21. Respondents' modification thus falls within the legal standard for what constitutes "use," which allows for modifications and improvements to trade secrets. (CX-0107C.0004; CX-0096C; CX-1772C (Lin Dep. Tr. Vol. 2) at 69:15-70:14); *see also* CX-1772C (Lin Dep. Tr. Vol. 2) at 216:15-217:5.).

Accordingly, it is a finding of this ID that SDC has proven by a preponderance of evidence that Respondents use TS II.1.b and TS II.1.c.

c) TS II.1.y

Respondents did not dispute that they use TS II.1.y in their OLED manufacturing process. (RBr. at 47-53.). Thus, any argument on this issue is deemed waived, abandoned or withdrawn under Ground Rule 10.1. Therefore, the only issue is whether there is a preponderance of evidence that Respondents use TS II.1.y.

The undisputed testimony given by Respondents' expert, Dr. Glew, supports a finding that Respondents use SDC's TS II.1.y. Dr. Glew testified that [redacted] s [redacted]. [redacted], exactly as required by SDC's definition of TS II.1.y. (Tr. (Glew) at 1284:5-12, 1284:21-22, 1285:6-11; RDX-0004C.0018.).

Given the undisputed evidence that Respondents' process uses or is derived from SDC's trade secret and given the lack of counterargument or counterevidence from Respondents, it is a finding of this ID that SDC has proven, by a preponderance of evidence, that Respondents use TS II.1.y.

5. Respondents Conceded That They Did Not Independently Develop the Glass Separation and Movement Trade Secrets

a) TS II.1.a and TS II.1.y

Respondents conceded that they did not independently develop TS II.1.a or TS II.1.y. (JSUI at 1.). Therefore, it is a finding of this ID that Respondents failed to prove by a preponderance of evidence that they independently developed TS II.1.a and TS II.1.y.

b) TS II.1.b and II.1.c

As a threshold matter, it is unclear whether, in Respondents' Post-Hearing Briefs, Respondents asserted a defense that they independently developed their own processes that have

been found to have misappropriated TS II.1.b and TS II.1.c. Respondents argued they independently developed their [redacted] which they alleged negates the "use" element of SDC's trade secret misappropriation claim. (RBr. at 39-42.). However, Respondents did not specifically assert an independent development defense for TS II.1.b and TS II.1.c. (RBr. at 39-42; RRBr. at 15.). Respondents' independent development defense for TS II.1.b and TS II.1.c is therefore waived, withdrawn or abandoned under Ground Rule 10.1.

To the extent Respondents attempted to assert a defense that they independently developed their own process for [redacted] the issue is whether Respondents' development of its [redacted] modification to SDC's [redacted] constitutes independent development such that it negates Respondents' liability for misappropriation of SDC's trade secrets. "Independent development," as a defense to misappropriation, applies in a situation in which the defendant discovered the trade secret on their own by, for example, reverse engineering a finished product. *Sausage Casings*, Inv. No. 337-TA-148/169, ID at 247. It is not sufficient to engage in some alleged independent development if the alleged independent development derives from the trade secrets because development based on the trade secret is not "independent" development. *Bone Cements*, Inv. No. 337-TA-1175, ID at 53.

Here, Respondents' alleged independent development defense fails because Respondents' [redacted] was not developed independently. The weight of the evidence supports a finding that Respondents' [redacted] was derived from SDC's trade secrets. The evidence demonstrates that Respondents obtained TS II.1.b and TS II.1.c through improper means by hiring [redacted] away from SDC in violation of [redacted] termination agreement with SDC. (Tr. (H. Lee) at 251:22-252:14; Tr. (Katona) at 367:13-368:23; CX-0563C.0011; CX-2477.001-

2; CX-1783C (Dep. Tr. Vol. 1) at 14:4-5, 35:7-16, 116:25-119:24, 135:18-139:12; CX-0680C.0008; CX-0379C.0010-0018; CX-2482C.0005.). The evidence also supports a finding that Respondents used the required by TS II.1.b and TS II.1.c in Respondents' . (CX-0107C.0004; Tr. (Katona) at 364:7-365:16; CX-1772C (Dep. Tr. Vol. 2) at 213:7-216:14; RX-0094C.0017; CX-0099C.0001.). Moreover, , (CX-0096C.0002.). Respondents did not produce any other evidence, such as testing or experimentation records, which corroborated Respondents' allegation that they independently developed their or glass movement process. (Tr. (Katona) at 357:14-358:17, 368:24-369:4.).

On this record, any argument that Respondents developed the independently of SDC's trade secrets is utterly implausible. The timeline of events of when left SDC, joined Respondents, and the without any other records of testing or experimentation with the modified to include a , supports only one conclusion: that Respondents derived the using SDC's trade secrets as the starting point. There is not a jot of evidence from Respondents that they independently developed their own version of TS II.1.b. and TS II.1.c without "borrowing" from SDC's trade secrets.

For the forgoing reasons, it is a finding of this ID that Respondents have not carried their burden to prove independent development of TS II.1.b and TS II.1.c.

D. Trade Secret III.1.h+s ( )

1. SDC Did Not Adequately Describe Its Trade Secret

SDC defined TS III.1.h+s as follows:



(FITS at 50-53.).

The issue is whether, as Respondents argued, SDC's treatment of this combination trade secret as a single trade secret renders it insufficiently specific. (RBr. at 60; RRBr. at 20.). Courts have determined that, when it is not clear whether several individual trade secrets are asserted separately or if they are asserted in combination, then the trade secret owner's disclosure may be insufficiently specific. *See, e.g., E. & J. Gallo Winery v. Instituut Voor Landbouw-En Visserijonderzoek*, No. 117CV00808DADEPG, 2018 WL 3062160, at *6 (E.D. Cal. June 19, 2018).

SDC's position is that its description of TS III.1.h+s is sufficiently specific. (CBr. at 44-

[42] "CVD" stands for Chemical Vapor Deposition.

[43] SC-1378.0554733 is CX-0564C.0004.

[44] SC-1378.0554733 is CX-0564C.0004.

45.). SDC relied on the document cited in SDC's definition of TS III.1.h+s, CX-0564C.0004. (*Id.*). CX-0564C.0004 contains a [redacted] that SDC argued is the subject of TS III.1.h+s. (Tr. (Katona) at 373:25-374:8.). SDC's expert, Dr. Katona, relied on his demonstrative CDX-0002C.0053, which depicts the [redacted] from CX-0564C.0004 with the [redacted] highlighted in red. Dr. Katona's demonstrative CDX-0002C.0053 is reproduced in Figure 30 below.

Figure 30: Annotated Excerpt From CX-0564C.0004, TS III.1.h+s, That Depicts SDC's [redacted] Highlighted in Red



(CDX-0002C.0053; Tr. (Katona) at 369:24-370:14.).

Dr. Katona, SDC's expert, and SDC's employee Mr. Giyul Ham[45] testified that TS III.1.h+s is directed to the [redacted], depicted in Figure 30 above, [redacted]. (RX-1475C (Ham Dep. Tr.) at 130:13-132:5; Tr. (Katona) at 369:24-370:14.).

Staff argued that SDC's description of TS III.1.h+s is sufficiently specific because CX-0564C.0004 "shows the [redacted]." (SBr. at 57-58).

Respondents argued that SDC failed to identify TS III.1.h+s with the requisite specificity because SDC treated the combination of III.1.h and III.1.s as if it were only individual trade secret III.1.s. (RBr. at 60; RRBr. at 20.).

For support, Respondents cited to SDC's Pre-Hearing Brief. (*Id.*). SDC's Pre-Hearing Brief states that TS III.1.h+s is "[redacted], as shown in CX-0564C." (CPBr at 45.). Respondents also argued that SDC did not identify or describe the "other elements of the [redacted]" that are referenced in TS III.1.h but that are not referenced in TS III.1.s. (RBr. at 60; RRBr. at 20.).

Both of Respondents' arguments have merit. SDC's Pre-Hearing Brief and its reliance on CX-0564C.0004 both describe ***only TS III.1.s*** because both SDC's statement on page 45 of its Pre-Hearing Brief and SDC's reliance on CX-0564C.0004 specify [redacted]. One of the differences between TS III.1.h and TS III.1.s is that ***TS III.1.s*** [redacted]

[45] At the time of his deposition, Mr. Giyul Ham was an SDC employee who was involved with modifying and improving SDC's CVD equipment. (RX-1475C (Ham Dep. Tr.) at 51:5-53:1.). Mr. Ham did not testify during the Hearing.

[redacted], whereas ***TS III.1.h*** [redacted]. Moreover, as described in the rest of this section of the ID with respect to TS III.1.h+s, there is no evidence that SDC developed [redacted].

Another difference between TS III.1.s and TS III.1.h is that TS III.1.h refers to [redacted]," whereas TS III.1.s does not mention other elements of the [redacted]. (FITS at 50-53 (emphasis added).). Neither SDC's statement in its Pre-Hearing Brief nor CX-0564C.0004 defines the "[redacted]" referred to in TS III.1.h. In other words, both SDC's statement on page 45 of its Pre-Hearing Brief and CX-0564C.0004 appear to treat TS III.1.h+s as if it were only TS III.1.s.

TS III.1.h does not require [redacted]. However, it does require the [redacted] be defined with respect to the other elements of the [redacted]. SDC described the combination TS III.1.h+s as [redacted] without any reference to the other elements of the [redacted]. Thus, it is not clear what, if anything, TS III.1.h contributes to SDC's alleged combination trade secret. No SDC witness testified with respect to any other elements of the [redacted] and how the [redacted] relate to such elements. No SDC witness testified with respect to [redacted]. Neither SDC nor Staff addressed, in their briefs, the lack of evidence of [redacted]. (CBr. at 44-45; CRBr. at 20; SBr. at 57-58; SRBr. at 1-39.). Therefore, this issue is waived, abandoned, and withdrawn under Ground Rule 7.2.

Moreover, neither SDC nor Staff addressed, and no witness testified to, what the [redacted]

[redacted] are and what their [redacted]

[redacted]

It was SDC's burden to prove by a preponderance of evidence that its trade secrets are defined with sufficient particularity. *Olaplex, Inc. v. L'Oreal USA, Inc.*, 855 F. App'x 701, 710-12 (Fed. Cir. 2021) (lack of particularity in describing the trade secret precluded a finding that a trade secret existed). SDC defined TS III.1.h as, in relevant part, [redacted] (FITS at 51.). However, neither an SDC witness nor any other witness addressed the [redacted] Without knowing any other elements of the [redacted], the [redacted] cannot be determined and is therefore insufficiently definite. It is also unclear what, if anything, TS III.1.h contributes to SDC's alleged combination trade secret. SDC has not satisfied its burden of proof that the description of the TS III.1.h+s is sufficiently specific.

It is a finding of this ID that SDC failed to prove, by a preponderance of evidence, that its definition of TS III.1.h+s is sufficiently specific and precise.

2. SDC Proved the Existence of a Protectible Trade Secret

a) TS III.1.h+s is Neither Generally Known Nor Readily Ascertainable

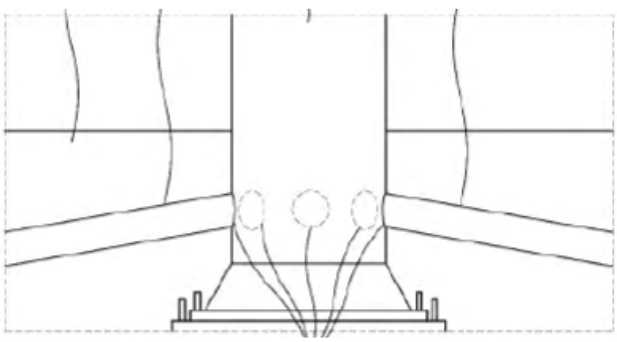
There are two (2) issues. The first is whether the [redacted] that are depicted on CX-0564C.0004, one of the documents that SDC relied on to describe TS III.1.h+s, are also described in published SDC patent application KR 10-2022-0147181 ("SDC Patent Application"). (*Compare* CX-

0564C.0004 *with* CX-0422.0030-32). The second issue is whether, even if the [redacted] are described publicly, Respondents can nevertheless be liable for misappropriation because the alleged misappropriation occurred before the SDC Patent Application was published, as SDC argued. (CBr. at 21). The Commission has held that public disclosure of a trade secret after the time of the misappropriation does not preclude liability for misappropriation. *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 31 ("the Commission affirms the ID's finding that the design of the bending machine was not known outside of Vego Garden prior to the publication of [the patent] . . . . the ID correctly found that the trade secret remained confidential before the publication of the patent application and was thus protectable at the time of the alleged misappropriation. The Commission has recognized that a protectable trade secret can exist when it is kept secret before the publication of a patent application") (internal citations omitted). The SDC Patent Application bears the publication date November 3, 2022. (CX-0422.0018.).

With respect to the first issue, Respondents argued that TS III.1.h+s is disclosed in the SDC Patent Application (CX-0422), a South Korean patent application publication titled "Thin film deposition apparatus" and published on November 3, 2022. (RBr. at 54-55.). Both the SDC Patent Application and CX-0564C.0004 depict a [redacted]. Depicted in Figures 31 through 34 below are images from the SDC Patent Application next to images from CX-0564C.0004.

Figure 31 below depicts side (cross-sectional) views of the [redacted] according to SDC's Patent Application (left) and according to TS III.1.h+s (right).

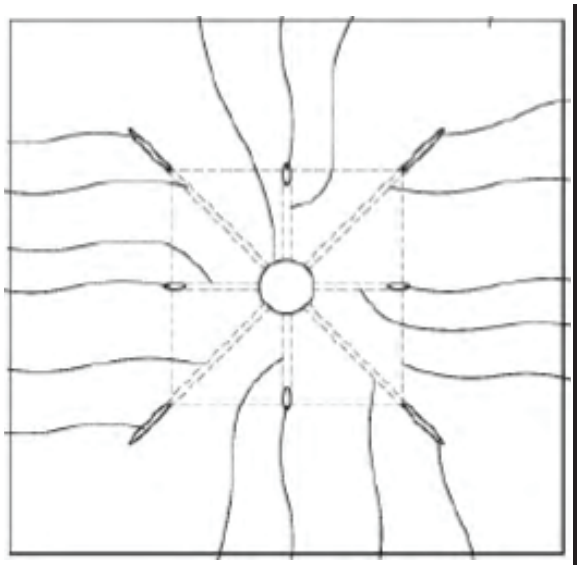
Figure 31: Figure 2 of the SDC Patent Application (CX-0422.0030) (Left) and CX-0564C.0004 (Right)



(CX-0422.0030; CX-0564C.0004.).

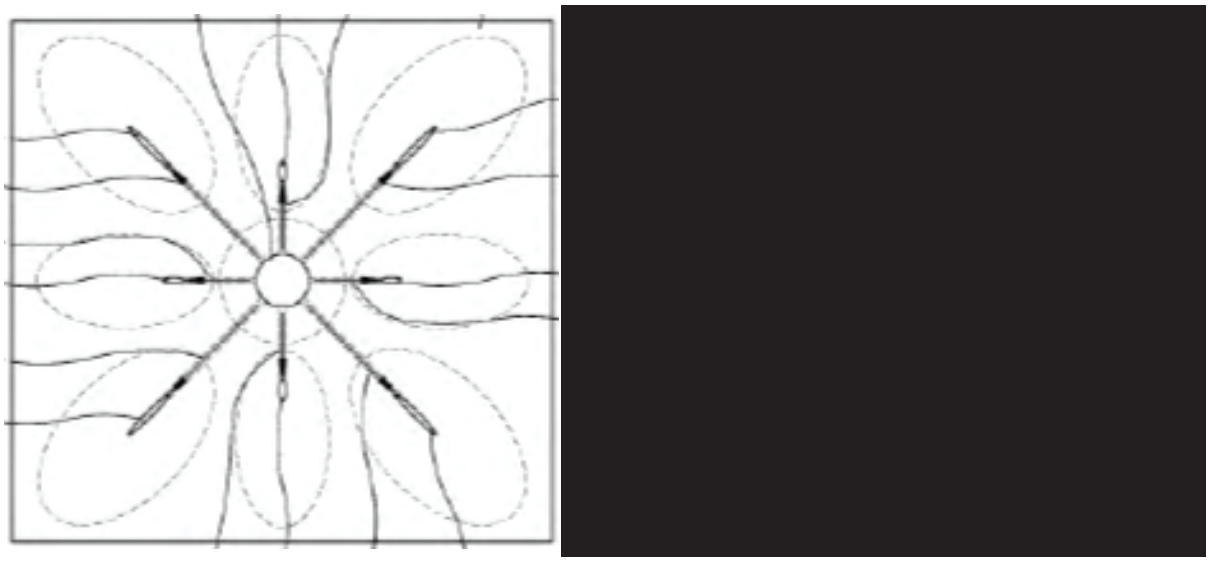
Figures 32-34 below depict head-on (plan) views of the according to the SDC Patent Application (left) and according to TS III.1.h+s (right). Depicted on the left are . Also shown on the right are

Figure 32: Figure 3 of SDC's Patent Application (CX-0422.0031) (Left), and CX-0564C.0004 (Right)



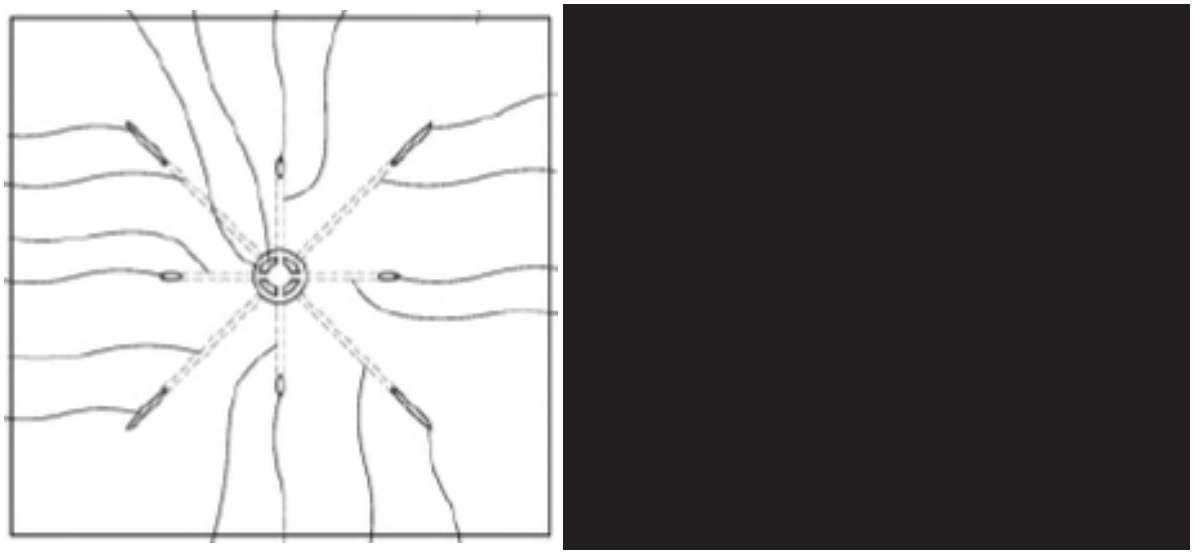
(CX-0422.0031; CX-0564C.0004.).

Figure 33: Figure 4 of SDC's Patent Application (CX-0422.0031) (Left), and CX-0564C.0004 (Right)



(CX-0422.0031; CX-0564C.0004.).

Figure 34: Figure 5 of SDC's 2022 Patent Application, (CX-0422.0031) (Left), and CX-0564C.0004 (Right)



(CX-0422.0032; CX-0564C.0004.).

Respondents' expert, Dr. Glew, testified that Figures 2 and 4 of the SDC Patent Application depict a [redacted]. (Tr.

(Glew) at 1314:16-1315:13; RDX-0004C.0054-55.). Dr. Glew testified that, because the SDC Patent Application depicts a [redacted], it discloses SDC's TS III.1.h+s. (Tr. (Glew) at 1315:14-21.). However, Dr. Glew's opinion is not consistent with the evidence he cited. SDC's Trade Secret III.1.h+s requires [redacted] (CX-0564C.0004), while the SDC Patent Application does not disclose [redacted]. (*Compare* CX-0422.0030-.0032 *with* CX-0564C.0004.).

In contrast, SDC's expert, Dr. Katona, opined that SDC's Patent Application does not disclose SDC's TS III.1.h+s because SDC's Patent Application does not disclose [redacted] that are depicted in CX-0564C.0004. (CBr. at 46.). Dr. Katona's opinion is consistent with testimony from Mr. H. Lee and Dr. Glew. Mr. H. Lee and Dr. Glew both testified that the SDC Patent Application does not disclose [redacted] shown in Figures 2-5 of SDC's Patent Application. (RX-1487C (H. Lee Dep. Tr.) at 228:7-231:2, 231:17-232:10, 232:15-233:6; Tr. (Glew) at 1377:20-1378:14.). Moreover, Dr. Katona testified that TS III.1.h+s could not be reverse engineered from any end product and is not publicly disclosed. (Tr. (Katona) at 377:5-16.).

Staff's view is also that the SDC Patent Application does not disclose TS III.1.h+s because Respondents did not prove that the [redacted] in the figures of the SDC Patent Application are the same as the [redacted] in CX-0564C.0004. (SBr. at 58-59.).

With respect to the first issue, it is a finding of this ID that SDC's Patent Application does not disclose TS III.1.h+s. SDC's identification of and support for TS III.1.h states that CX-0564C.0004 describes the "[redacted]" including

their "[redacted]" (FITS at 51.). CX-0564C.0004 discloses [redacted]. (CX-0564C.0004.). Moreover, SDC's identification of TS III.1.s states that CX-0564C.0004 describes the [redacted]. (*Id.*). This reference to the [redacted] of CX-0564C.0004 clearly conveys that it is the [redacted] shown in CX-0564C.0004 that constitutes the trade secret, rather than the [redacted]. Therefore, the [redacted] depicted in CX-0564C.0004 is a necessary aspect of TS III.1.h+s.

However, the SDC Patent Application discloses neither [redacted]. (RX-1487C (H. Lee Dep. Tr.) at 228:7-231:2, 231:17-232:10, 232:15-233:6; Tr. (Glew) at 1377:20-1378:14.). Moreover, Dr. Katona testified that he compared the figures from SDC's Patent Application to the figures from CX-0564C.0004. (Tr. (Katona) at 386:14-387:9; CDX-0002C.0069.). Dr. Katona's comparison revealed that the [redacted]. Therefore, it is a finding of this ID that the SDC Patent Application does not disclose TS III.1.h+s.

With respect to the second issue, Respondents allegedly improperly acquired TS III.1.h+s and disclosed it to [redacted] sometime before April 2022. (CBr. at 46 n.6.). Therefore, if SDC's Patent Application discloses TS III.1.h+s, Respondents could still be liable for misappropriation if SDC satisfied its burden of proving the other elements of trade secret misappropriation, including the elements of acquisition by improper means and use.

It is a finding of this ID that SDC proved by a preponderance of evidence that TS III.1.h+s is neither generally known nor readily ascertainable.

b) TS III.1.h+s Has Economic Value

Respondents conceded that SDC proved by a preponderance of evidence that TS III.1.h+s has economic value. (JSUI at 1-2.).

SDC presented more than sufficient evidence that TS III.1.h+s has economic value. (CBr. at 45). Dr. Katona testified that it is [redacted]. (Tr. (Katona) at 371:4-372:25.). Dr. Katona testified that the [redacted] that is the subject of TS III.1.h+s, with [redacted] depicted in CX-0564C.4, enables [redacted]. (*Id.* at 375:15-376:16, CX-002C.0061 (testifying that CX-0633C, an SDC internal testing document, shows [redacted]); CX-0633C.2639.).

Based on the undisputed evidence, and the lack of any counterargument or counterevidence, it is a finding of this ID that SDC proved, by a preponderance of evidence, that TS III.1.h+s has economic value.

3. SDC Failed to Prove That Respondents Acquired TS III.1.h+s Through Improper Means

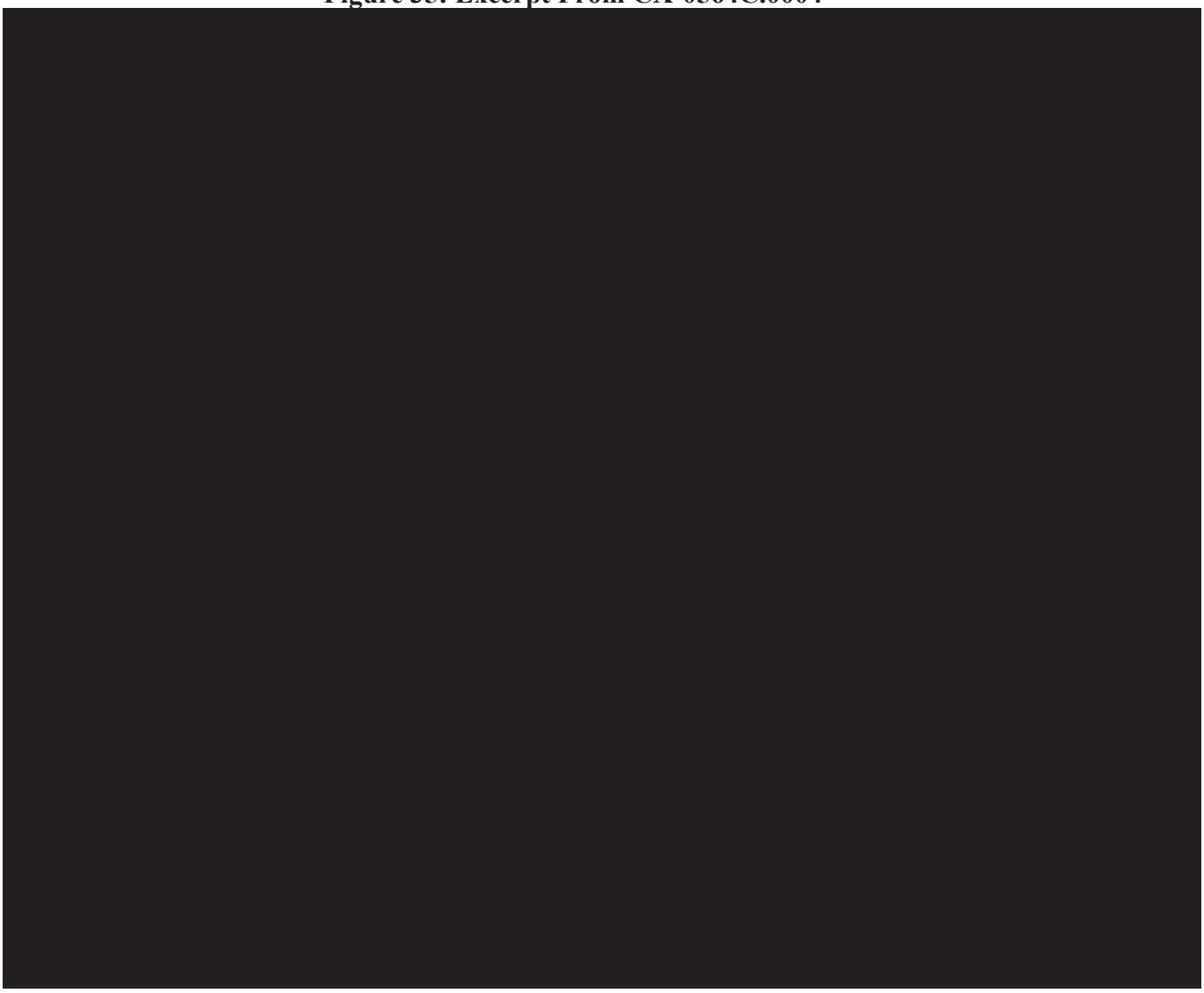
SDC's argument that Respondents obtained TS III.1.h+s by improper means is premised on SDC's assertion that Respondents sent a screenshot (CX-1009C.0007), that allegedly depicts the [redacted] depicted in CX-0564C.0004 to SDC's vendor [redacted] for the purpose of having [redacted] manufacture SDC's [redacted] for Respondents. (CBr. at 46-47.).

Respondents contended that SDC's position that its [redacted] is described in the screenshot (CX-1009C.0007), is inconsistent with SDC's position that SDC's 2022 Patent Application does not disclose TS III.1.h+s because neither SDC's Patent Application nor the screenshot (CX-1009C.0007), display [redacted] that are displayed on CX-0564C.0004.[46] (RBr. at 58-59.). Therefore, the first issue is whether the screenshot Respondents allegedly sent (CX-1009C.0007), embodies TS III.1.h+s, despite that the screenshot does not display [redacted] displayed in CX-0564C.0004.

SDC's identification of TS III.1.h states that CX-0564C.0004 describes the "[redacted]," including their "[redacted]" (FITS at 51.). CX-0564C.0004 discloses [redacted], as depicted in Figure 35 below. (CX-0564C.0004.).

[46] Respondents accused SDC of trying to "have it both ways." (RBr. at 58-59.). This is because, according to Respondents, on one hand SDC relied on a definition of TS III.1.h+s that requires [redacted] of rebutting Respondents' public disclosure defense. On the other hand, according to Respondents SDC relied on a definition that does not require those [redacted] to prove misappropriation based on the screenshot, CX-1009C.0007. (RBr. at 58-59.). For reasons that will be discussed in detail later, Respondents' accusation is misguided.

Figure 35: Excerpt From CX-0564C.0004



(CX-0564C.0004.).

SDC's identification of TS III.1.s states that CX-0564C.0004 describes the "[redacted]" of the "[redacted]" of the [redacted] (*Id.*). This reference to the "specific configuration" of CX-0564C.0004 clearly conveys that it is the exact configuration shown in CX-0564C.0004 that constitutes the trade secret, rather than the general concept of [redacted]. Therefore, it is a finding of this ID that TS III.1.h+s requires the exact configuration

disclosed on CX-0564C.0004, including the [redacted] displayed on CX-0564C.0004.

The screenshot on which SDC relied for its misappropriation case (CX-1009C.0007), is reproduced in Figure 36 below. The screenshot reproduced in Figure 36 below (CX-1009C.0007), is from [redacted]. (CX-1009C.0005.). The [redacted] Declaration contains an August 16, 2023 WeChat message that a person using the alias "[redacted]" (WeChat ID [redacted]) sent to [redacted]. (CX-1009C.0006.). The [redacted] Declaration also contains a series of WeChat messages from [redacted] between [redacted][47] and [redacted]. (*Id.*). According to the [redacted] Declaration, [redacted] contacted [redacted] because he was acting on behalf of third-party [redacted] to procure equipment from [redacted]. (*Id.* at .0008). Also, according to the [redacted] Declaration, "[redacted]" contacted [redacted] because "[redacted]" was acting on behalf of Respondents to procure equipment from [redacted]. (*Id.* at .0007.). Finally, according to the [redacted] Declaration, in 2022 "[redacted]" asked [redacted] if [redacted] could manufacture SDC's [redacted] according to the schematic depicted in the screenshot at issue. (CX-1009C.0007.). The screenshot does not display the [redacted] displayed on CX-0564C.0004.

[47] [redacted] is a third party who was neither deposed nor testified during the Hearing. According to the [redacted] Declaration, [redacted] was a representative of third-party [redacted] who sought to procure equipment from [redacted]. (CX-1009C.0008.).

Figure 36: Excerpt From CX-1009C.0007



(CX-1009C.0007.).

Even though the screenshot reproduced above in Figure 36 does not display the [redacted] displayed on CX-0564C.0004, during the Hearing, SDC entered sufficient evidence to prove that the configuration depicted in the screenshot is identical to the configuration depicted on CX-0564C.0004.

For example, Dr. Katona testified that he conducted a direct, side-by-side comparison of CX-0564C.0004 with CX-1009C.0007 and determined that the [redacted] on CX-0564C.0004 is the same as the [redacted] on CX-1009C.0007. (Tr. (Katona) at 386:2-13; CDX-0002C.0068.). In the

context of public disclosure, Dr. Katona conducted the exact same kind of direct, side-by-side comparison between SDC's Patent Application and CX-0564C.0004. (Tr. (Katona) at 386:14-387:9; CDX-0002C.0069.). Dr. Katona's comparison of SDC's Patent Application with CX-0564C.0004 revealed that the figures in SDC's Patent Application do ***not*** depict [redacted] as in CX-0564C.0007. Respondents' expert, Dr. Glew, did not rebut either of Dr. Katona's side-by-side comparisons.[48] Therefore, it is a finding of this ID that SDC proved by a preponderance of evidence that CX-1009C.0007 depicts [redacted].

The second issue is whether SDC carried its burden of proof by a preponderance of evidence that Respondents acquired TS III.1.h+s by improper means. Because SDC did not call [redacted] to testify, [redacted] was not deposed, and no witness testified to lay a foundation for the [redacted] Declaration, Respondents moved to strike the [redacted] Declaration. (Motion Dkt. No. 1378-067.). Respondents' motion to strike the [redacted] Declaration was denied. (Order No. 56.). In denying Respondents' motion to strike the [redacted] Declaration, it was noted that Respondents' counsel had acknowledged that "[redacted]" [redacted]. (*Id.* at 7-11.). It was also noted that Respondents' employees deleted WeChat messages with Respondents' vendors. The WeChat messages should have been preserved and produced as evidence. (*Id.*). As a result, the [redacted] Declaration was not stricken from the record. However, Order No. 56 noted that the [redacted] Declaration would be accorded the evidentiary weight it deserves based on the totality of the evidence. (*Id.* at 10-11.).

[48] Dr. Katona's unrebutted testimony proves that SDC is not trying to "have it both ways" because Dr. Katona's unrebutted testimony proves that the [redacted] disclosed in SDC's 2022 Patent Application is different from the [redacted] described by TS III.1.h+s.

The [redacted] messages from [redacted] that are reproduced in the [redacted] Declaration requested [redacted] to manufacture a [redacted] according to an "SDC patent." (CX-1009C.0006.). According to the [redacted] Declaration, in those [redacted] messages, [redacted] stated that Respondents purchased SDC's [redacted] from a Chinese supplier called [redacted]. (CX-1009C.0008.). According to the [redacted] Declaration, because [redacted] understood that SDC's [redacted] resulted in improvements to the manufacturing process, [redacted] wanted to implement the same solution for [redacted]. (*Id.*).

The [redacted] WeChat record between "[redacted]" and [redacted] that is reproduced in the [redacted] Declaration reflects a voice call followed by "[redacted]" sending a [redacted]. (*Id.*).

Neither of the two WeChat records just discussed, the [redacted] record with [redacted] and the [redacted] record with "[redacted]," both of which are reproduced in the [redacted] Declaration, contain the communication in which "[redacted]" allegedly sent the screenshot on which SDC relied to prove acquisition by improper means. Moreover, both of those WeChat records are dated ***after*** the November 2022 publication of the SDC Patent Application.

With respect to the screenshot on which SDC relied to prove acquisition by improper means, [redacted] asserted in his declaration that it was sent to him "in [redacted]" in connection with [redacted]'s request to have [redacted] manufacture SDC's [redacted]. (CX-1009C.0007.). [redacted] also stated in his declaration that he sent an SDC employee, Mr. Seokjin Ko,[49] the screenshot "in [redacted]" (*Id.*).

SDC attempted to narrow [redacted] general "[redacted]" timeframe for Respondents' alleged

[49] At the time of his deposition, Mr. Seokjin Ko was a principal engineer in the production engineering R&D center at SDC. (RX-1681C (Ko Dep. Tr.) at 11:4-8.).

misappropriation down to "[redacted]," which is [redacted] months before the November 2022 publication of the SDC Patent Application, based on deposition testimony Mr. Ko provided. (CBr. at 46-47 (citing CX-1868C[50] (Ko Dep. Tr.) at 81-82); CRBr. at 22 (citing RX-1681C (Ko Dep. Tr.) at 81:6-82:15; CX-1009C.0007).). The portion of Mr. Ko's testimony to which SDC cited is reproduced below.

> Q. My question, Mr. Ko, and then I can move on. In an interrogatory response you've been identified as knowledgeable about SDC's first notice of trade secret misappropriation by BOE. And my question is what is your knowledge about SDC's first notice of that alleged misappropriation?
>
> * * *
>
> THE WITNESS: So BOE misappropriated our company's trade secrets and that was about [redacted] technology. And my understanding is that they misappropriated the [redacted]. [redacted].
>
> BY MR. MANCINI:
>
> Q. My question, sir, is when did you first come to that understanding?
>
> A. My recollection is that it was on or about [redacted].
>
> Q. And how did you come to know that in [redacted]?
>
> A. That information was provided to us by an employee of a company who we work with.
>
> * * *
>
> THE WITNESS: That information was provided to me by an employee of a company who we work with.
>
> BY MR. MANCINI:
>
> Q. Who was that employee and what was that company?
>
> A. The name of the company was [redacted] and the name of the employee was [redacted].

[50] CX-1868C was withdrawn. It is in the record as RX-1681C.

(RX-1681C (Ko Dep. Tr.) at 81:6-82:15.).

Based on Mr. Ko's testimony reproduced above, and [redacted]'s statements contained in his declaration, SDC argued that the SDC Patent Application "cannot 'provide[] an innocent explanation for the reference to a [redacted]' . . . because the screen shot was taken more than [redacted] before the [SDC Patent Application] was published." (CRBr. at 22 (citing RBr. at 57).).

SDC's argument is problematic because there is insufficient evidence in the record indicating that "[redacted]" request to [redacted] was actually sent before SDC's Patent Application published. In his declaration, [redacted] stated generally that he "could not locate [his] communication with '[redacted]' in [redacted]," without specifying a month. (CX-1009C.0007). [redacted]'s statement regarding the screenshot he claimed to have sent to Mr. Ko "[redacted]" also fails to identify a specific month in [redacted]. (*Id.*). Moreover, during his deposition, Mr. Ko simply confirmed that his "understanding" of Respondents' misappropriation was based on information [redacted] had provided in [redacted]. (RX-1681C (Ko Dep. Tr.) at 81:6-82:15.). Mr. Ko did not offer any testimony about having received the screenshot included in the [redacted] Declaration upon which SDC relied. Stated differently, SDC did not adduce any facts that persuasively connect the [redacted] timeframe, which Mr. Ko claimed to have come to an "understanding" of Respondents' misappropriation of SDC's [redacted] based on information from [redacted], with [redacted]'s claim that he sent a screenshot to Mr. Ko "in [redacted]." Therefore, there is inadequate evidence to conclude that "[redacted]" and Respondents possessed SDC's secret [redacted], as opposed to another [redacted] such as, for example, a [redacted] derived from the [redacted] disclosed in the SDC Patent Application.

In evaluating the evidentiary weight of the [redacted] Declaration on the merits in accordance

with Order No 56, it is a finding of this ID that the content of CX-1009C does not prove the facts that SDC asserted it proves.

Additionally, SDC's claim that the screenshot at issue says "Samsung Confidential" is inaccurate. (CRBr. at 21.). The screenshot at issue only says "CONFIDENTIAL" (CX-1009C.0007). There is also no evidence in the record demonstrating that SDC inserted the "CONFIDENTIAL" marking. Accordingly, SDC failed to present sufficient evidence demonstrating that Respondents improperly possessed SDC's confidential [redacted] trade secret.

For the foregoing reasons, it is a finding of this ID that SDC failed to prove by a preponderance of evidence that Respondents acquired TS III.1.h+s by improper means.

4. SDC Failed to Prove Respondents Use TS III.1.h+s

SDC argued that there is enough circumstantial evidence to prove that Respondents "used" the [redacted] that is the subject of TS III.1.h+s. (CBr. at 47-48.). According to SDC, Respondents changed their [redacted] from one that could not use the [redacted] design of TS III.1.h+s to one that could. (*Id.*). Moreover, according to SDC, Respondents failed to produce during discovery certain documents that reflected their [redacted], and Respondents' failure of production should be held against them. (*Id.*).

Respondents argued that SDC's claims are "mere conjecture intended to shift the burden to BOE to prove a negative." (RBr. at 54.). Staff supported Respondents' position that there is a lack of evidence that Respondents use TS III.1.h+s. (SBr. at 60.). Therefore, the issue is whether there is sufficient circumstantial evidence to infer Respondents used TS III.1.h+s.

In *Certain Balanced Armature Devices, Products Containing Same, & Components Thereof*, the Commission held that misappropriation can, and often is, proven through

circumstantial evidence. *Certain Balanced Armature Devices, Products Containing Same, & Components Thereof* ("*Balanced Armature Devices*"), Inv. No. 337-TA-1186, Comm'n Op., 2021 WL 5104810, at *10 (Oct. 29, 2021) ("use" proven via circumstantial evidence) (citing *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 56 for the rule that circumstantial evidence can be sufficient to support determinations of use of a trade secret).

However, circumstantial evidence must still constitute a preponderance of evidence. In *Balanced Armature Devices*, the circumstantial evidence that the Commission found sufficient consisted of evidence that individuals with knowledge of the trade secret that they gained, for example, through their employment for the trade secret owner, took the trade secret information with them when they left their employment for the trade secret owner and/or sent the information to employees of the alleged misappropriator. *Balanced Armature Devices*, Inv. No. 337-TA-1186, 2021 WL 5104810, at *10.

SDC did not introduce such evidence. Instead, SDC relied on evidence that Respondents [redacted] in their PECVD.[51] (CX-0345C.0035 ([redacted] "[redacted]," [redacted] "[redacted]").). SDC and its expert, Dr. Katona, argued that Respondents [redacted]. (Tr. (Katona) at 387:10-388:17 (testifying that SDC had to [redacted]

[51] "PECVD" stands for Plasma Enhanced Chemical Vapor Deposition.

[redacted]); CX-1789C ([redacted] Dep. Tr.)[52] at 118:16-21 ([redacted]); CX-0119C.0002 [redacted] "[redacted]").).

Although SDC may have demonstrated that [redacted], SDC did not introduce into evidence any of Respondents' internal records, or testimony, that Respondents use a [redacted] as described in SDC's trade secret. Instead, to prove that Respondents manufactured the [redacted] that is the subject of TS III.1.h+s, SDC relied on the portion of the [redacted] Declaration wherein [redacted] asserted that [redacted] contacted him because [redacted] "[redacted]." (CX-1009C.0008.). Because SDC relied on hearsay that Respondents had purchased illegally SDC's [redacted], this aspect of the [redacted] Declaration has been given little weight.

Moreover, neither [redacted] nor [redacted] were deposed or examined during the Hearing in this Investigation. Thus, there is no way to assess the credibility or basis of [redacted]'s belief that [redacted] learned that Respondents purchased SDC's [redacted] from the Chinese supplier [redacted]. There is also no way to assess the reliability or foundation of [redacted]'s purported belief that Respondents purchased SDC's [redacted] from [redacted]. Moreover, in the messages exchanged, [redacted] purportedly told [redacted] that

[52] [redacted]

manufacturing the [redacted] would involve infringing SDC's patent. (*Id.* at .0006.). Even assuming, *arguendo*, [redacted] belief that [redacted] believed that Respondents purchased a [redacted] from [redacted] is credible and plausible, the [redacted] could be based on SDC's publicly available design from the SDC Patent Application. More importantly, even if Respondents acquired SDC's [redacted], SDC failed to introduce evidence that Respondents used SDC's [redacted] in Respondents' OLED manufacturing process.

SDC also argued that Respondents failed to produce documents reflecting the [redacted] Respondents received from [redacted], which should be held against Respondents. (CBr. at 48.). SDC did not raise this issue as a discovery dispute. Instead, SDC appears to have sprung this issue on Respondents, and Staff, for the first time in its Initial Post-Hearing Brief. (CBr. at 48.). Thus, SDC has not created a record to show that Respondents failed to discharge their discovery obligations on this topic. Accordingly, SDC has failed to prove that the sanction of an adverse inference is warranted on this issue.[53] For these reasons, SDC has waived, abandoned, or withdrawn this issue under Ground Rule 7.2.

In sum, there is no direct evidence that Respondents use the [redacted] defined in SDC's TS III.1.h+s. The circumstantial evidence SDC introduced, described in detail above, proves, at most, that Respondents [redacted]. However, that does not prove that the [redacted] defined in SDC's TS III.1.h+s. The only other evidence SDC

[53] Respondents asserted that [redacted]. (RRBr. at 20-22; CX-1498C ([redacted]).). Respondents also asserted that t[redacted]. (RRBr. at 20-22).

introduced is the [redacted] Declaration and Mr. Ko's deposition testimony, which, even if taken at face value, are not enough evidence to prove that Respondents used SDC's TS III.1.h+s. This is because there is no way to determine, from the [redacted] Declaration and Mr. Ko's deposition testimony, whether Respondents acquired the [redacted] that is the subject of TS III.1.h+s from the screenshot included in the [redacted] Declaration or the [redacted] that is depicted in the SDC Patent Application. Moreover, even if Respondents acquired SDC's [redacted], the [redacted] Declaration and Mr. Ko's deposition testimony do not prove that Respondents used SDC's [redacted].

It is a finding of this ID that SDC failed to prove, by a preponderance of evidence, that Respondents use TS III.1.h+s.

5. Respondents Conceded That They Did Not Independently Develop TS III.1.h+s

Respondents conceded that they did not independently develop TS III.1.h+s. (JSUI at 1.). Therefore, it is a finding of this ID that Respondents failed to prove, by a preponderance of evidence, that they independently developed TS III.1.h+s.

E. Trade Secret IV.1 ([redacted])[54]

1. SDC Adequately Described its [redacted] Trade Secrets

a) TS IV.1.d

SDC defined TS IV.1.d as follows:

[redacted]

[54] TS IV.1.a was withdrawn. (Joint Notice at 1-2).

d. [redacted]

(FITS at 61.).

Respondents argued that Mr. Jae Jung Kim's[55] testimony about the meaning of the term [redacted] which is a term used in the definition of TS IV.1.d reproduced above, is different from Dr. Katona's interpretation. (RBr. at 61.). Moreover, according to Respondents, neither Mr. Kim nor Dr. Katona provided sufficient guidance on how to determine which [redacted] (*Id.*). Therefore, the first issue is whether SDC provided sufficient guidance about the meaning of [redacted] and thus described TS IV.1.d with sufficient particularity.

Where the trade secret owner presents evidence that they developed the trade secret information and the information is unique from what was already publicly known, the trade secret owner has sustained its burden of proving that the trade secret is defined with sufficient particularity. *Caudill Seed*, 53 F.4th at 382.

Mr. Jae Jung Kim testified that, [redacted], SDC had [redacted]. (Tr. (J. Kim) at 160:21-161:4.). In [redacted], Mr. Kim worked on a project to [redacted] and found out that, [redacted]. (*Id.* at 161:5-13.). In connection with that project, Mr. Kim prepared the

[55] At the time of the Hearing, Mr. Jae Jung Kim was a principal engineer at SDC. (Tr. (J. Kim) at 158:11-14.). Mr. Kim belonged to [redacted] (*Id.* at 158:18-21.). [redacted] (*Id.* at 158:22-159:5.). Mr. Kim had been [redacted]. (*Id.* at 160:12-16.).

presentation referenced in the definition of TS IV.1.d, CX-0584C. (*Id.* at 161:14-162:17.). CX-0584C is an SDC internal presentation dated [redacted], titled "[redacted]." (CX-0584C.0002.). It was authored by Mr. Kim for internal distribution within SDC. (Tr. (J. Kim) at 161:14-15, 162:3-17; CX-0584C.). The specific page of that presentation cited in SDC's definition of TS IV.1.d is reproduced in Figure 37 below.

Figure 37: CX-0584C.0007 Cited in SDC's Definition of TS IV.1.d

[redacted]

(CX-0584C.0007.).

Mr. Kim testified that, before developing TS IV.1.d, SDC used the [redacted]

[56] Mr. Kim testified that [redacted]. (Tr. (J. Kim) at 164:25-165:2.). Dr.

[redacted] (Tr. (J. Kim) at 163:7-164:2, 164:18-24; CX-0584C.0013.). In other words, [redacted]. This [redacted] of Figure 38 copied below.

Figure 38: CX-0584C.0013

[redacted]

(CX-0584C.0013; Tr. (J. Kim) at 163:7-166:15.).

Katona testified that, with respect to TS IV.1, [redacted] (Tr. (Katona) at 331:9-332:7.).

[57] Mr. Kim testified that the "[redacted]. (Tr. (J. Kim) at 165:3-5.).

Mr. Kim provided the following testimony to explain how the [redacted].

> Q. So, Mr. Kim, based on all your experiments and research, did you notice any problems in terms of [redacted], for example, the one shown in (a)?
>
> A. Sure. [redacted].

(Tr. (J. Kim) at 165:6-18 (emphases added).).

In contrast, Mr. Kim testified that the [redacted] covered by TS IV.1.d, shown above in [redacted] of Figure 38, is the [redacted], which would [redacted]." (*Id.* at 165:19-24.). In other words, the [redacted]. Mr. Kim explained that the "[redacted]" (*Id.* at 166:4-8.).

In sum, the critical aspect of the [redacted] SDC developed is that [redacted]. (*Id.* at 164:6-166:15.).

Notably, on the right hand side of CX-0584C.0007 of Mr. Kim's presentation, which is replicated below in Figure 39, under the title [redacted]

and right next to "Hypothesis 2(b)," the following is written: [redacted] (CX-0584C.0007.). CX-0584C.0007 also depicts the [redacted]. (*Id.*). Like CX-0584C.0013, CX-0584C.0007 shows [redacted]. (*Id.*). This is in contrast to the [redacted]. (*Id.*).

Figure 39: Excerpt From CX-0584C.0007 Comparing



(CX-0584C.0007.).

Additionally, Dr. Katona illustrated the change from SDC's to SDC's TS IV.1 , which is reproduced in Figure 40 below:

Figure 40: Dr. Katona's Demonstrative Illustrating the Different Between SDC's



(CDX-0002C.0013; CX-0584C.0009.).

In describing his demonstrative above, Dr. Katona provided the following testimony:

> Q. So what have you depicted here between the comparison of what you call the for SDC?
>
> A. Yes. So the was shown in a lot of the documents that I reviewed.
>
> And then you have this which is one of the subjects of the trade secrets, and it's showing down in the graph, you know, up to a increase in yield, which, from one who has worked in manufacturing, specifically when you're high volume, is – that's like game changing.

(Tr. (Katona) at 336:4-21.).

In other words, SDC developed a that led to

Respondents argued that Mr. Kim's reference to [redacted] as a [redacted] (Tr. (J. Kim) at 163:25-164:2), and Dr. Katona's description of the [redacted] as [redacted] and as [redacted] (Tr. (Katona) at 331:23-332:7), result in differing interpretations of the term [redacted] (RBr. at 61.). For evidentiary support, Respondents relied on Dr. D'Andrade's opinion that SDC's definition "does not provide any information about the characteristics, the material composition, the functionality, the optical properties [of the [redacted]]. Nothing is in the definition." (Tr. (D'Andrade) at 1180:5-8.). The problem with Dr. D'Andrade's opinion and testimony is that Dr. D'Andrade seems to require that SDC provide a description about material composition, functionality, and optical properties. However, the category IV.1 trade secrets are directed to the [redacted].

Moreover, Dr. D'Andrade repeatedly testified that TS IV.1.d and TS IV.1.e, TS IV.1.d and TS IV.1.e are directed to the [redacted], not the material composition, functionality, or optical properties of [redacted] (Tr. (D'Andrade) at 1180:9-25 (testifying that he went through the device structures shown on page 4 of M. J. Kim's presentation, CX-0584C.0004, "in terms of how they inform an OLED engineer about the [redacted] in the particular OLED") (emphasis added), 1181:1-14 (testifying that the definition of TS IV.1.e "[redacted]").).

Dr. D'Andrade's opinion that the category IV.1 trade secrets are unclear is also

inconsistent with, and undermined by, his other testimony where he clearly understood and explained the meaning of TS IV.1.d and TS IV.1.e. (Tr. (D'Andrade) at 1180:9-1181:22 (testifying that, based on Mr. J. Kim's presentation, CX-0584C.0004, and focusing on [redacted] and [redacted] he "came to some conclusions about what their trade secret, what the narrative is really trying to explain," and then explained the definitions of TS IV.1.d and TS IV.1.e and the differences between the two).). Dr. D'Andrade's testimony that TS IV.1.d and TS IV.1e are "unclear" is not credible because it is inconsistent and contradicts other testimony he gave.

Another reason Dr. D'Andrade's testimony is not credible on this issue is because, as SDC pointed out in its Initial Post-Hearing Brief, it contradicts credible testimony from multiple technical fact witnesses, including Respondents' own technical fact witnesses. (CBr. at 23-24.). For example, [redacted] Mr. Fei Xie,[58] [redacted]. (CX-1792C (Xie Dep. Tr. Vol. 2) at 256:6-258:7 ([redacted]).

[redacted].

(CX-1787C (Xiao Dep. Tr. Vol. 1) at 109:5-110:13 ([redacted]

[redacted]

[58] At the time of the Hearing, Mr. Fei Xie was an EV/EN engineer for, and the deputy head of, BOE's F1 Project Development Center, where "F1" refers to [redacted]. (Tr. (Xie) at 1101:18-1102:1.).

[59] [redacted] (CX-1787C (Xiao Dep. Tr. Vol. 1) at 28:20-30:22.). [redacted] (*Id.* at 19:4-15.).

[redacted]). [redacted] t [redacted] (CX-1804C ([redacted] Dep. Tr. Vol. 2) at 230:4-232:6 [redacted]). Thus, Dr. D'Andrade's testimony on this issue is not supported by the factual record.

Respondents also argued that SDC made inconsistent arguments about whether its definitions of TS IV.1.d and IV.1.e require [redacted]. (RBr. at 61-62.). Specifically, Respondents argued that Dr. Katona initially testified that [redacted] was required to satisfy TS IV.1.d and TS IV.1.e. (*Id.*). According to Respondents, Dr. Katona changed his testimony to offer a new opinion that [redacted] is a point of distinction from what is publicly disclosed. (*Id.* at 62.). Respondents relied on Dr. D'Andrade's testimony that TS IV.1.d and TS IV.1.e [redacted] (Tr. (D'Andrade) at 1192:19-23.).

Respondents' argument that Dr. Katona testified inconsistently is not supported by the record. Dr. Katona's testimony demonstrates that he clearly distinguished SDC's TS IV.1.d and TS V.1.e from public disclosures based on [redacted]. Specifically, during his opening testimony, Dr. Katona focused on the lack of any public disclosure of [redacted]. (Tr. (Katona) at 341:3-12.). He did not testify that the [redacted] is not a point of distinction. (*Id.*). Notably, failing to say something is true is not the same as saying that the thing is not true. Moreover, Dr. Katona

[60] At the time of his deposition, [redacted] (CX-1803C ([redacted] Dep. Tr. Vol. 1) at 12:2-14:24.).

testified in both his opening and rebuttal testimony that neither the "[redacted] as provided in the category IV.1 trade secrets is publicly disclosed. (Tr. (Katona) at 341:24-342:18, 1482:3-1484.). For these reasons, Respondents' argument is not credible because it contradicts the record.

The weight of the evidence favors SDC's argument about the specificity of TS IV.1.d and TS IV.l.e for the following reasons. For example, testimony from multiple technical witnesses, including Respondents' own expert Dr. D'Andrade, SDC's expert Dr. Katona, and SDC's principal engineer Mr. Kim, corroborate those technical terms used in the TS IV.1.d definition, including [redacted] and [redacted] (abbreviated as [redacted]) are commonly used and understood by engineers in the field of OLED manufacturing. (Tr. (D'Andrade) at 1180:9-1181:22; Tr. (J. Kim) at 164:25-165:5; Tr. (Katona) at 331:9-332:7; *see also* CX-1792C (Xie Dep. Tr. Vol. 2) at 256:6-258:7.). The witnesses' use of the term [redacted] without apparent confusion or disagreement as to what it means, contradicts Respondents' argument and Dr. D'Andrade's opinion that there is insufficient guidance as to the meaning of this term in the definition of TS IV.1.d. Moreover, the language of SDC's definition of TS IV.1.d does not restrict the trade secret to [redacted], and thus can [redacted] within its scope. The definition is consistent with Dr. Katona's testimony where he distinguished the trade secret from public disclosures based on [redacted] in those public disclosures and his testimony that the trade secrets [redacted]. (Tr. (Katona) at 341:3-342:18, 1476:20-1477:7, 1478:12-18,1482:3-1484:6.). Thus, Respondents' arguments are not credible because they contradict the evidence.[61]

[61] Respondents also argued that SDC attempted to incorporate [redacted] into

For these reasons, it is a finding of this ID that SDC proved, by a preponderance of evidence, that TS IV.1.d is described with sufficient particularity.

b) TS IV.1.e

SDC defined TS IV.1.e as follows:

[redacted]

e. [redacted]

(FITS at 61.).

Respondents' arguments for why SDC allegedly failed to disclose TS IV.1.e with sufficient particularity are identical to Respondents' arguments for why SDC allegedly failed to disclose TS IV.1.d with sufficient particularity. (RBr. at 61-62; RRBr. at 22-23.). TS IV.1.e is materially the same as TS IV.1.d, except that TS IV.1.e specifies that the [redacted]. For TS IV.1.e, [redacted]. By contrast, TS IV.1.d does not [redacted].

---

the trade secrets. (RRBr. at 23-24.). That is incorrect. SDC discussed the goal of [redacted] when SDC explained that [redacted] disclosed in the publications Respondents alleged constitute public disclosures of TS IV.1.d admitted and guaranteed that there would be [redacted], whereas [redacted] described in SDC's trade secrets [redacted]. (CBr. at 49-51.). SDC explained why the [redacted] described in SDC's trade secrets, where [redacted] is so important. (*Id.*). SDC also explained why, by extension, public disclosures of [redacted] do not disclose the trade secret. (*Id.* at 52-54.).

For the same reasons and based upon the same evidence as for TS IV.1.d, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS IV.1.e is described with sufficient particularity.

2. SDC Proved the Existence of a Protectible Trade Secret

a) The [redacted] Trade Secrets Are Neither Generally Known Nor Readily Ascertainable

To defeat trade secret protection, a person in the industry must be able to ***readily*** ascertain or ***duplicate*** the trade secret. *Crawler Cranes*, Inv. No. 337-TA-887, ID at 24.

Respondents argued that the Deposition Order Trade Secrets are disclosed publicly in the following three (3) documents: (i) CX-0410 ("Effect of Evaporation and Stagnation on the Performance of OLED Device," by Ziaohu Li, *et al.* at BOE Technology Group Co. ("Li")); (ii) CX-0411 ("Full color organic electroluminescent display with shared blue light-emitting layer for reducing one fine metal shadow mask," by Shuming Chen and Hoi-Sing Kowk ("Chen")); and (iii) CX-0412 ("A study on full color organic light emitting diodes with blue common layer under the patterned emission layer," by Hee Young Shin and Min Chul Suh ("Shin")). (RBr. at 62-66.).

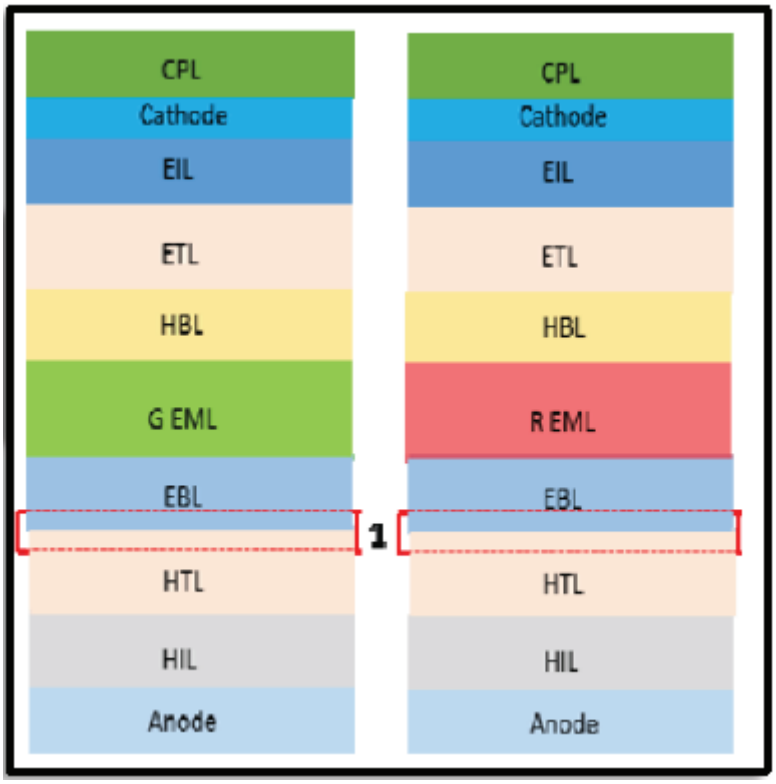
SDC's counterargument is that those references only disclose [redacted], and not [redacted]. (CBr. at 52-54.). As Staff contended, a [redacted]. (SBr. at 51-54.). Therefore, the issue is whether any of the references Respondents presented contains sufficient information, in addition to [redacted] can be determined.

For the following reasons, none of the references adequately disclose information that would allow one of ordinary skill to readily ascertain or duplicate SDC's trade secrets.

(i) Li (CX-0410)

Respondents argued that the structure depicted in Figure 41 below, which is disclosed on page 1 of Li, discloses [redacted] required by TS IV.1.d and TS IV.1.e. (RBr. at 66.). Dr. D'Andrade testified that, in the structure depicted on page 1 of Li and reproduced in the figure below, [redacted], thus allegedly disclosing the trade secrets. (Tr. (D'Andrade) at 1189:15-1190:1.).

Figure 41: Annotated Excerpt From CX-0410.0001



(RDX-0003C.0062; Tr. (D'Andrade) at 1189:15-1190:1.).

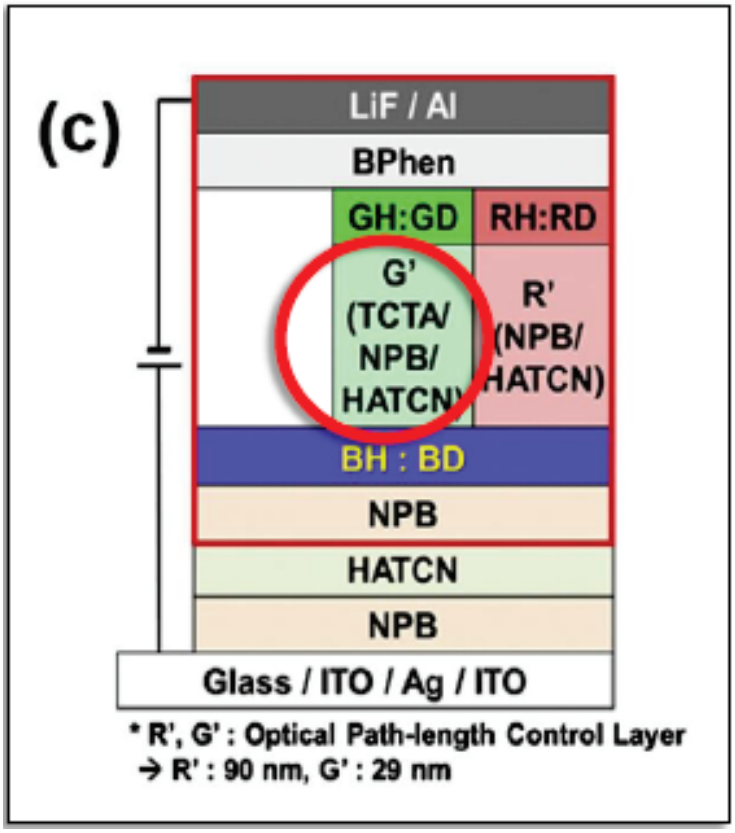
To the contrary, SDC argued and Dr. Katona testified that [redacted], which shifted the burden to Respondents to produce counterevidence. (CBr. at 54; Tr. (Katona) at 1485:12-20.). Neither Respondents nor Dr.

D'Andrade presented evidence or otherwise explained how one can infer the [redacted] required by the trade secrets from just the structure shown in the figure on page 1 of Li (reproduced in Figure 41 above). Thus, Respondents did not satisfy their burden to produce counterevidence. Therefore, it is a finding of this ID that SDC satisfied its burden to prove by a preponderance of evidence that Li does not disclose TS IV.1.d and TS IV.1.e.

(ii) Chen (CX-0411) and Shin (CX-0412)

Respondents argued that TS IV.1.d and TS IV.1.e are readily ascertainable from Shin. (RBr. at 65.). According to Respondents, Shin discloses the use of [redacted]. (RBr. at 65; Tr. (D'Andrade) at 1189:9-14; RDX-0003C.0060.). Respondents pointed to the following figure in Shin (which they annotated as depicted in Figure 42 below).

Figure 42: Annotated Excerpt From CX-0412



(RDX-0003C.0060.).

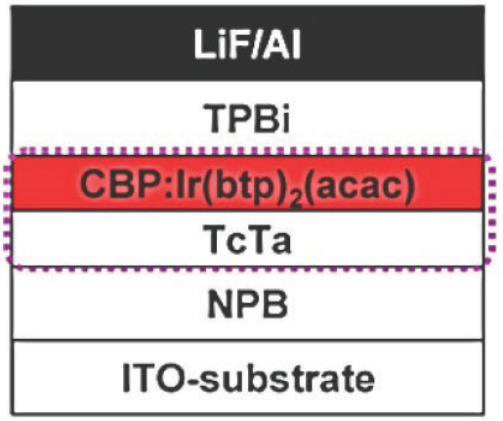
Dr. Katona, SDC's expert, testified that one cannot know the [redacted] from just the final structure depicted in Shin. (Tr. (Katona) at 1480:12-1481:14, 1484:2-6.). Dr. Katona's testimony satisfied SDC's burden of production and thus shifted the burden to Respondents to produce counterevidence.

Respondents did not satisfy their burden of producing counterevidence. Respondents did not provide evidence other than the structure depicted in that reference and Dr. D'Andrade's conclusory opinion. Additionally, neither Respondents nor Dr. D'Andrade rebutted SDC's argument and Dr. Katona's explanation that [redacted] in general. (CRBr. at 25; Tr. (Katona) at 1480:12-1481:14.). Thus,

Respondents' reliance on Shin, which only discloses a deposition structure, is not persuasive. Therefore, it is a finding of this ID that SDC satisfied its burden of proving by a preponderance of evidence that Shin does not disclose TS IV.1.d and TS IV.1.e.

By contrast, for the Chen reference, Respondents presented the structures depicted therein alongside accompanying narrative disclosure. (RBr. at 63-64; RDX-0003C.0058.). For this reason, the issue of public disclosure from Chen is a much closer question. With respect to the disclosed structure, Chen describes a "conventional three shadow mask alignment" labeled "R-3" (table on the left of Figure 43 below), which Respondents compared with the figure depicted in SDC's document, CX-0584C.0007 (table on the right below).

Figure 43: Excerpt From CX-0411.0002 and CX-0584C.0007



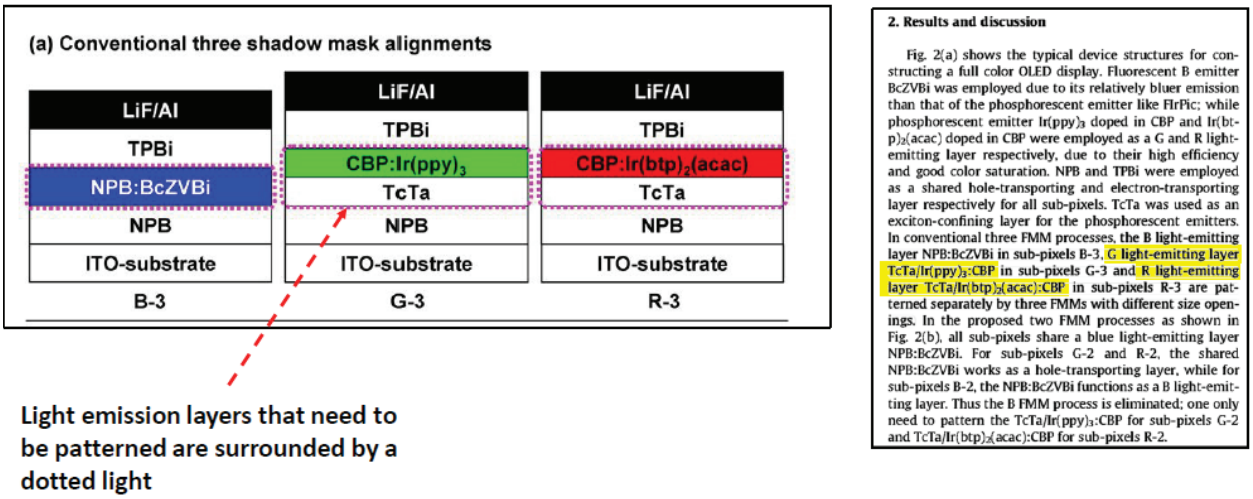
[redacted]

(RDX-0003C.0057; Tr. (D'Andrade) at 1184:6-1185:13.).

According to Respondents, on the left of Figure 43 above (from Chen), the layer labeled [redacted] (RBr. at 64; Tr. (D'Andrade) at 1183:22-1186:20, 1187:23-1183:3.).

Although the depiction above contains a comparison for [redacted], Chen discloses the same [redacted], as depicted in Figure 44 below. On the right-hand side of Figure 44 is an excerpt from the text of Chen explaining that in the layer diagram on the left, there is a "light-emitting layer" [redacted] "lr(ppy)$_3$:CBP" [redacted] "lr(btp)$_2$)acac):CBP" [redacted]. (CX-0411.0003.). Based on the disclosure on the right-hand side of the Chen reference, Figure 44 below, and on the dotted line enclosures in the layer tables, Respondents argued, and Dr. D'Andrade testified, [redacted]. (RBr. at 64; Tr. (D'Andrade) at 1183:3-1186:20.).

Figure 44: Annotated Excerpt from Figure 2 of CX-0411.0002 and CX-0411.0003



(RDX-0003C.0058; Tr. (D'Andrade) at 1185:14-1187:19.).

SDC presented two counterarguments. SDC's first counterargument is that Chen (and Shin, which SDC addressed together with Chen) discloses a "fundamentally different and inferior OLED ***structure***" than the one used by both SDC and Respondents. (CBr. at 52

[redacted]

that structure alone is not sufficient to determine [redacted].

Figure 45: Excerpt From CDX-0010C.0024

[redacted]

(CDX-0010C.0024; Tr. (Katona) at 1480:12-1481:14.).

With regard to Figure 45 above, Dr. Katona explained that:

> So I'm referring back to -- we talked about this manufacturing line with these [redacted], and this now shows the [redacted]
>
> So, again, we've got the glass panel [redacted]
>
> [redacted]
>
> And so this highlights the fact that ***you can't just look at the final structure and then somehow understand and know*** [redacted].
>
> And for all of these [redacted], if we just follow through with [redacted]
>
> ***So in order to*** [redacted]***, which is at the heart of the trade secrets, you have to have*** [redacted].

(Tr. (Katona) at 1480:15-1481:14.).

Respondents contended that, in Dr. Katona's demonstrative depicted in Figure 45 above, every [redacted]

[redacted]. (RRBr. at 26.). In other words, [redacted] depicted in CDX-0010C.0024 is within the scope of TS IV.1.d and TS IV.1.e. From that, Respondents argued that the structure depicted in CDX-0010C.0024 compels a [redacted] that is within the scope of TS IV.1.d and TS IV.1.e and, more broadly, that "[redacted] – at least to the level that SDC tries to claim as its trade secret." (*Id.* (emphasis in original).). However, Respondents' argument that [redacted] to the level required to disclose TS IV.1.d and TS IV.1.e lacks evidentiary support. Again, neither Respondents nor Dr. D'Andrade rebutted SDC's argument and Dr. Katona's explanation that [redacted]. (CRBr. at 25; Tr. (Katona) at 1480:12-1481:14.).

Whether SDC has satisfied its burden to prove that TS IV.1.d and TS IV.1.e are not disclosed in the Chen reference is a much closer question for Chen than it is for Shin. Unlike Shin, Respondents did not rely solely on an argument that the structure disclosed in Chen can [redacted]. Instead, Respondents contended, and Dr. D'Andrade testified, that in addition to the structure disclosed in Chen, a specific paragraph in Chen, highlighted in RDX-0003C.0058 in Figure 44 above, when read in the context of the structures depicted, constitutes a disclosure of [redacted] required by TS IV.1.d and TS IV.1.e. (RBr. at 64; Tr. (D'Andrade) at 1183:3-1187:19; RDX-0003C.0058.).

SDC attempted to address this point in its Post-Hearing Reply Brief by arguing that the paragraph discloses that Chen "[redacted]." (CRBr. at 25.). However, SDC's argument is not consistent with the language of the paragraph at issue. The words of the specific paragraph at issue do not say that [redacted]. (CX-0411.0003.).

Moreover, SDC's argument is not supported by the evidence because SDC did not introduce evidence from its expert or from any other source that Chen [redacted]. Specifically, Dr. Katona, did not directly address the specific paragraph upon which Respondents and Dr. Andrade relied.

Nevertheless, Dr. Katona testified credibly and competently that the figure and paragraph disclosed in Chen [redacted] required by TS IV.1.d and TS IV.1.e. This shifted the burden of production to Respondents to produce counterevidence. (Tr. (Katona) at 1480:12-1481:14, 1483:6-12, 1484:2-6.). Respondents attempted to satisfy their burden of production with Dr. D'Andrade's testimony. Specifically, Dr. D'Andrade opined that the highlighted passage in Chen provides sufficient guidance to one in the industry to replicate [redacted] required by TS IV.1.d and TS IV.1.e. (Tr. (D'Andrade) at 1185:14-1187:19; RDX-0003C.0058.). For the following reasons, Dr. D'Andrade's opinion did not satisfy Respondents' burden of production.

Dr. D'Andrade's opinion rests on his assertion that a person in the industry would understand the text [redacted]. The relevant testimony is reproduced below.

> Q. Just for clarity, we're discussing, even though RDX-0003.0058, but this is exhibit CX-0411 at 2 and 3.
>
> And if we can blow up the right side, the text for a little bit, and can you explain, as an OLED engineer, you said this is showing you that [redacted]?
>
> A. So it's [redacted]. So it's explicitly disclosed.

(Tr. (D'Andrade) at 1186:6-20.).

However, Dr. D'Andrade did not present any documentary evidence to corroborate his assertion that [redacted], to a person in the industry, [redacted]. His opinion is therefore a conclusory expert opinion entitled to minimal weight. *TQ Delta, LLC v. CISCO Sys., Inc.*, 942 F.3d 1352, 1361 (Fed. Cir. 2019); *Magnetic Tape Cartridges*, Inv. No. 337-TA-1058, Comm'n Op. at 11 (Apr. 9, 2019).

Therefore, it is a finding of this ID that SDC satisfied its burden to prove that TS IV.1.d and TS IV.1.e are neither generally known or readily ascertainable from Chen.

b) The [redacted] Trade Secrets Have Economic Value

Respondents conceded that SDC proved by a preponderance of evidence that TS IV.1.d and TS IV.1.e have economic value. (JSUI at 1.). Respondents could not credibly dispute the economic value of TS IV.1.d and TS IV.1.e. The undisputed evidence demonstrates that [redacted] described in these trade secrets cause [redacted]. (Tr. (J. Kim) at 166:16-168:2; Tr. (Katona) at 334:22-336:3; CX-0584C.0014.).

Therefore, it is a finding of this ID that SDC proved by a preponderance of evidence that TS IV.1.d and TS IV.1.e have economic value.

3. SDC Proved Respondents Acquired the [redacted] Trade Secrets Through Improper Means

SDC argued that Respondents acquired TS IV.1.d and TS IV.1.e by improper means because two SDC employees with knowledge of SDC's [redacted], Mr. Chang Soon Ji[62] and Mr. Chul Young Kim, left SDC to [redacted]

[62] [redacted] Mr. Chang-Soon Ji [redacted]. (Tr. (Ji) at 272:20-21.). [redacted], Mr. Ji [redacted]. (*Id.* at 272:25-273:2.). [redacted], Mr. Ji [redacted]. (*Id.* at

[redacted] technology shortly before Respondents changed their [redacted]. (CBr. at 55-56.). Respondents' counterargument is that their [redacted] (RBr. at 67-68.). Therefore, the issue is whether the weight of the evidence is in favor of an inference that Respondents' [redacted] was due to Mr. Ji's and Mr. Young's [redacted]

The evidence undisputably demonstrates that SDC's former employee, Mr. Ji, had [redacted] (Tr. (Ji) at 276:2-277:18, 280:6-10.). [redacted] Mr. Ji [redacted]. (*Id.* at 276:2-13.). [redacted] Mr. Ji [redacted]. (*Id.* at 277:19-278:13, 278:20-22; CX-0725C.0004.). [redacted] Mr. Ji [redacted] (Tr. (Ji) at 279:5-280:5; CX-0725C.0005; [redacted] Tr. (J.J. Kim) at 170:23-171:4 (testifying that [redacted] Mr. Kim [redacted] Mr. Ji [redacted]

273:11-19.).

[redacted]

[redacted] Mr. Ji [redacted]

[redacted]

[redacted] (CX-0725C.0004.). The relevant portions of Mr. Ji's [redacted] is replicated below.

Figure 46: [redacted] Mr. Ji's [redacted]

[redacted]

(CX-0725C.0004-0005; Tr. (Ji) at 277:10-280:5.).

[redacted] Mr. Ji [redacted]

[redacted], [redacted]. (Tr. (Ji) at 313:19-314:10; CX-0725C.0006.). [redacted], Mr. Ji [redacted] (Tr. (Ji) at 280:22-281:8.). Mr. Ji [redacted]. (*Id.* at 284:17-286:6). [redacted] Mr. Ji [redacted]. (*Id.* at 284:23-286:3.).

[redacted]. (Tr. (Fei Xie)[63] at 1119:7-22). [redacted] Mr. Xie [redacted] (*Id.* at 1119:23-1120:5).

Specifically, during his deposition, Mr. Xie t[redacted] (CX-1791C (Xie Dep. Tr. Vol. 1) at 65:15-19, 65:25-66:4, 66:9-12.). Additionally, [redacted] (CX-1787C (Xiao Dep. Tr. Vol. 1) at 108:21-109:11.).

[63] At the time of the Hearing, Mr. Fei Xie worked for Respondents as an EV/EN engineer as the deputy head of the FI (or [redacted]) Project Development Center. (Tr. (Xie) at 1101:18-1102:1.).

Based on the record evidence, there is a strong likelihood of misappropriation where, as here, an employee has duties that are nearly identical to their duties at their former employment. *See, e.g., Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 41-42. Moreover, where there is no evidence of how the alleged misappropriator arrived at the trade secret, there is strong circumstantial evidence of misappropriation. *Id.*

As discussed above, Mr. Ji left SDC and joined SDC's competitor to work in a role substantially identical to the one he worked in for SDC in violation of his NDA resignation agreement. Respondents did not present evidence of how they arrived at the [redacted] recited in the trade secrets other than through Mr. Ji.[64] Under these circumstances, it is a finding of this ID that SDC proved, by a preponderance of evidence, that Respondents obtained TS IV.1.d and TS IV.1.e through improper means.

4. SDC Proved That Respondents Used the [redacted] Trade Secrets

Respondents did not present arguments or evidence that they did not use or disclose TS IV.1.d and TS IV.1.e. (CRBr. at 26; RBr. at 60-68; RRBr. at 23-30.). Additionally, because Mr. Xie and Mr. Xiao both admitted that Respondents used TS IV.1.d and TS IV.1.e, Respondents could not have credibly rebutted SDC's evidence of their use. (CX-1791X (Xie Dep. Tr. Vol. 1) at 66:9-12; CX-1787C (Xiao Dep. Tr. Vol. 1) at 108:16-109:11.). Accordingly, it is a finding of this ID that SDC has proven with undisputed and unrebutted evidence that SDC used SDC's TS IV.1.d and TS IV.1.e.

5. Respondents Failed to Prove They Independently Developed the

[64] It should be noted throughout that Respondents were precluded from attempting to introduce at the Hearing ***any*** testimony with respect to Respondents' alleged independent development of their own [redacted] because of their failure to provide such evidence during discovery. (Tr. at 10:24-11:16, 13:5-19.).

[redacted] **Trade Secrets**

Respondents did not present evidence or argument that they independently developed TS IV.1.d and TS IV.1.e. (CBr. at 57; RBr. at 60-68; RRBr. at 23-30.). In addition, SDC's expert, Dr. Katona, testified that he had not seen evidence of Respondents' independent development. (Tr. (Katona) at 348:17-25.).

Therefore, based on the unrebutted, undisputed, and incontestable evidence SDC presented, it is a finding of this ID that Respondents did not satisfy their burden of proving by a preponderance of evidence that they independently developed SDC's TS IV.1.d or TS IV.1.e.

F. Trade Secret IV.2 (Defect Detection)

1. SDC Adequately Described the Defect Detection Trade Secrets

a) TS IV.2.b ([redacted])

SDC defined TS IV.2.b as follows:

[redacted]

b. [redacted].

(FITS at 63.).

The issue is whether SDC described its [redacted] with sufficient particularity. To describe a trade secret with sufficient particularity, a person in the industry must be able to conduct a meaningful

[65] This pin cite corresponds to CX-0636C.0006.

comparison between the trade secret and what is generally known or ascertainable. *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 44-46. As explained in detail below, SDC introduced sufficient evidence that a person in the industry would be able to conduct a meaningful comparison between TS IV.2.b and what is generally known or ascertainable.

SDC's witness, Mr. Minho Ryu,[66] testified that, before implementing TS IV.2.b, SDC [redacted]. (Tr. (Ryu) at 210:11-211:8.). Using [redacted]. (*Id.* at 211:9-23.). SDC needed [redacted]. (*Id.*). SDC determined through testing that [redacted]. (*Id.* at 211:24-213:1.). From the [redacted]. (*Id.* at 213:2-214:10.). Importantly, Mr. Ryu testified that [redacted] (*Id.* at 213:9-22.).

Mr. Ryu presented CX-0671C, an SDC PowerPoint presentation dated [redacted], and titled "[redacted]" (Tr. (Ryu) at 217:15-22; CX-0671C [redacted]. Mr. Ryu testified that page six (6) of SDC's [redacted] Presentation depicts [redacted]

[66] Mr. Ryu was SDC's fact witness. At the time of the Hearing, Mr. Minho Ryu was a section leader at SDC who had worked on [redacted] equipment. (Tr. (Ryu) at 209:20-210:10.).

[redacted] (Tr. (Ryu) 217:15-218:15; CX-0671C.0006.). The images depicted on CX-0671C.0006 are reproduced in Figure 47 below:

Figure 47: Excerpt from SDC's [redacted] Presentation That Depicts SDC's [redacted]

[redacted]

(Tr. (Ryu) 217:15-218:15; CX-0671C.0006.).

Mr. Ryu testified that, according to the image on the left, which represents [redacted] (Tr. (Ryu) 217:15-219:9; CX-0671C.0006.). Because SDC would have [redacted]. (Tr. (Ryu) at 217:15-219:9.).

In contrast, the image immediately to the right is an image of [redacted]. (*Id.*). [redacted]. On the other hand, the two images on the right of Figure 47 above represent a situation where [redacted]. (Tr. (Ryu) at 219:9-19; CX-0671C.0006.).

SDC disclosed SDC's [redacted] Presentation on a list of documents that described the implementation of all SDC's category TS IV.2 trade secrets. (FITS at 64 (in SDC's FITS, the exhibit CX-0671C is cited using the bates number "SDC-1378-0789845").).

In addition to SDC's [redacted] Presentation (CX-0671C), the body of SDC's definition of TS IV.2.b cites SDC-1378-0788529, which is CX-0636C.0006. Neither Mr. Ryu nor any SDC fact witness testified about CX-0636C.0006.

Respondents argued that SDC failed to describe TS IV.2.b with sufficient specificity because CX-0636C.0006 "says nothing to 'describe' the trade secret other the [sic] words: [redacted]" (RBr. at 78.). Therefore, according to Respondents' argument, "the alleged trade secret must be nothing more than an abstract idea of [redacted], without any specificity on implementation." (*Id.*). If Respondents' argument were correct, then SDC's TS IV.2.b could not be differentiated from conventional, commercially available equipment because [redacted] in general was known in the industry. (RRBr. at 30-31.). The image depicted on CX-0636C.0006 is reproduced in Figure 48 below.

Figure 48: Image from CX-0636C.0006 Depicting



(CX-0636C.0006).

The image depicted in Figure 48 above (CX-0636C.0006), is relevant to the specificity of SDC's description of TS IV.2.b because CX-0636C.0006 is cited in the body of SDC's trade secret definition. (FITS at 63.). Yet, neither Mr. Ryu nor any other SDC fact witness testified about CX-0636C.0006. Only SDC's expert Dr. Katona, testified about CX-0636C.0006. Dr. Katona's opening testimony about CX-0636C.0006 was brief. He testified that the depiction of SDC's in Figure 48 above contains an It shows that it's

[redacted] (Tr. (Katona) 394:25-395:5.). In SDC's rebuttal case, Dr. Katona testified that, in CX-0636C.0006, [redacted]" (*Id.* at 1486:22-1487:11.). Dr. Katona further testified that, because CX-0636C.0006 depicts the [redacted], it demonstrates that SDC's Defect Detection Trade Secrets are directed to [redacted]. (*Id.* at 1487:12-17.). Finally, Dr. Katona testified that the specifics of how SDC uses [redacted] are not publicly disclosed. (*Id.* at 1487:18-24.).

Staff's view is that SDC's TS IV.2.b is described with sufficient particularity because [redacted] is depicted in the image on CX-0636C.0006 reproduced in Figure 48 above. (SBr. at 78-79.). Respondents disagreed without more.

Respondents' argument fails because Respondents did not introduce any evidence that the [redacted] was known. Respondents also did not introduce any evidence that SDC's [redacted] were generally known or readily ascertainable. On the other hand, Dr. Katona's and Mr. Ryu's unrebutted testimony, (Tr. (Katona) at 1486:22-1488:24; Tr. (Ryu) at 213:9-22), proves by a preponderance of evidence that a person in the industry could meaningfully distinguish between TS IV.2.b, [redacted], and what was generally known or readily ascertainable. *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 44-46.

Respondents' argument also fails because Respondents focused on only one part of

SDC's definition of TS IV.2.b, i.e., the citation to CX-0636C.0006. Respondents failed to address the entirety of SDC's definition of TS IV.2.b. In addition to CX-0636C.0006, SDC's FITS states that CX-0671C, SDC's [redacted] Presentation, is one of the documents that describes its implementation of TS IV.2.a, .b, .c, .d, .e, and .f. (FITS at 63-64 (in the FITS, CX-0671C is cited using the bates number "SDC-1378-0789845").). Mr. Ryu testified that the images depicted in CX-0671C.0006 illustrate how SDC developed the non-conventional, not generally well-known [redacted]. (Tr. (Ryu) at 217:15-219:19; CX-0671C.0006.). Respondents did not introduce evidence or argument to rebut Mr. Ryu's testimony. Mr. Ryu's unrebutted testimony also proves by a preponderance of evidence that a person in the industry could meaningfully distinguish between TS IV.2.b and what is generally known or readily ascertainable.

Therefore, it is a finding of this ID that SDC has proven by a preponderance of evidence that SDC described TS IV.2.b with sufficient particularity.

b) TS IV.2.c ([redacted])

SDC defined TS IV.2.c as follows:

[redacted]

c. [redacted]

(FITS at 63.).

SDC relied on the same arguments and evidence it relied on for TS IV.2.b to prove that

TS IV.2.c is described with sufficient particularity. (CBr. at 58-59; CRBr. at 31-32.). Respondents also relied on the same arguments and evidence they relied on for TS IV.2.c. (RBr. at 78-79; RRBr. at 30-31.). Staff argued that SDC's [redacted] Presentation (CX-0671C.0006) "[redacted]" (SBr. at 79-80.).

It is a finding of this ID that, for the same reasons and evidence as provided for TS IV.2.b, SDC has proven by a preponderance of evidence that it described TS IV.2.b with sufficient particularity.

2. SDC Proved the Existence of a Protectible Trade Secret

a) The Defect Detection Trade Secrets Are Neither Generally Known Nor Readily Ascertainable

Respondents attempted to prove during the Hearing that the Defect Detection Trade Secrets are neither generally known nor readily ascertainable. (RBr. at 71-74.). The problem with Respondents' arguments and evidence is that, at most, Respondents proved that [redacted] was generally known or readily ascertainable. As fully explained below, SDC introduced more than sufficient evidence to prove that the Defect Detection Trade Secrets, which include [redacted], are neither generally known nor readily ascertainable.

SDC's expert witness Dr. Katona testified, without rebuttal, that TS IV.2.b and TS IV.2.c cannot be discerned or reverse-engineered from any end-product. (Tr. (Katona) at 398:4-12.). Respondents argued that the Defect Detection Trade Secrets are not protectible because [redacted] constitutes nothing more than "general industry knowledge." (RBr. at 71-72.).

Respondents relied on Mr. Ryu, who testified that [redacted] was available to display manufacturers at the time SDC was [redacted]. (Tr. (Ryu) at 213:2-6;

221:20-222:11.). Respondents also relied on the following two (2) publications: (1) "White light interferometry applications in nanometrology," V. Damian *et al.*, (CX-0413), ("Damian"); and (2) "Noise reduction and defect detection algorithm in white-light scanning interferometry for display panel inspection," by Sanghoon Cho et al., (CX-1879), ("Cho"). (RBr. at 72-74.). Dr. D'Andrade testified that Damian and Cho both demonstrate that [redacted] was known in the industry as a method for [redacted] (Tr. (D'Andrade) at 1201:14-1202:1205:10.). SDC's expert, Dr. Katona, agreed that [redacted] was available in the industry at the time SDC was [redacted]. (Tr. (Katona) at 394:17-18.).

Staff agreed that SDC proved that the Defect Detection Trade Secrets are neither generally known nor readily ascertainable. (SBr. at 80-82.).

The problem with Respondents' arguments and evidence is that the Defect Detection Trade Secrets are not directed to [redacted]. SDC's FITS, Mr. Ryu's testimony, and Dr. Katona's testimony all establish that SDC developed [redacted]. (Tr. (Ryu) at 217:15-219:19; Tr. (Katona) at 1486:22-1488:24; FITS at 63-64; CX-0636.0006; CX-0671C.). Therefore, Respondents' arguments are not supported by the record.

For the foregoing reasons, it is a finding of this ID that TS IV.2.b and TS IV.2.c are neither generally known nor readily ascertainable.

b) The Defect Detection Trade Secrets Have Economic Value

Respondents conceded that SDC proved by a preponderance of evidence that TS IV.2.b and TS IV.2.c have economic value. (JSUI at 1-2.).

SDC introduced sufficient evidence that TS IV.2.b and TS IV.2.c have economic value.

Mr. Ryu and Dr. Katona both testified that the Defect Detection Trade Secrets enable SDC to [redacted]. (Tr. (Ryu) at 217:2-219:18; Tr. (Katona) at 396:9-22.).

Based on SDC's unrebutted and incontestable testimony, it is a finding of this ID that TS IV.2.b and TS IV.2.c have economic value.

3. SDC Proved That Respondents Acquired the Defect Detection Trade Secrets Through Improper

The weight of the evidence supports a finding that Respondents acquired the Defect Detection Trade Secrets by improper means. As explained below, SDC has proven by a preponderance of evidence that Respondents improperly acquired the Defect Detection Trade Secrets from SDC's [redacted] third-party vendors, DIT and HIMS, and by hiring SDC's [redacted], Mr. Jae Ho Lee.[67] Staff agreed with SDC. (SBr. at 86-90.).

SDC relied in part on CX-0205C, [redacted] (CX-0205C.0005.). [redacted] (*Id.*). Therefore, CX-0205C is evidence that [redacted].

SDC also relied upon CX-0240C, [redacted] (CX-0240C.0004.). [redacted]

[67] Mr. Jae Ho Lee [redacted]. (CX-1767C (J. Lee Dep. Tr. Vol. 1) at 18:5-6, 18:9-19:4, 19:7-18, 20:1-7, 20:13-21:8, 21:18-22.). He joined Respondents in May 2019. (*Id.* at 30:1-5.).

[redacted]. (*Id.*). [redacted]" (*Id.*). [redacted].

Additionally, SDC entered into evidence [redacted]. (CX-0396C.0001, .0034; *see also* CX-0230C.0004 ([redacted]

[redacted]. (*Id.*). Respondents' possession of [redacted] is additional evidence that Respondents obtained SDC's confidential and proprietary [redacted]

information.

Figure 49:



(CX-0396C.0034.).

SDC also relied upon CX-0219C,

. (CX-0219C.0002.).

[redacted]

Figure 50: [redacted]

[redacted]

(CX-0219C.0002.).

Another key piece of evidence that SDC introduced is the [redacted] resignation letter of Mr. Jae Ho Lee (CX-0698C.0007), and his affidavit on trade secret protection (CX-0729C). Both Mr. Lee's resignation letter and his affidavit on trade secret protection state that Mr. Lee [redacted]. (CX-0698C.0007.). Mr. Lee [redacted]. (CX-1767C (J. Lee Dep. Tr. Vol. 1) at 24:11-34:18.). Mr. Lee [redacted].

Mr. Lee then joined Respondents in [redacted] (*Id.* at 24:11-34:18.). Mr. Lee's access to SDC's trade secrets and subsequent move to work for Respondents, [redacted] constitutes additional circumstantial evidence that Respondents improperly acquired the Defect Detection Trade Secrets.

In their Post-Hearing Briefs, Respondents did not introduce argument or evidence to rebut SDC's arguments and evidence that Respondents improperly acquired the Defect Detection Trade Secrets. (RBr. at 68-79; RRBr. at 30-35.). Therefore, Respondents waived, withdrew or abandoned the right to argue this issue under Ground Rule 10.1. SDC's arguments and evidence for acquisition by improper means are unrebutted.

Based upon SDC's unrebutted arguments and evidence, it is a finding of this ID that SDC has proven by a preponderance of evidence that Respondents acquired TS IV.2.b and TS IV.2.c by improper means.

4. SDC Proved Respondents Used the Defect Detection Trade Secrets

As explained below, during the Hearing, SDC adduced evidence that Respondents use the Defect Detection Trade Secrets. Respondents argued that there is insufficient evidence that Respondents used [redacted]. (RBr. at 68-71.). Respondents relied primarily on the testimony of their witness, Mr. Xie. SDC argued that Mr. Xie's testimony is not credible, and Staff argued that Mr. Xie's testimony is unreliable and should be given no weight. (CBr. at 65-67; SBr. at 93-94.).

The problem with Respondents' arguments and with Mr. Xie's testimony is that they are contrary to the weight of the evidence in the record, as discussed below.

TS IV.2.b recites [redacted] (FITS at 63.). TS IV.2.c recites

[redacted] (*Id.*).

For TS IV.2.b, the issue is whether Respondents' [redacted]. For TS IV.2.c, the issue is whether Respondents' [redacted].

SDC relied upon exhibit CX-1193C, [redacted]. (CX-1193C.0001 ("[redacted] (Tr. (Katona) at 404:25-405:18.). [redacted] (CX-1193C.0031.).

Figure 51: [redacted]



(CX-1193C.0031.).

[redacted] (*Id.* at .0034.). [redacted]

Figure 52: [redacted]



(CX-1193C.0034.).

[redacted] demonstrates that Respondents use TS IV.2.b because [redacted] (*Id.* at .0031, .0034.). [redacted] is therefore evidence that [redacted] and that Respondents use TS IV.2.b.

[redacted] is also evidence that Respondents use TS IV.2.c. This is because [redacted] states that [redacted]. (CX-1193C.0031.). Dr. Katona, SDC's expert, testified that [redacted]

accordance with the language of TS IV.2.c. (Tr. (Katona) at 404:25-405:18.). Therefore, [redacted] is evidence that Respondents [redacted]. [redacted] does not expressly state that [redacted], and so by itself, it is not sufficient to prove by a preponderance of evidence that Respondents use TS IV.2.c.

Respondents argued that the [redacted] is "***not*** anything related to the current usage of BOE." (RRBr. at 34 (emphasis in original).). Respondents did not provide evidence that CX-1193C reflects anything other than the process Respondents use.

Thus, it is a finding of this ID that CX-1193C is reliable evidence that Respondents [redacted]. The [redacted] alone is sufficient evidence that Respondents use TS IV.2.b.

SDC also relied upon exhibit CX-0295C, [redacted] (CX-0295C.0046.). [redacted] "[redacted]" (*Id.* at .0059.). [redacted]

Figure 53: [redacted]



(CX-0295C.0059.).

Dr. Katona testified that [redacted] in accordance with SDC's description of TS IV.2.c. (*Id.*; Tr. (Katona) at 400:13-401:1)

Respondents argued that Dr. Katona is mistaken. (RBr. at 70.). According to Respondents, [redacted]. (*Id.*). Respondents relied on testimony from their witness, Mr. Xie, which is reproduced below.

[redacted]

(Tr. (Xie) at 1114:1-15 (emphasis added).).

One problem with Respondents' argument and Mr. Xie's testimony is that they are inconsistent with Respondents' documentary evidence. (CX-0295C.0056.). (*Id.*).

Figure 54:



(CX-0295C.0056.).

[redacted]. (*Id.* at .0059.). Respondents' [redacted], is inconsistent with Respondents' argument and Mr. Xie's testimony that [redacted] Dr. Katona's testimony is more supported by the documentary evidence than Mr. Xie's.

Therefore, it is a finding of this ID that Dr. Katona's testimony about Respondents' [redacted] is more credible. (CX-0295C.0059; Tr. (Katona) at 400:13-401:1.).

SDC also relied upon CX-1433C, [redacted] (CX-1433C.0009.). [redacted]. (*Id.* at .0010.). [redacted]. (*Id.*). [redacted].

Figure 55: [redacted]



(CX-1433C.0010.).

Dr. Katona testified that, in the [redacted] column, [redacted] (Tr. (Katona) at 400:13-401:14.). According to Dr. Katona, this is the same step in the EV/EN process where SDC [redacted] in SDC's trade secrets.

Respondents' witness, Mr. Xie, testified that [redacted]. (Tr. Xie) at 1117:12-1118:18.). Mr. Xie [redacted] (*Id.*). According to Mr. Xie, [redacted]." (*Id.* at 1118:14-15.). In other words, according to Mr. Xie, the

[redacted]. Mr. Xie's testimony is reproduced below.

[redacted]

(Tr. (Xie) at 1117:11-1118:18.).

The problem with Mr. Xie's testimony that [redacted] (CX-0295C.0056, .0059.). Dr. Katona's testimony is more supported

by the documentary evidence than Mr. Xie's. Therefore, it is a finding of this ID that Dr. Katona's testimony about Respondents' [redacted] is more credible. (Tr. (Katona) at 400:13-401:14; CX-1433C.0010.).

SDC also relied upon exhibit CX-0051C, [redacted] (CX-0051C.0001.). [redacted] Dr. Katona testified that the [redacted] reflects the [redacted]. (CX-0051C.0033, .0035; Tr. (Katona) at 403:15-404:10; CDX-0002C.0102.). An excerpt from the [redacted] which reflects Respondents' [redacted] is reproduced in Figure 56 below.

Figure 56: [redacted]



(C

Respondents' witness, Mr. Xie, [redacted] (CX-

0051.0048C) [redacted]. (RBr. at 69.). Mr. Xie testified as follows:

[redacted]

[redacted]

(Tr. (Xie) at 1114:1-1115:21.).

[redacted] Mr. Xie's [redacted]

[redacted]

Figure 57: [redacted] **Mr. Xie** [redacted]

[redacted]

(CX-0051C.0048.).

Mr. Xie also provided the cited testimony below about Respondents' [redacted].

Mr. Xie [redacted] "[redacted]

[redacted]."

[redacted]?

[redacted]

[redacted]

[redacted]

[redacted]?

[redacted]

[redacted]

A. [redacted]

[redacted]

[redacted]

[redacted].

[redacted]

[redacted]

(Tr. (Xie) at 1112:14-1113:25.).

The excerpt from the [redacted] reproduced in Figure 57 above suggests that

. Considered in the context and the totality of the documentary and testimonial evidence (Tr. (Katona) at 400:13-401:14, 403:15-405:18; CX-1433C.0009, .0010; CX-1193C.0031, .0034; CX-0295C.0056, .0059; CX-0051C.0033, .0035), at best,

(CX-0230C) constitutes additional evidence that Respondents

.

Additionally, exhibit CX-0230C is

." (CX-0230C.0004.).

: "

."

Figure 58:



[redacted]

(CX-0230C.0004.).

Respondents argued that CX-0230C is not persuasive evidence because [redacted] (RRBr. at 34 n.26.). The problem with Respondents' argument is that the evidence that SDC relies upon for Respondents use of equipment taken from SDC's trade secrets [redacted]. In addition to the documentary evidence described above and the testimony of SDC's expert Dr. Katona, Mr. Xie testified that Respondents use [redacted] (Tr. (Xie) at 1112:14-1113:16.). [redacted]

Based upon the totality of the evidence discussed above, it is a finding of this ID that SDC proved by a preponderance of evidence that Respondents use TS IV.2.b and TS IV.2.c.

5. Respondents Conceded That They Did Not Independently Develop the Defect Detection Trade Secrets

Respondents conceded that they did not independently develop TS IV.2.b. (JSUI at 1.).

Respondents introduced no arguments or evidence that they independently developed the Defect Detection Trade Secrets. (RBr. at 68-79; RRBr. at 30-35.). Accordingly, it is a finding of this ID that Respondents failed to satisfy their burden of proving they independently developed TS IV.2.b.

G. Trade Secret IV.3 (EVEN Equipment)

1. SDC Adequately Described the EVEN Equipment Trade Secrets

a) TS IV.3.a (EVEN [redacted])

SDC defined TS IV.3.a as follows:

[redacted]

a. [redacted]

(FITS at 65.).

SDC's principal engineer, Mr. Jaemork Park, testified that an SDC presentation titled

[68] SDC-1378-0554573 at 578 is CX-0811C.0007.

[69] SDC-1378-0789863 at 864 is CX-0672C.0003.

[70] SDC-1378-0790187 at 202 is CX-0676C.0017.

[71] SDC-1378-0789919 at 927 is CX-0673C.0010.

[72] SDC-1378-0790116 at 121 is CX-0675C.0007.

[73] SDC-1378-0790376 at 380 is CX-0677C.0006.

"[redacted]," and dated [redacted] ("[redacted]"),[74] depicts [redacted]. (Tr. (J. Park) at 183:14-184:8; CX-0674C.0013.). Mr. Park testified that there are [redacted]. (Tr. (J. Park) at 184:23-186:15.). The [redacted]. (*Id.* at 187:9-188:5.). [redacted]. (*Id.* at 188:12-24.). [redacted]. (*Id.* at 188:25-189:17.). [redacted] (*Id.* at 189:23-190:9.). Mr. Park testified that [redacted]. (*Id.* at 190:10-24.). He explained that [redacted], that is the subject of TS IV.3.a, [redacted]. (*Id.* at 186:16-25.). The depiction of SDC's [redacted] is reproduced in Figure 59 below.

[74] SDC's [redacted] is not one of the documents cited in SDC's description of TS IV.3.a.

Figure 59: SDC's [redacted] from SDC's [redacted]



(Tr. (Park) at 183:14-190:24; CX-0674C.0013.).

Mr. Park also testified that an SDC technical document titled "[redacted]" ("[redacted]."), is SDC's [redacted]. (Tr. (J. Park) at 193:19-194:5; CX-0675C.0002.). Mr. Park testified that SDC's [redacted]. depicts [redacted] (Tr. (J. Park) at 194:6-18; CX-0675C.0007.). Mr. Park explained that, according to the depiction in SDC's EV[redacted]. (Tr. (J. Park) at 194:19-195:3.). [redacted] (*Id.* at 195:4-13.). [redacted] (*Id.* at 195:14-

197:10.). SDC's expert, Dr. Michael Lebby,[75] also testified that the depiction contained in SDC's [redacted]. reflects SDC's description of TS IV.3.a. (Tr. (Lebby) at 563:24-564:6; CDX-0003C.0058.).

The depiction of SDC's EV [redacted] is reproduced in Figure 60 below.

Figure 60: SDC's [redacted]

[redacted]

(Tr. (Park) at 193:19-197:10; CX-0675C.0007.).

Dr. Lebby testified that an SDC technical document titled "[redacted], dated [redacted] ("[redacted]."), depicts SDC's [redacted] that is the subject of TS IV.3.a, and SDC's [redacted] that is the subject of

[75] Dr. Michael Lebby was called by SDC to testify as a technical expert with respect to Trade Secrets IV and VII. (Tr. (Lebby) at 529:11-17.). Dr. Lebby earned a bachelor's degree in electrical engineering, an MBA, and a Ph.D. in semiconductor physics, and a Doctor of Engineering in Optoelectronics. (Tr. (Lebby) at 530:3-10; CDX-0003C.0002.). Dr. Lebby gained experience with OLEDs in connection with his work at Motorola and OIDA, and as a product expert for a European project called Piscale which involved fabrication and characterization of OLED technologies. (Tr. (Lebby) at 530:11-25.). Dr. Lebby was named by the USPTO as the most prolific inventor in the United States from 1988-1997. (Tr. (Lebby) at 531:1-6; CDX-0003C.0003.). He has over 225 issued utility patents in the United States, and at least twenty of those are related to OLED technology. (Tr. (Lebby) at 531:1-13; CDX-0003C.0004.). SDC offered Dr. Lebby as an expert in "OLED and optical technologies and related fabrication and industry." (Tr. (Lebby) at 531:14-16.). Neither Respondents nor Staff objected to SDC's offering Dr. Lebby as an expert. (*Id.* at 531:17-24.). Therefore, Dr. Lebby was accepted as an expert "without objection on the subject matter for which he has been called upon to testify." (*Id.* at 531:25-532:2.).

TS IV.3.a. (Tr. (Lebby) at 564:7-18; CX-0672C.0003; CDX-0003C.0059.). Dr. Lebby explained that SDC's newer A3 EV/EN line "[redacted]." (Tr. (Lebby) at 564:14-18.). The older A2 line, in contrast, is [redacted] (*Id.* at 564:10-14.). [redacted]. (*Id.* at 564:19-565:13.). He noted that it is [redacted]. (*Id.*). [redacted]. (*Id.*). The [redacted]. is reproduced in Figure 61 below.

Figure 61: SDC's [redacted]

[redacted]

(Tr. (Lebby) at 564:7-565:13; CX-0672C.0003; CDX-0003C.0059.).

Respondents argued that SDC's description of TS IV.3.a is insufficient because it is not sufficiently clear what is meant by a [redacted] (RBr. at 80-82.). Respondents claimed that the documents cited in SDC's description of TS IV.3.a depict [redacted] (*Id.*at 80.). However, Respondents' expert Dr. D'Andrade testified that, based on SDC's cited documents, he understood [redacted] to mean [redacted] (Tr. (D'Andrade) at 1210:8-18.). Ultimately, Respondents objected to what they viewed as SDC's attempt to narrow the scope of their description of TS IV.3.a during the Hearing to avoid Respondents' alleged public disclosure references. (RBr. at 80-82.). Respondents argued that any attempt by SDC to require [redacted] is inconsistent with the plain language of SDC's description. (RRBr. at 36-39.).

In Staff's view, SDC's description of TS IV.3.a is sufficiently particular. (SBr. at 95-96.).

The problem with Respondents' argument is that it is entirely attorney argument. No expert witness or fact witness testified that they were unable to understand SDC's description of TS IV.3.a. To the contrary, SDC's fact witness, Mr. Jaemork Park, and expert witness, Dr. Lebby, in their testimony summarized above, described in detail [redacted] depicted in each document cited in SDC's description of TS IV.3.a. That is more than a preponderance of evidence that SDC's description of TS IV.3.a is sufficiently specific.

Therefore, it is a finding of this ID that SDC has proven, by a preponderance of evidence, that TS IV.3.a is described with reasonable particularity.

b) TS IV.3.m ( )

SDC defined TS IV.3.m as follows:



(FITS at 67.).

Respondents did not dispute that SDC described TS IV.3.m with reasonable particularity. (JSUI at 1-2.).

SDC introduced sufficient evidence to prove by a preponderance of evidence that TS IV.3.m is described with reasonable particularity. SDC entered in evidence CX-0817C, which is an SDC presentation dated and titled " " (CX-0817C.0002.). SDC also entered in evidence CX-0736C, which is an SDC presentation dated and titled " " (CX-0736C.0002.). CX-0817C and CX-0736C are both cited in the body of SDC's description

[76] SDC-1378-0792454 at 461-67 is CX-0736C.0009-15.

[77] SDC-1378-0991350 is CX-0817C.0002.

of TS IV.3.m. SDC's expert Dr. Lebby testified that CX-0817C and CX-0736C depict the [redacted] that are the subject of SDC's TS IV.3.m. (Tr. (Lebby) at 566:23-567:21; CDX-0003C.0063-64; CX-0817C.0013; CX-0736C.0011.). Dr. Lebby also testified that SDC's [redacted] that are the subject of TS IV.3.m ensured that [redacted]. (Tr. (Lebby) at 567:22-569:23; CDX-0003C.0065-66.).

Based on SDC's unrebutted arguments and evidence, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS IV.3.m is described with reasonable particularity.

c) TS IV.3.s.xiii (EVEN [redacted])

SDC defined TS IV.3.s.xiii as follows:

[redacted]

s. [redacted]

xiii. [redacted]

[78] SDC-1378-0792454 at 461-67 is CX-0736C.0009-15.

[79] SDC-1378-0991350 is CX-0817C.0002.



(FITS at 72.).

Respondents did not dispute that SDC described TS IV.3.s.xiii with reasonable particularity. (JSUI at 1-2.).

SDC relied on the same arguments and evidence for TS IV.3.s.xiii as it relied on for TS IV.3.m. (CBr. at 68-69.). The evidence SDC relied on for TS IV.3.m includes Dr. Lebby's testimony that CX-0736C and CX-0817C depict [redacted] in accordance with SDC's description of TS IV.3.s.xiii. (Tr. (Lebby) at 566:23-567:21.).

Based on SDC's unrebutted arguments and evidence, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS IV.3.s.xiii is described with reasonable particularity.

2. SDC Proved the Existence of a Protectible Trade Secret

a) The EVEN Equipment Trade Secrets Are Neither Generally Known Nor Readily Ascertainable

(i) TS IV.3.a

As explained below, SDC introduced sufficient evidence to prove by a preponderance of evidence that TS IV.3.a is neither generally known nor readily ascertainable. (CBr. at 75-77; CRBr. at 33.).

[80] SDC-1378-0792454 at 461-67 is CX-0736C.0009-13.

[81] SDC-1378-0991350 is CX-0817C.0002.

SDC's expert, Dr. Lebby, testified that TS IV.3.a could not be reverse engineered from an end product. (Tr. (Lebby) at 586:21-587:2.). Dr. Lebby also testified that he reviewed Respondents' alleged public disclosure references and concluded that none disclosed TS IV.3.a. (*Id.* at 593:12-595:1.).

Respondents argued that a paper titled "Development of the OLED Mass Production System," authored by Elichi Matsumoto of Canon Tokki and published in 2020 (RX-1252) ("Matsumoto"), discloses TS IV.3.a. (RBr. at 82-83.). Respondents' expert Dr. D'Andrade testified that Figure 9 of Matsumoto depicts an [redacted]. (Tr. (D'Andrade) at 1211:22-1212:11.). Dr. D'Andrade opined that Figure 9 of Matsumoto "absolutely discloses the category IV.3.a." (*Id.* at 1211:22-1212:11, 1213:3-7.). Dr. D'Andrade's reproduction of Figure 9 of Matsumuto is depicted in Figure 62 below.

Figure 62: Dr. D'Andrade's Reproduction of Figure 9 of Matsumoto

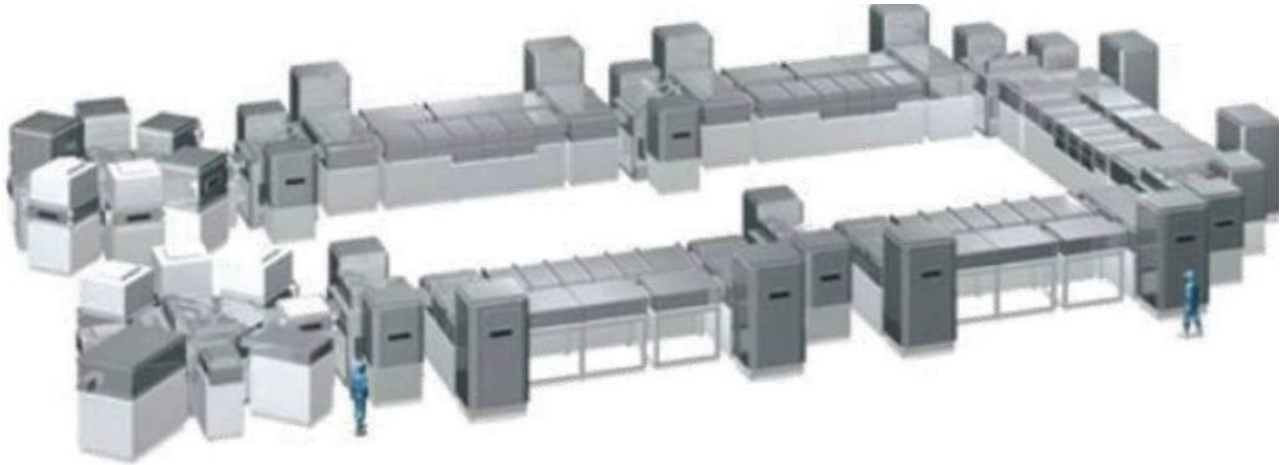


Fig.9 G8H In-line type system image

(Tr. (D'Andrade) at 1211:22-1212:11; RDX-0003C.0081; RX-1252 at p.919[82].).

[82] RX-1252 is stamped with the exhibit number RX-1252 at the top right of the first page of the

As an initial matter, Respondents did not cite to Figure 9 of Matsumuoto in their Pre-Hearing Brief, and therefore waived, abandoned, or withdrew this contention under Ground Rule 7.2.

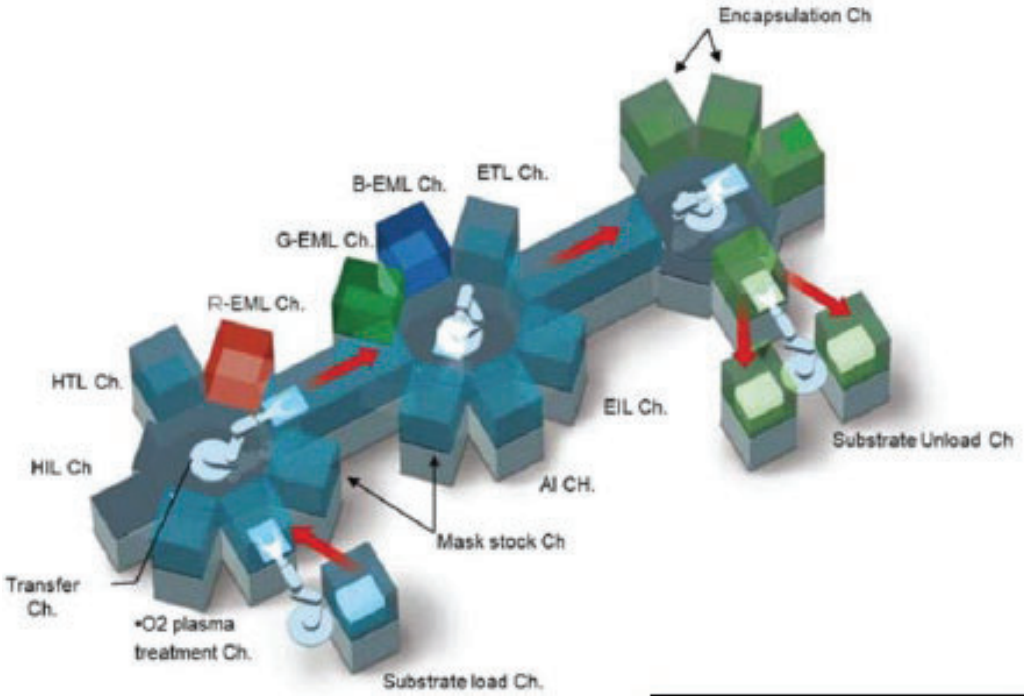
Respondents' argument also fails on the merits. Dr. Lebby testified that Figure 9 of RX-1252 is a "G8" line, not a "G6" line as described in TS IV.3.a. (Tr. (Lebby) at 593:24-594:11; CDX-0003C.0093.). Dr. Lebby testified that a G8 line is "very different" than what is described in TS IV.3.a. (Tr. (Lebby) at 593:24-594:11; CDX-0003C.0093.). Additionally, SDC's fact witness, Mr. Jaemork Park, testified that Figure 9 depicts an "in-line" system, whereas TS IV.3.a is [redacted] and so "they are completely different." (Tr. (J. Park) at 207:16-208:4.). This is relevant because Mr. Park and Dr. Lebby testified that the [redacted] that SDC cited to for SDC's definition of TS IV.3.a are directed to [redacted]. (Tr. (J. Park) at 183:14-190:24; CX-0674C.0013; Tr. (Lebby) at 563:24-564:6; CDX-0003.0058; Tr. (J. Park) at 193:19-197:10; CX-0675C.0007; Tr. (Lebby) at 564:7-565:13; CX-0672C.0003; CDX-0003C.0059.). Respondents did not dispute the foregoing testimony. Moreover, none of Respondents witnesses explained how an "in line" configuration such as the one depicted in Figure 9 of Matsumoto constitutes a disclosure of [redacted] defined in SDC's TS IV.3.a. Therefore, it is a finding of this ID that Figure 9 of Matsumoto does not disclose TS IV.3.a.

Respondents' expert Dr. D'Andrade also testified that Figure 6 of Matsumoto depicts an [redacted] as indicated by the red arrow in the figure. (Tr. (D'Andrade) at 1212:14-1213:7; RDX-0003C.0081; RX-1252 at p. 918.). Dr. D'Andrade opined that Figure 6

document. However, the pages of RX-1252 are not "sequentially numbered in a consistent location" as required by Ground Rule 8.7.4.

of Matsumoto "absolutely discloses the category IV.3.a." (Tr. (D'Andrade) at 1212:14-1213:7.). Dr. D'Andrade's reproduction of Figure 6 of Matsumoto is depicted in Figure 63 below.

Figure 63: Dr. D'Andrade's Reproduction of Figure 6 of Matsumoto



(Tr. (D'Andrade) at 1212:14-1213:7; RDX-0003C.0081; RX-1252C at p. 918.).

As an initial matter, Respondents did not cite to Figure 6 of Matsumuoto in their Pre-Hearing Brief, and therefore waived, abandoned, or withdrew this contention under Ground Rule 7.2.

Respondents' argument also fails on the merits. The problem with Respondents' argument and Dr. D'Andrade's opinion is that Figure 6 of Matsumoto does not depict [redacted]. Dr. Lebby and Mr. Park both explained in their testimony that the [redacted] depicted in the documents SDC relied on to define TS IV.3.a have [redacted]. (Tr. (J. Park) at 183:14-190:24; CX-0674C.0013; Tr. (Lebby) at 563:24-564:6; CDX-0003.0058; Tr. (J.

Park) at 193:19-197:10; CX-0675C.0007; Tr. (Lebby) at 564:7-565:13; CX-0672C.0003; CDX-0003C.0059.).

Finally, even if Matsumoto discloses TS IV.3.a, Respondents did not defeat SDC's misappropriation claim because Matsumoto published in 2020, which is approximately four to five years after Respondents' misappropriation of TS IV.3.a. (CX-0396C.0028; CX-0208C.0019; CX-0393C.0023.). A party is liable for misappropriation of a trade secret, even if the trade secret is publicly disclosed or generally known, if the misappropriation occurred before the trade secret became publicly disclosed or generally known. *See, e.g., Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 31.

Therefore, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS IV.3.a is neither generally known nor readily ascertainable.

(ii) TS IV.3.m and TS IV.3.s.xiii

Respondents did not present any argument or evidence during the Hearing or in their Post-Hearing Briefs that TS IV.3.s.xiii is publicly disclosed. (RBr. at 82-85; RRBr. at 39.). This argument is therefore waived, abandoned, or withdrawn pursuant to Ground Rule 10.1. SDC's evidence that TS IV.3.s.xiii is unrebutted. (Tr. (Lebby) at 595:2-22.). Therefore, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS IV.3.s.xiii is neither publicly disclosed nor readily ascertainable.

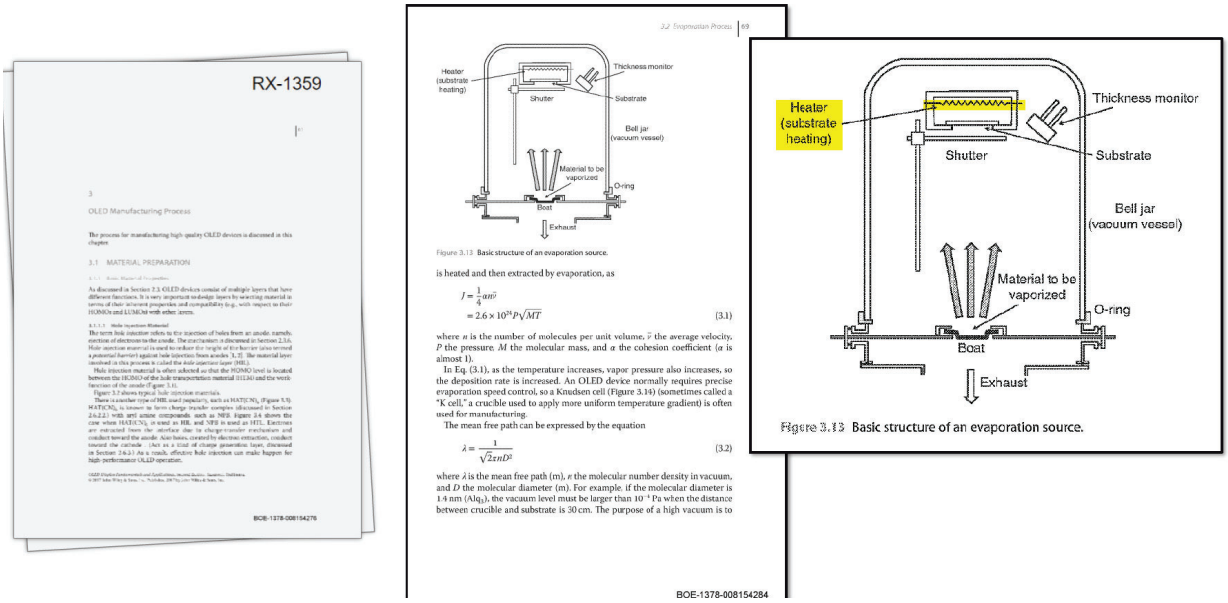
With respect to TS IV.3.m., Dr. Lebby testified that it could not be reverse engineered and it is not readily ascertainable from any end product. (Tr. (Lebby) at 586:10-587:2.).

Respondents argued that [redacted] is well known and something an OLED engineer would readily understand. (RBr. at 83-85; Tr. (D'Andrade) at 1216:4-1217:11.). Dr.

D'Andrade testified that one of SDC's documents depicts [redacted], and relies on that document as alleged evidence that it was readily understood to [redacted]. (Tr. (D'Andrade) at 1217:12-1218:14; CX-0673C.). Dr. D'Andrade testified that an OLED engineer would understand [redacted]. (Tr. (D'Andrade) at 1218:15-1219:14; RDX-0003C.0088.).

Dr. D'Andrade testified that a chapter from a book titled "OLED Display Fundamentals and Applications" (RX-1359) provides additional evidence that TS IV.3.m is generally known or readily ascertainable. (Tr. (D'Andrade) at 1219:15-1221:22.). Dr. D'Andrade provided a demonstrative that depicts Figure 3.13 from RX-1359. (RDX-0003C.0090.). He explained that Figure 3.13 depicts a "bell jar," which is a "pictorial type of way to express what is the evaporation lines." (Tr. (D'Andrade) at 1220:1-3.). Dr. D'Andrade also testified that there is a [redacted] (*Id.* at 1220:1-5.). Dr. D'Andrade opined in his testimony that although Figure 3.13 depicts an [redacted], it is relevant to [redacted] because it illustrates [redacted], and it would be generally known that you can do that and would want to do that [redacted]. (*Id.* at 1221:2-12.). Dr. D'Andrade's demonstrative is reproduced in Figure 64 below.

Figure 64: Dr. D'Andrade's Reproduction of Figure 3.13 of RX-1359 and Accompanying Disclosure



(Tr. (D'Andrade) at 1219:15-1221:22; RDX-0003C.0090; RX-1359.0009.).

SDC's expert Dr. Lebby testified that RX-1359 is "not even close to being applicable" to TS IV.3.m because, in RX-1359, [redacted], in TS IV.3.m, [redacted]. (Tr. (Lebby) at 595:2-16.). Dr. Lebby also testified that he had seen no evidence that [redacted] was generally known. (*Id.* at 595:17-21.).

Staff agreed with SDC that TS IV.3.m is neither publicly disclosed nor readily ascertainable. (SBr. at 101-102.).

The problem with Respondents' argument is that it is undermined by SDC's development work. Evidence adduced in this Investigation demonstrates that it took SDC's engineers [redacted]. (CX-0673C.0003-06 ([redacted]

[redacted]); CX-0675C.0003, .0007, .0012, .0019 ([redacted]); Tr. (J. Park) at 206:4-11; RX-1491C (J. Park Dep. Tr. Vol. 1) at 100:15-101:8, 108:9-23.). The fact that SDC had to [redacted] undermines Respondents' and Dr. D'Andrade's contention that [redacted] would be readily ascertainable. Moreover, that the Respondents and Dr. D'Andrade could only find a public disclosure of [redacted] is not as straightforward as they contend. Weighing the evidence, Dr. Lebby's testimony is more credible because it is consistent with SDC's development work and it is consistent with Respondents' and Dr. D'Andrade's failure to identify any disclosure, other than from SDC, of [redacted].

Therefore, it is a finding of this ID that SDC has proven, by a preponderance of evidence, that TS IV.3.m is neither generally known nor readily ascertainable.

b) The EVEN Equipment Trade Secrets Have Economic Value

SDC presented substantial, incontestable, and unrebutted evidence that the Category IV.3 Trade Secrets have economic value. (CBr. at 72-75.). SDC's principal engineer, Mr. Jaemork Park, testified that [redacted], i.e., the subject of SDC's TS IV.3.a, [redacted]. (Tr. (Park) at 186:9-187:4.). Mr. Park and SDC's expert Dr. Lebby testified that the [redacted]. (Tr. (Lebby) at 563:24-566:22, 645:2-646:18; Tr. (J. Park) at 185:20-187:4, 191:5-193:18; RX-1592C (J. Park Dep. Tr.

Vol. 2) at 175:19-176:3.).

Dr. Lebby testified that the [redacted], *i.e.* the subject of TS IV.3.m and IV.3.s.xiii, enabled [redacted]. (Tr. (Lebby) at 567:22-569:23.).

Respondents conceded that SDC proved by a preponderance of evidence that TS IV.3.a, TS IV.3.m, and TS IV.3.s.xiii have economic value. (JSUI at 1-2).

Therefore, based on the undisputed and incontestable evidence adduced by SDC, it is a finding of this ID that SDC proved by a preponderance of evidence that TS IV.3.a, TS IV.3.m, and TS IV.3.s.xiii have economic value.

3. SDC Proved That Respondents Acquired the EVEN Equipment Trade Secrets Through Improper Means

As explained in detail below, SDC introduced more than a preponderance of evidence that Respondents improperly acquired SDC's TS IV.3.a, TS IV.3.m, and TS IV.3.s.xiii by targeting SDC's vendor Canon Tokki and SDC's engineers. (CBr. at 78-81.). Staff agreed with SDC. (SBr. at 106-118.).

a) TS IV.3.a

SDC entered into the record CX-0396C, which is [redacted] (CX-0396C.0028.). [redacted]. (CX-0396C.0032, .0034.). [redacted] (*Id.* at .0032.). [redacted],

Figure 65:



(CX-0396C.0032.).

SDC's expert, Dr. Lebby, testified that CX-0396C as described by TS IV.3.a. (Tr. (Lebby) at 581:4-582:6; CX-0396C.0030; .0038.).

Figure 66: [redacted]



(Tr. (Lebby) at 581:4-582:6; CX-0396C.0030.).

Figure 67: [redacted]



(Tr. (Lebby) at 581:4-582:6; CX-0396C.0038.).

Respondents did not dispute Dr. Lebby's testimony about CX-0396C or SDC's argument that CX-0396C [redacted] as described by TS IV.3.a. (RBr. at 86-87; RRBr. at 42-44.). Therefore, Dr. Lebby's unrebutted and uncontested testimony and SDC's unrebutted arguments relying on CX-0396C prove that, [redacted], Respondents were in possession of SDC's confidential and proprietary [redacted] information.

As explained in detail in above, Mr. Chang Soon Ji [redacted]. (Tr. (Ji) at 276:2-277:18,

280:6-10.). , Mr. Ji

“

” (Tr. (Ji) at 277:10-280:5; CX-0725C.0004-05; *see also* Tr. (J. Kim) at 170:23-171:4.). Mr. Ji’s . (Tr. (Ji) at 294:3-6, 310:8-10.).

Mr. Ji

(Tr. (Ji) at 272:25-273:17, 275:4-14, 280:22-281:8, 313:19-314:10; CX-0725C.0006; CX-1787C (Xiao Dep. Tr.) at 33:1-5; CX-1831C.0064.). , Mr. Ji

. (Tr. (Ji) at 286:7-14, 294:3-18.). Mr. Ji

. (*Id.* at 310:5-25.).

, Mr. Ji

. (Tr. (Ji) at 284:17-286:6.).

The evidence proves that, , Mr. Ji

. For example, CX-2324C

(CX-2324C.0004; Tr. (Ji) at 286:15-287:1.).

(CX-2324C.0004; Tr. (Ji) at 287:2-12.).

Mr. Ji

[redacted] (CX-2324C.0060-68; Tr. (Ji) at 288:19-289:7.). Mr. Ji [redacted] (Tr. (Ji) at 293:14-23.).

A [redacted] (CX-0196C.0042). [redacted] (CX-0196C.0042; Tr. (Lebby) at 580:3-12; CDX-0003C.0080.).

[redacted]. (CX-0208C.0019.). Mr. Ji [redacted]. (Tr. (Ji) at 294:19-296:22; CX-0208C.0023.). Mr. Ji [redacted] (Tr. (Ji) at 296:9-22.). [redacted].

Figure 68: [redacted]



(Tr. (Ji) at 294:19-296:22; CX-0208C.0023.).

[redacted] (CX-0393C.0023.). [redacted]

Figure 69: [redacted]



(CX-0393C.0023.).

The foregoing evidence is sufficient to prove by a preponderance of evidence that Respondents obtained SDC's confidential and proprietary [redacted] information from SDC's former [redacted] Mr. Ji. Mr. Ji [redacted], Mr. Ji [redacted], Mr. Ji's [redacted] Mr. Ji [redacted] Mr. Ji [redacted]. (CX-0396C.0030, .0032, .0034, .0038; Tr. (Lebby) at 580:3-12, 581:4-582:6; Tr. (Ji) at 272:25-273:17, 275:4-14, 276:2-280:5, 280:22-281:8, 284:17-287:12, 288:19-289:7, 293:14-23, 294:3-296:22, 310:5-25, 313:19-314:10; CX-0196C.0042; CX-0208C.0023; CX-0393C.0023; CX-0725C.0004-.0006; CX-

2324C.0004; Tr. (J.J. Kim) at 170:23-171:4; CX-1787C (Xiao Dep. Tr.) at 33:1-5.).

Based on the record evidence, there is a strong likelihood of misappropriation where, as here, an employee has duties that are nearly identical to their duties at their former employment. *See, e.g., Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 41-42. Moreover, where there is no evidence of how the alleged misappropriator arrived at the trade secret, which is the case in this Investigation, there is strong circumstantial evidence of misappropriation. *Id.*

Finally, Respondents produced in this Investigation [redacted], that Dr. Lebby testified implements TS IV.3.a. (CX-0169C.0001; Tr. (Lebby) at 580:13-581:8; CDX-0003C.0081.). Dr. Lebby provided a demonstrative, reproduced in Figure 70 below, that depicts SDC's [redacted] from CX-0672C.0003 (which is cited in SDC's description of TS IV.3.a) on the left and [redacted], CX-0169C, on the right.

Figure 70: [redacted]

(Tr. (Lebby) at 580:13-581:8; CDX-0003C.0081; CX-0674C.0003; CX-0169C.0001.).

Among the evidence discussed above, Respondents only disputed the [redacted] (CX-0169C). (RBr. at 85-86.). [redacted]

[redacted] (*Id.*). [redacted] (*Id.*).

As discussed in detail in this ID, the record proves by more than a preponderance of evidence that SDC's security measures were extensive. (*See* Section VI.J, *infra*.). Additionally, as discussed in detail in this ID, the record proves by a preponderance of evidence that SDC owns TS IV.3.a. (*See* Section VI.I, *infra*.). Therefore, there is no merit to Respondents' argument that SDC either does not own TS IV.3.a or did not use sufficient security measures with respect to TS IV.3.a.

Moreover, in the context of the entire record, including SDC's extensive evidence of its security measures (*see* Section VI.J, *infra*), and the evidence that Mr. Ji [redacted] (CX-0396C.0030, .0032, .0034, .0038; Tr. (Lebby) at 580:3-12, 581:4-582:6; Tr. (Ji) at 272:25-273:17, 275:4-14, 276:2-280:5, 280:22-281:8, 284:17-287:12, 288:19-289:7, 293:14-23, 294:3-296:22, 310:5-25, 313:19-314:10; CX-0196C.0042; CX-0208C.0023; CX-0393C.0023; CX-0725C.0004-.0006; CX-2324C.0004; Tr. (J.J. Kim) at 170:23-171:4; CX-1787C (Xiao Dep. Tr.) at 33:1-5), CX-0169C corroborates SDC's argument that Respondents obtained TS IV.3.a through overlapping vendor Cannon Tokki and [redacted] Mr. Ji.

Therefore, it is a finding of this ID that SDC has proven, by a preponderance of evidence, that Respondents obtained TS IV.3.a by improper means.

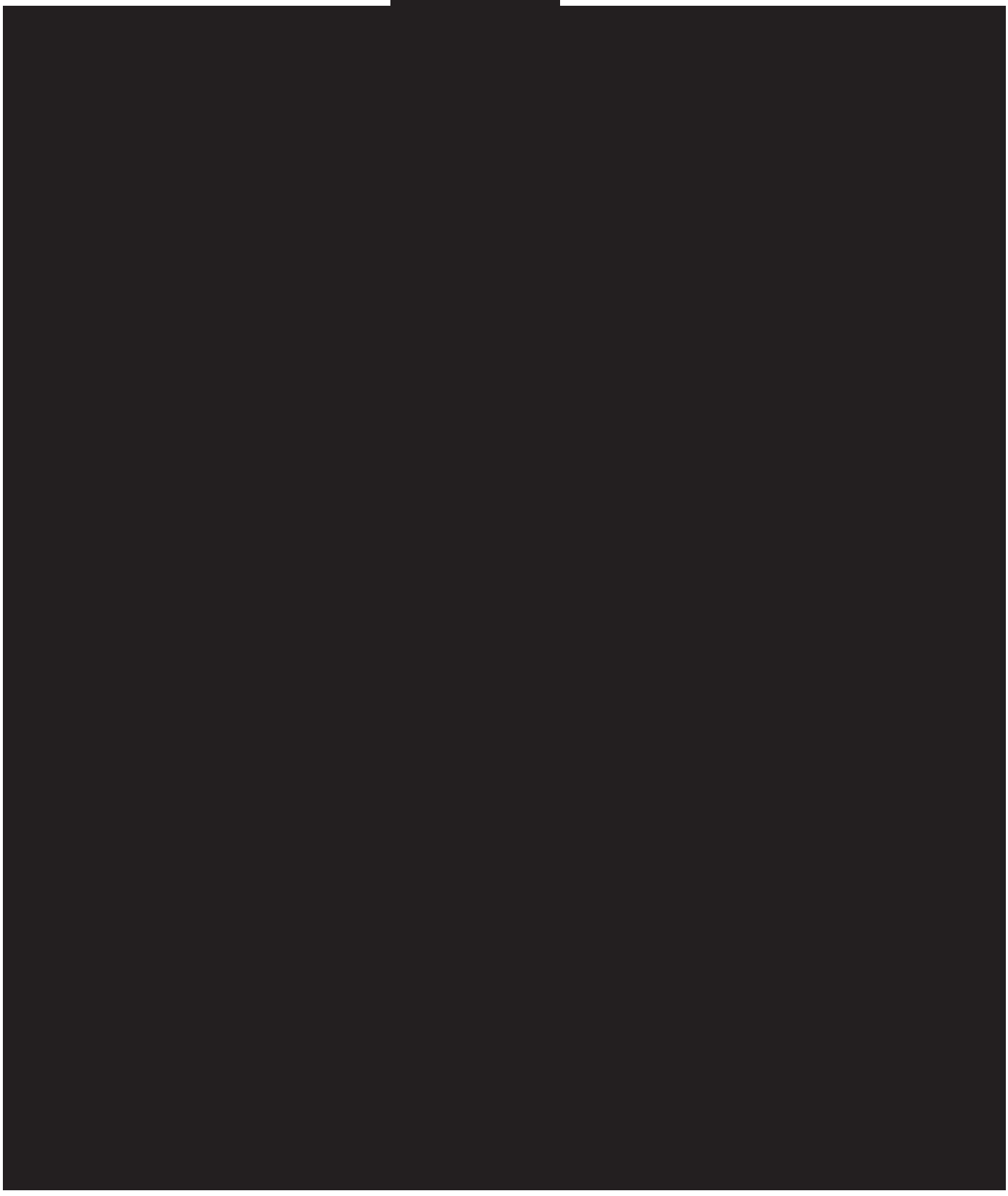
b) TS IV.3.m and TS IV.3.s.xiii

As explained in detail below, SDC introduced more than a preponderance of evidence

that Respondents improperly acquired TS IV.3.m and TS IV.3.s.xiii through former SDC employees Nam Yoo Kang and Chul Young Kim and vendor Canon Tokki.

When Mr. Kang left SDC on [redacted] (CX-0695C (Kang [redacted]); CX-0993C (Kang [redacted]).). Mr. Kang [redacted] (CX-0695C.0005; CX-0993C.0003.). [redacted] Mr. Kang's [redacted]

Figure 71: Excerpts from [redacted] Yoo Kang's [redacted]



***

[redacted]

(CX-0695C; CX-0993C ([redacted] Nam Yoo Kang).).

[redacted] Mr. Kang's [redacted] (CX-0695C.0002-.0003.). [redacted] Mr. Kang [redacted] (CX-1761C (Kang Dep. Tr.) at 42:15-43:8.). Mr. Kang then joined Respondents in December 2019. (*Id.*). Mr. Kang's [redacted] (CX-0695C.0006.).

[redacted] Mr. Kang's [redacted] (CX-1831C.0063.). [redacted] Mr. Kang's [redacted] (CX-2482C.0005.). [redacted]

[redacted] Mr. Kang's [redacted] (*Id.* at .0003.).

[redacted] Mr. Kang [redacted]. (CX-0306C.0003; CX-0309C.0008; CX-0310C.0003 and CX-0311C (attachment to CX-0310C); CX-0339.0004 and CX-0340C (attachment to CX-0339C); *see also* SBr. at 114-116.).

Mr. Kang's [redacted], is all evidence that Respondents improperly acquired SDC's confidential and secret information about its [redacted] that are the subject of TS IV.3.m and TS IV.3.s.xiii.

Another SDC engineer, Mr. Cheolyoung Kim, [redacted] (CX-0697C.0002 (Kang resignation letter).). Mr. C.Y. Kim [redacted] (CX-0697C.0004.). [redacted] (*Id.* at .0006.). Mr. Kim [redacted]

[redacted] (CX-1763C (Kim Dep. Tr. Vol. 1) at 55:17-56:15, 56:24-57:6, 57:18-58:2.). Mr. Kang's [redacted] clearly violated the provision of his signed resignation letter that prohibited him from seeking employment with a competing company within two (2) years. (CX-0698.0005.).

[redacted], Mr. Kim's [redacted]. (CX-1831C.0063 ([redacted] Mr. Kim's [redacted]. Mr. Kim [redacted]. (CX-1763C (C.Y. Kim Dep. Tr. Vol. 1) at 146:16-19.). [redacted], Mr. Kim's [redacted] "[redacted]" [redacted] Mr. Kim [redacted]. (CX-1477C.0013.).

Mr. Kim's [redacted], is all evidence that [redacted] about SDC's [redacted] that are the subject of TS IV.3.m and TS IV.3.s.xiii.

SDC entered into the record CX-0195C, which is [redacted] (CX-0195C.0001.). [redacted]



(CX-0195C.0001; Tr. (Lebby) at 577:15-10; CDX-0003C.0076.).

CX-0195C is additional evidence that Respondents were actively and intentionally seeking to obtain the .

Respondents argued that SDC's arguments and evidence suffer from a timing problem. (RBr. at 86-87; RRBr. at 42-43.). Specifically, Respondents contended that Mr. Nam Yoo Kang and Chul Young Kim . (*Id.*). However, there is no evidence of communications between Respondents and related to before 2018.[83] (*Id.*). Respondents also argued, based on the testimony of their fact witness, Mr. Fei Xie,

[83] Respondents claimed that, because Mr. C.Y. Kim and Mr. Kang left SDC , they "could not be the source of the alleged misappropriation." (RRBr. at 43.). Respondents did not explain why the timing of Mr. Kim's and Mr. Kang's resignation from SDC means

[redacted] (Tr. (Xie) at 1105:12-24; 1109:20-1110:21.).

The problem with Respondents' timing argument is that it does not provide a credible explanation for Respondents' possession and use of SDC's [redacted]. (Tr. (Lebby) at 583:1-585:6; CDX-0003C.0085-88; CX-0352C.0037, .0034, .0040, .0041, .0055; CX-1788C (Xiao Dep. Tr. Vol. 2) at 135:15-17.). There is also no credible or persuasive explanation for Respondents hiring away SDC's EVEN engineers to work with [redacted] on Respondents' [redacted]. There is more than a preponderance of evidence, as described above, that Mr. Kang and Mr. C.Y. Kim [redacted], [redacted].

Additionally, Respondents' argument and Mr. Xie's testimony that Respondents were [redacted] Mr. Kang and Mr. Kim [redacted] is that it is not corroborated by any documentary evidence and thus lack credibility. In balancing the evidence in the record, it is a finding of this ID that Dr. Lebby's testimony and the documentary evidence on which he relies, (Tr. (Lebby) at 583:1-585:6; CDX-0003C.0085-.0088; CX-0352C.0037, .0034, .0040, .0041, .0055), the testimony and documentary evidence described in detail above with respect to Mr. Kang's and Mr. C.Y. Kim's [redacted], and other evidence of record (CX-1788C (Xiao Dep. Tr. Vol. 2) at 135:15-17; CX-0195C.0001) more than outweighs Mr. Xie's uncorroborated testimony. Moreover, even if Mr. Xie's testimony is accurate, at most it proves that Respondents had the idea to [redacted]. It does not prove that Respondents had the exact [redacted] described by TS IV.3.m and TS IV.3.s.xiii.

Therefore, it is a finding of this ID that SDC has proven, by a preponderance of evidence,

that Respondents misappropriated TS IV.3.m and TS IV.3.s.xiii.

4. SDC Proved That Respondents Used the EVEN Equipment Trade Secrets

a) TS IV.3.a

Respondents conceded that SDC proved by a preponderance of evidence that Respondents used or disclosed TS IV.3.a. (JSUI at 1-2.).

SDC introduced sufficient evidence to prove by a preponderance of evidence that respondents use TS IV.3.a. Dr. Lebby testified that Respondents' [redacted], which are depicted in numerous of Respondents' own documents, [redacted] as described in TS IV.3.a. (Tr. (Lebby) at 581:4-582:6; CX-0114C.0030; CX-0169C.0001; CX-0200C.0003; CX-0396C.0030, .0038; CX-0400C.0513, .0514; CX-0672C.0003.). Moreover, Mr. Fei Xie testified that Respondents' [redacted]. (CX-1791C (Xie Dep. Tr. Vol. 1) at 177:6-178:3.).

SDC also entered in evidence CX-0208C, [redacted] (CX-0208C.0019.). Mr. Chang Soon Ji, [redacted]. (Tr. (Ji) at 294:19-296:22; CX-0208C.0023.). Mr. Ji [redacted] (Tr. (Ji) at 296:9-22.). [redacted] d[redacted]

Figure 73: [redacted]



(Tr. (Ji) at 294:19-296:22; CX-0208C.0023.).

Therefore, based on the undisputed and incontestable evidence SDC entered into the record, it is a finding of this ID that SDC proved by a preponderance of evidence that Respondents use TS IV.3.a.

b) TS IV.3.m and TS IV.3.s.xiii

SDC introduced more than a preponderance of evidence that Respondents' [redacted] described by TS IV.3.m and TS IV.3.s.xiii. (CBr. at 82-83.). SDC entered in evidence CX-0352C, [redacted] (CX-0352C.0034.). SDC's expert Dr. Lebby testified, with no rebuttal from Respondents' expert or Respondents' fact

witnesses, that CX-0352C [redacted] in accordance with TS IV.3.m and TS IV.3.s.xiii. (Tr. (Lebby) at 583:1-585:6; CDX-0003C.0085-.0088; CX-0352C.0037, .0034, .0040, .0041, .0055.). In addition, [redacted]. (CX-1788C (Xiao Dep. Tr. Vol. 2) at 135:15-17.).

Staff agreed with SDC that there is sufficient evidence of Respondents' use. (SBr. at 118-119.).

Respondents did not dispute SDC's arguments and evidence that [redacted] of TS IV.3.m and TS IV.3.s.xiii. (RBr. at 87.). Instead, Respondents argued that SDC failed to prove that any display Respondents imported into the U.S. was manufactured using R[redacted][84] (*Id.*). Respondents' arguments were not asserted in their Pre-Hearing Brief. (RPBr. at 97-104.). In their Pre-Hearing Brief, Respondents' argument was that Respondents' manufacturing lines [redacted] described by TS IV.3.m and TS IV.3.s.xiii. (*Id.* at 97-98). Respondents said nothing in their Pre-Hearing Brief about an allegation that SDC failed to prove that products Respondents imported were made using TS IV.3.m and/or TS IV.3.s.xiii. (*Id.*). Respondents also said nothing in their Pre-Hearing Brief about "mass imported" products. Therefore, Respondents waived, abandoned, and/or withdrew their argument that SDC allegedly failed to prove that Respondents imported a display

[84] Respondents also criticized SDC for failing to prove that any "mass-imported product" was manufactured [redacted] of TS IV.3.m and TS IV.3.s.xiii. (RRBr. at 42.). Respondents waived, withdrew, and/or abandoned this argument under Ground Rule 7.2 for failure to assert it in their Pre-Hearing Brief. (RPBr. at 97-104.). This argument also fails because Respondents cited no precedent for view that proving "use" of a trade secret requires proving that a "mass imported" product was made using the trade secret.

made using TS IV.3.m and/or TS IV.3.s.xiii under Ground Rule 7.2.

Respondents' argument also fails on the merits. The only evidence Respondents presented for this argument is the testimony of Mr. Fei Xie, Respondents' head of [redacted] (RBr. at 87.). Mr. Xie [redacted]. (Tr. (Xie) at 1104:23-1105:11, 1130:19-1131:21.). The problem with Respondents' argument and evidence is that they would prove, at most, that Respondents have not imported into the U.S. products, made using equipment [redacted] according to TS IV.3.m and TS IV.3.s.xiii, for sale to [redacted]. It does not establish that Respondents did not import any products into the U.S. that were made using equipment with [redacted] according to TS IV.3.m and TS IV.3.s.xiii.

Therefore, it is a finding of this ID that SDC has proven, by a preponderance of evidence, that Respondents use TS IV.3.m and TS IV.3.s.xiii.

5. Respondents Conceded They Did Not Independently Develop the EVEN Equipment Trade Secrets

Respondents conceded that they did not independently develop TS IV.3.a, TS IV.3.m, and TS IV.3.s.xiii. (JSUI at 1.). Therefore, it is a finding of this ID that Respondents did not sustain their burden to prove, by a preponderance of evidence, that they independently developed TS IV.3.a, TS IV.3.m, and TS IV.3.s.xiii.

H. Trade Secret VII.1 (Glass Removal Process)[85]

1. SDC Adequately Described the Glass Removal Process Trade Secrets

a) TS VII.1.f

SDC defined TS VII.1.f as follows:

[redacted]

[85] TS V.1.g and TS VII.1.k were withdrawn. (Joint Notice at 1-2.).

[redacted]

f. [redacted]



(FITS at 93.).

Respondents argued that SDC failed to describe TS VII.1.f with sufficient specificity because it does not allow for a meaningful comparison of the trade secret against what is generally known and ascertainable. (RBr. at 89 (citing *Activity Tracking Devices,* Inv. No. 337-TA-963, ID at 17 (Aug. 23, 2016).). The Commission has held that one way to establish that a trade secret is described with sufficient particularity is to prove that the trade secret description allows for a "meaningful comparison of the putative trade secret with information that is generally known and ascertainable in the relevant field or industry," which is the appropriate test upon which Respondents relied. *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 44-46.

Therefore, the disputed issue is whether SDC introduced sufficient evidence that TS VII.1.f is described with sufficient specificity to allow for a meaningful comparison with what is generally known and ascertainable in the field. As explained in detail below, SDC introduced

uncontested, unrebutted, and incontrovertible evidence that its description of TS VII.1.f is sufficiently specific to allow for a meaningful comparison with what is generally known or ascertainable in the relevant field or industry. In contrast, Respondents did not introduce evidence to support their argument or to rebut SDC's argument. Therefore, it is a finding of this ID that SDC has sustained its burden of proving by a preponderance of evidence that TS VII.1.f is adequately described.

To explain TS VII.1.f, SDC's expert, Dr. Lebby, introduced into evidence CX-0679C, an SDC document titled "[redacted]," dated [redacted]. (Tr. (Lebby) at 535:10-536:17; CX-0679C.0004, .0005 ("GRM,[86] [redacted]").).[87] Specifically, Dr. Lebby relied upon certain portions of CX-0679C, which are reproduced in Figures 74 and 75 below. As Dr. Lebby explained in his testimony, the first of the two figures below depicts a table that describes some of the changes between SDC's older and newer equipment and the reasons for those changes. (Tr. (Lebby) at 536:7-17.). Notably, one reason for the changes was to "reduce tact." (*Id.*). The second of the two figures below, Figure 75, depicts SDC's older phase 1 equipment on the left and SDC's newer phase II equipment on the right. (*Id.*). Dr. Lebby testified that the phase II equipment on the right is more advanced because it [redacted][88] (*Id.* at 536:14-17.).

[86] "GRM" stands for "Glass Removal."

[87] CX-0679C is one of the documents cited in the trade secret definition reproduced above.

[88] No witness defined or otherwise explained the precise meaning of the term "tact time." From context, it appears that "tact time" is the amount of time it takes to complete a full manufacturing cycle, i.e., the time that elapses between starting the glass removal process on one display panel and starting the glass removal process on the next display panel.

Figure 74: Excerpt From CX-0679C.0004 Dr. Lebby Relied on and Depicted in CDX-0003C.0009



(CX-0679C.0004; CDX-0003C.0009; Tr. (Lebby) at 535:10-536:17.).

Figure 75: Excerpts From CX-0679C.0005 Dr. Lebby Relied on and Depicted in Dr. Lebby's Demonstrative CDX-0003C.0009



(CX-0679C.0005; CDX-0003C.0009; Tr. (Lebby) at 535:10-536:17.).

To further explain the equipment diagrams depicted in Figure 75 above, Dr. Lebby played an animation that started with the schematic reproduced in Figure 76 shown below. Dr. Lebby testified that the red box at the top of Figure 76 below that contains diagonal lines represents

[redacted] (Tr. (Lebby) at 537:2-10.). Referring to the animation depicted on his demonstratives, Dr. Lebby explained how [redacted] (*Id.*).

Figure 76: Dr. Lebby's Animation Illustrating SDC's GRM Process

[redacted]

(CDX-0003C.0010; Tr. (Lebby) at 536:18-537:1.).

Dr. Lebby explained that [redacted] Following that process, [redacted]

[redacted]. (*Id.* at 537:11-538:16; CDX-0003C.0011-0016.). He testified that the [redacted]. (Tr. (Lebby) at 538:17-539:6; CDX-0003C.0017-0024.). Dr. Lebby also testified that [redacted]. (Tr. (Lebby) at 539:8-14; CDX-0003C.0025.).

Staff agreed with SDC that TS VII.1.f is described with sufficient particularity. (SBr. at 119-121.).

In contrast, Respondents argued that SDC's description of TS VII.1.f "merely discloses a generic material handling process and does not specify which element of the GRM is at issue in VII.1.f. of the 22 pages SDC cites in VII.1.f, only one page references the GRM's [redacted]." (RBr. at 89.).

At least one problem with Respondents' argument is that it is controverted by evidence adduced in this Investigation, including not only Dr. Lebby's explanation of TS VII.1.f but also SDC's documentation, which are summarized above. For example, it is apparent from CX-0679C that [redacted].

Additionally, Dr. Glew's testimony supports a finding that SDC's description of TS VII.1.f is sufficiently explained. Dr. Glew testified about how [redacted] that is the subject of TS VII.1.f is in his opinion generally known because it is described in a sales proposal from a non-SDC vendor STek Co. Ltd ("STek"). (Tr. (Glew) at 1327:10-1329:6 (discussing RDX-0004C.0074 and comparing CX-0678C.0040 cited in TS VII.1.f (annotated on the left side of RDX-0004C.0074) with CX-2385C.0029, a sales proposal STek Co. Ltd. and

SUN-TEC Co. Ltd. made to BOE dated August 30, 2016 ("STeK Proposal") (annotated on the right side of RDX-0004C.0074)).). In other words, Dr. Glew testified that TS VII.1.f, including its [redacted], is generally known in the OLED industry because it is disclosed in the STeK Proposal. (Tr. (Glew) at 1329:7-1330:6, 1332:7-14.). As explained below in the "generally known or readily ascertainable" section of this ID, the evidence does not support Dr. Glew's opinion that the [redacted] of TS VII.1.f is described in the STeK Proposal. However, Dr. Glew was able to make a meaningful comparison between what SDC describes as its trade secret and what Dr. Glew considers generally known in the industry. *See Crawler Cranes*, 337-TA-887, Comm'n Op. at 44-45 (noting that the description of the trade secret "must be specific enough to allow the meaningful comparison of the putative trade secret with information that is generally known and ascertainable in the relevant field or industry" (quoting *IDX Sys. Corp. v. Epic Sys. Corp.*, 165 F. Supp. 2d 812, 817 (W.D. Wis. 2001), *aff'd in rel. part*, 285 F.3d 581 (7th Cir. 2002.)). In other words, Dr. Glew must have understood SDC's description of TS VII.1.f well enough to compare it to what Dr. Glew alleges is generally known. Dr. Glew's apparent ability to understand SDC's trade secret description well enough to compare it to what he alleges is generally known constitutes additional evidence that SDC's trade secret description is sufficient.

For these reasons, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS VII.1.f is described with sufficient particularity.

b) TS VII.1.r

SDC defined TS VII.1.r as follows:

r. [redacted]

(FITS at 97.).

Respondents argued that "[t]o the extent that SDC claims a as part of this alleged trade secret, SDC failed to define this process in detail." (RBr. at 93.). SDC argued that TS VII.1.r includes a (CBr. at 85 (SDC's final trade secret identification "incorporates documents describing the).). Therefore, the issue is whether SDC adequately described the of TS VII.1.r.

As described in detail below, SDC introduced uncontested, unrebutted, and incontrovertible evidence that its is adequately described. Respondents did not introduce any expert testimony or other evidence to undermine SDC's evidence.

For example, SDC employee, Mr. Sang Hun Lee,[89] explained that for curved OLEDs, the in a glass removal process that is abbreviated as "GRM." (Tr. (S. Lee) at 498:12-18.). Mr. Lee testified that SDC's research and testing, as depicted in SDC's presentation titled " " (CX-0656C.0002), revealed that . (Tr. (S. Lee) at 498:19-501:3; CX-0656C.0003.). Dr. Lebby agreed with and relied upon Mr. Lee's testimony

[89] At the time of the Hearing, Mr. Sang Hun Lee was a member of SDC's "cell technology group." SDC's cell technology group is responsible for, among other things, SDC's GRM process. (Tr. (S. Lee) at 497:20-498:18.). SDC's cell technology group is responsible for attaching the protective film to the carrier glass and cutting that glass into the appropriate size for the devices in which it will be used such as smartphones, tablets, and notebook PCs. (*Id.*). Mr. Lee joined the LCD division of Samsung Electronics in 2004, the division that became SDC in 2012. (*Id.* at 497:24-498:2.).

with respect to the relationship between [redacted]. (Tr. (Lebby) at 539:20-540:13; CX-0656C.0003.).

Specifically, Mr. Lee discussed CX-0661C, an SDC presentation marked "SAMSUNG SECRET," [redacted], which is titled "[redacted]" (Tr. (S. Lee) at 501:4-19; CX-0661C.). Mr. Lee explained that in SDC's GRM process, [redacted]. (Tr. (S. Lee) at 501:4-19; CX-0661C.). [redacted] as depicted on page 18 of CX-0661C. (*Id.*). SDC's [redacted] is depicted in Figure 77 below.

Figure 77: SDC's [redacted]

[redacted]

(Tr. (S. Lee) at 502:24-506:1; CX-0661C.0018.).

With respect to CX-0661C, Mr. Lee explained that in [redacted], which is depicted on the right side directly above the line graph in Figure 77 above, [redacted]. (Tr. (S. Lee) at 503:14-504:7.). In addition, Mr. Lee explained that in the table at the bottom of Figure 77 above, the top row represents [redacted]. (*Id.* at 504:8-505:3.).

Additionally, Mr. Lee testified that in the line graph right below the equation, the blue line and blue dots represent [redacted]. (*Id.* at 505:4-11.). Mr. Lee explained that based on the [redacted]. (*Id.* at 505:12-25.).

Dr. Lebby also discussed pages 7 and 11 of CX-0661C, to explain how [redacted]. (Tr. (Lebby) at 540:14-541:8.). Pages 7 and 11 of CX-0661C are shown in Dr. Lebby's demonstrative CDX-0003C.0029, which is depicted below in Figure 78. Dr. Lebby explained that in the top graph of Figure 78 below with the title "[redacted]" the red, orange, and yellow boxes represent [redacted]. (Tr. (Lebby) at 540:14-541:8; CDX-0003C-0029; CX-0661C.0007, .0011.). He pointed out, that in the bottom graph of the figure above where SDC's [redacted] is depicted, the [redacted]. (*Id.*). Dr. Lebby also

testified that SDC had [redacted]. (Tr. (Lebby) at 541:9-542:4.).

Figure 78: Excerpt of Dr. Lebby's Demonstrative CDX-0003C.0029 That Depicts Excerpts from CX-0661C.0007, .0011



(CDX-0003C.0029; CX-0661C.0007, .0011; Tr. (Lebby) at 540:14-541:8.).

Staff agreed with SDC that TS VII.1.r is sufficiently described such that it constitutes a trade secret. (SBr. at 121.).

Respondents' argument that the [redacted] is not described with sufficient particularity is, again, not supported by the evidence. SDC relied on undisputed evidence that consisted of SDC documents and unrebutted testimonial evidence. Included with the collection of documents referenced in the SDC testimony, and documents admitted into evidence, is the document that was cited in SDC's definition of TS VII.1.r. (Tr. (S. Lee) at

498:19-501:3; Tr. (Lebby) at 539:20-540:13; CX-0656C.0003.). Mr. Lee's and Dr. Lebby's undisputed testimonies, in which they explained SDC's [redacted], support a finding that SDC described TS VII.1.r with sufficient particularity such that it qualifies as one of the factors that determines a trade secret.

Accordingly, it is a finding of this ID that SDC has proven by a preponderance of evidence that TS VII.1.r is described with sufficient particularity such that it is a trade secret.

2. SDC Proved the Existence of a Protectible Trade Secret

a) The Glass Removal Process Trade Secrets Are Neither Generally Known Nor Readily Ascertainable

SDC introduced unrebutted, undisputed, and incontrovertible evidence in the form of Dr. Lebby's expert testimony that TS VII.1.f and TS VII.1.r could not be reverse engineered from an end product. (Tr. (Lebby) at 561:24-562:8.). Moreover, as described in Section VI.J of this ID, the weight of the evidence, which is unrebutted, is that SDC uses more than sufficient security measures to ensure that SDC's trade secrets are neither generally known nor publicly available.

(i) TS VII.1.f

Respondents argued that the [redacted] used in TS VII.1.f is "common in equipment and provides [redacted]." (RRBr. at 46 (citing Tr. (Glew) at 1326:23-1327:9).). From that factual premise, Respondents concluded that the [redacted] (*Id.*).

A threshold problem with Respondents' argument is that Respondents did not provide evidence that the [redacted]. Even if Respondents had provided evidence suggesting that [redacted]

[redacted], Respondents' argument still fails because Respondents did not provide evidence that the process SDC uses is "readily ascertainable."

To eliminate trade secret protection, a person in the industry must be able to ***readily*** ascertain it or ***duplicate*** it. *Crawler Cranes*, Inv. No. 337-TA-887, FID at 24 (emphasis added). TS VII.1.f requires more than [redacted]. The Parties agreed that TS VII.1.f describes [redacted] (FITS at 93.). Neither Respondents nor Dr. Glew addressed the specific sequence of steps in TS VII.1.f. Thus, there is insufficient evidence in the record to support a finding that a person in the industry could readily ascertain or duplicate TS VII.1.f.

Respondents also argued that the STeK Proposal (RX-0531C (also CX-2385C)), presented to Respondents in August 2016 to manufacture GRM equipment, was capable of the same [redacted] as described in TS VII.1.f. (RBr. at 89-91.).[90] According to Respondents, the STek Proposal's disclosure of TS VII.1.f proves that TS VII.1.f was generally known in the OLED industry. (*Id.*). Thus, the issue is whether the STek Proposal describes TS

[90] In their Pre-Hearing Brief, Respondents relied on RX-1291, a Korean patent owned by SDC vendor SFA Co., Ltd. ("SFA"), as allegedly constituting a public disclosure of TS VII.1.f. (RPBr. at 120-21.). However, Respondents did not produce evidence during the Hearing to support their defense. Respondents also failed to assert this argument/defense in their Post-Hearing Briefs. (RBr. at 89-91; RRBr. at 46-47.). Respondents therefore waived, withdrew, or abandoned their defense/argument under Ground Rule 10.1. Moreover, SDC introduced evidence, as supported by Dr. Lebby's unrebutted testimony, that RX-1291 does not disclose [redacted] as described in TS VII.1.f. (Tr. (Lebby) at 588:17-589:7 (RX-1291 discloses [redacted] that "[redacted]"); RX-1291.0034-35.). Consequently, whether because of their waiver, or because SDC produced a preponderance of evidence that Respondents are incorrect, Respondents' defense fails.

VII.1.f.

As explained in detail below, Respondents' argument that the STeK Proposal describes TS VII.1.f is not supported by the evidence because the information contained in the STeK Proposal is not sufficient for a person in the industry to readily ascertain or duplicate TS VII.1.f. *Crawler Cranes*, Inv. No. 337-TA-887, FID at 24 (quoting *George S. May Inter. Co. v. Int'l Profit Associates*, 628 N.E.2d 647, 654 (1st Dist. Ill. 1993)).

Dr. Glew, Respondents' expert, testified that the STek Proposal describes TS VII.1.f. (Tr. (Glew) at 1326:13-1328:18.). To support his argument Dr. Glew presented a demonstrative, which is reproduced in Figure 79 below. On the left, Dr. Glew's demonstrative depicts an image of the layout of SDC's GRM equipment from CX-0678C ([redacted] . On the right, Dr. Glew's demonstrative depicts the equipment layout from the STek Proposal. (CX-2385C.0029.).

[redacted]

(RDX-0004C.0074; Tr. (Glew) at 1326:13-1328:18; CX-0678C.0040; CX-2385C.0029 (red rectangle annotations added to original).).

Dr. Glew testified that the image from the STek Proposal, reproduced on the right in Figure 79 above, depicts a system with a number of components. (Tr. (Glew) at 1327:18-1329:6.). These components include: [redacted] as shown by the grey up and down arrows on the left (emphasized with a red rectangle that Dr. Glew added to the original figure from the STek Proposal) for [redacted] (*Id.*).

SDC and Staff presented two (2) counter arguments that the STek Proposal is not evidence of general knowledge in the industry: 1) the STek Proposal does not disclose the [redacted] described in TS VII.1.f; and 2) the information in the STek Proposal originated with SDC, not Stek. (CBr. at 89-90; SBr. at 123-125.).

(a) The STek Proposal Does Not Describe TS VII.1.f

SDC argued and produced documents and testimonial evidence from Dr. Lebby that the STek Proposal does not describe a [redacted] because of the way [redacted] is calculated. (CBr. at 89-90.). Dr. Lebby testified that the STek Proposal reports the [redacted] for the GRM process [redacted], a practice that is inconsistent with Respondents' theory that the STek Proposal's GRM process involves [redacted]. (Tr. (Lebby) at 589:8-590:3; RX-0531C.0049.). SDC and Dr. Lebby reasoned that [redacted]. (Tr.

(Lebby) at 589:8-590:3.). The STek Proposal's tact timetable is reproduced in Figure 80 below. (CX-2385C.0049.). The leftmost column lists each operation in the overall glass removal process. (*Id.*). The middle column contains the time for the operation listed in that row in minutes. (*Id.*). The rightmost column contains the sum of the time for the operation in that row plus the time for each previous operation. (*Id.*).

Figure 80: STek Proposal Tact Timetable



(CX-2385C.0049; Tr. (Lebby) at 589:8-590:3.).

In contrast, in SDC's documentation describing its trade secret, [redacted]. (CX-0679C.0005.). SDC's tact timetable from CX-0679C.0005 is reproduced in Figure 81 below. (*Id.*). Equipment is listed in the leftmost column. (*Id.*). In the next column to the right, the individual operations are listed.

(*Id.*). In the next column to the right, the time for that operation to complete in minutes is listed. (*Id.*). In the next column to the right, the rightmost column, there are "notes" for certain operations or [redacted]. (*Id.*).

Figure 81: SDC's Tact Timetable

[redacted]

(CX-0679C.0005.).

Respondents counter argued, and Dr. Glew testified, that the time for each step of the STek Proposal is summed cumulatively with the time for each preceding step, despite [redacted], because the STek Proposal Tact Timetable shows how much time the process takes for a single cell or panel. (RBr. at 89; Tr. (Glew) at 1329:7-1330:3.). Respondents and Dr. Glew argued that the comment in the upper right of the STek Proposal reproduced in Figure 80 above that says "1 Cell as the reference" reflects that the STek Proposal represents the tact time for the entire process for a single panel. (RBr. at 89; RDX-0004.0075; CX-2385C.0049; Tr. (Glew) at 1329:7-21.).

In contrast, the total tact time for the process minus the tact time for [redacted], as was calculated in the SDC Tact Timetable in Figure 81 above, represents the tact

time per panel for multiple panels during continuous operation. (Tr. (Lebby) at 589:8-590:3; CX-0679C.0005.).

Respondents also argued, with Dr. Glew's support, that the STek Proposal is consistent with [redacted] because the total tact time in the STek Proposal is [redacted]. (RBr. at 90; Tr. (Glew) at 1330:4-6.). SDC counter argued with evidence that the STek Proposal is directed to glass sized [redacted], which is [redacted]. (CRBr. at 39; CX-0678C.0004 ([redacted]); CX-2385C.0005 (STek Proposal glass panel "works size" is [redacted]).).

The theory that STek proposed a design for a glass removal process involving [redacted] steps that would result in a lower (and thus more desirable) total tact time but chose to report a higher cumulative total tact time for a single panel as if the process involved [redacted], is not credible. It stands to reason that if STek were proposing a design for glass removal equipment capable of a glass removal process where [redacted], STek would have reported the advantageous lower total tact time associated with [redacted]. The evidence reflects incentives to do so. For instance, Dr. Lebby testified that a [redacted] results in the advantageous reduction in total tact time per panel for a series of panels during continuous operation resulting in improved yield. (Tr. (Lebby) at 506:22-507:1, 507:18-508:6, 539:7-11, 611:15-612:10; CX-0679C.0004-0005.). That is an incentive for STeK to report a lower cumulative total tact time enabled by [redacted]. Neither Respondents nor Dr. Glew provided a reason why STek would have reported a higher total tact time for a single panel rather than the lower total tact time per panel.

For the reasons described above, Dr. Lebby's testimony and opinions are more consistent with the evidence, and thus, are more credible than the theories Respondents and Dr. Glew advanced. Therefore, it is a finding of this ID that the STek Proposal does not describe TS VII.1.f. It is also noted that as a consequence of this finding, SDC's has described a specific trade secret because a meaningful comparison was conducted between SDC's description of the trade secret and what is allegedly generally known, i.e., the STeK Proposal.

(b) There is Insufficient Evidence That the STek Proposal Originated with SDC

SDC argued that the content of the STek Proposal originated with SDC, not STek. (CBr. at 90.). SDC introduced evidence that SDC met with another vendor, SFA Engineering Corp. ("SFA"), in a series of meetings to discuss GRM equipment specifications and design starting on or about [redacted]. (CX-0586C [redacted]); (CX-0559C ([redacted]). [redacted], [redacted] STek. (CX-0236C [redacted]). [redacted] (CX-0236.). S[redacted] (CX-2385C.0001 ([redacted]).

The problem with SDC's argument is that it rests on the premise that the STek Proposal contains SDC's trade secrets. Unrebutted and uncontested evidence in this Investigation demonstrates that the content of the STek Proposal does not include SDC's trade secrets for two (2) reasons. One, because the STek Proposal is directed to much smaller glass workpieces. (CX-0678C.0004 ([redacted]); CX-2385C.0005 (STek Proposal glass panel "works size" is [redacted]).). Two, because the STek Proposal does not describe [redacted]. (CX-0679C.0005; CX-2385C.0049; Tr. (Lebby) at 589:8-590:3.).

(ii) TS VII.1.r

Respondents' only rebuttal is that RX-1293,[91] which is a patent co-owned by SFA and SDC, discloses the [redacted] (RRBr. at 47.). Respondents' identification of RX-1293 as an alleged public disclosure of TS VII.1.r appears for the first time in their Post-Hearing Reply Brief. (*Id.*). Respondents' Pre-Hearing Brief identifies RX-1293 as an alleged public disclosure of TS VII.1.k, a trade secret that is no longer at issue in this Investigation. However, Respondents' Pre-Hearing Brief does not identify RX-1293 as an alleged public disclosure of TS VII.1.r. (RPBr. at 130-131.). Therefore, Respondents withdrew or abandoned any argument on this issue under Ground Rule 7.2. (Order No. 2, G.R. 7.2.). Alternatively, Respondents' argument also fails on the merits because Respondents did not introduce evidence to support their theory or argument. (RRBr. at 47.).

b) The Glass Removal Process Trade Secrets Have Economic

[91] Respondents did not identify RX-1291, another patent co-owned by SFA, as a public disclosure of TS VII.1.r in Respondents' Pre-Hearing Brief. RX-1291 was identified in Respondents' Pre-Hearing Brief as a public disclosure of TS VII.1.f and as evidence that SFA owns TS VII.1.f, but Respondents did not rely on RX-1291 for TS VII.1.r. (RPBr at 121-138.). Thus, Respondents waived any reliance on RX-1291 as a public disclosure of TS VII.1.r under Ground Rule 7.2.

Value

In their Pre-Hearing Brief, Respondents disputed whether pre-hearing, SDC had introduced sufficient evidence of the economic value of TS VII.1.r. (RPBr at 134-135). Respondents disputed but appear to have abandoned the economic value of TS VII.1.f in their Post-Hearing Briefs. (RPBr. at 121-129; RBr. at 87-95; RRBr. at 44-45.). Therefore, Respondents waived any argument on this issue under Ground Rule 10.1. (Order No. 2, G.R. 10.1.).

Thus, the only issue is whether SDC introduced sufficient evidence of the economic value of TS VII.1.f and TS VII.1.r.

A trade secret "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use." Uniform Trade Secrets Act (UTSA) §1(4); *see also Raised Garden Beds*, Inv. No. 337-TA-1334, FID at 33.

SDC introduced uncontested, unrebutted, and incontrovertible evidence that TS VII.1.f has economic value. For example, SDC's expert, Dr. Lebby, testified and relied upon SDC's documents to prove that TS VII.1.f [redacted]. (Tr. (Lebby) at 506:22-507:1, 507:18-508:6, 539:7-11, 611:15-612:10; CX-0679C.0004-0005.). Additionally, one of SDC's fact witnesses, Mr. Lee, testified that the [redacted] used in TS VII.1.r is [redacted]. (Tr. (S. Lee) at 500:4-501:33, 516:25-517:15; *see also* Tr. (Lebby) at 540:14-541:24; CX-0661C.0007, .0016, .0021.).

The foregoing documents and testimony from SDC prove that TS VII.1.f and TS VII.1.r have independent economic value because they [redacted]

[redacted]. *Crawler Cranes*, 337-TA-887, Comm'n Op. at 37-38. Therefore, it is a finding of this ID that SDC proved by a preponderance of evidence that TS VII.1.f and TS VII.1.r have economic value.

3. SDC Proved That Respondents Acquired the Glass Removal Process Trade Secrets Through Improper Means

SDC's misappropriation theory is that Respondents targeted SFA because they knew SFA had SDC's trade secret information. (CBr. at 93-95.). Consequently, SDC claimed that Respondents caused SFA to provide SDC's GRM trade secrets to Respondents in breach of SFA's confidentiality obligations to SDC. (*Id.*).

a) Facts Surrounding SDC's and Respondents' Interactions With SFA

Through one of SDC's fact witnesses, Mr. Sang Hun Lee, SDC introduced undisputed testimonial evidence that SFA had been SDC's exclusive supplier of GRM equipment since 2015. (RX-1672C (S. Lee Dep. Tr.) at 48:14-49:4.).

Moreover, SDC's expert, Dr. Lebby, introduced a document, CX-0678C, that describes the GRM equipment that SFA manufactured for SDC. (Tr. (Lebby) at 554:5-19; CDX-0003C.0042; CX-0678C.0040.). Dr. Lebby also introduced a document, CX-0361C, that describes the GRM equipment that Respondents obtained from SFA. (Tr. (Lebby) at 554:5-19; CDX-0003C.0042; CX-0361C.0069.). Dr. Lebby testified, without rebuttal, that both the GRM equipment SFA manufactured for SDC and the GRM equipment that Respondents obtained from SDC [redacted] that TS VII.1.f. uses. (Tr. (Lebby) at 554:5-19; CX-0678C.0040; CX-0361C.0069.). Additionally, Dr. Lebby testified, again without rebuttal from Respondents, that based on deposition testimony from one of Respondents' corporate witnesses, Respondents' GRM equipment is the same as the equipment SDC designed

with TS VII.1.f. specifications. (Tr. (Lebby) at 554:20-555:6 (discussing CDX-0003C.0043).). Respondents did not explain why they would have equipment from an SDC vendor that is the same as or similar to the equipment that SDC designed for that vendor to manufacture.

[redacted] (CX-0378C [redacted] CX-0382C [redacted] (CX-0267C ([redacted] (CX-0267C.0004-05.). [redacted] (Tr. (Lebby) at 553:9-554:5.).

SDC argued that there is simply "no legitimate reason that BOE should have had this document in its possession." (CBr. at 94.). Staff agreed with SDC that the [redacted] are sufficient to prove that Respondents used improper means to acquire SDC's trade secret. (SBr. at 127-130.).

b) Facts Surrounding Former SDC Employee Mr. Jaeho Lee

SDC also provided a document titled "Resignation Letter," dated February 28, 2017, which was signed by former SDC employee, Jaeho Lee. (CX-0698C.0003.). Under the heading [redacted], Mr. Lee's [redacted] p[redacted] Mr. Lee [redacted] (*Id.*). [redacted], Mr. Lee [redacted]:

[redacted]

(CX-0698C.0002.).

[redacted], Mr. Lee [redacted]:

[redacted]

(*Id.*).

[redacted],

Mr. Lee [redacted]:

[redacted]

(*Id.*).

[redacted], Mr. Lee [redacted]

[redacted]:

[redacted]

(*Id.*).

[redacted], Mr. Lee [redacted]

[redacted]

[redacted]

(*Id.*).

Mr. Lee's [redacted]. (*Id.* at .0006.). Mr. Lee [redacted]. (*Id.*).

Mr. Lee's [redacted] (*Id.* at .0007.). It is undisputed that the reference to "EAC" includes glass removal technology. (Tr. (S. Lee) at 498:24-499:5; CX-0656C.). "EVEN" refers to SDC's evacuation and encapsulation processes. (Section VI.C(1), *supra*.).

SDC also provided Mr. Lee's "Affidavit on Protection of Trade Secrets," [redacted] (CX-0729C.0002, .0004.).[92]

[92] SDC provided more than 15 of these Resignation Letters, or similar NDA's that appeared to be part of a standard business practice that SDC took to maintain the secrecy of its technology. (*See, e.g.*, Section VI.J.).

The description of the tasks Mr. Lee performed while he worked for SDC and the dates he performed them is so detailed and granular that there can be no mistaking which of SDC's trade secretes Mr. Lee worked on, or what he could not disclose or work on for SDC's competitors.

[redacted], Mr. Lee [redacted] (CX-1767C (J. Lee Dep. Tr. Vol. 1) at 24:11-24.). [redacted] (*Id.* at 26:13-22.). [redacted]. ([redacted], CX-0680C.0008.). [redacted] Mr. Lee [redacted]

Mr. Lee's [redacted]. (CX-1767C (J. Lee Dep. Tr. Vol. 1) at 28:7-19.). Mr. Lee [redacted]. [redacted], Mr. Lee [redacted]

(*Id.* at 29:21-30:5.).

, Mr. Lee Mr. Lee . (*Id.* at 29:21-32:7, 33:3-11.). Mr. Lee . (*Id.* at 33:19-34:18.).

, Mr. Lee Mr. Lee Mr. Lee

Mr. Lee (Tr. (Lebby) at 551:15-552:1, 555:7-19 (testifying that CX-0139C); CDX-0003C.0038, .0044; CX-0139C.0001 ( ), .0010); *see also* Tr. (Lebby) at 555:20-556:12 (testifying that CX-0140C, CX-0257C, and CX-2458C ’

[redacted]); CDX-0003C.0045-46; CX-0140C.0019 [redacted]); CX-0257C.0004-.0005 ([redacted]); CX-0258C.0004-.0005 ([redacted])).

[redacted] Mr. Lee [redacted] Mr. Lee [redacted]. The undisputed and documentary evidence described above establishes the following facts, which Respondents did not dispute (RBr. at 91-95): (i) Mr. Lee [redacted]; (ii) Mr. Lee [redacted]; (iii) Mr. Lee [redacted]; (iv) Mr. Lee [redacted]; (v) [redacted], Mr. Lee [redacted]; (vi) Mr. Lee [redacted]; and (vii) [redacted] Mr. Lee [redacted].

[redacted], Mr. Lee [redacted]. [redacted] Mr. Lee [redacted]. Respondents' [redacted] that SDC used, after Mr. Lee [redacted], is compelling circumstantial evidence that undermines any argument that Respondents developed [redacted] independently of what they [redacted]

[redacted], Mr. Lee.

c) TS VII.1.f Was Acquired Through Improper Means

Because Respondents conceded that they use TS VII.1.f (JSUI at 1-2), the only issue that remains is whether SDC proved by a preponderance of evidence that Respondents acquired the subject matter of TS VII.1.f by **improper means**.

Respondents claimed that they did not know they were receiving SDC's confidential information when, [redacted] (CX-0279C). (RBr. at 92.). Specifically, Dr. Glew testified that [redacted] (Tr. (Glew) at 1381:1-7 ([redacted]). This explanation is a pretense at best.

Respondents also argued that that they had already obtained their GRM equipment from [redacted] (RBr. at 92-93.). For evidentiary support, Respondents relied on the following testimony from their expert, Dr. Glew:

> Q. Turning to slide RDX-4.78, Dr. Lebby testified at this hearing that BOE acquired Samsung Confidential GRM information as shown in exhibit CX-279.
>
> Do you have any response to Dr. Lebby's testimony?
>
> A. Yes. Viewing CX-267.4 and CX-279 (sheet 1) as well as CDX-0003C at 41, Dr. Lebby is wrong in his analysis. The document shown in the right side of RDX-4.78 is a machine hazard document. One might think of OSHA. It's a listing of the hazards that must be provided to equipment users by the manufacturer.

> Secondly, it was late in timing. It came after the equipment. And it doesn't even show [redacted]. The document shown, the image shown, is [redacted].

(Tr. (Glew) at 1331:18-1332:6.).

However, Dr. Glew did not provide documentary support for his testimony that Respondents' acquisition of SDC's Glass Removal Process "came ***after***" Respondents' glass removal equipment. Thus, it is conclusory expert testimony entitled to little, if any, weight. *Magnetic Tape Cartridges*, Inv. No. 337-TA-1058, Comm'n Op. at 11 (Apr. 9, 2019).

Additionally, Dr. Glew testified that CX-0279C is a listing of the hazards that must be provided to equipment users by the manufacturer." (Tr. (Glew) at 1331:18-1332:3.). According to Dr. Glew, CX-0279C does not describe GRM equipment [redacted] in accordance with TS VII.1.f. (*Id.* at 1332:4-6.). However, Respondents' argument does not account for the totality of the evidence. Even if CX-0279C does not describe the subject matter of TS VII.1.f and [redacted] the weight of the undisputed evidence is that Respondents used improper means to acquire SDC's trade secret.

For example, SDC presented undisputed evidence that Respondents used GRM equipment that is the subject of TS VII.1.f. (JSUI at 1-2; Tr. (Lebby) at 554:5-555:6; CDX-0003C.0042; CX-0678.0040; CX-0361C.0069.). The undisputed evidence indicates that Respondents had the means to learn from SFA that SFA was a vendor for SDC's GRM equipment. (CX-0378C; CX-0382C.). The undisputed evidence also demonstrates that [redacted] (CX-0267C.0004-.0005; CX-0279C; Tr. (Lebby) at 553:9-554:5.). This evidence confirms that the [redacted], which is the

subject of SDC's TS VII.1.r, [redacted] Mr. Lee left SDC, [redacted] (CX-0698C.0003; CX-0729C.0002, .0004; CX-01767C (J. Lee Dep. Tr. Vol. 1). at 24:11-24, 26:13-22, 29:21-32:7, 33:3-11, 33:19-34:18.).

In addition to Dr. Glew's testimony, Respondents relied on CX-0257C, [redacted]. (RBr. at 92-93.). [redacted] (CX-0257C.). [redacted]

Figure 82: Excerpts of CX-0257C

[redacted]

(CX-0257C.).

Respondents' witnesses did not describe or otherwise explain CX-0257C during the Hearing. However, SDC's expert, Dr. Lebby, testified that CX-0257C constitutes evidence that Respondents use TS VII.1.r because the [redacted], which is within [redacted] specified in SDC's description of TS VII.1.r. (Tr. (Lebby) at 556:1-12; CDX-0003.0046.). Dr. Lebby testified:

[redacted]

[redacted]

(Tr. (Lebby) at 556:1-12; CDX-0003C.0046.).

Respondents' reliance on CX-0257C is problematic because it does not demonstrate that Respondents possessed the GRM equipment that is the subject of TS VII.1.f. Specifically, CX-0257C does not disclose anything about [redacted], or any other aspect of TS VII.1.f. Nor did any witness testify that CX-0257C describes equipment or a process according to TS VII.1.f. Thus, CX-0257C does not prove Respondents were in possession of GRM equipment that was [redacted] in accordance with TS VII.1.f.

Although there may not be a single undisputed "smoking gun" document reflecting Respondents receipt of the subject matter of TS VII.1.f, the circumstantial evidence weighs heavily in favor of SDC's claim that Respondents misappropriated TS VII.1.f. *Certain Crawler Cranes*, 337-TA-887, Comm'n Op. at 56-57, 65.

Accordingly, based on the totality of the evidence, it is a finding of this ID that Respondents used improper means to acquire SDC's TS VII.1.f.

d) TS VII.1.r Was Acquired Through Improper Means

[redacted] Mr. Lee's [redacted] Mr. Lee [redacted]. (RBr. at 93-94.). Specifically, Respondents contended that they [redacted]

[redacted]

[redacted]" (*Id.* at 94.). As described below, none of the evidence Respondents relied upon for that argument demonstrates that Respondents had developed their [redacted] before Mr. Lee [redacted].

To support their contentions, Respondents cited a document titled [redacted] (CX-0078C.). [redacted] (*Id.* at .0004.).

The first problem with Respondents' reliance on CX-0078C is that [redacted] does not match the trade secret. SDC's description of TS VII.1.r provides for a [redacted]. (FITS at 97.). Because CX-0078C does not match TS VII.1.r, it does not support Respondents' argument that CX-0078C proves Respondents developed the [redacted] required by TS VII.1.r.

The second problem with Respondents' reliance on CX-0078C is that there is no evidence that this document's reference to [redacted] is the same as what the trade secret requires, which is [redacted] (*Id.*). Because Respondents did not introduce evidence that the [redacted] in CX-0078C is the same as the [redacted] required by TS VII.1.r, CX-0078C does not support Respondents' argument that Respondents developed the [redacted] required by TS VII.1.r.

The third problem with Respondents' reliance on CX-0078C is that the document is not dated and none of Respondents' witnesses testified about the date the document was created. Even if the document disclosed the exact subject matter of TS VII.1.r, which it does not, it would

still be insufficient to prove that Respondents developed their [redacted] independently because it would not prove that Respondents possessed the [redacted] recited in TS VII.1.r [redacted] Mr. Lee.

Respondents also relied on a document titled [redacted] (CX-0244C.). [redacted] (*Id.*). [redacted] (*Id.* at .0004.).

The first problem with Respondents' reliance on CX-0244C is that [redacted] matches TS VII.1.r. TS VII.1.r requires a [redacted]. (FITS at 97.). Because CX-0244C does not match TS VII.1.r, it does not support Respondents' argument that CX-0244C proves Respondents developed the [redacted] required by TS VII.1.r.

The second problem with Respondents' reliance on CX-0244C is that Respondents did not introduce evidence that either [redacted] means the same thing as the [redacted] required by TS VII.1.r. Because Respondents did not introduce evidence that the [redacted] in CX-0244C is the same as the [redacted] required by TS VII.1.r, CX-0244C does not Respondents' argument that CX-0244C proves Respondents developed the [redacted] required by TS VII.1.r.

The third problem with Respondents' reliance on CX-0244C is that the "date" of the [redacted] is left blank. Even if the document disclosed the exact subject matter of TS VII.1.r, which it does not, it would still be insufficient to prove that Respondents developed their [redacted] independently because it would not prove that Respondents possessed the [redacted] Mr. Lee.

Additionally, Respondents relied on one of their spreadsheets that provides a [redacted] (CX-0257C.0004-05.). [redacted] Mr. Lee [redacted]. CX-0257C therefore bolsters SDC's argument that [redacted] Mr. Lee [redacted]

Respondents also relied on [redacted] (CX-0139C.). [redacted]. (*Id.* at .0007.). [redacted]. (CX-0139C.0010.). [redacted] (FITS at 97.). [redacted] Therefore, CX-0139C bolsters SDC's argument that [redacted] Mr. Lee.

Staff agreed with SDC that the evidence proves that Respondents acquired TS VII.1.r by improper means. (SBr. at 127-130.).

As explained in detail above for TS VII.1.f, the totality of the evidence SDC presented during the Hearing supports a finding that Respondents used improper means, including hiring SDC's employee Mr. Lee and targeting SDC's vendor SFA, to acquire SDC's confidential information about its glass removal equipment, i.e., TS VII.1.f and TS VII.1.r. As explained in the immediately preceding paragraphs, none of Respondents' counterevidence or counterarguments adequately rebutted SDC's evidence and arguments. Therefore, based on the facts and reasoning provided above for TS VII.1.f, it is a finding of this ID that SDC proved by a

preponderance of evidence that Respondents used improper means to acquire TS VII.1.r.

4. SDC Proved Respondents Used the Glass Removal Process Trade Secrets

a) TS VII.1.f

Respondents conceded that SDC proved by a preponderance of evidence that Respondents use or disclosed TS VII.1.f. (JSUI at 1-2.). Therefore, the only issue is whether SDC sustained its burden of proof.

The evidence and reasoning set forth in Section VI.H(3) above with respect to Respondents' acquisition of TS VII.1.f by improper means, in combination with SDC's unrebutted documentary and testimonial evidence that Respondents used TS VII.1.f, proves by a preponderance of evidence that Respondents use TS VII.1.f. Tr. (Lebby) at 554:5-555:6; CDX-0003C.0042; CX-0678.0040; CX-0361C.0069.). Therefore, it is a finding of this ID that Respondents used TS VII.1.f.

b) TS VII.1.r

Respondents did not dispute that they use TS VII.1.r. (RBr. at 87-95; RRBr. at 44-50.). Therefore, the only issue is whether SDC sustained its burden of proof.

SDC introduced undisputed evidence that Respondents use a [redacted] TS VII.1.r. (Tr. (Lebby) at 551:15-552:1, 555:7-19 (testifying that CX-0139C [redacted]); CDX-003C.0038, .0044; CX-0139C.0001 [redacted]); *see also* Tr. (Lebby) at 555:20-556:12 (testifying that CX-0140C, CX-0257C, and CX-2458C reflect [redacted]); CDX-0003C.0045-46; CX-0140C.0019 ([redacted]

[redacted]); CX-0257C.0004-05 ([redacted]); CX-0258C.0004-05 ([redacted]).).

Therefore, it is a finding of this ID that SDC proved by a preponderance of evidence that Respondents use TS VII.1.r.

5. Respondents Failed to Prove They Independently Developed the Glass Removal Process Trade Secrets

a) TS VII.1.f

Respondents did not argue that they independently developed TS VII.1.f, i.e., GRM equipment [redacted] as described in TS VII.1.f, in either their Pre-Hearing Brief or Post-Hearing Briefs. Thus, Respondents waived, withdrew, and/or abandoned any argument on this issue under Ground Rules 7.2 and 10.1. (RPBr. at 118-125; RBr. at 87-93.).

b) TS VII.1.r

Respondents argued they independently developed their [redacted]. (RBr. at 93-94.). As explained above, none of the evidence that Respondents provided demonstrates that Respondents independently developed their [redacted]. (CX-0078C.0004 [redacted]); CX-0244C [redacted], [redacted] CX-0257C.0004-5 [redacted] Mr. Lee [redacted]); CX-0139C.0007, .0010 [redacted]

[redacted]

Therefore, for the reasons provided above, it is a finding of this ID that Respondents did not sustain their burden to prove by a preponderance of evidence that they independently developed TS VII.1.r.

I. Contested Trade Secret Ownership[93]

Respondents initially contended that SDC does not "own" its trade secrets because they

[93] Respondents argued in their Pre-Hearing Brief without a citation to a single legal precedent, that SDC lacked standing to bring their Complaint because SDC lacks "ownership" of most, if not all its identified trade secrets. Respondents' argument is that "standing to sue requires a clear demonstration of ownership." (RPBr. at 2; *see e.g., id*. at 16, 17, 28, 29, 33, 39, 41; *see also* e.g. RBr. at 8, 10, 18-23.). Entwined with that argument is that SDC did not have standing, at least in part because Respondents claim that SDC did not have full possessory rites of its trade secrets or because SDC lacks "demonstrative" ownership in certain trade secrets. (RBr. at e.g., 8, 10, 11, 8-13, 20, 24.). Respondents claimed that SDC either: 1) did not own the information which SDC claimed as part of its trade secrets because other third-party vendors either developed or manufactured the equipment involved; or 2) SDC "shared" ownership of certain of its trade secrets with other third-parties, which included specifically Toptec/FAI, Canon Tokki, HB Technology ("HBT"), DIT, AP System ("Naeil"), Yodogawa, HIMS and SFA. (RPBr. at 2; *see id*. at 8, 16, 29, 32-33, 53-60; *see also,* e.g. RBr. at 13, 23-24-,35, 45, 93.). As Staff noted, Respondents' argument mis-stated trade secret law. Standing as required in patent cases is not a required element of proving the existence of a trade secret. (SBr. at 44.).

Moreover, the Commission is "a creature of statute." *Kyocera v. Int'l Trade Comm'n*, 545 F.3d 1340, 1355 (Fed. Cir. 2008). The Commission has statutory authority to investigate an alleged violation of section 337 where a complaint alleges that the named respondents have imported, sold for importation, or sold after importation articles that, *inter alia*, infringe a valid and enforceable U.S. patent. 19 U.S.C. § 1337(a)(1)(B). Commission Rule 210.12(a)(7), which implements section 337(a)(1)(B), specifies who may file a complaint with the Commission. "For every intellectual property-based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject intellectual property." 19 C.F.R. § 210.12(a)(7).

As a separate concept, ownership (unlike with respect to patents) "is based on possession (via secrecy), not formal ownership." *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 25 n.23. In this Investigation, and as discussed in this Section, SDC has proven that it has ownership rights in all of its asserted trade secrets. *See Certain Activity Tracking Devices, Systems, and Components Thereof*, Inv. No. 337-TA-963, Order No. 55 at 3-4 (Apr. 27, 2016) (denying motion to terminate for lack of standing based on complainants' alleged lack of all substantial rights in the asserted trade secrets and holding that "Complainants have possession and title to the asserted trade secrets[.]").

are either owned outright by others, or "co-owned" with other third-party vendors such as Toptec/FAI, Canon Tokki, SFA, DIT, HIMs, HBT, and Naeil, among those who worked with SDC and/or who manufactured much of the equipment at issue in SDC's trade secrets. (RPBr. at 1; *see also id*. at 15-16, 28, 29, 33, 41, 96, 122, 126.). "Ownership" of the alleged trade secrets is one of the elements necessary to satisfy a claim of misappropriation of a trade secret. *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 10.

An initial argument that is entwined with Respondents' arguments about SDC's ownership and standing is that SDC lacked "ownership" because it did not describe certain of its trade secrets with sufficient specificity. (RPBr. at 28, 32 (TS II.1.a and II.1.b), 41 (TS II.1.y), 75 (TS IV.2.b and IV.2.c), 83 (TS IV.3.a, IV.3.s.xiii), 125 (TS VII.1.k).).

With respect to SDC's TS I.1 and I.2 and the other trade secrets identified in the preceding paragraph, Respondents wove into their arguments that SDC lacks "ownership" and hence, standing, because SDC failed to show a "clear demonstration" of ownership. (RPBr. at 2.). According to this second argument, which is largely equally unsupported and belied by extensive evidence, as well as by both Commission precedent and South Korean law (discussed below), is that third-party vendors, Toptec and its creation, FAI, owned TS I.1 and I.2 jointly with SDC. (SBr. at 44 (citing RPBr. at 15-17, 53-60 (TS I); RBr. at 18-22).).

Similarly, for other trade secrets, as discussed below, Respondents claimed that other third-parties either "shared ownership" with SDC in the trade secrets, or they developed and owned them outright. Respondents suggested that their arguments of "shared ownership" or outright ownership apply to TS I.1.a, TS I.2.a, TS II.1.a, TS II.1.b, TS II.1.c, TS II.1.y, TS IV.2.b, TS IV.2.c, TS IV.3.m, TS IV.3.s, TS VII.1.f and TS VII 1.r. However, post-Hearing, Respondents explicitly conceded their objections to SDC's ownership of TS III.1. h+s, TS IV.1.d

and TS IV.1.e. (JSUI.). Additionally, Respondents failed to develop arguments that SDC did not own its trade secrets in their Pre-Hearing Brief, pursuant to Ground Rule 7.2, with respect to TS II.1.a, II.1.b., II.1.y. (RPBr. at 26-53; SBr. at 37). That leaves "disputed ownership" only with respect to TS I.1.a., I.2.a, II.1.c., TS IV, and TS VII.

As discussed below, certain third-party vendors with whom Respondents "engaged" may have had, at best, shared ownership rights. However, the weight of the evidence unequivocally supports a finding that no third-party vendor had the right to disclose ***any*** of SDC's trade secrets, without SDC's express consent. That express consent SDC did not provide.

1. Legal Standard of Ownership

a) Commission Precedent

To be the "owner" of a trade secret, a complainant must be one who "possesses a proprietary interest therein." *Sausage Casings*, Inv. No. 337-TA-148/169, USITC Pub. 1624, 1984 WL 273789; *Crawler Cranes*, Inv. No. 337-TA-1159, Final ID at 132 (quoting *Sausage Casings*), *aff'd,* Comm'n Op. at 35. The Commission also has explained that "one 'owns' a trade secret when one knows of it, as long as it remains a secret." *Crawler Cranes*, Final ID at 134 n.41, *aff'd,* Comm'n Op. at 35. In other words, "ownership of a trade secret is based on possession (via secrecy), not formal ownership." *Raised Garden Beds*, 337-TA-1334, Comm'n Op. at 35, n.23 (Mar. 21, 2024) (citing *Crawler Cranes*). Ownership of a trade secret is one of the several factors the Commission considers, which includes a "comparative evaluation of all relevant factors, including the value, secrecy, and definiteness of the information as well as the nature of the defendant's misconduct." *Id.* at 21.

As Staff has noted rightly, there is no requirement that a complainant be the exclusive owner of, or that it possess all substantial rights in, the asserted trade secrets. (SRBr. at 10

(citing *Certain Activity Tracking Devices, Systems, and Components Thereof*, Inv. No. 337-TA-963, Order No. 55 at 3-4 (Apr. 27, 2016) (denying motion to terminate for lack of standing based on complainants' alleged lack of all substantial rights in the asserted trade secrets and holding that "Complainants have possession and title to the asserted trade secrets[.]").).

With respect to SDC's trade secrets that Respondents claimed are jointly owned with other third-parties, and for which Respondents have claimed that there can be no misappropriation, the Commission dealt with a similar factual scenario. The Commission has held that the complainant satisfied the ownership requirement even though the asserted trade secret was developed jointly with, and manufactured by, a third party. *See Certain Apparatus for the Continuous Production of Copper Rod* ("*Apparatus for Copper Rod*"), Inv. No. 337-TA-52, USITC Pub. 1017, Comm'n Op., 1979 WL 445781, at *22 (Nov. 23, 1979).

There are other principles that apply. A complainant can have ownership over a trade secret by having legal title to that trade secret. *Certain Activity Tracking Devices, Sys., and Components Thereof*, No. 337-TA-963, Order No. 55 at 4 (Apr. 27, 2016) (denying Motion for Termination of the Investigation); *see also Railway Wheels*, Inv. No. 337-TA-655, ID at 6-8. Thus, ownership is not synonymous with "developer" or "inventor." A complainant that has not itself developed a trade secret can come to own a trade secret via contractual agreement or assignment−for example, after the complainant purchases the assets of another company. *Id.*; *Certain Paper Shredders, Certain Processes for Mfg. or Relating to Same and Certain Products Containing Same and Certain Parts Thereof*, No. 337-TA-863, Order No. 5 at 24 (July 19, 2013) (denying Respondents' Motion for Partial Termination of the Investigation as to Fellowes' Claims of Misappropriation).

There is, here, however, another issue tied in: the right of a party who has a trade secret,

even if ostensibly jointly owned, to maintain the secrecy and non-disclosure of its trade secret unless it gives ***permission*** to use that protected trade secret.

b) Korean Civil and Criminal Decisions

The Suwon High Court (Criminal) and the Suwon Lower Court (Criminal) each created an extensive record of the findings of the theft of certain of SDC's trade secrets based upon similar principles as those the Commission and the DTSA apply. *See* CX-0430C (Part 1, 1-574); CX-0430C (Part 2, 575-756); CX-0430C (Part 3, 757-1010); CX-0431C (Suwon Record, Part 1-361); CX-0431C (Suwon Record, Part 2, 362-515); CX-0431C (Suwon Record, Part 3, 516-700); CX-0435C (Suwon Doc); CX-0445C; CX-0451C; CX-0452C, CX-0454C; CX-0455C.). The South Korean High Court Decision, i.e., Criminal findings, are particularly detailed in describing: (i) the development of SDC's lamination line and its EN/EV processes; and (ii) the SDC trade secrets that were surreptitiously requested of certain third-party vendors, and especially Toptec/FAI and Cannon Toki (among others) by various Chinese companies, including the Respondents. The Suwon High Court Decision also contains the content of communications among various third-party vendors who had access to SDC's trade secrets and Chinese companies, including Respondents. The Suwon High Court Decision also discussed certain confidentiality agreements SDC had executed with certain of its vendors. (*See, e.g.*, CX-0435C, CX-0454C (High Court Decision); s*ee also* CDX-0004C.0009 (Lists of Vendor Agreements with SDC, which include but are not limited to: with Toptec (CX-0734C; CX-0574C; CX-0479C; CX-0600C; CX-0610C); with Canon Tokki (CX-0565C); with Naeil (CX-0984C); with SFA (CX-0587C; *see* discussion below).).

Among the many findings, and especially those in the Suwon High Court Decision, with respect to the South Korean Unfair Competition Prevention Act, the Suwon High Court Decision

found certain individual defendants guilty because "***by colluding and disclosing this information to Defendant FAI without SDC's explicit or implicit approval," [defendants] "are in violation of trade secrets as defined in Article 18, Clause 2 of the Previously Unfair Competition Prevention Act.***" (CX-0454C.0064 (emphasis added).). There are other similar Suwon High Court findings and citations throughout.

Whether the Commission chooses to apply principles of comity, the point is that if trade secrets are protected, then a co-owner must obtain "explicit or implicit approval of a co-owner." (*Id*.; *Certain Semiconductor Integrated Circuits & Prods. Containing Same*, FID, USITC Inv. No. 337-TA-665, 2009 WL 5942422, at *22-24 (Oct. 14, 2009); *see also Apparatus for Copper Rod*, Inv. No. 337-TA-52, Comm'n Op., 1979 WL 445781, at *22 (determining that complainant "established a sufficient proprietary ownership interest to maintain an action for misappropriation of Trade Secret No. 5 as an unfair act within the meaning of section 337," even though the trade secret was "designed and developed jointly" by the manufacturer and the complainant); *see also* CX-2447C.0002 ("All information for the purpose of manufacturing the 3D Lamination Pilot Equipment shall not be used for any purpose other than the intended business purpose without ***the approval of the SDC personnel in charge***...") (emphasis added); CX-0450C.0003 (Article 4(1)-(2).).

2. TS I.1.a and TS I.2.a

According to the weight of the evidence, and as SDC detailed (and including details provided from the Suwon High Court Decision), when SDC began development of its 3D lamination line equipment, SDC retained a third-party vendor, YMK, to produce a prototype design for its [redacted] lamination line. [redacted]. (CBr. at 19-23 (citing CX-0454C.0033-34.). YMK manufactured [redacted] in approximately [redacted] based upon

SDC's specifications and delivered it to SDC in [redacted]. According to the Suwon High Court, to which SDC cites, SDC signed an NDA with [redacted] "titled '[redacted]' and initiated negotiations with YMK for the collaborative development of the technology." (*Id.* at 34; *see also* CX-2455C (SDC specification dated [redacted]).). However, before that occurred, SDC made various adjustments and improvements to this design. (CX-0454C.0034.).

SDC then retained Toptec on or about [redacted] to produce a second prototype, Pilot Unit No. 2 ("Pilot No. 2"). (*Id.* at 36.). Pilot No. 2 was made pursuant to SDC'***s*** blueprints and specifications. (*Id.* at 35-36, 47-48; CX-0455C.0064 ([redacted]); CX-2454C ([redacted]); CX-2452C ([redacted]); CX-2453C ([redacted]); *see also* CX-0509C.0023 ([redacted]); CX-0515C ([redacted]).). At least one SDC employee met with Toptec engineers multiple times from [redacted] to discuss the production and trial runs. (CPBr. at 24 (citing CX-0454C.0047 (Suwon Hight Court Decision).).

According to virtually unrebutted and detailed evidence, in or about [redacted], Toptec manufactured Pilot No. 2, based on SDC's specifications. (CX-0454C.0036; *see also* Section VI.B, *supra*.). Pilot No. 2 did not have a [redacted] chamber. (*Id.* at 36.). SDC [redacted] (CPBr. at 20-22; CBr. at 19-23 (citing CX-2261C (J. Kim Dep. Tr.) at 69-70, 71-72; CX-0509C).).

Consistent with SDC's timeline (as supported in part by the Suwon Record), SDC placed orders for the [redacted] prototype with Toptec in [redacted], which was delivered

to SDC in or about [redacted]. (CX-0454C.0036; *see also* CX-0509C ([redacted]).). SDC continued to work with Toptec to develop the [redacted] of SDC's 3D lamination equipment for mass production, all of which included the [redacted] chamber from SDC's Pilot No. 2 work. (CX-0454C.0048; CX-2261C (J. Kim Dep. Tr.) at 69-70, 71-72; CX-0509C.). SDC continued to provide Toptec with [redacted] for later generations of its lamination line—based on SDC's development work, starting with SDC's [redacted]. SDC participated in design reviews and other meetings with Toptec with respect to the design and modification of this equipment. (CX-0454C.0048-0051; *see also* CX-0455C.0067 ([redacted]); CX-2451C and CX-2450C ([redacted]); *see also* CX-2402C; CX-2403C; CX-2404C; CX-2405C; CX-2406C; CX-2414C; CX-2415C.).

For the mass production of the [redacted] lamination equipment, Toptec drafted equipment proposals, created final drawings, and manufactured the equipment based on the above information, which contained continuous feedback and modification from SDC. (Tr. (S. Kim) at 685:9-24; CX-2261C (J. Kim Dep. Tr.) at 62:9-23; CX-0454C.0057-0058.).

According to the weight of the evidence, in moving from the Pilot No. 2 prototype to the [redacted] equipment, the core features supplied in SDC's initial Pilot No. 2 CAD drawings were carried over and according to SDC, SDC continuously refined what it was given. (*See* Tr. (S Kim) 656:15-657:4; *see also* CX-0509C.0004-08.). Through this work, Toptec was exposed to the knowledge and know how that SDC developed through its years of improving upon the multiple generations of its mass production 3D lamination equipment. (SBr. at 21 (citing CX-2261C (J. Kim Dep. Tr.) at 69:12-72:16; CX-0509C; CX-0431C; CX-0432C; CX-0511C; CX-0517C; CX-0518C; CX-0519C; CX-0520C; CX-0521C; CX-0522C; CX-0530C; *see also* CX-

0454C.0048).). After Toptec delivered the [redacted] equipment in [redacted], according to SDC, it continued to work with Toptec to improve its TS I.1 and I.2 technology. (Tr. (S. Kim) at 672:25-673:6; CX-0545C.0036-0037; *see, e.g.*, CX-0509C.0002, .0007.).

Additional evidence bolsters SDC's argument that it developed TS I.1a and I.2.a. Mr. Jaeyoung Kim,[94] who provided deposition testimony, testified that SDC alone tested and modified the Pilot No. 2. (CX-2261C (J. Kim Dep. Tr.) at 71:17-72:7.). The specifications for the modified Pilot No. 2, which was referred to as the [redacted] prototype, were completed by approximately [redacted]. Toptec then manufactured the [redacted] prototype by approximately [redacted]. (CX-0509C.0002 ([redacted]); CX-0432C.0071 ([redacted]), .0080-82 ([redacted]).).

Mr. Sangcheol Kim testified that, based on testing on the [redacted] prototype, SDC developed automation improvements that were implemented in the [redacted]. (Tr. (S. Kim) at 670:6-672:18; CX-0509C.0002.). The same functionality that is incorporated into the Pilot No. 2 and covered by the Lamination Line Trade Secrets is also functionality that is incorporated in the [redacted] version of SDC's equipment. (Tr. (S. Kim) at 655:14-657:19.).

Reflected below is a depiction of SDC's timeline of its development work with Toptec.

[94] Mr. Jaeyoung Kim was one of SDC's corporate witnesses. (CX-2261C (J. Kim Dep.) at 15:12-15.). At the time of his deposition, he was a team leader for the lamination technology team. (*Id.* at 45:3-5.).



(CBr. at 21 (citing CDX-0009C.0008).).

According to SDC, when it was alerted by the South Korean prosecutor that Toptec and its employees were being investigated for sharing confidential SDC information with and selling SDC 3D lamination equipment to certain Chinese OLED manufacturers, the relationship between SDC and Toptec ended. (CBr. at 22; RX-1675C (S. Kim Dep. Tr. Vol. 2) at 239:20-22; *see also* RX-1674C (S. Kim Dep. Tr. Vol. 1) at 20:7-12.).

As a result of Toptec's and SDC's working together, and in defense of their misappropriation, Respondents contended that: (i) Toptec at least co-owned the lamination-related trade secrets affected by the designs that Toptec manufactured for SDC; and (ii) Toptec represented to Respondents, by a warranty and representation in a purchase agreement, that

BECA lamination equipment did not contain SDC's intellectual property. (RPBr. at 18-25; RBr. at 13, 151.).[95]

In support of their arguments, Respondents cited to [redacted] of the Master Agreement between SDC and Toptec, which [redacted] resulting from RX-2145C at 19-20 (Article 37). That provision to which Respondents cited states:

[redacted]

(RPBr. at 16 (citing RX-2145C) (emphasis in original); RBr. at 19, 21; SBr. at 23.).[96]

As the language of the cited passage makes clear, the rights described [redacted]. (SBr. at 23 n. 6.).

Additionally, Respondents relied upon ambiguous deposition testimony by an SDC corporate representative, Mr. Jaeyoung Kim, as follows:

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[95] Even though Respondents' "good faith" or "innocent purchaser" argument is discussed here, it was ruled against as part of a ruling on SDC's MIL 1. (Tr. at 13:17-19.).

[96] Staff argued the point, correctly, that Respondents' argument that Toptec jointly owned SDC's trade secrets and their reliance on [redacted] of the [redacted] Master Agreement between SDC and Toptec is misplaced. (SBr. at 23 n. 6 (citing RPBr. at 16).). Staff noted that even if Respondents' contention had merit (it does not), [redacted] pertains to Toptec's obligations ([redacted]) to [redacted]. (*See also,* [redacted] (emphasis added).). There is no reference to ownership of ***trade secrets***, which is a separate and distinct term. Another section of the Master Agreement between SDC and Toptec, [redacted]. (*See* CX-0734.0021 [redacted] (emphasis added).).

> Q. Is it fair to say that the drawings Samsung provided to describe the basic concept were insufficient to manufacture the machine that is depicted in the picture under Pilot 2 of RX 352?
>
> A. Based on the drawings that Samsung provided alone, they could not manufacture this equipment; however, without Samsung's drawings, this equipment may not have been manufactured, so. . .
>
> Q. In order to manufacture the equipment shown in the picture under Pilot 2 of RX 352, Toptec had to provide the details with respect to the design of that equipment. Correct, sir?
>
> A. It is correct to say that it was Toptec who created the final drawings for this equipment.

(CX-2261C (J. Kim Dep. Tr.) at 65:17-66:1, 66:19-67:2.).

None of Respondents' arguments hold much weight or are well-supported. Even Mr. Kim's testimony is vague and without detail. Mr. Kim's testimony appears to be opinion that is undermined by documentary evidence, Commission precedent, and the Suwon Court Record and the Suwon High Court Decision findings.

First, Toptec's and SDC's roles and responsibilities were well-defined in contract (*infra*), including a document that Respondents' counsel referred to as a "Master Agreement," (CX-0734C; Tr. at 916:25-917:9, 1159:21-1160:2), as well as by multiple SDC-Toptec NDAs. (CX-0734C (Article 4(1)-(2); CX-0450C.0003; CX-0574C; CX-0479C; CX-0610C.). SDC conceded that, at best, even if Toptec (but not FAI), might have had "co-ownership" of certain information according to the correct contractual citations, Toptec had no right to disclose it. (CBr. at 22.). Commission precedent clearly allows for joint ownership so long as the trade secrets are protected. *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 35 n.23 ("Ownership of a TS is based on possession (via secrecy), not formal ownership.").

As Respondents noted, there is some evidence that Toptec and SDC jointly contributed to certain intellectual property. However, [redacted] of the Master Agreement between SDC and

Toptec provides only some evidence of this result. It is not enough to undermine SDC's ownership rights in the protected trade secrets. [redacted] of the agreement that Respondents' counsel referred to as the "Master Agreement" between SDC and Toptec states that if the parties have not come to an agreement on ownership, the technology will be jointly owned between the parties. (RBr. at 19; CX-0734C.0020 (RX-2145C); Tr. (D'Andrade) at 1160:3-5.). Respondents found some significance in the fact that Dr. Jokerst acknowledged that she only reviewed a portion of the Master Agreement between SDC and Toptec, but not [redacted]. (Tr. (Jokerst) at 917:2- 9.). Moreover, Dr. Jokerst testified that she did not discuss this Article, nor did she offer an opinion that took into consideration any potential ownership rights of Toptec in the equipment that resulted from SDC and Toptec's collaboration. (R.Br. at 20 (citing Tr. (Jokerst) at 917:10-21. According to Respondents, [redacted] demonstrates that because of Toptec's contribution to the design and development of the technology described in I.1. and I.2.a, Toptec was a joint owner, at a minimum. (RBr. at 21.). This testimony and argument are of little moment.

As SDC argued, even if SDC jointly owned certain aspects of SDC's TS I.1.a and TS I.2.a with Toptec, joint ownership would not defeat SDC's ownership interest in, or SDC's ability to assert misappropriation of, TS I.1.a and TS I.2.a. (CBr. at 22.). As the weight of the contract evidence demonstrates, Toptec did not have the right to disclose SDC's trade secrets to Respondents without SDC's approval because they were protected by contract.

SDC's trade secrets are also protected under Commission law so long as SDC took reasonable measures to protect them, which SDC certainly did. (*See* Section VI.J, *infra*; SPBr. at 14-15.). *Apparatus for Copper Rod*, Inv. No. 337-TA-52, Comm'n Op., 1979 WL 445781, at *22 (determining that complainant "established a sufficient proprietary ownership interest to maintain an action for Trade Secret No. 5 as an unfair act within the meaning of section 337,"

even though the trade secret was "designed and developed jointly" by the manufacturer and the complainant).

Initially, Respondents tried to argue that the language of [redacted] in the Master Agreement between SDC and Toptec required that the information "[redacted]" (RPBr. at 16.). Respondents took that provision out of the context of the entirety of the Master Agreement.

There is another section of the Master Agreement between Toptec and SDC, [redacted] which is included in all the SDC-Toptec NDAs that Respondents did not cite, but which is quoted in Figure 84 below. [redacted] of the SDC-Toptec NDAs states clearly that Toptec/FAI [redacted]

Figure 84: [redacted] of SDC's Agreement with Toptec

[redacted]

(*See, e.g.*, SDA-Toptec NDAs; CX-0450C.0004 (Article 4); CX-0451C.0004; CX-0452C.0004: CX-0609C.0007; CX-0610C.0004; CX-0479C.0004; CX-0734C (SDC-Toptec Contract on Rights/Responsibilities/Liabilities); CDX-0004C.0009 (All NDAs with Third-Party Vendors Reviewed by Mr. Pooley); RDX-0002C.0025 (NDAs with Third-Party Vendors Reviewed by Dr. Jokerst)).).

As noted above, SDC had not just one NDA with Toptec that protected SDC's rights, but several of them. Moreover, that SDC is the owner of the technologies constituting TS I.1.a and I.2.a is a fact that Toptec acknowledged. (Tr. (S Kim) 667:22-668:4, 668:20-670:5; CX-2447C.0002; CX-2394C.0002; *see also* CX-0454C.0047-0048, 0064.). As SDC noted, in a

[redacted] letter that Toptec's CEO Jae-Hwan Lee sent to SDC:

[redacted]

(CX-2394C.0002 (emphasis added); *see also* CX-2447C.0002 ("[redacted]") (emphasis added); (Tr. (S. Kim) 667:22-668:4, 668:20-670:5; CX-2447C.0002; CX-2394C.0002; *see also* CX-0454C.0047-48, .0064; CBr. at 22 citing CX-2394C.0002; CX-2447C.0002 ("[redacted]").).

Additionally, the Suwon High Court Decision focused on the explicit consent that SDC had a right to give under South Korean law before any of its trade secrets could be disclosed. The Suwon High Court Decision found that Toptec violated South Korean law by creating and sharing information with its creation, FAI. The Suwon High Court Decision found certain defendants who worked for Toptec criminally liable and sentenced some of them to prison terms because "***by colluding and disclosing this information to Defendant FAI without SDC's explicit or implicit approval," [defendants] "are in violation of trade secrets as defined in Article 18, Clause 2 of the Previously Unfair Competition Prevention Act.***" (CX-0454C.0064 (emphasis added).).

To circumvent their own responsibilities and liability for their theft of SDC's trade secrets, Respondents first argued that they did not have a confidentiality agreement with SDC and so they could not be liable for any alleged misappropriation. (RPBr. at 17 (citing *Schroder v. Pinterest Inc.*, 113 A.D. 3d 12 (2015); *see also Pauwels v. Deloitte LLP*, 2020 WL 818742, at *9 (S.D.N.Y. Feb. 19, 2020) (relying on *Pinterest* to hold that a corporate defendant cannot be liable for trade secret misappropriation for use of the alleged trade secret information in the absence of allegations that it breached a confidential relationship or acquired the information by

improper means). To support their "innocent purchaser" argument, Respondents also tried to argue that [redacted] of the agreement between Toptec/FAI and Respondents state that "[redacted]" and that "[redacted]" (RBr. at 22-23 (citing CX-0003C).).

Additionally, Respondents claimed that they relied upon the testimony of an employee of one of the BOE Respondents, Mr. Jialin Wang, t[redacted] According to Respondents' reliance on Mr. Wang and his testimony, Mr. Wang explained that[redacted] (RBr. 34 (citing Tr. (J. Wang) at 1143:9-1144:9; CX-0004C).). According to Mr. Wang's testimony, [redacted] (RBr. at 23 (citing Tr. (J. Wang) at 1143:25-1144:1).). [redacted] (RBr. at 23 (citing Tr. (J. Wang) at 1144:1-6).).

Among other problems for Respondents' reliance on its "innocent purchaser" theory is that Respondents acquired SDC's TS I.1.a and II.1.a wrongfully, and knowingly did so. That

they did so is supported by extensive evidence, including in the Suwon High Court Decision, as well as in other evidence SDC adduced.

For example, as SDC noted, [redacted] (CBr. at 23 (citing CX-0004C.0002-03; CX-1778C (J. Wang Dep. Tr.) at 189:12-195:1.). There could not have been any misunderstanding about who "S Company" was. Similarly, as the Suwon High Court Decision found as part of its record, Respondents' employees used WeChat instant messages to obtain confidential materials concerning SDC lamination equipment from FAI. (*See* CX-0455C.0001,), [redacted] (CX-0454C.0071.). [redacted]:

[redacted]

(CX-0454C.0071 (emphasis added).).

[redacted]

[redacted]

(CX-0454C.0008.).

SDC, as noted above, had not just one NDA with Toptec that protected SDC's rights, but several of them. Moreover, that SDC is the owner of the technologies constituting TS I.1 and I.2 is a fact that Toptec acknowledged. (Tr. (S. Kim) at 667:22-668:4, 668:20-670:5; CX-2447C.0002; CX-2394C.0002; *see also* CX-0454C.0047-0048, 0064.). It appears that Respondents did not ask Toptec/FAI for copies of Toptec/FAI's NDAs or other contracts with SDC to assure itself that it was not purchasing SDC's trade secrets illegally, which amounts to, at a minimum, a lack of "due diligence" on Respondents' end.

Respondents' second argument, that at the time it was working with Toptec/FAI it was unaware or did not have "notice" of SDC's ownership rights in its 3D lamination technology, cannot reasonably be true. To that end, Respondents cited to the Suwon Lower Court Decision issued in 2021 that Toptec did not misappropriate SDC's trade secrets. (RBr. at 23-24 (citations omitted).). As noted elsewhere in this ID, the Suwon Lower Court Decision was ***overturned in its entirety*** by the Suwon High Court Decision in 2023. (*See* CX-0454C.0004. ("The original decisions are hereby reversed.").).

Ultimately, Respondents' argument is dubious at best. It amounts to a statement that even though they knew they had targeted and used Toptec/FAI precisely because SDC had also used Toptec/FAI to create its lamination lines for SDC's OLED factories, Respondents used any information that Toptec/FAI gave them until they were investigated and caught. To state this

another way, it is a reasonable inference to draw, and this decision does so, that when they hired Toptec/FAI to develop their lamination lines in China, Respondents knew there was no other company in South Korea other than SDC who had developed OLED lamination technology. Moreover, as the South Korean Suwon Court Records show, the South Korean prosecutor was developing a record of "crimes" and obtaining WeChat messages, e-mails and other documents from Toptec/FAI that are dated 2017, if not earlier. (*See, e.g.*, CX-0456C.0007; CX-0454C.0006.). As the Suwon High Court Decision noted, Respondents paid Toptec/FAI for the lamination line equipment that consisted of SDC's lamination line processes and configuration on or about October 5, 2018. (CX-0454C.0014.).

Additionally, Respondents are wrong on legal precedent as well as the evidence. Even if Toptec/FAI had joint ownership of at least some of the information that comprises SDC's TS I.1.a and I.1.b, that would not defeat SDC's ownership interest in, or its ability to assert a misappropriation of its trade secrets whether under Commission precedent or under South Korean law. Neither would co-ownership with SDC grant Toptec/FAI a right to disclose SDC's trade secrets to Respondents without SDC's approval. *See Apparatus for Copper Rod*, Inv. No. 337-TA-52, Comm'n Op., 1979 WL 445781, at *22 (determining that complainant "established a sufficient proprietary ownership interest to maintain an action for misappropriation of Trade Secret No. 5 as an unfair act within the meaning of section 337," even though the trade secret was "designed and developed jointly" by the manufacturer and the complainant). *See also* CX-2447C.0002 ("[redacted]"); CX-0450C.0003 (Article 4(1)-(2) (emphasis added).).

There is a final problem for Respondents. There is no evidence that they researched, developed, or created any of the contents independently of the information that they obtained from Toptec/FAI's provision to them of SDC's trade secrets TS I.1.a and TS.I.2.a. Given the weight of the documentary and testimonial evidence, together with the record and findings in the Suwon High Court Decision that corroborates much of the evidence SDC investigated and adduced independently, it is a finding that SDC has proven by a preponderance of evidence that SDC is an owner of TS I.1.a and TS I.2.a.

3. TS II.1.a, II.1.b, II.1.c, and II.1.y

Respondents argued that SDC's documents failed to prove that SDC possessed a working device that implements the category II.1 trade secrets. (RBr. at 36.). With respect to TS II.1.a, Respondents specifically argued that "SDC failed to show ownership or standing" because "[redacted] is unworkable and not clearly disclosed, and SDC did not even design [redacted]." (RBr. at 36.). Similarly, Respondents contended that SDC did not establish ownership of TS II.1.c because SDC "failed to demonstrate that [redacted]." (RBr. at 45.). With respect to TS II.1.y, Respondents asserted that SDC's "lack of description or evidence of its creation of II.1.y indicate that SDC also has no ownership over this alleged trade secret and no standing to lodge a misappropriation claim." (RBr. at 48.).[97]

A second argument that Respondents advanced was that SDC's [redacted] was developed by another third-party vendor, Naeil, who created the [redacted] and then offered the

[97] Respondents appear to be drawing on patent law; not trade secret law.

design to other prospective OLED display manufacturers. (RRBr. at 12 (citing Tr. (H. Lee) at 270:5-271:5; CX-0789; Tr. (Glew) at 1304:5-25; RX-2800C.0078; RDX-0004C.0038.). Additionally, Dr. Glew testified that the [redacted] SDC uses is a simple solution and constitutes a straightforward solution that could have been readily conceived not only by a skilled OLED display engineer, but by an ordinary layperson. (Tr. (Glew) at 1289:25-1290:10; RDX-0004C.0024; RRBr. at 12).). Respondents also argued that SDC did not establish ownership of S II.1.c because SDC "failed to demonstrate that [redacted]." (RBr. at 45.).

Respondents did not present authority for their argument that would establish that trade secret ownership requires proof that the trade secret design is not unworkable, or that the trade secret is "enabled." None of the trade secret precedent cited by the Parties, no precedent issued by the Commission, and no decision of the Federal Circuit sets forth such requirements based on the briefing. *Crawler Cranes*, Inv. No. 337-TA-887, Final ID at 132 (quoting *Sausage Casings*), *aff'd,* Comm'n Op. at 35 ("one 'owns' a trade secret when one knows of it, as long as it remains a secret"); *Raised Garden Beds*, 337-TA-1334, Comm'n Op. at 35 n.23 (Mar. 21, 2024) ("ownership of a trade secret is based on possession (via secrecy), not formal ownership") (citing *Crawler Cranes*)).

Nonetheless, SDC introduced testimonial and documentary evidence that it developed the category II.1 trade secrets. Mr. H. Lee testified that SDC began developing the [redacted]. (Tr. (H. Lee) at 251:22-253:7, 266:1-4, 268:15-269:19; CX-0563C.0011; CX-0747C (SDC presentation titled "[redacted]," dated [redacted]; CX-0778C (SDC email dated [redacted] reflecting that investment in equipment and validation

for Y-OCTA has been completed).). Mr. Lee also testified that [redacted]. (Tr. (H. Lee) at 100:22-101:7.). According to SDC, its design team included Mr. Won before he left SDC to work first at [redacted] and then directly for one of the Respondents. (SBr. at 36.). Also, according to Mr. Lee's testimony, Naeil's involvement only began after SDC's design was complete, when SDC shared its design with Naeil. (CBr. at 36 (citing Tr. (H. Lee) at 266-1:4.). Naeil then used SDC's design to manufacture SDC's [redacted]. (*Id.*; Tr. (H. Lee) at 266:8-11, 269:15-269:15.). Naeil agreed that SDC owned the design and the [redacted] trade secrets, and did not claim ownership or the right to disclose them. (*See* CX-2446C.0010 (NDA of the disclosing party); Tr. (H. Lee) at 269:16-19 (confirming that Naeil never told SDC that Naeil believes it owns TS II.1).).

SDC executed an NDA with Naeil on [redacted], which protected the exchange of confidential information pertaining to the "[redacted]" (CX-2446C.0008-12; *see also* CX-0984C.0002-06 (NDA between SDC and Naeil dated [redacted], *see especially* [redacted].). As Staff noted, SDC "reasonably expected" that Naeil would keep SDC's trade secrets confidential in view of the NDAs. Even Mr. Won, who attempted to claim at some point that he was not involved with or had a minimal role in the development of SDC's TS II category, clearly testified that h[redacted] (Tr. ([redacted]) at 269:3-7 [redacted] *see also* SBr. at 44.).

Therefore, even if Respondents had cited legal authority for their theory that proving

trade secret ownership requires proof that SDC's trade secrets (especially the [redacted] or [redacted]) or that the trade secret owner's equipment must have been designed such that it is "enabled," or that the trade secret was sufficiently described, SDC has satisfied Respondents' requirements.

It is a finding of this ID that SDC has proven by a preponderance of evidence that it is the owner of TS II.1.a, TS II.1.b, TS II.1.c, and TS II.1.y.

4. TS III.1.h+s

Staff contended that Respondents waived, withdrew or abandoned their right to argue that SDC did not own TS III.1.h+s pursuant to Ground Rule 7.2 because Respondents did not develop their argument with supporting evidence in their Pre-Hearing Brief. (SBr. at 57 (citing RPBr. at 53-60).). Even if Staff is correct, Respondents nonetheless conceded that SDC proved by a preponderance of evidence that it owns TS III.1.h+s. (JSUI at 1-2.).

Moreover, SDC adduced evidence sufficient to support its claim of ownership of TS III.1.h+s. Mr. Giyul Ham, an SDC employee, testified that SDC's [redacted] was designed by SDC employees, including himself. (RX-1475C (Giyul Ham Dep. Tr. Vol. 1)[98] at 95:6-12, 105:5-11, 105:19-106:21.). Additionally, there is undisputed documentary evidence that SDC designed and developed the [redacted] that is the subject of TS III.1.h+s, internally. As noted in Section VI.J, SDC protected TS III.1.h+s, and therefore is the owner of TS III.1.h+s. (CX-0576C ([redacted]); CX-0577C (same); CX-0578C (same); CX-0805C (same); CX-0966C (SDC

[98] At the time of his deposition, Mr. Giyul Ham was a career level 3 engineer at SDC. (RX-1475C (Giyul Ham Dep. Tr. Vol. 1) at 51:5-11.). Mr. Ham's responsibilities include "[m]odifying and improving CVD equipment." (*Id.* at 51:12-14.).

presentation regarding [redacted]).).

Based on the undisputed evidence, and the lack of any counterargument or counterevidence, it is a finding of this ID that SDC has proven by a preponderance of evidence, that SDC owns TS III.1.h+s.

5. TS IV.1

Respondents conceded that SDC had proven by a preponderance of evidence that it owns TS IV.1.d and IV.1.e., i.e., the "Defect Detection" trade secrets. (JSUI at 1.). Respondents could not credibly dispute SDC's ownership of TS IV.1.d and TS IV.1.e because the undisputed testimonial and documentary evidence is that SDC developed these trade secrets internally based upon its own testing and proprietary data. (Tr. (J. Kim) at 160:17-20, 168:14-25; CX-0584C; CX-1875C.).

Therefore, it is a finding of this ID that SDC has proven by a preponderance of evidence that SDC owns TS IV.1.d and TS IV.1.e.

6. TS IV.2

Respondents did not develop with sufficient detail that it disputed that SDC owns TS IV.2.b and TS IV.2.c. (RPBr. at 73-82; RBr. at 68-79; RRBr. at 30-35.). Arguably, Respondents waived, withdrew or abandoned arguments with respect to ownership pursuant to Ground Rules 7.2 and 10.1. Nonetheless, Respondents did not concede post-hearing that they abandoned their arguments with respect to SDC's ownership of its TS IV.2 ownership. Therefore, the only issue is whether SDC sustained its burden of proof that it owns TS IV.2.

SDC introduced uncontested, unrebutted, and irrefutable evidence that SDC possessed the designs and specifications for its [redacted]. (Tr. (Ryu) at

213:23-214:10, 214:23-216:17.). SDC kept its designs and specifications secret. It provided its designs for manufacturing purposes providing them to its vendors under NDAs. (*Id.* at 214:11-17, 216:22-217:1). TS IV.2.b and TS IV.2.c.). Three (3) of the third-party vendors with him SDC worked were HIMS, DIT and HBT. However, as with Toptec and other third-party vendors, SDC executed NDAs with each of those third-party vendors that did not authorize any disclosure of SDC's information or trade secrets. (HIMS NDAs (CX-0585C; CX-0571C; CX-0831C.); DIT NDA (CX-0483C); HBT NDAs (CX-0841C; CX-0838C).).

With respect to HIMS, and SDC's unrefuted evidence, SDC conducted testing on a variety of [redacted] because SDC engineers determined that [redacted] worked best in its mass production line. (CPBr. at 68 (citing CX-2342C (Ryu Dep. Tr. Vol. 1) at 128-30).). [redacted], SDC then decided that [redacted]. (*Id*.). SDC contacted HIMS, its [redacted] vendor, and requested that HIMS [redacted]. (*Id.*).

According to SDC's timeline and unrebutted evidence, at the time, HIMS did not have the capacity to manufacture [redacted] and had no experience with using [redacted]. According to SDC, there was no vendor available to manufacture the equipment it needed in [redacted]. (*Id.* (citing CX-0823C).). SDC's unrebutted documents and testimony reflect that SDC's engineers guided HIMS in both the design and manufacture of [redacted] and the installment and operation of [redacted]. (*Id*. (citing CX-2342C (Ryu Dep. Tr. Vol. 1) at 261; *see also* CX-0819C; CX-0820C; CX-0821C; CX-0822C; CX-0823C; CX-0824C; CX-0825C; CX-0826C; CX-0827C; CX-2341C (SDC-HIMS documents).). After months of working with HIMS, "around the end of [redacted]," SDC introduced the [redacted] and

[redacted] to the A3 line. (CBr. at 68 (citing CX-2342C (Ryu Dep. Tr. Vol. 1) at 105).). The HIMS-SDC NDAs unequivocally each gives SDC the property rights to the development and ownership of the [redacted]. (CX-0585C ([redacted]); CX-0571C; CX-0831C.).

When SDC decided to purchase [redacted] from the vendor HB Technology ("HBT") sometime in [redacted], SDC took measures to protect its ownership and the secrecy of its TS IV.2 trade secrets by also executing NDAs with HBT. (CX-0841C; CX-0838C; *see also* CX-2343C (Ryu Dep. Tr. Vol. 2) at 171; *see also* CX-2342C (Ryu Dep. Tr. Vol. 1) at 108).). The NDA also contains several provisions establishing that SDC is the owner of the information covered by the NDA. (*See, e.g.*, CX-0841C [redacted]).

As a precautionary measure, when SDC thought it was going to use third-party vendor DIT to help SDC develop and manufacture its [redacted], SDC signed an NDA with vendor DIT on [redacted] that similarly stated SDC owned the equipment and process and restricted the rights of DIT to use or share any information. (SBr. at 70 (citing CX-0843C).). Ultimately, SDC did not engage DIT to develop and/or manufacture its [redacted].

Without any substantive rebuttal to SDC's documentation or SDC's supporting testimony that it owned TS IV.2.B or TS IV.2.c., it is a finding of this ID that SDC sustained its burden of proving that it owns TS IV.2.b and TS IV.2.c.

7. TS IV.3

In their Pre-Hearing Brief, Respondents disputed that SDC owns TS IV.3.a, TS IV.3.m, and TS IV.3.s.xiii. (RPBr. at 82-111.). There were disputes over the extent to which SDC versus its third-party vendor, Canon Tokki, owned certain aspects of TS IV.3. Respondents

contended that Canon Tokki "likely" developed TS IV.3—regardless of which of the individual trade secrets. (RPBr. at 84-87, 96-99.). However, the ownership defense in Respondents' Pre-Hearing Brief was not raised in Respondents' Post-Hearing Briefs. (RBr. at 79-87; RRBr. at 35-44.). Therefore, the defense is deemed waived, abandoned, and withdrawn pursuant to Ground Rule 10.1.

Even if Respondents did not waive the defense, it would fail because SDC introduced uncontested, unrebutted, and irrefutable evidence that it [redacted] to its vendor Canon Tokki under an NDA. (CX-0565C ("[redacted]"); *see also* Tr. (J. Park) at 206:4-11; RX-1591C (J. Park Dep. Tr. Vol. 1) at 100:15-101:8, 108:9-23.).

Mr. Park, an SDC fact witness, was asked in pertinent part who developed the [redacted] and who manufactured the equipment for SDC's [redacted]. (*See* Tr. (J. Park) at 206:4-11 ("[Q.] Which vendor supplies EVEN equipment to SDC, do you know? A. EV deposition equipment was provided by Canon Tokki. Q. Did Canon Tokki or SDC design [redacted]? A. [redacted] was designed by SDC and sent to Canon Tokki."); CX-0683.0003 (SDC "[redacted]," identifying [redacted] as the date that SDC began development of the [redacted]).).

Mr. Park explained that SDC [redacted]. (*See* Tr. (J. Park) at 185:25-186:25 (describing how [redacted]). SDC's [redacted] was deployed in South Korea near the [redacted]. (*See* CX-0801C.0003 ([redacted]).).

Additionally, the evidence reflects that SDC [redacted]. (*See* Tr. (J. Park) at 195:19-197:10.).).

Respondents tried to argue, again only in their Pre-Hearing Brief, that a Canon Tokki [redacted] that Canon Tokki sent to one of the Respondentsk labeled as "Canon Tokki CONFIDENTIAL," demonstrates Canon Tokki's ownership of the EV/EN trade secrets. (*See* RPBr. at 83 (citing RX-0297C); *id.* at 85.). That [redacted] is dated July 26, 2016, and post-dates SDC's own confidential [redacted]. (*See, e.g.*, CX-0811C (dated [redacted]); CX-0676C (dated [redacted]).). As Staff also noted, Canon Tokki sent exhibit RX-0297C (CX-0169C) sent to Respondents more than one year after SDC had developed and installed its first [redacted]. Canon Tokki sent the information to Respondents while Canon Tokki was still subject to its NDA with SDC. (CX-0565C.). Notably, that document also is virtually identical to SDC's [redacted].

Even if Canon Tokki had shared ownership rights with SDC, and it did not, for the foregoing reasons, it is a finding of this ID that SDC sustained its burden of proving that it owns TS IV.3.a, TS IV.3.m, and TS IV.3.s.xiii.

8. TS VII.1

According to SDC's development timeline, SDC's development of TS VII.1 began as part of SDC's efforts to [redacted], which was underway by [redacted], and continued through approximately the beginning of [redacted]. (*See* CPBr. at 96-97 (citing, e.g., CX-0656C.0002, .0005; CX-0661C.0005; CX-0678C.0022, .0027; CX-0679C.0004-05 ([redacted]). However, the Parties disputed whether TS

VII.1.f and TS VII.1.r were developed by SDC or independently by SDC's vendor SFA. (RBr. at 88, 91; CBr. at 124-126; SBr. at 125.). Staff and SDC contended that SDC "alone" developed and owned the EAC equipment and processes of TS VII. Again, Respondents conceded that SDC developed TS IV.1.d. but none of the other TS VII trade secrets. Instead, Respondents contended that SFA, a third-party vendor with whom SDC shared information, independently developed the GRM-related equipment/processes. That argument is not supported. As explained below, SDC has proven by the weight of the evidence that SDC possessed/owned and kept secret TS VII.1.f and TS VII.1.r. The evidence also supports a finding that SDC developed at least some aspects of TS VII.1.f and TS VII.1.r.

Mr. S. Lee testified and relied upon SDC documents that SDC started developing and designing the GRM equipment that is the subject of TS VII.1.f on [redacted]. (Tr. (S. Lee) at 498:19-501:10, 505:21-25; CX-0656C.0002-.05, .0008.). Mr. Lee also testified that SDC alone continued to develop the specifications and design of its GRM equipment that is the subject of TS VII.1.f until at least [redacted]. (Tr. (S. Lee) at 506:2-508:16, 517:19-518:11; CX-0679C.0002, .0004-05 ([redacted]).

Mr. Lee testified that on or about [redacted], SDC started researching and developing ways to [redacted] by, among other things, [redacted], which is the subject of TS VII.1.r. (*See* Tr. (S. Lee) at 498:12-501:3; CX-0656C.0002, .0003 ([redacted]). Mr. Lee also testified that CX-0661C, an SDC presentation labeled "SAMSUNG SECRET" dated [redacted], represents the results of SDC's research and development. (Tr. (S. Lee) at 501:4-506:1; CX-0661C.0018.). One of the results of SDC's research and development was that the [redacted]. (Tr. (S. Lee) at 505:12-25,

516:11-24.).

SDC acknowledged that it shared designs with SFA. SDC began discussing the implementation of SDC's improvements to the GRM processes and equipment with its vendor, SFA, [redacted]. (CBr. at 86 (citing *e.g.*, CX-0586C.0002 ([redacted]); CX-0559C.0002-03 ([redacted]).). According to SDC, the cited meeting minutes evince SDC's development of the GRM Trade Secrets, including SDC's [redacted]. (*Id.* (CX-0559C.0002-03 ([redacted]); CX-0586C.0002 (reciting, under [redacted]); *see also* Tr. (S. Lee) at 516:11-24 ("SDC alone" "developed the design and configuration of [redacted]"), 517:19-518:11 ("SDC alone" "developed the [redacted] used by SDC").). According to SDC, on [redacted], SFA provided SDC "mock-ups" for the GRM equipment based on the sketches and renderings that SDC had drew up internally dated [redacted]. (*Compare* CX-0678C.0002, .0005, .0017 *with* CX-0560C.0003, .0007, .0021, .0031).).

According to SDC, it continued testing tact time savings through [redacted]. (CBr. at 86-87 (citing CX-0679C.0002, .0004-05).). According to SDC, in [redacted], SDC derived the [redacted], which SDC observed would result in [redacted]. (*Id*. (citing CX-0661C.0007, .0009, .0011, .0016, .0018, .0021, .0024-26, .0028, .0030 ([redacted]

[redacted]); Tr. (S. Lee) at 502:24-505:25 (SDC "arriv[ed] at the desired [redacted]" from the "research and those evaluations" in CX-0661C).). On [redacted], according to SDC's documents and testimony**,** the GRM Trade Secrets were deployed for the first time as part of the EAC line in SDC's [redacted]. (CBr. at 87 (citing CX-0661C; Tr. (S. Lee) at 498:19-499:10, 505:21-25; Tr. (Lebby) at 542:19-543:6).).

As documents reflect, only on [redacted], SFA provided SDC with an implemented GRM design that includes subsections of TS VII. (CX-0678C.0002.). [redacted] (CX-0236C.0001).). [redacted] (*See* SBr. at 123 (citing RX-0531C.0001 (CX-2385C).). Thus, it appears that SFA received the trade secret information from SDC, but later [redacted] (*Id*.).

Respondents argued that SDC does not own TS VII.1.f and TS VII.1.r based on Respondents' theory that SFA exclusively developed the trade secrets at issue. Respondents argued that Mr. Lee admitted in his deposition that SFA alone developed the trade secrets. (RBr. at 91 (citing RX-1673C (S. Lee Dep. Tr. Vol. 2) at 47:16-48:4, 58:6-11, 62:16-63:4).).[99] The deposition testimony Respondents relied on for their argument that Mr. Lee admitted SFA developed the trade secrets is reproduced below. Objections and instructions from SDC's counsel are omitted from the quoted testimony. Note that, in Mr. Lee's deposition transcript, the

[99] Respondents intended to cite RX-1672C (S. Lee Dep. Tr. Vol. 1).

document labeled "RX-0702" is CX-0678C [redacted], and so in the reproduction below, references to RX-0702 have been replaced with CX-0678C. Mr. Lee testified:

> Q. Do you have before you, sir, the document which we've identified now with a label of [CX-0678C]?
>
> A. Yes.
>
> Q. Have you seen this PowerPoint before, sir?
>
> A. Yes.
>
> Q. What is your knowledge of this document?
>
> A. It seems that the vendor, SFA, organized what's subject to changes as removed from phase 1 to phase 2.
>
> Q. And when you say the vendor is SFA, do you know what part or machine SFA is a vendor of?
>
> A. It is a manufacturer of this entire equipment.
>
> ***
>
> Q. And if we go back to [CX-0678C.0005], as we were reviewing before, you'll see on the left side of the page and on the right side of the page are depictions of what appear to be manufacturing drawings for phase 1 and phase 2 of the glass removal machine that themselves bear the SFA logo on them, correct?
>
> A: Yes, correct. Yes, I'm aware of that.
>
> Q. And you are aware that these manufacturing drawings are manufacturing drawings belonging to SFA for this piece of equipment, correct?
>
> A. Yes, it is correct. These are the drawings that were created by SFA.
>
> ***
>
> Q. And do you know how regularly SFA's engineers visited SDC's manufacturing line to monitor improvements to the glass removal machine?
>
> A. So during the setting-up stage, of course SFA engineers come and stay with SDC. But once the setting-up phase is over, we don't regularly call them in. Only when there is an issue, we will call them in, and we will look at the issue together.

We do not regularly have them over.

(RX-1672C (S. Lee Dep. Tr. Vol. 1) at 47:4-63:4.).

Mr. Lee's deposition testimony reproduced above is consistent with his Hearing testimony. During the Hearing, Mr. Lee testified that the equipment drawings depicted on page 5 of CX-0678C were created by SFA, that SFA was the manufacturer of the equipment including the [redacted], and that SDC only used the default target specifications for the equipment from SFA. (Tr. (S. Lee) at 510:10-25, 512:17-22, 513:25-514:8, 515:18-20.).

That is not quite accurate. Mr. Lee's opinion about whether SFA or Respondents owned the design, and the processes involved are undermined by SDC's documents. The evidence is mixed: that SDC produced designs with SFA and that SFA manufactured equipment for SDC. (*See* CX-0678C.).

Respondents also argued that certain SFA patents prove that SFA owns TS VII.1.f. (RBr. at 45 ("SFA patents also show that SFA owns the GRM design [redacted]").). Dr. Glew, Respondents' expert, referenced two (2) SFA patents, RX-1291.0020 and RX-1293.0022, that are directed to GRM equipment [redacted]. (Tr. (Glew) at 1331:9-17.). A problem for Respondents is that their argument is not supported by evidence. Respondents did not introduce documents or testimony to prove that any of SFA's patents, including RX-1291.0020 and RX-1293.0022, describe TS VII.1.f or TS VII.1.r. Dr. Glew's testimony was not developed or credible.

Moreover, SDC's unequivocal documents provide evidence of its development of the trade secrets that predates SDC's engagement with SFA. (CX-0586C.0002; CX-0560C.0031; CX-0656C.0002, .0003; Tr. (S. Lee) at 499:6-500:3.). Exhibit CX-0560C is an internal SDC PowerPoint presentation that predates SDC's first meeting with SFA, titled "[redacted]

[redacted]," labeled "SAMSUNG SECRET," and dated [redacted]. (CX-0560C.0003.). CX-0560C documents the changes SDC made to its GRM equipment between phase I and phase II, including the [redacted]. (Tr. (S. Lee) at 519:6-25, 522:8-23; CX-0560C.0031.).

SDC also provided exhibit CX-0656C.0003, another internal SDC PowerPoint presentation that predates SDC's first meeting with SFA, titled "[redacted]" labeled "SAMSUNG SECRET," and dated [redacted]. (CX-0656C.0002.). This document reflects SDC's efforts to set up its phase I GRM equipment and SDC's efforts to reduce the tact time for its GRM equipment. (Tr. (S. Lee) at 498:19-499:5.). Exhibit CX-0656C contains [redacted] of TS VII.1.r. (*See* Tr. (S. Lee) at 409:6-500:3; CX-0656C.0003.).

Additionally, SDC provided CX-0586C, a document containing minutes of a meeting between SDC and SFA on [redacted]. An excerpt of the meeting minutes, in which SDC is assigned responsibility for "[redacted]," including "[redacted]" which is the subject of TS VII.1.r, is reproduced below.

Figure 86: Excerpt of Meeting Minutes for SDC/SFA Meeting on [redacted]

[redacted]

(CX-0586C.0002.).

The documents cited support SDC's argument that SDC developed at least some aspects of TS VII.1.f and VII.1.r without any input from SFA. (CX-0586C.0002; CX-0560C.0031; CX-

0656C.0002, .0003; Tr. (S. Lee) at 409:6-500:3.). Taken together, SDC's documents prove by a preponderance of evidence that SDC developed its GRM trade secrets, albeit while working with SFA. (Tr. (S. Lee) at 498:19-501:10, 505:21-25, 506:2-508:16, 517:19-518:11.).

Respondents' argument that SFA exclusively developed the GRM trade secrets is not supported by documents. Moreover, Respondents' arguments that SDC "did not provide any documents suggesting that SDC developed the [redacted]" is simply wrong. (RBr. at 91-92 (citing Tr. (Glew) at 1330:14-1331:8).). That argument is belied by the many documents SDC produced.

Additionally, SDA had three (3) NDAs with SFA. (CX-0573C, CX-0587C; CX-0983C.). The SDC-SFA NDAs contain the same protection of SDC's confidential information, with requirements that SDC provide express consent for the disclosure of any information as in other NDA's SDC executed with its third-party vendors. (*See, e.g.*, *id.* at Article 9 of each NDA.). There is no evidence that third party vendor SFA has affirmatively claimed ownership rights or has otherwise raised any challenge to SDC's ownership of the Category VII trade secrets. (*See* (Tr. (S. Lee) at 516:21-24, 518:9-11.).

Therefore, it is a finding of this ID that SDC has proven by a preponderance of evidence that it owns and certainly possesses TS VII.1.f and TS VII.1.r.

J. SDC's Reasonable Measures to Protect Its Trade Secrets

1. Legal Standards

When a company has a practice of requiring a non-disclosure agreement ("NDA") with another company before sharing trade secret information, requires its employees to sign NDAs, trains its employees on trade secrets, and tracks the trade secret information to which employees have access, the Commission has found those measures to be sufficient. *Bone Cements*, 337-TA-

1153, Final ID at 20-22; *Motorola Sols., Inc. v. Hytera Commc'ns Corp.*, 495 F. Supp. 3d 687, 699-700 (N.D. Ill. 2020) ("Motorola took sufficient steps to safeguard its technical documents. Motorola employees were subject to a confidentiality agreement. The database that contained the technical documents and source code was accessible only to certain Motorola employees."), *aff'd in part, rev'd in part and remanded*, 108 F.4th 458 (7th Cir. 2024); *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 41 ("[Complainant] applied various safeguard measures, including locked entry doors, password protected computer system, and corporate policies on trade secrets and confidentiality.").

Additionally, a complainant's reasonable efforts to maintain the secrecy of the trade secret are evaluated against the efforts of a reasonable business in the same situation and having the same knowledge and resources, exercising due care to protect important information for the same time. *See, e.g.*, *Learning Curve Toys Inc. v. PlayWood Toys, Inc.*, 342 F.3d 714, 724-26 (Fed. Cir. 2003) (finding reasonable measures considering size and sophistication of the parties, the nature of industry, available confidentiality agreements); *Gates Rubber Co. v. Bando Chem. Indus., Ltd.*, 9 F.3d 823, 848-49 (10th Cir. 1993) (holding information retained status as trade secret even though it was disclosed at a preliminary injunction hearing because plaintiffs' counsel had monitored the presence of observers in the court room and placed record and certain exhibits under seal after the hearing). "Reasonable efforts" can include advising employees of the existence of a trade secret, limiting access to the information to a "need to know basis," requiring employees to sign confidentiality agreements, *MAI Sys. Corp. v. Peak Computer*, 991 F.2d 511, 521 (9th Cir. 1993), and keeping secret documents under lock. 1 Roger Milgrim, *Milgrim on Trade Secrets*, § 1.04 at 1-126. Perfection and eliminating all possible risk is not required; instead a complainant must have taken practical steps to protect its information, given

the nature of the risk to the information in view of the business and legal environment, and its value. *Rockwell Graphic Sys., Inc. v. DEV Indus., Inc.*, 925 F.2d 174, 180 (7th Cir. 1991) ("Perfect security is not optimum security.").

The secrecy required to prove that something qualifies as a trade secret ***"need not be absolute" secrecy***. *See, e.g.*, *Pioneer Hi-Bred Int'l v. Holden Found. Seeds, Inc.*, 35 F.3d 1226, 1235 (8th Cir. 1994) (emphasis added) (finding that district court concluded that the relevant information did not exist outside of plaintiff and plaintiff's contractors). Rather, secrecy is a relative concept and requires a fact-intensive analysis. For example, matters of general knowledge in the industry, that can be easily discerned, and disclosed in patents and other public filings are not eligible for trade secret protection. *Sausage Casings*, Inv. 337-TA-148/169, ID at 246, 270 ("[A] specific embodiment of general concepts or combination of elements, some or all of which may be known in the industry, may be protectible as a trade secret.")).

The fact that a trade secret "has been in the public domain . . . does not preclude the issuance of an LEO." *Raised Garden Beds*, Comm'n Op. at 53. Although "an injunction shall be terminated when the trade secret has ceased to exist, [] the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation." *Id*. (quoting UTSA § 2(a) (1985)); *see also Lamb-Weston, Inc. v. McCain Foods, Ltd*., 941 F.2d 970, 975 (9th Cir. 1991) (recognizing that "public disclosure of the [trade secret] did not exonerate [defendant] from previous illegal use of that trade secret," and upholding injunction extending beyond the issuance of a patent disclosing the trade secret).

As reflected below, SDC employed all the security measures that case precedent finds to be "reasonable," and more, with respect to all the Asserted Trade Secrets.

2. SDC Presented Persuasive Evidence of its "Extraordinary" Security Measures

Respondents argued that SDC did not take reasonable measures to maintain the secrecy of its trade secrets. (RPBr. at 21-22; RBr. at 25.). SDC disagreed and provided extensive documentation of its security measures. (CPBr. at 26-27; CBr. at 18-19, 35-36, 46, 54-55.). Staff agreed with SDC that SDC used reasonable measures to protect its trade secrets. (SBr. at 14-15; SRBr. at 7.).

SDC implemented a variety of legal, physical and electronic security measures to protect its trade secrets. SDC called as its primary expert witness, Mr. James Pooley, to testify on the measures SDC took to protect its trade secrets.

In support of his opinion that SDC took "extraordinary security measures," Mr. Pooley identified a variety of SDC's documents. Mr. Pooley noted generally, that SDC (i) secured its facilities with locks; (ii) restricted access to SDC's facilities and specific areas within SDC's facilities with key-cards; (iii) required visitors to be pre-approved before entry into a building; (iv) required visitors to sign NDAs before they could enter SDC facilities; (v) required visitors to be escorted in its facilities; (vi) required visitors to [redacted] upon entering and exiting SDC's facilities; and (vii) [redacted] so that printed documents containing trade secrets could not be removed from SDC's facilities. (*See generally* Tr. (Pooley) at 729:1-733:9); *see also* CX-1783C (Sung Hyuk Won Dep. Tr.)[100] at 169:20-170:2 [redacted]); Tr. (Ji) at 315:4-7 ([redacted]

[100] [redacted], Mr. Sung Hyuk Won was a former SDC employee, [redacted] (Section VI.C.3, *supra*.).

[redacted]); CX-0501C (SDC Information Protection Policy Paper); CX-0502C (SDC Information Security Guidelines); CX-0503C (SDC National Core Technology Protection – Management Guidelines); CX-0504C (SDC Information Protection Procedures); CX-0505C (SDC Information Protection Guide).).

Additionally, one SDC witness, Mr. Sangcheol Kim,[101] testified that SDC maintains a security system and procedures whereby only certain individuals who have access to the building can enter. (Tr. (S. Kim) at 676:6-677:1). Mr. Kim also testified that, to send files outside SDC facilites, SDC uses a [redacted] system whereby an appropriate person within SDC must approve any file that is sent out of an SDC facility. After that step, someone in SDC's information protection group must confirm whether the file can be sent or not. (*Id.* at 666:5-667:9; CX-0509C.0024; *see also* Tr. (H. Lee) at 269:3-12.). Mr. Kim also testified that a file cannot be sent outside SDC without having [redacted]. (Tr. (S. Kim) at 667:10-16.). Moreover, before any confidential SDC information is shared with any non-employee or anyone else outside the company, an NDA with that person/company is required.

In addition to the security measures described above, SDC has had a standard business practice with all its third-party vendors whereby no confidential SDC information could be shared without an executed NDA. (Tr. (J. Park) at 198:13-16; Tr. (H. Won) at 269:3-15; Tr. (M. Ryu) at 216:18-217:1.). For example, SDC introduced into evidence copies of at least five (5) NDAs with its vendor Toptec. (CX-0445C; CX-0450C; CX-0451C; CX-0452C; CX-0609C.). Additionally, SDC introduced into evidence NDAs that it with HIMS (CX-0571C; CX-0585C; CX-0839C); with Canon Toki (CX-0565C); with Naeil (CX-0984C); with DIT (CX-0843C),

[101] As noted elsewhere in this ID, at the time of the Hearing, Mr. Sangcheol Kim was a principal engineer for SDC and worked as part of SDC's equipment development team. (Tr. (S. Kim) at 652:18-653:3.).

with TTS (CX-0582C; CX-0583C; CX-0731C); with HBT (CX-0838C; CX-0841C); with YMC (CX-0581C); and with Yodogawa (CX-0981C).

For example, with respect to the Toptec NDAs, Exhibit 1 to each NDA [redacted]. (CX-0445C; CX-0450C; CX-0451C; CX-0452C; CX-0609C.). As each of the NDAs reflects, each contains prohibitions on the use of another party's confidential information for any purpose other than as stated in the NDA. Additionally, the NDAs include requirements that each party to the NDA could not duplicate or store confidential information beyond that which was necessary to perform the work necessary to the purpose of the NDA.

Among other provisions, there were requirements that each party make all efforts necessary to protect and manage another party's confidential information. Reflected below is standard language used in SDC's NDAs with third-party vendors based upon the samples of Toptec and other third-party vendors' NDAs that SDC relied upon during the Hearing. Other third-party vendor NDAs contain similar provisions and restrictions as cited below.

Figure 87: Confidentiality Provisions of SDC's Confidentiality Agreements with Vendor Toptec[102]



(CX-0445C.0003; CX-0450C.0003; CX-0451C.0003; CX-0452C.0003; CX-0609C.0003.).

Finally, there was testimony and documentary evidence that SDC required (and still requires) all its employees to sign *annual* affidavits of trade secret protection that describes the work they performed covered by trade secrets. (CX-0695C (document labeled "Resignation Letter," and bearing the signature of Nam Yoo Kang);[103] *see also* CX-0697C (document labeled "Resignation Letter," and bearing the signature of Cheolyoung Kim); CX-0993C (document labeled "Affidavit on Protection of Trade Secrets," and bearing the signature of Nam Yoo Kang); CX-0985C (document labeled "List of Trade Secrets" and bearing the signature of Cheolyoung Kim, was attached a document labeled "Affidavit on Protection of Trade Secrets" that also bears Cheolyoung Kim's signature); CX-0986C (document labeled "Affidavit on Protection of Trade Secrets," and bearing the signature of Cheolyoung Kim); Tr. (Katona) at 337:14-338:4, 349:17-350:13, 359:19-360:10.).

[102] SDC sometimes referred to these agreements as NDAs and sometimes as Confidentiality Agreements.

[103] Nam Yoo Kang is an ex-SDC employee whose testimony was presented by deposition designation. (CX-1761C (Kang Dep. Tr. Vol. 1); CX-1762C (Kang Dep. Tr. Vol. 2).).

SDC employees also undergo mandatory training on how to protect SDC's trade secrets. Upon leaving the company, SDC employees sign resignation letters that are also Affidavits that identify the categories of trade secrets to which they have had access. An SDC employee resignation letter [redacted] and also prohibits duplication and disclosure of confidential information. An example of pertinent parts of a resignation letter of a former SDC employee, Nam Yoo Kang, is reproduced in Figure 88 below. At the bottom of Figure 88 is a list of the types of work Mr. Kang performed while he was employed by SDC, which was incorporated into his "resignation letter." Mr. Kang was [redacted]

Figure 88: Excerpts From Nam Yoo Kang's Resignation Letter and Affidavit of Trade Secret Protection

[redacted]

[redacted]

(CX-0695C; CX-0993C (affidavit of trade secret protection for Nam Yoo Kang); *see also* CX-0697C (resignation letter for Cheolyoung Kim);[104] CX-0985C (list of trade secret information to which Cheolyoung Kim had access attached to his affidavit of trade secret protection); CX-0986C (affidavit of trade secret protection for Cheolyoung Kim); Tr. (Katona) at 337:14-338:4, 349:17-350:13, 359:19-360:10.).

It should be noted that because SDC takes the protective measures described at all of its facilities, and with respect to all of its Trade Secrets, the described protective measures SDC uses will not be repeated for each Trade Secret.

3. Respondents Did Not Dispute or Rebut Most of SDC's Evidence

Respondents argued that SDC failed to take certain actions to secure the Asserted Trade Secrets. However, Respondents did not, and could not realistically or with credible expert rebuttal, dispute most of the substantial evidence that SDC's provided on its security measures. Respondents relied principally on the testimony of their expert Professor Elizabeth Rowe, who they offered as an expert in the field of trade secrets to testify on the measures considered "reasonable."[105] Despite Professor Rowe's qualifications, she has not had experience in the

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[104] [redacted] (CX-1763C [redacted] Dep. Tr. Vol. 1); CX-1764C (C.Y. Kim Dep. Tr. Vol. 2).

[105] Professor Elizabeth Rowe was Respondents' expert witness on the reasonableness of the measures SDC took to protect its Asserted Trade Secrets. (Tr. (Rowe) at 982:12-17; RDX-0002C.0010.). At the time of the Hearing, Professor Rowe was a law professor at the Virginia School of Law, the Dohert Charitable Foundation Chair, and the Horace Goldsmith Chair. (Tr. (Rowe) at 978:17-22.). Professor Rowe was also the co-director of the Law Technology Center and the Center on Intellectual Property Law. (*Id.*). Before Virginia Law School, Professor Rowe held a chair at the University of Florida, Levin College of Law, where she was the director of the Center in Intellectual Property Law. (*Id.* at 978:23-979:2.). Before that, Professor Rowe was a partner at the Boston law firm WilmerHale where she

OLED industry. Professor Rowe has not had experience managing trade secret protections within a company. Additionally, Professor Rowe lacks specific knowledge about security measures in the OLED industry. Overall, Professor Rowe did not contest the reasonableness of the extensive steps that SDC took to protect its Asserted Trade Secrets. (Tr. (Rowe) at 1000:14-1001:1 (testifying that she takes "as true and give credit" for the precautions SDC says that it exercised).).

One of Professor Rowe's primary critiques was that SDC did not audit its third-party vendors, yet she had no specific knowledge whether such a practice is followed or is even practicable. (*Id.* at 999:22-1000:13, 1012:2-14 (testifying that she "can't tell you" how common it is for NDAs in the OLED industry to contain audit provisions), 1015:6-23 (testifying that she "doesn't know" whether NDAs between a company and a sub-supplier are common in the OLED industry).). Therefore, on that point, Professor Rowe's testimony is limitedly useful.

A second critique Professor Rowe voiced is that SDC did not monitor its third-party vendors' compliance with their NDAs, or with their sub-suppliers' compliance with SDC's

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specialized in counseling and representing clients on trade secret management in litigation matters and on other intellectual property litigation. (*Id.* at 979:3-9.). Professor Rowe has written more than 50 books and publications on the topic of trade secrets, including one of the few, if not only casebook used by law schools in the country that teach courses on trade secrets. (*Id.* at 980:1-10.). Professor Rowe has provided expert testimony in other trade secret matters. (*Id.* at 979:10-18; RDX-0002C.0005.). Respondents offered Professor Rowe as an expert in the field of trade secrets generally and specifically with respect to reasonable measures to protect trade secrets. Professor Rowe was accepted as an expert on the subject matter for which she was called to testify without objection. (Tr. (Rowe) at 981:3-11.). Professor Rowe was accepted as an expert to testify on the subjects for which she was called. (*Id.* at 981:12-14.).

However, Professor Rowe testified she has no experience in display manufacturing technologies, and she is neither an expert in the industry nor has she worked in the industry. (*Id.* at 999:22-1000:7.). Professor Rowe also testified that she has no operational experience in managing trade secret protection programs inside of a company. (*Id.* at 1000:8-13.). Accordingly, her opinion as to what measures by SDC would be sufficient to constitute reasonable measures to protect its trade is entitled to little if any weight.

NDAs. This critique, for which she had no industry support or examples, appeared to undermine her overall view which she then claimed made SDC's security measures unreasonable. (*Id.* at 993:11-21, 995:7-22.). Additionally, Professor Rowe testified that SDC did not adhere to its standard NDA practice because, among the SDC NDAs and other confidentiality agreements that were made available to her, there were some companies with whom SDC does business that were not a party to any of those NDAs or confidentiality agreements. (*Id.* at 992:19-993:3). It is not clear who she included in this group of vendors.

Professor Rowe's opinion that SDC's failure to monitor its vendors and its vendors' sub-suppliers was unreasonable is not supported by evidence from an expert in the field. Professor Rowe's opinion is not ultimately credible because it is based at least in part on deposition testimony from Mr. Park that was not made part of the record. (Tr. (Rowe) at 993:11-21, 995:7-996:8; RDX-0002C.0029.). While Mr. Park testified during the Hearing, Respondents' counsel did not ask him about the subject matter of the deposition testimony upon which Professor Rowe relied. (Tr. (J. Park) at 201:5-205:20 (cross-examination).). That undermined Respondents' attempts to diminish SDC's prolific evidence. Moreover, Professor Rowe did not know whether it is common, let alone practical, in the OLED industry to include audit provisions in NDAs with a sub-supplier. (Tr. (Rowe) at 1012:2-14, 1015:6-23 (testifying that she "doesn't know" whether NDAs between a company and a sub-supplier are common in the OLED industry).). Professor Rowe's opinion is based on evidence not in the record, is unsupported by her own knowledge and experience, and is therefore entitled to little weight.

Professor Rowe's opinion that SDC failed to adhere to its standard NDA practice also is not credible. Neither Respondents nor Professor Rowe presented arguments, evidence, or reasoning that Professor Rowe reviewed every NDA that SDC provided as evidence. To the

contrary, Professor Rowe acknowledged that the NDAs to which she had access to form her opinions constituted only a subset of SDC's NDAs. Professor Rowe noted that the SDC third-party NDAs to which she did not have access contained information that is implicated in the Asserted Trade Secrets. (*Id.* at 1001:2-1002:5.). Professor Rowe's opinion that SDC failed to enter into NDAs with some of its vendors is unsupported and, therefore, entitled to little, if any, weight.

Ultimately, SDC introduced exemplary evidence that it employs exactly the types of security measures, and more, that the Commission has found sufficient in previous Investigations.

4. TS I.1.a and TS I.2.a

In addition to the extensive evidence of SDC's security measures discussed in Section VI.J(2) above, SDC introduced substantial evidence of additional measures SDC employed to protect the secrecy of TS I.1.a and I.2.a. For example, during a meeting between SDC and its vendor Toptec in which SDC's [redacted] was discussed, SDC and Toptec agreed to execute an NDA to protect SDC's confidential information related to the project at issue. (Tr. (S. Kim) at 667:17-670:5; CX-2447C.0002 (Meeting Minutes); CX-2394C ([redacted]). Dr. Jokerst confirmed that the NDAs SDC executed with Toptec were related to and covered SDC's 3D lamination technology. (Tr. (Jokerst) at 889:5-18 (confirming that the NDAs with Toptec are related to lamination and lamination processes, citing CX-0445C; CX-0450C; CX-0451C: CX-0452C; CX-0609C; CX-0734C).).

The testimonial and documentary evidence SDC presented through Mr. Sangcheol Kim and Dr. Jokerst is sufficient to prove by a preponderance of evidence that SDC took reasonable

measures to protect the secrecy of its trade secrets. Cumulatively, the security measures SDC took to protect its trade secrets are as strong, if not stronger than, the measures the Commission has previously found sufficient. *Bone Cements*, Final ID at 20-22, *aff'd*, Comm'n Op. at 12.

Respondents did not dispute or rebut the evidence SDC presented. Instead, Respondents argued that ***unless*** SDC took legal action against every entity who may have misappropriated or attempted to appropriate SDC's trade secrets, SDC did not take sufficient measures to protect its trade secrets. Specifically, Respondents argued that SDC's failure to take action against CSOT and GVO, two Chinese companies to whom Toptec was attempting to sell SDC's trade secret information, extinguishes SDC's trade secrets. (RBr. at 25.).

SDC and Staff argued that there is no legal precedent for Respondents' stringent security standards. (CBr. at 19; SBr. at 19-20.). On this legal point, SDC and Staff are correct. Reasonable measures to protect secrecy require neither perfect security nor elimination of all possible risk. *Pioneer Hi-Bred*, 35 F.3d at 1235; *Rockwell Graphic*, 925 F.2d at 180.

Moreover, Respondents did not provide evidence that SDC could have taken legal action in Korea against Chinese entities such as CSOT and CVO. Ultimately, Respondents' argument is supported by neither record evidence nor legal precedent. In contrast to Respondents, who did not introduce contrary evidence, SDC's evidence of its extensive security measures is comprehensive, persuasive and more than satisfies standards of "reasonableness" under Commission precedent as cited above.

For the foregoing reasons, it is a finding as a matter of law that SDC has proven by a preponderance of evidence that it took reasonable measures to protect TS I.1.and TS I.2.a.

5. TS II.1: TS II.1.a, II.1.b, and TS II.1.c

Mr. Heungwon Lee testified that, before SDC shared its [redacted] (TS II.1.b

and TS II.1.c) with Naeil for the purpose of having Naeil manufacture the [redacted], SDC executed an NDA with Naeil. SDC's technical documents shared with Naeil were vetted through SDC's [redacted] secured communication system. SDC's technical documents were marked "Samsung Confidential." (Tr. (H. Lee) at 254:14-16, 264:11-16, 268:25-269:15; CX-2446C.0008-12 (NDA with Naeil dated [redacted]); Tr. (Pooley) at CX-0984C.0002-06 (NDA with Naeil dated [redacted]).).

Evidence reflects that SDC marked documents containing information about the [redacted] as "Samsung Secret" and "Confidential." (CX-2476C ([redacted]); CX-2477C [redacted]

The SDC presentation titled "[redacted]" which depicts the [redacted] of the TS II.1 category of trade secrets (CX-0563C.0005, .0011; Tr. (H. Lee) at 246:24-247:20, 247:23-248:21, 249:8-251:8), identifies Mr. Sung Hyuk Won[106] [redacted] "[redacted]

[106] Mr. Sung Hyuk Won was an SDC employee [redacted]. (CX-1783C (S. Won Dep. Tr.) at 56:9-21; Tr. (H. Lee) at 252:12-14.). Mr. Won [redacted]. (CX-1783C

[redacted]" (Tr. (H. Lee) at 251:22-252:11, 265:24-266:4; Tr. (Katona) at 356:2-15, 432:13-21; CDX-0002C.0035; CX-0563C.0005.). Mr. Won [redacted]. (CX-1783C (S. Won Dep. Tr.) at 116:25-119:24.). [redacted], Mr. Won [redacted] (*Id.* at 169:20-170:2.).

Respondents argued that none of SDC's employee exit agreements or confidentiality agreements with former SDC employees involved any of the category II.1 trade secrets. (RBr. at 49.). Respondents argued that for Mr. Won, who was an ex-SDC employee involved with the category II.1 trade secrets, SDC did not provide a termination agreement.[107] (*Id.*). [redacted] Mr. Won's [redacted] Mr. Won's [redacted] (CX-1783C (S. Won Dep. Tr.) at 116:25-119:24.). Therefore, there is a preponderance of evidence that Mr. Won [redacted]

Respondents also argued that the NDAs SDC entered into evidence were executed with vendors that "have nothing to do with SDC's development of the allegations relating to the

(S. Won Dep. Tr.) at 56:22-58:10.). [redacted] Won joined BOE. (*Id.* at 14:4-5.). Mr. Won's [redacted]. (*See also* n.36.). Mr. Won [redacted].

[107] Respondents cited RX-1741 for this argument. Respondents did not include that exhibit in the record.

category II.1 trade secrets in this Investigation: Naeil System, SFA, Toptec, and Hanil High Tech." (RBr. at 49-50.). Respondents' argument is inconsistent with the record. SDC's exhibits document that SDC was working with Naeil for the purpose of having Naeil manufacture the [redacted] that are the subject of the category II.1. trade secrets. (CX-2476C ([redacted]); CX-2477C [redacted]).

Additionally, Respondents contended that the NDA that SDC executed with Naeil is dated several months after Respondents started to design their [redacted] and years after SDC's [redacted] first appeared in Naeil's documents that were sent to SDC in [redacted]. (RBr. at 50 (citing CX-0830C ([redacted]); CX-0789C ([redacted]); RX-2221C ([redacted]).).

Respondents' argument ignores the record. The NDA that Respondents referenced is dated [redacted]. (Tr. (Katona) at 360:2-4, 14-22; CX-0984C.). SDC entered as evidence CX-2446C, which is an NDA between SDC and Naeil dated [redacted]. (Tr. (H. Lee) at 254:14-16; CX-2446C.0005.). That date precedes the date Respondents alleged they started designing their [redacted]. The NDA that covers SDCs TS II gave Naeil access to SDC's protected TS II secrets.

Respondents' allegation that SDC's category II.1 trade secrets first appeared in Naeil documents that Naeil sent to SDC, dated [redacted], is not adequately supported. Respondents did not present testimony about those documents to explain what they are or what they say. CX-

0830C is an [redacted] (CX-0830C.). There is no evidence that supports the date this document was created, who created it, the purpose for which it was created, to whom it was sent, or if it was sent anywhere or to anyone. None of the schematics in the cited document depict the [redacted] that are all the subject of the category II.1 trade secrets.

CX-0789C is a Naeil PowerPoint presentation dated [redacted], titled "[redacted]" (CX-0789C.).[108] There is no evidence that this was sent to anyone or that it contains any aspects of the category II.1 trade secrets. To the contrary, Mr. Heungwon Lee testified that CX-0789C is related to [redacted]. (Tr. (H. Lee) at 270:15-271:2.). Similarly, RX-2221C is a Naeil PowerPoint presentation that is dated [redacted], and titled "[redacted]" (RX-2221C.). Again, there is no evidence that RX-2221C was sent to anyone or that it contains any aspect of the category II.1 trade secrets.

The evidence discussed above with respect to TS I.1. and TS I.2.a and the evidence discussed in the immediately preceding paragraphs proves, by a preponderance of evidence, that SDC exercised reasonable precautions to maintain the secrecy of the category II.1 trade secrets. The evidence Respondents presented in rebuttal lacked corroboration and/or context testimony and did not appear to relate to the trade secret information. Respondents' arguments and evidence were insufficient to rebut the preponderance of evidence that SDC provided.

[108] CX-0789C was precluded during the Pre-Hearing Conference in connection with rulings on motions *in limine*. (Tr. at 43:23-45:14.). CX-0789C was not timely disclosed during discovery. Therefore, allowing it into evidence would have been unfair and prejudicial to SDC. (*Id.* at 45:8-14.).

Therefore, it is a finding of this ID that SDC has proven by a preponderance of evidence that it exercised reasonable precautions to maintain the secrecy of TS II.1.a, TS II.1.b, and TS II.1.c.

6. TS II.1.y

Respondents conceded that SDC proved by a preponderance of evidence that it exercised reasonable measures to maintain the secrecy of TS II.1.y. (JSUI at 1-2.).

Based upon the evidence described above for TS I.1.a, TS I.2.a, TS II.1.a, TS II.1.b, and TS II.1.c, all of which is undisputed as applied to TS II.1.y, it is a finding of this ID that SDC has proven by a preponderance of evidence that SDC exercised reasonable precautions to maintain the secrecy of TS II.1.y.

7. TS III.1.h+s

Respondents did not present argument or evidence that SDC failed to take reasonable precautions to maintain the secrecy of TS III.1.h+s. (RBr. at 53-60; RRBr. at 20-23.). Thus, the only issue is whether SDC proved by a preponderance of evidence that it used reasonable measures to maintain the secrecy of TS III.1.h+s.

The security measures described above for TS I.1.and TS I.2.a apply to all Asserted Trade Secrets, except those that are specifically identified above as applying only to TS I.1.and TS I.2.a. Accordingly, those security measures described under TS I.1.a and TS I.2.a apply here to TS III.1.h+s, even though the description of those measures under TS I.1.a and TS I.2.a is not repeated here.

For TS III.1.h+s specifically, SDC presented confidentiality agreements it executed with vendors YMC (Ltd.) ("YMC") (CX-0581C; CX-0731C) and TTS Co., Ltd. ("TTS") (CX-0582C). Dr. Katona provided undisputed, unrebutted testimony that those confidentiality

agreements relate to SDC's [redacted]. (Tr. (Katona) at 376:17-377:4.).

Given the undisputed evidence on this issue, and the lack of any counterargument from Respondents, it is a finding of this ID that SDC proved by a preponderance of evidence that it exercised reasonable measures to maintain the secrecy of TS III.1.h+s.

8. TS IV: TS IV.1.d and TS IV.1.e

SDC's security measures for all Asserted Trade Secrets have already been described above and satisfy the definition of "reasonable precautions" to protect SDC's Asserted Trade Secrets. (*See* Section VI.J(2), *supra*.). For TS IV.1.d and TS IV.1.e specifically, as an additional precaution over and above SDC's other precautions, the lead developer, Mr. J.J. Kim, testified that he abstained from submitting his research underlying the trade secrets at issue for the Samsung Thesis Award for security reasons. (Tr. (J. Kim) at 162:20-163:4.). Mr. Kim also testified that the trade secret [redacted] he developed cannot be determined simply by looking at the evaporation equipment because "[redacted]" (*Id.*at 177:17-24).

Mr. Kim explained that SDC did not disclose its trade secrets to its equipment vendors. (*Id.* at 177:25-178:6.). Finally, for employees who worked on the trade secrets at issue, and then left, SDC required signed confidentiality agreements, excerpts of which are reproduced below.

Figure 89: Excerpts From CX-0695C (Resignation and Confidentiality Agreement of Nam Yoo Kang)





(CX-0695C.0004-06.).

Ultimately, SDC has proven by a preponderance of evidence that it used reasonable precautions to protect its Asserted Trade Secrets.

VII. DOMESTIC INDUSTRY AND INJURY TO DOMESTIC INDUSTRY

Section 337(a)(1)(A)(i) requires complainant to prove that the "threat or effect" of importation of the articles is to "destroy or substantially injure an industry in the United States." 19 U.S.C. § 1337(a)(1)(A)(i). The complainant must prove both the existence of a domestic industry and "actual substantial injury or the threat of substantial injury to a domestic industry." *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 9-10; *see also Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 43-44; *Bone Cements*, Inv. No. 337-TA-1153, Comm'n Op.

at 8-9; *Certain Foodservice Equipment and Components Thereof* ("*Foodservice Equipment*"), Inv. No. 337-TA-1166, Comm'n Op. at 10-11 (U.S.I.T.C. Dec. 14, 2020).

A. Existence of a Domestic Industry

1. Legal Standard for Existence of Domestic Industry

"[T]here is no bright-line rule for determining whether a domestic industry exists under section 337(a)(1)(A) [.]" *Foodservice Equipment*, Inv. No. 337-TA-1166, Comm'n Op. at 6 (Oct. 29, 2021). "The Commission considers 'the realities of the marketplace,' when determining the domestic industry in a trade secrets investigation or other investigation based on unfair acts other than the infringement of statutory intellectual property rights (such as patents)." *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 17. "The Federal Circuit has upheld the Commission's pragmatic approach to the determination of whether a complainant can obtain protection under Section 337 for its domestic industry." *Id.*

"In assessing the existence of a domestic industry, the Commission first considers the nature of the alleged activities in the United States to determine whether they are of the nature of activities that contribute to an 'industry in the United States' under section 337(a)(1)(A)(i)." *Foodservice Equipment*, Inv. No. 337-TA-1166, Comm'n Op. at 6 (internal quotations and citation omitted). "Then, the Commission considers the extent of the investments in the context of the investigation to determine whether they are sufficient to establish an industry in the United States." *Id.* at 6-7.

Historically, "[t]he Commission's assessment of whether the 'industry' requirement was met consisted of considering investments in land, plant, and equipment and to employment of labor and capital, but also more generally to the nature of complainant's claimed business reactivities in the United States within 'the realities of the marketplace.'" *Bone Cements*, Inv.

No. 337-TA-1153, Comm'n Op. at 18 (citing *TianRui*, 661 F.3d at 1336).). "This reflects the fact that each industry is unique to its particular facts and circumstances." *Id.* "While there is no bright-line rule for determining whether a domestic industry exists under section 337(a)(1)(A), the statute does not protect mere importers." *Foodservice Equipment*, Inv. No. 337-TA-1166, Comm'n Op. at 6; *see also Schaper Mfg. Co. v. Int'l Trade Comm'n*, 717 F.2d 1368, 1373 (Fed. Cir. 1983) ("Schaper has not shown its United States inspection activities to be substantially different from the random sampling and testing that a normal importer would perform upon receipt").

The domestic industry is not required to practice the asserted trade secrets. *See TianRui*, 661 F.3d at 1335-37 (rejecting the contention that "investigations involving intellectual property under the unfair practices provision [(i.e., section 337(a)(1)(A))] require the existence of a domestic industry that relates to the asserted intellectual property in the same manner that is required for statutory intellectual property [(i.e., section 337(a)(1)(B)-(E))]"). "For example, in *TianRui*, the Federal Circuit affirmed the Commission's definition of the complainant's domestic industry as the investments and activities relating to 'wheels domestically produced by the trade secret owner' which compete with appellants' imported wheels, even though these wheels did not use the complainant's trade secrets." *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 17 (citing *TianRui*, 661 F.3d at 1335-37). Depending on the realities of the marketplace, a domestic industry may be shown based on investments in any "activities with a close relationship to the products at issue." *Certain Bone Cements and Bone Cement Accessories* ("*Bone Cement Accessories*"), Inv. No. 337-TA-1175, ID at 19, 88 (Feb. 11, 2021) (citing *Certain Airtight Cast-Iron Stoves*, Inv. No. 337-TA-69, Comm'n Op. at 11 (Jan. 1981)).

The Commission "has historically considered the 'nature and significance' of the

complainant's activities that allegedly form the domestic industry." *Bone Cements*, Inv. No. 337-TA-1153, Comm'n Op. at 8-9; *see also Certain Miniature, Battery-Operated, All Terrain, Wheeled Vehicles*, Inv. No. 337- TA-122, USITC Pub. No. 1300, Comm'n Op. at 6 (Oct. 1982) ("The threshold question of the existence of an 'industry . . . in the United States' . . . requires an inquiry into the nature and significance of complainants' business activities in the United States[.]"), *aff'd by Schaper Mfg. Co. v. ITC*, 717 F.2d 1368; *Certain Modular Structural Sys.*, Inv. No. 337-TA-164, USITC Pub. No. 1668, Comm'n Op. at 13 (June 1984) (finding it necessary to determine "the nature and significance" of complainant's activities in the United States with respect to the relevant product to determine "whether there is an industry 'in the United States' within the meaning of section 337"); *Certain Cube Puzzles*, Inv. No. 337-TA-112, USITC Pub. 1334, Comm'n Op. at 30 (Jan. 1983) ("We find that Ideal's domestic activities are of the appropriate nature and are significant enough to conclude that their domestic business activities constitute an 'industry . . . in the United States.'"). Complainants are thus required to provide "contextual evidence," to demonstrate the claimed domestic investments are "sufficient." *Bone Cements*, Inv. No. 337-TA-1153, Comm'n Op. at 35-36.

2. SDC Has Demonstrated That a Domestic Industry Exists

SDC and its U.S. subsidiaries, eMagin and Samsung Display Americas Lab ("SDAL"), have invested more than [redacted] into the domestic industry since 2020. SDC, through eMagin and SDAL, invested at least [redacted] related to the manufacture and research and development ("R&D") of OLED displays between January 2020 and mid-2023. (CX-0780C (eMagin Expense Report); CX-0500C (SDAL Expenditure Report); Tr. (Jeffrey Klenk)[109] at

[109] When he testified during the Hearing, Mr. Jeffrey Klenk was an economist and the Managing Director

1028:2-6, 1052:20-22.). SDC also made a direct investment of $218 million to acquire eMagin in October 2023. (Tr. (Andrew Sculley)[110] at 826:15-20; Tr. (Klenk) at 1028:12-16.). SDC's expert, Mr. Klenk, provided the demonstrative copied below as Figure 90, which summarizes SDC's investments in the domestic industry through eMagin and SDAL, and its own direct investment.



(CDX-0008C.0018 (citing CX-0780C; CX-0500C).).

For the reasons discussed below, the evidence demonstrates that SDC has satisfied the industry requirement based on eMagin's and SDAL's investments in domestic R&D of OLED manufacturing processes and products (including micro-OLEDs), as well as eMagin's sufficient investments in domestic manufacturing of micro-OLEDs.

a) Overview of the Domestic Industry

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of Berkeley Research Group, LLC. (Tr. (Klenk) at 944:17-24.). SDC offered Mr. Klenk as an expert in "economic and financial analysis." (*Id.* at 946:4-5.). Neither Respondents nor Staff objected. (*Id.* at 946:6-12.). Therefore, Mr. Klenk was accepted as an expert on the subject matter for which he was called to testify without objection. (*Id.* at 946:13-15.).

[110] When Mr. Andrew Sculley testified during the Hearing, he was the Chief Executive Officer of eMagin. (Tr. (Sculley) at 821:17-20.). SDC identified Mr. Sculley as a fact witness to testify about "eMagin products and projects, the micro-OLED market, micro-OLED technology, applicability of SDC trade secrets to micro-OLED, eMagin's work and investment in the United States, and eMagin's acquisition by SDC." (CPSt. at 6-7.).

(i) eMagin

eMagin is headquartered in Hopewell Junction, NY, where it researches, develops, and manufactures "OLED micro displays." (CX-0874.0035 (eMagin 10-K); CX-1057.0005, 0022 (eMagin investor presentation).). The Hopewell Junction location is "approximately 63,000 square feet," including ">42,000 square feet" of manufacturing space, and houses its equipment for OLED micro display fabrication, R&D and product development. (CX-0874.0014, 0035; CX-2485.0024-25 (eMagin SID 2024 presentation).). eMagin has a second location in Santa Clara, CA, where it has "approximately 2,000 square feet of office space for design and product development." (*See* CX-0874.0035, *see also* CX-2485.0025.).

eMagin employs "[a]bout 127" people in the United States. (Tr. (Sculley) at 827:23-828:2); *see also* CX-1045C (eMagin Employee Roster) (run date Feb. 22, 2024).). "[A]bout 80%" of eMagin's employees are in manufacturing and R&D. (Tr. (Sculley) at 828:11-13.). eMagin is the "only US-based manufacturer of OLED micro displays." (CX-1057C.0020; *see also* Tr. (Sculley) at 841:23-25 ("Q. . . . How many micro-OLED manufacturers are there in the U.S.? A. Just eMagin.").).

On May 17, 2023, SDC and eMagin executed an "Agreement and Plan of Merger." (CX-1041C.). SDC's acquisition of eMagin was valued at approximately $218 million and closed in October 2023. (*See* RX-1401C (Sculley Dep. Tr.) at 89:4-15; Tr. (Sculley) at 826:15-20.).

eMagin researches, develops, and manufactures OLED micro displays, i.e., micro-OLEDs, for "near-the-eye" applications. (Tr. (Sculley) at 821:24-822:2, 824:5-8.). eMagin's micro-OLEDs cannot be used as standalone devices; they are used in a variety of downstream products and segments. (*Id.* at 824:1-4.). Since 2001, eMagin has provided displays (or glass screens) for use in augmented reality ("AR") and virtual reality ("VR") products across multiple

different market segments, including for military, medical, commercial, and industrial uses. (*See* Tr. (Sculley) at 822:11-823:7; CX-0874.0006; RX-2186C (Revenue Chart); CX-1665 (Product Data Sheet); CX-1086C (eMagin Report); CX-0781C (eMagin Report); CX-2039C (eMagin Report); CX-2040C (eMagin Report); CX-1664 (eMagin 10-K).). eMagin offers six (6) resolutions for its displays, all of which are "commercial off-the-shelf." (Tr. (Sculley) at 824:9-23.). Mr. Sculley explained that this means "those products are sold to any of the market segments, and all customers[.]" (*Id.* at 824:11-16.).

eMagin has two (2) different technologies for micro-OLED products: (i) white OLED with color filter ("CF"); and (ii) directly patterned RGB without CF ("RGB SBS"). (CX-0499C.0009 (eMagin PPT); *see also* CX-1057C.0011 (describing RGB SBS technology development).). Mr. Sculley agreed that RGB SBS technology is the "next generation of microdisplay technology." (Tr. (Sculley) at 869:19-25; *see also* CX-1884C.0053 ([redacted] Mr. Sculley testified that RGB SBS is "much newer" and has higher technological capabilities, such as "much higher brightness" and is "much more power efficient," than CF technology. (Tr. (Sculley) at 868:3-869:1; CX-1884C.0052 ([redacted]

eMagin has two (2) sources of revenue: (i) selling micro-OLEDs; and (ii) contract

revenue from projects for, and partnerships with, customers, such as to research and develop micro-OLED displays and produce prototypes. (Tr. (Sculley) at 833:14-834:8.). Examples of eMagin contract revenue include a [redacted] contract with [redacted] and a [redacted] contract with [redacted], both pertaining to development of eMagin's RGB SBS technology. (*Id.* at 833:21-834:8.). Mr. Sculley testified that eMagin has [redacted] ongoing projects: [redacted]. (*Id.* at 834:9-13.). He explained that [redacted]. (*Id.* at 834:17-25; CX-0771C (Statement of Work for [redacted] RGB SBS development project); CX-1097C.0015 (project timeline identifying "[redacted]").). The development work for these contracts has been taking place at eMagin's facilities in New York and California. (Tr. (Sculley) at 835:8-14.). Mr. Sculley testified that eMagin's contract revenue is a "significant" portion of eMagin's annual revenue, which is "roughly anywhere between [redacted] and [redacted]." (*Id.* at 836:18-22.).

(ii) SDAL

SDAL is SDC's U.S. research lab that works on the R&D of "highly complex" OLED technologies. (Tr. (Yonghui Lee)[111] at 802:16-19.). SDAL is located in San Jose, CA. (*See* CX-0684C (Y. Lee Decl.) at ¶ 5.). Established by SDC in 2012, SDAL is fully and exclusively funded by SDC. (Tr. (Y. Lee) at 802:10-15; Tr. (Klenk) at 1092:5-11.).

"Nineteen people" work at SDAL across five different research groups: artificial intelligence, driving, optics, standardization, and technology sensing. (Tr. (Y. Lee) at 803:7-

[111] When he testified during the Hearing, Mr. Yonghui Lee was the group leader of open innovations group at SDC's R&D center. (Tr. (Y. Lee) at 800:24-801:13.). SDC identified Mr. Lee as a fact witness to testify about "SDAL activities, SDAL research projects, SDAL investments, and SDAL's relationship with SDC." (CPSt. at 7.).

804:18; RX-1721C (Y. Lee Dep. Tr.) at 59:1-66:11 (describing five projects).). Mr. Y. Lee testified that "all of the 19 engineers . . . are all engineers working on OLED technology." (Tr. (Y. Lee) at 804:6-12.). He also testified that SDAL's 19 engineers "spend all of their time working on development of OLED -- working on R&D activities relating to OLED." (*Id.* at 804:13-18.).

SDAL has performed several R&D projects for SDC relating to OLED products and manufacturing processes. (Tr. (Y. Lee) at 803:7-804:5 (discussing CDX-0007.0002 and describing the projects being conducted at SDAL, all of which "relate to OLED technology, so 100 percent of it").). For example, SDAL "helped SDC with technology that is related to improving the yield rate and quality for the manufacturing line to manufacture OLED products," including "smartphones." (RX-1721C (Y. Lee Dep. Tr.) at 51:20-52:21; *see also id*. at 63:22-65:2 (testifying that SDAL's AI team works on three main projects relating to OLED displays, including smartphone OLEDs and micro-OLEDs: "First one is to improve the productivity of the OLED manufacturing line; second one is to improve the defect ratios; and the third one is development of the materials."); *see also* CX-0496C (2022 Achievement & 2023 Planning presentation); CX-0498C (Status of R&D Tasks presentation).).

Mr. Lee testified that SDAL's annual budget is approximately [redacted] all of which is "dedicated to the OLED development in the United States." (Tr. (Y. Lee) at 804:19-805:5.).

b) Nature of Domestic Investments

Since 2020, eMagin and SDAL have invested approximately [redacted] in domestic industry investments and activities primarily related to R&D and manufacturing. (Tr. (Klenk) at 1028:2-6 (discussing CDX-0008C.0011).). Respondents did not dispute that these investments

have been made in the United States, or the accuracy of SDC's identified investments. (*See* Tr. (Ryan Herrington)[112] at 1461:23-1462:9 ("Q. . . . You do not dispute that in the last few years eMagin has invested tens of millions of dollars in domestic research and development and manufacturing, right? A. I don't dispute that's what's been put forward. Q. You don't dispute that eMagin has actually made those investments in the United States, right? A. No. I think they were overstated to a degree, and I talked about that overstatement, but I do believe there were investments made. Q. Tens of millions in investments over the last few years? A. I believe that's correct, yes.").).

For the reasons discussed below, the identified domestic activities and investments, which total approximately [redacted], are of the nature that contribute to an "industry in the United States" under section 337(a)(1)(A)(i).

(i) eMagin

eMagin invested approximately [redacted] in the domestic industry from January 2020 through June 2023. (Tr. (Klenk) at 1025:2-9; CX-0780C; CX-0685C (Sculley Decl.) at ¶¶ 11-14.). Mr. Klenk's demonstrative, copied below as Figure 91, summarizes eMagin's investments during this time period.

[112] When he testified during the Hearing, Mr. Ryan Herrington was a Senior Managing Director of FTI Consulting. (RPSt. at Ex. C.). BOE identified Mr. Herrington as an expert to testify about "economic issues in this investigation, including domestic industry, injury, and bond." (RPSt. at 3.).

Figure 91: Klenk Demonstrative Showing eMagin Investments



(CDX-0008C.0008 (citing CX-0780C).).

Mr. Klenk's calculations are also supported by eMagin's public financial statements, the accuracy of which Mr. Herrington did not dispute. (CX-0871 (eMagin 10-K); CX-0872 (eMagin 10-K); CX-0874 (eMagin 10-K); CX-0903 (eMagin 10-Q); Tr. (Klenk) at 1026:10-13; Tr. (Herrington) at 1438:9-17 (noting that he did not attempt to independently calculate what he "would consider the appropriate qualifying eMagin domestic industry investments").).

eMagin's investments in the R&D and manufacture of micro-OLEDs are of the type that have been routinely credited by the Commission for showing the existence of an industry. *See, e.g.*, *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 44 (affirming that an industry exists "based on [complainant's] domestic payroll expenditures attributable to research and development and testing associated with its raised garden beds"); *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 60 (affirming that an industry exists based on domestic R&D and manufacturing activities). Additionally, Mr. Herrington, BOE's economic expert, confirmed that

he had no opinion on whether SDC's domestic investments are those of a mere importer. (Tr. (Herrington) at 1447:18-21 ("Q. You're not offering an opinion in this investigation that eMagin is a mere importer, correct? A. No. To be clear, no, I'm not offering that opinion.").).

Moreover, it is a finding of this ID that eMagin's investments are both quantitatively and qualitatively significant. Quantitatively, 100% of eMagin's investments and work force are domestic. (Tr. (Sculley) at 827:17-22.). The calculated domestic investments account for [redacted]% of eMagin's total expenditures and [redacted]% of eMagin's revenue between January 2020 and June 2023. (CDX-0008C.0014; Tr. (Klenk) at 1030:12-1031:6.). Respondents did not dispute the facts or Mr. Klenk's calculations. Respondents' expert, Mr. Herrington, agreed that eMagin made "tens of millions in investments over the last few years." (Tr. (Herrington) at 1462:2-9; *see also id.* at 1447:18-21.).

Qualitatively, Mr. Klenk testified that "eMagin is the only U.S. manufacturer of micro-OLEDs, and both eMagin's manufacturing and its R&D are crucial to eMagin's business. They are really the crux of what eMagin does." (Tr. (Klenk) at 1030:6-9.). He noted SDC's "willingness [] to pay over $200 million to acquire eMagin," which demonstrates that eMagin's investments are of qualitative significance. (*Id.* at 1030:10-11; *see also* Tr. (C.H. Park)[113] at 781:23-782:2 (noting that the "reason why [SDC] acquired eMagin is for the purposes of creating synergy in between eMagin and SDC, since eMagin has its technological advance in terms of the micro-OLED technology and SDC has the capability in terms of mass production"); Tr. (Klenk) at 1029:19-1030:5 (discussing eMagin's manufacturing facilities and noting that these operations "really establish eMagin's domestic presence and domestic activities").).

[113] When he testified during the Hearing, Mr. Cheol Han Park was SDC's product group manager in charge of [redacted] sales. (Tr. (C. Park) at 759:3-7.).

Respondents contended that SDC failed to demonstrate that eMagin's alleged DI investments are quantitively or qualitatively significant. (RBr. at 103.). However, Mr. Herrington, Respondents' expert, did not separately calculate eMagin's investments or conduct his own significance analysis. (Tr. (Herrington) at 1437:14-1440:2.). Instead, Mr. Herrington relied upon Mr. Klenk's calculations and numbers and compared them to SDC's ***overall*** R&D investments. (*Id.* at 1400:1-16 ("Q. So Mr. Klenk only compared eMagin's investments to eMagin and not to SDC; is that correct? A. That is correct."), 1434:25-1435:18 (agreeing that "eMagin only builds micro-OLEDs" but that the SDC R&D figures Mr. Klenk relied on for comparison purposes are for OLEDs, where "OLEDs and micro-OLEDs are really part of a subset of each other"), 1438:21-24 ("Q. . . . You haven't determined SDC's worldwide investments in OLEDs, correct? A. SDC's worldwide OLED investments? I believe that is what I'm comparing to.").).

However, the Commission has held that a comparison to foreign expenditures is a factor that the Commission "is ***not*** required to consider." *Certain Carburetors and Prods. Containing Such Carburetors* ("*Carburetors*"), Inv. No. 337-TA-1123, Comm'n Op. at 9 (Oct. 28, 2019) (emphasis added) (quoting *Certain Optoelectronic Devices for Fiber Optic Commc'ns*, Inv. No. 337-TA-860, Comm'n Op. at 18-19 (May 9, 2014)). A comparison between domestic and foreign R&D investments "is one appropriate mode of contextual analysis, ***but not the only permissible one***." *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 49 (emphasis added); *see also Certain Wearable Elec. Devices with ECG Functionality and Components Thereof* ("*Wearable Electronic Devices*"), Inv. No. 337-TA-1266, Comm'n Op. at 22 (Jan. 20, 2023) (noting that "[t]he Commission . . . has made clear that a domestic-to-foreign comparison is not a requirement, nor is it 'preferred' as a general matter to show significance") (citation

omitted).

Moreover, Mr. Herrington's significance analysis disregards the significance and focus of eMagin's investments in micro-OLED technology, particularly RGB SBS, which he acknowledged. (Tr. (Herrington) at 1447:6-14 ("Q. . . . You agree that eMagin's primary business is in the research, development, manufacture, and sale of micro-OLEDs, correct? A. That's the evidence that's been put forward. Q. You agree? A. I don't have a reason to disagree. Q. Do you agree, yes or no? A. Yes. I would tend to agree with that based on the evidence I've seen.").). As SDC noted, Mr. Herrington's analysis improperly "overemphasizes the need for a 'foreign comparison' that would compare eMagin's investments in a specific novel technology to SDC's global investments across a variety of workstreams." (CBr. at 112.).

Additionally, Respondents argued that SDC improperly included domestic investments in "non-cognizable activities such as sales, marketing, warehousing, and other administrative activities," that cannot be distinguished from activities "of a mere importer of goods." (RPBr. at 138; *see also* RBr. at 98.). However, in a decision dated March 5, 2025, the Federal Circuit vacated the Commission's determination that Lashify, Inc. did not satisfy the economic prong of the domestic industry requirement based on investments related to such activities. The Federal Circuit held that it is "***not*** 'overinclusive'" to include "expenses related to warehousing, distribution, and quality control" as well as "sales and marketing expenses . . . to the extent they relate to employment of labor or capital." *Lashify, Inc. v. Int'l Trade Comm'n*, 130 F.4th 948, 963 (Fed. Cir. 2025) (emphasis added); *see also id.* ("On remand, the Commission ***must count*** Lashify's employment of labor and capital even when they are used in sales, marketing, warehousing, quality control, or distribution, and the Commission must make a factual finding of whether those qualifying expenses are significant or substantial based on 'a holistic review of all

relevant consideration.'") (emphasis added) (quoting *Wuhan Healthgen Biotechnology Corp. v. Int'l Trade Comm'n*, 127 F.4th 1334, 1339 (Fed. Cir. 2025).). Accordingly, Respondents' argument that SDC's investments in such domestic activities as warehousing, distribution, and sales and marketing should have been excluded from SDC's cognizable investments is no longer legally supported.

Respondents also contended that the quantitative value of eMagin's investments is overstated because they include investments in products that "do not directly compete" with the Accused Products. (RPBr. at 143-44; *see also* RBr. at 103; RRBr. at 50.). Specifically, Respondents argued that "as of the complaint, most of eMagin's sales were to the military market, where BOE does not compete." (RBr. at 103; *see also* RPBr. at 143-44; RRBr. at 50.). However, as SDC pointed out, "[t]he investment associated with manufacturing the products are not related to their ultimate end use—they can be sold to ***any*** customer regardless of the end use." (CBr. at 106 (emphasis in original) (citing Tr. (Sculley) at 824:5-23).).

By taking the position that Mr. Klenk should only have quantified investments in products "that directly compete with the Accused Products," Mr. Herrington essentially opined that one should look to injury or potential injury to frame the determination of whether an industry exists. That is exactly the type of analysis that the Commission has rejected. Rather, the Commission employs a two-step analysis where it first assesses whether an industry exists and then determines whether there is injury to that industry. *See, e.g.*, *Foodservice Equipment*, Inv. No. 337-TA-1166, Comm'n Remand Op. at 16 (Dec. 16, 2020) ("[T]he Commission suggests that the ALJ determine whether an 'industry in the United States' exists . . . before assessing injury.").

Moreover, as Staff noted slightly differently, "BOE improperly focuses on the ***specific***

customers and end products in which BOE's and SDC's products are incorporated, and not on ***SDC's products (OLEDs and micro-OLEDs) that compete with the accused OLEDs and micro-OLEDs***." (SBr. at 147 (emphases in original).).

The NOI defined the scope of this Investigation as being directed to OLEDs (including micro-OLEDs), not end products incorporating OLEDs, or products sold in a particular downstream market segment. *See generally*, *Rubber Resins*, Inv. No. 337-TA-849, ID at 620 (June 17, 2013) ("Based upon the scope defined in the Notice of Investigation, I find that the relevant domestic industry at issue is one that includes "rubber resins," and is ***not limited*** to "tackifier resins.") (emphasis added), *affirmed*, Comm'n Op. at 60; *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 17 ("[I]n *TianRui*, the Federal Circuit affirmed the Commission's definition of the complainant's domestic industry as the investments and activities relating to 'wheels domestically produced by the trade secret owner' which compete with appellants' imported wheels[.]") (citing *TianRui*, 661 F.3d at 1335-37). Accordingly, the appropriate focus for the industry requirement here is on the domestic activities pertaining to SDC/eMagin products that compete with the Respondents' products ***defined in the NOI*** as the scope of the Investigation, i.e., OLEDs (including micro-OLEDs).

Additionally, evidence adduced in this Investigation indicates that Respondents and eMagin are competitors in the research, development, manufacture, and sale of micro-OLED products, and specifically micro-OLEDS with the same two types of technology: Color Filters and RGB SBS. For example, many of Respondents' documents confirm that eMagin is a competitor. (*See, e.g.*, CX-1884C.0052-0053 ([redacted]); CX-1706C.0060-0061 ([redacted]). Furthermore, in their Pre-Hearing Brief, Respondents expressly stated that

Respondents and SDC are competitors in "OLED," "AMOLED," and "Micro display products and manufacturing." (RPBr. at 3-4 ([redacted]) (emphases added).).

Uncontested testimonial evidence given by witnesses from both SDC and Respondents also demonstrate that the only two companies with RGB SBS technology in the U.S. market are eMagin and Respondents. (Tr. (Sculley) at 839:19-22 ("Q. So other than eMagin and BOE, are you aware of any other company that has RGB micro-OLED technology? A. No, I have seen no one else display it except the two companies."); CX-1795C ([redacted] Dep. Tr. Vol. 1)[114] at 127:6-10 ([redacted] , 134:4-12 ([redacted] ; Tr. (Herrington) at 1441:25-1442:4 ([redacted]

[114] [redacted] (CX-1795C (T. Yang Dep. Tr. Vol. 1) at 6:16-24.). [redacted] (RPSt. at 4.).

Moreover, evidence presented in this Investigation reflects that eMagin and Respondents displayed RGB SBS micro-OLEDs at the 2024 Society for Information Display ("SID") conference held in California. (CX-2485.0014-0019 (SID Display Week 2024 presentation entitling "Making AR/VR a Reality," describing RGB SBS technology and product demonstration); CX-1795C (T. Yang Dep. Tr. Vol. 1) at 127:6-10; Tr. (Sculley) at 839:16-18, 871:1-5.).

Respondents' expert, Mr. Herrington, speculated that others may be developing RGB SBS technology. (Tr. (Herrington) at 1448:1-6 (referencing RDX.0005C.0054 titled "Other RBG SBS micro-OLED Competitors").). However, when asked about each of the five (5) alleged "competitors," he had ***no*** information whether any such companies: (1) have imported any RGB SBS micro-OLEDs into the United States; (2) have displayed any RGB SBS micro-OLEDs at industry conferences such as SID; or (3) are working to obtain [redacted] or [redacted] business for RGB SBS micro-OLEDs.

> Q. . . . RDX 5C.54 is a slide from your direct presentation, correct?
>
> A. Yes.
>
> Q. It's titled "Other RGB SBS micro-OLED competitors," correct?
>
> A. Yes.
>
> Q. You have five entities listed here, right?
>
> A. Yes.
>
> Q. Do you know whether Fraunhofer has imported any RGB micro-OLEDs into the United States?
>
> A. I don't know.
>
> Q. Do you know whether Fraunhofer has displayed any RGB SBS micro-OLEDs in the United States at conferences like SID?

A. I'm not sure whether they display. They may want their technology to be confidential.

Q. You don't know.

A. I don't know.

Q. You don't know whether Fraunhofer is working to obtain [redacted]'s or [redacted]'s business for RGB SBS micro-OLEDs, right?

A. That's true.

Q. We're going to go through this with the next one, which you've got, I believe, INT Tech. Do you see that?

A. Yes.

Q. You don't know whether INT Tech has imported into the United States any RGB SBS micro-OLEDs, right?

A. I do not.

Q. And you don't know whether INT Tech has displayed any RGB SBS micro-OLEDs in the United States at conferences like SID?

A. I'm not sure they have displayed. They may want their technology to be confidential.

Q. You don't know.

A. I don't.

Q. And you don't know whether INT Tech is working to obtain [redacted]'s and [redacted]'s business with respect to the development of RGB SBS micro-OLEDs, right?

A. That's correct, I do not know.

Q. Last one. SEL, do you see that one?

A. I do.

Q. Again, we're on RDX 5C.54. You don't know whether SEL has imported into the United States any RGB SBS micro-OLEDs, correct?

A. I do not know.

Q. And you don't know whether SEL has displayed in the United States at industry trade conferences RGB SBS micro-OLEDs, correct?

> A. I don't know if they displayed. They may want their technology to be confidential.
>
> Q. You don't know.
>
> A. I don't know.
>
> Q. And you don't know whether SEL is working to obtain [redacted]'s or [redacted]'s business with respect to the development of RGB SBS micro-OLEDs, correct?
>
> A. Yeah, I'm not aware.

(Tr. (Herrington) at 1448:1-14507.).

Because he had no specific knowledge about any of other SDC's possible competitors, little, if any, weight was given to Mr. Herrington's testimony on the existence of other RGB SBS micro-OLED competitors.

Lastly, Respondents argued that eMagin's domestic investments that pre-dated SDC's acquisition of eMagin "should not count towards the domestic industry." (RPBr. at 140; *see also* RBr. at 102 n.15.). However, SDC acquired all of eMagin's assets and liabilities, at a cost of $218 million. As SDC's subsidiary, eMagin is effectively a party to this Investigation. Accordingly, it is not logical to exclude eMagin's domestic investments that pre-dates SDC's acquisition of eMagin.

In sum, the evidence supports a finding that eMagin's domestic activities and investments are of the nature that contribute to an industry in the United States under section 337(a)(1)(A)(i). The evidence also supports a finding that eMagin's investments are quantitatively and qualitatively significant.

(ii) SDAL

For its OLED R&D products, SDAL invested at least [redacted] from January 2020 through September 2023. (Tr. (Klenk) at 1026:21-1027:8; CX-0500C; *see also* Tr. (Y. Lee) at

804:19-805:1 ("[O]n average, [SDAL's annual budget] would be [redacted], or [redacted]. So, in U.S. dollars it would be [redacted].").). Mr. Klenk's demonstrative, copied below as Figure 92, summarizes SDAL's investments during this time period, which was supported by financial information SDAL kept in the ordinary course of business.

Figure 92: Klenk Demonstrative of SDAL Investments: 2020-Q3 2023

[redacted]

(CDX-0008C.0010 (citing CX-0500C).).

Mr. Klenk's calculations for SDAL's investments in Figure 92 above primarily include labor expenditures that reflect the salaries for SDAL's researchers and engineers, as well as for rent and consumable supplies expenses that SDAL's employees need to carry out their research. (Tr. (Klenk) at 1026:21-1027:8.). "[redacted]" include funding SDAL's collaborative projects with professors at "prestigious universities," such as Stanford and Berkeley. (RX-1721C (Y. Lee Dep. Tr.) at 84:8-16.). Mr. Klenk's calculations excluded other

expenses that were not readily ascertainable from SDAL's documents, including non-cash expenses like depreciation. (Tr. (Klenk) at 1027:9-22.). Respondents' expert, Mr. Herrington, did not dispute the accuracy of Mr. Klenk's calculations or attempt to arrive at his own calculations. (*See id.* at 1027:23-1028:1; Tr. (Herrington) at 1437:14-17 ("Q. You didn't do any independent calculations regarding what you would consider appropriate qualifying SDAL domestic industry investments, correct? A. I didn't put forward a number.").).

As Staff noted, SDAL's investments in R&D are of the type that have been credited routinely by the Commission to prove the existence of a domestic industry. (SBr. at 150 (citing *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 44 (affirming that a domestic industry exists "based on [complainant's] domestic payroll expenditures attributable to research and development and testing associated with its raised garden beds")).).

Additionally, it is a finding here that SDAL's investments are both quantitatively and qualitatively significant. Quantitatively, Mr. Klenk offered his opinion that "on an extremely conservative basis, [redacted] percent of SDAL's expenditures are investments in the domestic industry." (Tr. (Klenk) at 1032:15-17; CDX-0008C.0017 (citing CX-0500C).). In calculating this percentage, Mr. Klenk explained that "out of an abundance of caution," he excluded expenses related to "noncash expenses, such as depreciation," and included only those directly related to SDAL's research and development operations. (Tr. (Klenk) at 1027:9-22, 1032:5-17.). However, he clarified that because all of SDAL's investments ultimately go towards R&D for OLED development, "arguably ***a hundred percent*** of SDAL's expenses are investments in the domestic industry." (*Id.* at 1032:11-13 (emphasis added).). Although there is no threshold for quantitative significance, that at least [redacted] percent of SDAL's expenditures are investments in the domestic industry is quantitatively significant.

The evidence also demonstrates that SDAL's domestic investments are qualitatively significant. SDAL is a research and development entity that is fully funded by SDC and has been tasked with projects directed to obtaining important improvements in SDC's manufacturing process and yield rates. (Tr. (Klenk) at 1032:2-4; CX-0498C.0022, 0026-0027 ([redacted]); Tr. (Y. Lee) at 815:10-816:9 (testifying that SDAL's "[redacted]" research project was applied in SDC's A3 line last year, and that the project "resulted in great improvement" of "defects," and "resulted in yield improvement").). Moreover, SDC's investments in SDAL support a domestic workforce of highly technical and skilled employees working out of its Silicon Valley facility. (Tr. (Klenk) at 1031:14-1032:4 (discussing CDX-0008.0016); RX-1721C (Y. Lee Dep. Tr.) at 52:22-54:5 ("SDAL was established in [Silicon Valley] so that they could utilize such superior work force for developing technologies that are highly . . . difficult for SDC to develop and research.").).

Respondents lodged similar arguments with respect to SDAL's domestic activities that it did for eMagin's domestic activities, namely that Mr. Klenk: (i) inappropriately included investments into non-cognizable activities such as "administrative, sales, marking, and warehouse expenditures from cognizable domestic industry activities" (RPBr. at 145); (ii) relied on investments SDAL made before the Complaint was filed (*id.* at 145-46); (iii) did not compare SDAL's domestic investments to SDC's worldwide investments (*id.* at 146); and (iv) failed to isolate investments in products that compete with the Accused Products (*id.* at 146-47.). (*See also* RRBr. at 55-56.). Respondents' arguments are without merit for the same reasons which are

explained above in Section VII.A(2)(b)(i) with respect to eMagin.

Additionally, Respondents alleged that "SDC does not make it clear whose subsidiary SDAL is." (RPBr. at 146 n.12.). Specifically, Respondents stated that although "SDC asserts that SDAL is a wholly owned subsidiary of Samsung Semiconductor, Inc.," Mr. Klenk "asserts that SDAL is a subsidiary of SDC." (*Id.* (citing RX-1859C (SDC's 3rd Objections and Responses to BOE's 7th Set of Interrogs.) at 13 (Resp. to Interrog. No. 122); RX-1771C (Klenk Expert Rpt.) at ¶ 1; RX-1739C (Klenk Dep. Tr.) at 25-27.).[115] Whether SDAL is a formal "subsidiary" of SDC does not have a meaningful bearing on whether SDC can rely on SDAL's domestic R&D. Even assuming, *arguendo*, SDAL is deemed a mere contractor of SDC, the Commission has permitted complainants to rely upon contractors for purposes of calculating domestic investments. *See, e.g.*, *Wearable Electronic Devices*, Inv. No. 337-TA-1266, Comm'n Op. at 16-17 (crediting complainant's investments in outside R&D contractors).

In sum, the evidence demonstrates that SDAL's domestic activities and investments are of the nature that contribute to an industry in the United States under section 337(a)(1)(A)(i), and that the investments are quantitatively and qualitatively significant.

c) Realities of the Marketplace

The Commission "will examine each case in the light of the realities of the marketplace" and "does not adhere to any rigid formula in determining the scope of the domestic industry." *Certain Foodservice Equipment and Components Thereof*, Inv. No. 337-TA-1166, Order No. 14 at 19 (Feb. 18, 2020); *see also Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 17. Respondents' economic expert, Mr. Herrington, did not offer any opinions on the "realities of the

[115] RX-1739C is not in the record.

marketplace." (Tr. (Herrington) at 1445:4-11 (reading his deposition testimony that "I don't think I'm specifically offering any opinions on the realities of the marketplace" and "I don't think I'm specifically looking at what I would think as the realities of the marketplace").).

Here, eMagin and SDAL's investments of approximately [redacted] between January 2020 and mid-year 2023 in the domestic industry are both quantitatively and qualitatively significant, especially when considering the realities of the marketplace. (Tr. (Klenk) at 1028:2-6.). As discussed above in Section VII.A(2)(b)(i), eMagin's expenditures reflect investments made by the only U.S. micro-OLED developer in RGB SBS technology. Additionally, as discussed above in Section VII.A(2)(b)(ii), SDAL's expenditures reflect SDC's investments in special projects developed in Silicon Valley. This [redacted] value is in addition to the $218 million that SDC directly invested to purchase eMagin outright. (*See* Tr. (Sculley) at 826:15-20; *see also* Tr. (Klenk) at 1092:12-21.).

In contrast, Respondents, SDC's primary competitor, perform ***no*** R&D or manufacturing in the United States. (CX-1773C (Mu Dep. Tr. Vol. 1) at 88:22-24 ([redacted]), 89:17-19 ([redacted]; *see also* Tr. (Klenk) at 1033:2-3 ("All of its manufacturing operations are located abroad, all of its research and development occurs abroad."), 6-9 ("So if one were to compare BOE's investments in the domestic industry versus SDC's, the dichotomy would be stark. BOE's number would literally be zero because it makes no investment in the domestic industry.").). Mr. Mu, [redacted]

[redacted][116] (CX-1773C (Mu Dep. Tr. Vol. 1) at 89:9-13 ("[redacted]; CX-1774C (Mu Dep. Tr. Vol. 2) at 273:3-274:2 ([redacted]).

Thus, comparing SDC's qualifying investments with BOE's zero qualifying investments underscores the significance of SDC's investments. (*See* Tr. (Klenk) at 1032:18-1033:11 (discussing CDX-0008.0018).). *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 17-18; *Carburetors*, Inv. No. 337-TA-1123, Comm'n Op. at 8-9, 19; *Bone Cements*, Inv. No. 337-TA-1153, Comm'n Op. at 35-36.

For the foregoing reasons, including that SDAL's and eMagin's domestic spending is quantitatively and qualitatively significant without more, the realities of the marketplace in the United States demonstrate the significance of eMagin's and SDAL's investments in the domestic industry between January 2020 and mid-year 2023.

B. Injury to a Domestic Industry

1. Legal Standard

To prevail in an investigation alleging a violation of section 337(a)(1)(A), a complainant must not only prove that the respondent committed an unfair act in the importation of articles, but also must prove that the "threat or effect of" the importation is: (i) to destroy or substantially injure an industry in the United States; (ii) to prevent the establishment of such an industry; or

[116] Mr. Herrington did not explore whether BOE performs R&D in the United States, or manufacture in the United States. (Tr. (Herrington) at 1446:4-18.).

(iii) to restrain or monopolize trade and commerce in the United States. 19 U.S.C. § 1337(a)(1)(A); *see also TianRui*, 661 F.3d at 1335. Subsections (i) and (ii) are at issue in this investigation.

"In determining whether unfair acts have substantially injured the domestic industry, the Commission considers a broad range of indicia[.]" *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 60. For example, injury might be demonstrated by considering the volume of imports and their degree of penetration, a complainant's lost sales, underselling by respondents, reductions in a complainant's profits or employment levels, declining production, declining profitability, declining sales, or harm to a complainant's good will or reputation. *Id.* at 60-61; *see also Certain Cast Steel Railway Wheels* ("*Railway Wheels*"), Inv. No. 337-TA-655, FID at 80 (Nov. 20, 2009) (public version), *unreviewed*, Comm'n Notice (Dec. 17, 2009). Evidence of injury is case-specific; other factors beyond those listed above may indicate economic injury. *Certain Lithium-Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, and Processes Therefor* ("*Lithium-Ion Batteries*"), Inv. No. 337-TA-1159, Comm'n Op. at 35 (March 4, 2021). "When the complainant alleges actual injury, there must be a causal nexus between the unfair acts of the respondents and the injury." *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 61 (citing *Bally/Midway Mfg. Co. v. Int'l Trade Comm'n*, 714 F.2d 1117, 1125 (Fed. Cir. 1983)) ("*Bally/Midway*").

"The injury requirement can also be met when an assessment of the market in the presence of the accused imported products demonstrates relevant conditions or circumstances from which *probable future injury can be inferred*." *Certain Footwear Products*, Inv. No. 337-TA-936 (Remand), Comm'n Op. at 83 (Sept. 24, 2020) (public version) (internal quotation omitted and emphasis added). Indeed, in one of the early cases interpreting section 337, the

Court of Customs and Patent Appeals affirmed a finding that the injury requirement is satisfied even where "the record does not show that [the complainant] has as yet been substantially damaged" so long as the record "sufficiently supports the holding that [the respondent's] actions have a tendency to injure substantially" the complainant's industry. *In re Von Clemm*, 229 F.2d 441, 445 (C.C.P.A. 1955). Later, the Federal Circuit cited *Von Clemm* and the legislative history of section 337 when it affirmed, "[w]here unfair methods and acts have resulted in *conceivable* losses of sales, a tendency to substantially injure such industry has been established." *See Bally/Midway*, 714 F.2d at 1124 (quoting House Comm. on Ways and Means, Trade Reform Act of 1973, H.R. Rep. No. 571, 93d Cong., 1st Sess. 78 (1973)) (emphasis added).

In determining whether a threat to substantially injure the domestic industry exists, the Commission may consider the following indicia: (1) where there is substantial foreign manufacturing capacity, (2) the ability of imported products to undersell a domestic product, (3) an explicit intention to enter the U.S. market, (4) the inability of the domestic industry to compete with the foreign products because of vastly lower foreign costs of production and lower prices, and (5) the significant negative impact lower priced goods would have on the domestic industry. *See Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 64. Depending on the circumstances of the investigation, other factors may be indicative of a threat of future injury. *Lithium-Ion Batteries*, Inv. No. 337-TA-1159, Comm'n Op. at 35. "The threatened injury must also be substantive and clearly foreseen, with a causal connection between the action of the respondents and the threatened injury." *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 64 (internal quotation omitted).

With respect to subsection (ii) of section 337(a)(1)(A), "the prevention clause of section 337 protects two categories of parties: (1) parties which have just begun [qualifying activities]

and for which section 337 violations would have the effect or tendency of frustrating efforts to stabilize such operations; and (2) parties which are about to commence [qualifying activities] and for which section 337 violations would have the effect or tendency of frustrating efforts to found a business." *Certain Ultra-Microtome Freezing Attachments*, 337-TA-10, Comm'n Op., 1976 WL 41463, at *4 (April 2, 1976) ("*Freezing Attachments*"). "The criteria which must be fulfilled to show prevention of establishment of an infant industry are, in many respects, the same as those used to establish that there exists a substantial injury or a tendency to substantially injure the domestic industry." *Certain Composite Diamond Coated Textile Machinery Components*, Inv. No. 337-TA-160, FID, 1984 WL 273787, at *78 (May 29, 1984), *no position taken after review*, *Certain Composite Diamond Coated Textile Machinery Components*, Inv. No. 337-TA-160, USITC Pub. 1603, Comm'n Action and Order at 3 (July 23, 1984). A complainant must also prove a causal nexus between the unfair acts and its inability to establish a domestic industry. *Id.* at *57-58.

For an industry in which the complainant has not yet commenced qualifying activities, the complainant must demonstrate a readiness to commence qualifying activities. *Freezing Attachments*, Comm'n Op., 1976 WL 41463, at *4. This requires an examination of the steps taken by the complainant to determine if it is ready to commence these activities.[117] *Certain Caulking Guns*, Inv. No. 337-TA-139, USITC Pub. 1507, FID at 97-107 (Nov. 25, 1983), *unreviewed by* 49 Fed. Reg. 670 (Jan. 5, 1984.). "In a case in which domestic [qualifying

[117] This analysis is similar to that undertaken to show to a domestic industry "in the process of being established" in the context of an industry exploiting statutory intellectual property, where a complainant must show that it is taking necessary tangible steps to establish such an industry and that those steps indicate a significant likelihood the domestic industry requirement will be satisfied in the future. *Certain Stringed Musical Instruments & Components Thereof*, Inv. No. 337-TA-586, Comm'n Op. at 13 (May 16, 2008).

activity] has not commenced, the most relevant measures of injury include lost customers, volume of imports, underselling, decreased profitability, and respondents' capacity and intent to enter the United States market." *Certain Meat Deboning Machines*, Inv. No. 337-TA-181, FID, 1984 WL 273798, at *54 (Nov. 16, 1984.).

2. Respondents' Unfair Conduct Has Substantially Injured and Threatens to Further Substantially Injure SDC's Domestic Industry

SDC alleged that Respondents' unfair acts have substantially injured its existing domestic industry, and they threaten to substantially injure its existing domestic industry in the future. (*See, e.g.*, CBr. at 117-48; CRBr. at 41-44, 49-60.). The Staff agreed that SDC has demonstrated substantial injury and threat of injury. (SBr. at 155-75; SRBr. at 24-30.). Respondents argued that SDC has not shown there is actual injury or threat of injury. (RBr. at 112-28; RRBr. at 57-66.).

As discussed in detail below, Respondents' misappropriation of SDC's trade secrets expedited Respondents' entry into, and growth in, the OLED marketplace. The unfair advantage that Respondents gained through misappropriation led to lost sales, price erosion, diminished profits, and risk of losing supply contracts for SDC, thereby resulting in substantial injury and threatening substantial future injury to SDC's investments in the domestic industry. *See Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 50. Furthermore, Respondents' actions not only took market share away from SDC in the sales of OLED displays, but it also impaired SDC's ability to allocate resources to future research and development ("R&D") projects through eMagin and SDAL.

Because of the close nature between SDC and its U.S. subsidiaries, SDAL and eMagin, injury to SDC will manifest in decreased budgets, investments, and productivity for eMagin and

SDAL. This would then impede SDC's ability to compete, compounding the injury that SDC has suffered as a result of Respondents' sales and undercutting SDC. All of these are indicia of injury and threat of injury that the Commission has recognized. There is no requirement that all indicia must be found to establish substantial injury or threat of substantial injury. *See Lithium-Ion Batteries*, Inv. No. 337-TA-1159, Comm'n Op. at 35; *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 60-64 (finding actual substantial injury based on "strong evidence of Respondents underselling and Complainants' reduced profitability" while declining to adopt the administrative law judge's finding of lost sales).

a) SDC' Suffered Reduced Sales and Profitability Because of Respondents' Entry into the Smartphone OLED Market and Undercutting of SDC's Prices

(i) Sales to [redacted]

According to Mr. Jeffrey Klenk, SDC's economic expert and SDC's Head of the Product Group for SDC's [redacted] Sales Team Mr. Cheol Han Park, and as discussed in detail in sections below (including data shown in tables and charts), SDC has suffered injury from its lost market share and lost profitability from major customers like [redacted]—from both lower quantity of sales and lower price of sales. As detailed below, based on lost OLED sales to [redacted], SDC expects a revenue loss of [redacted] dollars in 2024 alone, none of which are attributable to the other OLED competitors ([redacted]) or are driven by other external market factors. (*See* CX-1917C, Tr. (C. Park) at 763:16-765:10; Tr. (Klenk) at 1049:10-13; CBr. at 139-41).

As a buyer of OLED displays, [redacted] accounts for a significant share of sales of smartphones that use OLED displays. For example, as shown in Figure 93 below, [redacted]

[redacted] dominates the revenue and sales charts for smartphones with OLED displays.

Figure 93: Q1 and Q2 of 2023 Top Five OLED Smartphones

[redacted]

(CX-0943.0002 (displaysupplychain.com press release, dated July 3, 2023, showing that [redacted]); *see also id.* at .1-2 ([redacted] dominates the revenue and sales charts for smartphones with OLED displays).).

[redacted] is thus a critical customer for manufacturers of OLED displays. (CX-1769C (Yuhao Li Dep. Tr. Vol. 1)[118] at 142:16-143:11, 143:17-20.). The smartphone OLED supplier market for [redacted] is especially concentrated because according to SDC's Head of the Product Group for SDC's [redacted] Sales Team Mr. Cheol Han Park, [redacted]'s qualification process is rigorous; [redacted] "requires an extremely high level of quality and yield." (Tr. (C. Park) at 761:22-23; *see also id*. at 766:7-767:10 (describing the specific steps and time necessary for a product to be qualified by [redacted]).)

As discussed below, after two decades of R&D and investing [redacted] of dollars, SDC was the first company to pass [redacted]'s rigorous OLED qualification process. As Mr. Cheol Han Park testified, SDC began supplying smartphone OLED displays to [redacted] in

[118] At the time of his deposition, Mr. Yuhao Li [redacted]. (CX-1769C (Yuhao Lee Dep. Tr. Vol. 1) at 10:13-11:14.). [redacted] (RPSt. at 4.).

2017 for the [redacted], the first [redacted] to use an OLED display. (Tr. (C. Park) at 761:9-13.).

[redacted] (CX-1917C.). [redacted]

Figure 94: [redacted]

[redacted]

(CX-1832C.0079.).

[redacted] (CX-1773C (Mu Dep. Tr. Vol. 1) at 120:12-22.). [redacted] (*Id.* at 29:11-31:6, 36:19-42:19.). [redacted] (*Id.*). [redacted] (*Id.* at 38:4-6.). [redacted]

[redacted] (*Id.*).

As discussed above in detail with respect to trade secret misappropriation, Respondents went to certain lengths to ensure they would not be excluded from the smartphone OLED display supply market. [redacted] (CX-1909C.0001.). [redacted] (*Id.*) [redacted] (CX-1832C.0078 ([redacted]

[redacted]. (CX-1916C to CX-1924C; CX-1926C; CX-1928C.). Respondents' entry into the OLED market was sudden. Respondents have been characterized as having had a "meteoric rise" in the OLED market. (CX-1460.0001 (SmartPrix Bytes Article, June 10, 2020).). [redacted]. Figure 95

below provides a comparison of SDC's, [redacted]s and Respondents' market share of sales to [redacted]. As SDC's percentage of sales dropped, Respondents' share rose.

Figure 95: [redacted]



[redacted] (CX-1917C; CX-0943; CX-0958; Tr. (Klenk) at 1035:2-23 (describing Respondents' taking over of the OLED supplier concentration base).). [redacted] (CX-1916C.).

As discussed in more detail *infra,* in Sections VII.B.2.a). (iv) and (v), SDC's diminished profitability ultimately translates to decreased R&D funds for eMagin and a reduced budget for SDAL. (Tr. (Klenk) at 1050:11-17; Tr. (Y. Lee) at 805:6-21 (noting that SDAL's budget has been reduced by [redacted] for the coming year due to SDC's revenue loss).).

According to Mr. CH Park, it appears that future competition for sales to [redacted] will be limited to just SDC, Respondents, and [redacted]. (*See* RX-1453C (C. Park Dep. Tr.) at 83:3-6 (noting that competition for sales to [redacted] is limited to just SDC, Respondents, and [redacted]); CX-1775C (Mu Dep. Tr. Vol. 3) at 21:24-22:23 ([redacted]).). Thus, the evidence supports that the market for smartphone OLED sales to [redacted] will likely continue to be a concentrated, 3-player market, which magnifies the injury to SDC as Respondents continue to increase their supply share.

For the reasons discussed above, the evidence demonstrates that SDC has suffered injury from its lost market share and lost profitability from both lower quantity of sales and lower price of sales. *See Certain Surveying Devices*, Inv. No. 337-TA-68, Comm'n Op. at 35 (July 7, 1980) (a respondent taking a mere "5 percent" market share is sufficient to establish threat of substantial injury); *Akzo N.V. v. U.S. Int'l Trade Comm'n* ("*Akzo*"), 808 F.2d 1471, 1487 (Fed. Cir. 1986) (substantial injury can occur where the respondent "upon entry in the U.S. market, … will capture a significant share of the domestic market.").

(ii) Respondents' Undercutting of SDC's Prices

The evidence reflects that Respondents have and are willing to undercut SDC's prices for OLED and micro-OLED products. The Commission has determined previously that substantial injury exists where a customer leverages a respondent's reduced price to "apply pricing pressure

on Complainant during negotiations of an amended contract resulting in Complainant entering into a contract at a lower level of profitability." *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 63. The Commission also has found that the leveraging prices also establishes a threat of substantial injury, since accepting one contract at a lower price may encourage customers to negotiate lower prices in the future. *Id.* at 65-66.

As detailed below, Respondents' underselling of prices for its displays has already forced SDC to lower its own prices, leading to approximately [redacted]% decrease in SDC's revenue. (*See* Tr. (Klenk) at 1047:10-1048:21, 1049:16-19 (explaining price erosion caused by Respondents and resulting harm to SDC.) At the same time that Respondents began supplying their OLED displays to [redacted] in 2021 (at significantly lower prices than SDC and [redacted]), [redacted] introduced "[redacted]" to SDC for the first time, which forced SDC to lower its pricing. (Tr. (C. Park) at 762:6-12 ("Q. When did [redacted] first introduce [redacted] to SDC? A. That started in the fourth quarter of 2021. Q. Do you know when Respondents first began supplying OLED displays to [redacted]? A. Yes, that was [ ] near the fourth quarter of 2021."); *see also id.* at 762:15-763:15 (explaining [redacted] and noting that SDC did not "have any option but to decrease the price" when RESPONDENTS came into the picture).) [redacted] did not have [redacted] when SDC's only other competitor was [redacted]. (*Id.* at 762:15-20.).

As SDC's Head of the Product Group for SDC's [redacted] Sales Team Cheol Han Park testified, before [redacted] instituted [redacted] (*i.e.*, before Respondents came into the picture), [redacted] "would present the necessary supply as needed," which would be called the "demand," and "based on the demand, the supplier [SDC], would provide a quantity and the volume that [SDC could] provide to [redacted]." (*Id.* at 763:2-6.). SDC then would supply the OLED displays to [redacted] at a "pre-agreed" price. (*Id.* at 762:4.). But with [redacted], [redacted] sets a price that is

"a lot lower than the pre-agreed amount" and puts "pressure" on SDC by stating that if SDC cannot meet that price, "then demand could be zero." (*Id.* at 762:4-763:11.).

's introduction of in parallel with Respondents' entry into the market is no coincidence. Respondents priced their OLED displays at percent lower than SDC's prices. (Tr. (C. Park) at 764:10-11; CX-0844C.0011.). This pricing trend is exemplified by the figure below.

Figure 96: Comparison of Pricing for Among Respondents and SDC



(*Id.*).

As seen in the above chart, Figure 96, taken from Mr. Cheol Han Park's testimony, SDC and Respondents were the only display suppliers of the For Q4 2023, was willing to pay SDC's price of but paid Respondents per unit. For obvious reasons, Respondents began supplying to in earnest in Q1 2024, at which point was paying Respondents per unit. As a result, SDC was forced to lower its price to per unit to compete against Respondents for s business. (Tr. (C. Park) at 764:23-765:6.). Once Respondents quoted a lower price and demonstrated that they could supply the volume

needed, SDC had no choice but to lower its price at [redacted] demand by [redacted] per unit of sales. (*Id.* at 765:7-10.). That price erosion equates to a 15% decrease in SDC's revenue. (*Id*.).

The price differentials are not present when only SDC and LGD are competing.

Figure 97: Comparison of [redacted] Payment Per Unit for [redacted] and SDC OLED Glass for Certain [redacted]

[redacted]

(CX-0844C.0012.).

For example, as reflected above in Figure 97, SDC and [redacted] are the only suppliers to [redacted] for the glass used in the [redacted]. The display price in Q4 2023 was [redacted] dollars for SDC and [redacted] for [redacted], a very similar quoted price. (Tr. (C. Park) at 792:11-15.). In Q1 2024, the display price was [redacted] for both SDC and [redacted], a mere [redacted] decrease. (*Id.* at 792:16-19.). This stands in stark contrast to the [redacted] price drop, or concession, that SDC was forced to make to [redacted] for glass SDC supplied for the [redacted] because of Respondents' lower prices. (*Id.* at 792:20-23.). The timing of SDC's losses on its OLED products coincides with Respondents' relationship with [redacted]. (Tr. (Sculley) at 792:24-793:6 (confirming that "[redacted] only instituted [redacted] in late 2021 once Respondents started competing"); RX-1453C (C. Park Dep. Tr.) at 130:3-133:5.).

Moreover, according to an article titled "BOE OLED Revenue share expected to see a steep rise to 12% in 2020," Respondents have "managed to drag down OLED panels to lower price points" for the entire industry. (CX-1460.0002 (SmartPrix Bytes Article, June 10, 2020).).

[redacted]

[redacted]. (CX-1773C (Mu Dep. Tr. Vol. 1) at 136:16-140:14.). Additionally, [redacted]." (*Id*. at 138:15-139:13.). [redacted] (CX-1774C (Mu Dep. Tr. Vol. 2) at 291:8-292:5; CX-0958.0002.).

After Respondents' OLED displays were qualified by [redacted]—by importing into the United States samples of Respondents' products that are produced using SDC's trade secrets—Respondents were able to offer their OLED displays to [redacted] at a significantly lower price point. As a result, SDC has lost market share and has been forced to make price concessions since Respondents entered the market in 2021. (RX-1453C (C. Park Dep. Tr.) at 130:3-133:5.). Even with SDC's price concessions, [redacted] has continued shifting additional volume to Respondents. (*Id.* at 134:1-17; *see also* CX-1916C; CX-1917C.).

Furthermore, Respondents' pricing is on track to causing SDC to be perceived as the "pricier" option in the OLED and micro-OLED display industry, thereby potentially threatening SDC's future attempts to sell both its OLED and micro-OLED displays. With respect to micro-OLEDs, eMagin's prices were described by at least one customer as "too far off" from the price per unit that Respondents could offer. (RX-1401C (Sculley Dep. Tr.) at 172:9-20; *see also* Tr. (Sculley) at 841:15-22 (noting that a Respondents' representative told him at the 2024 Society for Information Display presentation, without even knowing eMagin's prices, that Respondents' RGB display will cost less than eMagin's display); CX-1059C.). In summary, Respondents have

demonstrated a willingness to undercut prices for smartphone OLED displays and micro-OLED displays, further amplifying the substantial injury to SDC's domestic industry.

(iii) Sales to [redacted][119]

According to Mr. Scully, eMagin's CEO, and others, the evidence reflects that SDC also has lost micro-OLED sales from [redacted], a former eMagin customer, to Respondents (Tr. (Klenk) at 1044:12-1045:1, 1049:14-15; Tr. (Sculley) at 838:3-16, 837:24-838:2, 839:23-840:18; Tr. (Herrington) at 1418:14-19.). Respondents have countered that there can be no harm to eMagin from Respondents' mass production contract with [redacted]. (*See* RBr. at 117.). Respondents claim that Mr. Sculley's testimony that [redacted] asked eMagin for a quote in August 2024 should be disregarded because there is no corroborating documentation. (*Id.*). However, as CEO of eMagin, Mr. Sculley has direct knowledge of eMagin's interactions with [redacted], and there is no reason to doubt his credibility, so corroborating documentation is not required. *Certain Solid State Storage Drives*, Inv. No. 337-TA-1097, Comm'n Op. at 21 (June 29, 2018) ("*Solid State*").

Moreover, the number of micro-OLED units that Respondents have sold to [redacted] is not a "small number" as Respondents claim. (RBr. at 117.). Deposition testimony from one of Respondents' witnesses, Mr. TT Yang, [redacted] (CX-1796C (T. Yang Dep. Tr.) at 215:16-216:22 ([redacted] CX-1838C.0009-0010.).

The fact that Mr. Sculley does not point to a specific instance where [redacted] explicitly stated that they were going to continue to buy OLED displays from Respondents ignores the

[119] [redacted] is "a company that makes thermal imaging devices for night-vision goggles or -- and thermal scopes." (Tr. (Sculley) at 838:19-21.).

realities of the marketplace—customers do not typically reveal this information. (Tr. (Sculley) at 861:4-7; 873:10-13.). Mr. Sculley testified: "We supplied [ ] the displays over ten years ago, and [] they came to us and said that China displays are much cheaper, and then [] they went away, and we haven't supplied them since." (*Id*. at 837:24-838:2; *see also id.* At 839:23-840:18 (confirming that Respondents' products are sold across all the market segments that eMagin targets and that "[i]f BOE were to sell its micro-OLEDs to customers…[i]t would take sales away from [eMagin]").)

(iv) Respondents' General Arguments and Arguments Specifically with Respect to

Respondents argued that there is no actual injury or threat of injury because: (1) one of eMagin's largest customers is the U.S. military; (2) there are numerous competitors in the micro-OLED space; (3) is only a portion of the smartphone market and thus SDC has not been harmed by Respondents' entry into the OLED supplier market; (4) may be considering other companies such as Tianma; (5) Mr. Sculley did not specifically identify any lost sales from SDC to Respondents; (6) (7) R (8) the threat of injury is "too speculative" because there are no contracts or set dates for mass production; and (9) eMagin's manufacturing will take place abroad in the future, and that eMagin will not be involved with the work. (*See* RBr. at 116-26.). Each of Respondents' arguments is addressed below. Respondents' arguments are largely flawed.

Respondents argued that there can be no harm to SDC and eMagin because one of eMagin's largest customers is the U.S. military. Respondents are allegedly prohibited from selling to the U.S. military because they are a Chinese entity, and therefore, according to their

argument, there can be no harm to eMagin, SDC's subsidiary. (*Id*. at 116, 124.). This argument fails short for several reasons.

First, eMagin's micro-OLEDs are "commercial off the shelf" ("COTS") products that can be sold to any customer in any market segment regardless of the end use. (Tr. (Sculley) at 824:5-23.). According to Mr. Scully, eMagin sells its COTS products to customers in the consumer, medical, military, and commercial/industrial market segments. (*Id.* at 822:11-17.). As Mr. Sculley testified, this segmentation is for the "sales and marketing team to market to the customers" but the micro-OLEDs being sold are the same six COTS displays, regardless of end use and regardless of whether they are being sold to the military or another customer. (*Id.* at 822:15-824:23.).

According to Mr. Scully, eMagin's COTS displays are marketed to be used in applications such as VR/AR, night vision, rangefinders, telescopes, microscopes, and vision trainers. (*Id.* at 823:2-7; CX-1057C.). Respondents' documents show that they target the same micro-OLED applications. (CX-0128C.5-0007.). [redacted] (CX-1796C (T. Yang Dep. Tr.) at 219:9-17.). Respondents' products are sold across all market segments that eMagin targets. (Tr. (Sculley) at 839:23-840:18; CX-1086C.). Therefore, for Respondents to argue that there is no competition between Respondents and eMagin for sales to customers across the various market segments is to ignore the evidence in this Investigation. [redacted] (*See, e.g.*, CX-1884C; SBr. at 163-164 ([redacted]

[redacted]) Respondents' argument is simply not credible let alone supported.

Second, Respondents' argument is premised on the incorrect assumption that Respondents cannot sell to the military. (RBr. at 116.). According to Mr. Scully's testimony, there is no prohibition against Respondents providing its products to the U.S. military, whether directly or indirectly through a prime contractor. (Tr. (Sculley) at 840:19-841:2.). Congressman John Moolenaar of Michigan wrote a letter to former U.S. Secretary of Defense Lloyd Austin warning the Department of Defense of the dangers of buying from Respondents. Congressman Moolenaar's letter suggests that it was possible that Respondents were attempting to sell certain products to the U.S. military. (CX-2487; Tr. (Klenk) at 1094:23-1095:19.). C[redacted] (RBr. at 116, 123.). [redacted] (Tr. (Li) at 1472:15-25.).

Moreover, Congressman Moolenaar's letter to the DOD specifically warns against Respondents' supplying to the U.S. military and suggests that the "policy" of not buying from an essentially Chinese entity was not being followed. Thus, Respondents' imports, which directly compete with eMagin's products, could end up being used by the U.S. military, especially if the DOD was not aware that Respondents' products were being sold through a different contractor.

Third, as SDC and Staff pointed out, there is direct competition between Respondents and eMagin in the consumer market for companies like [redacted] and [redacted]. (SBr. at 159-67; CBr. at 132-138.). As Mr. Klenk testified, Respondents and SDC/eMagin appear to be in the same stage of the development process with [redacted] and [redacted]—competing for micro-OLED supply contracts. (Tr. (Klenk) at 1041:1-1042:16 [redacted]; SBr. at 159-67 (noting that Respondents and eMagin are in competition for supply contracts, supporting a finding of substantial injury); *see also* CBr. at 132-38).).

Respondents next argued that there are numerous competitors in the micro-OLED space, and that SDC would thus face competitive pressures from others regardless of Respondents' presence. Yet, it is undisputed among the Private Parties that only a concentrated number of suppliers can provide high-brightness micro-OLEDs. (*Compare* RBr. at 118 (listing any potential micro-OLED company) *with* Tr. (Klenk) at 1036:1-6 (explaining that there are only a handful of firms capable of manufacturing high brightness micro-OLED displays).) With respect to the highly desirable, RGB SBS technology, there is apparently even greater concentration—only two suppliers are known to have RGB SBS capabilities, i.e., Respondents and eMagin. (Tr. (Klenk) at 1036:7-13; CX-1795C (T. Yang Dep. Tr.) at 134:4-12; SBr. at 159-67 (discussing competition between the only two known RGB SBS manufacturers, Respondents and eMagin).).

Moreover, Respondents misstated testimony from [redacted] (RBr. at 121.). Respondents omit the testimony that immediately follows where [redacted]

[redacted] (CX-1795C (T. Yang Dep. Tr.) at 134:4-12.).

Respondents argued that [redacted] occupies only a portion of the smartphone market and thus, SDC has not been harmed by Respondents' entry into the OLED supplier market. (RBr. at 126.). This argument disregards historical data and trial testimony. [redacted] (CX-0943.0001 (displaysupplychain.com press release, dated July 3, 2023, showing that [redacted] dominates the revenue and sales charts for smartphones with OLED displays).).

As discussed above in Section VII.B.2.a). (i), on the buyer side, [redacted], in particular, accounts for a significant share of sales of smartphones that use OLED displays. (*Id.* at .2 (showing that [redacted]).). [redacted] is thus a critical customer for OLED suppliers, a market that is concentrated. (CX-1769C (Li Dep. Tr.) at 142:16-143:11, 143:17-20; CX-0958.0001.). [redacted]

As discussed above in Section VII.B.2.a). (i), currently, the [redacted] companies identified are the only companies that have passed [redacted]'s stringent qualification requirements. (Tr. (C. Park) at 761:14-24.). When Respondents entered the OLED supplier market for [redacted], [redacted] instituted [redacted] against SDC. SDC was forced to lower its OLED prices. According to Mr. Park, Respondents have now exceeded SDC's share of the [redacted] market, while SDC has lost [redacted] in revenue in 2024 alone based on price erosion for SDC OLEDs and SDC's loss of market share for its OLED sales. (*Id.* at 761:25-765:10; CX-1917C; CBr. at 124-25.).

[redacted]. (CX-1917C.). Moreover, even though there are generally other OLED suppliers in the smartphone market overall, the important point here is that [redacted] has only had [redacted] suppliers. It is evident that Respondents (not any other supplier) is the one causing price erosion and taking SDC's market share. (CX-1460.0002 (SmartPrix Bytes Article, June 10, 2020); CX-1917C; Tr. (C. Park) at 761:25-763:24, 764:6-11; CX-844C.0011; CX-1059C; Tr. (Klenk) at 1035:2-23.).

Respondents criticized Mr. Sculley, SDC's expert, for not specifically identifying any lost sales to them because Mr. Sculley has never been told explicitly that Respondents have taken sales from eMagin. (RBr. at 117.). However, Mr. Sculley testified that micro-OLED suppliers such as eMagin and Respondents may not know whether their customers use other sources. (Tr. (Sculley) at 861:4-7; 873:10-13.). This does not mean that eMagin has not lost a sale to Respondents and likely has because of Respondents' lower prices. (*See* Tr. (Sculley) at 841:15-22 ([redacted]

That SDC and eMagin do not know other sources of micro-OLED suppliers to [redacted] does not negate the injury or threat of injury to eMagin posed by Respondents' conduct. *See Bally/Midway Mfg. Co. v. U.S. Int'l Trade Comm'n*, 714 F.2d 1117, 1124 (Fed. Cir. 1983) (holding that "[w]here unfair methods and acts have resulted in *conceivable* losses of sales, a tendency to substantially injure such industry has been established"). Respondents also have trivialized their relationship with [redacted] and [redacted]. (*See* RBr. at 119-22, 125-27.). However,

Respondents' actions show their clear commitment to continue to take SDC's share of smartphone OLED sales and to compete with SDC for micro-OLED supply contracts. The evidentiary records are indisputable.

[redacted]. (CX-1769C (Li Dep. Tr. Vol. 1) at 142:8-20; CX-1770C (Li Dep. Tr. Vol. 1) at 260:12-15; CX-1795C (T. Yang Dep. Tr. Vol. 1) at 21:16-24:22; CX-1796C (T. Yang Dep. Tr. Vol. 2) at 157:18-159:19; CX-0368C.0014.). [redacted]. (CX-1838C.0010.). [redacted] (CX-1770C (Li Dep. Tr.) at 260:12-15; CX-1795C (T. Yang Dep. Tr. Vol. 1) at 21:16-24:22; CX-1796C (T. Yang Dep. Tr. Vol. 2) at 157:18-159:19; CX-0368C.0014.). [redacted] (CX-2251C; CX-2258C; CX-1721C.). [redacted] (CX-1773C (Mu Dep. Tr. Vol. 1) at 120:23-121:13, 122:15-22.). Respondents have another department specifically dedicated to growing its micro-OLED work with [redacted]. (CX-1769C (Li Dep. Tr. Vol. 1) at 142:8-20.). [redacted] (CX-1796C (T. Yang Dep. Tr. Vol. 1) at 231:2-236:24.). [redacted] (CX-0167C.0002-3; *see also* CBr. at 132-38 and SBr. at 155-67 (SDC demonstrated substantial injury and threat of injury).). [redacted]

[redacted], [redacted] (CX-0090C; CX-0092C.0002.).

Respondents relied upon their corporate representative [redacted] deposition testimony to characterize Respondents' relationship with [redacted] and [redacted]—[redacted] (RBr. at 119.). However, Respondents chose not to bring Ms. Yang to the evidentiary Hearing. Thus, there was no opportunity for her to be cross-examined or for the administrative law judge to assess her credibility at the Hearing.

[redacted] (CX-1795C (T. Yang Dep. Tr. Vol. 1) at 31:19- 32:4)) in ensuring Respondents' success in this Investigation, her deposition testimony has been given little weight. Moreover, her testimony has been contradicted by other solid testimony that was given during the Hearing. Contrary to Ms. Yang's testimony, the weight of the evidence demonstrates that [redacted] and [redacted] are interested in and already are working with Respondents. (*See* CBr. at 118-38 (factual background illustrating Respondents' unfair conduct); SBr. at 155-67 (SDC demonstrated substantial injury and threat of injury); *see also, infra* (discussing the activity between Respondents and both [redacted] and [redacted] are frequent and robust).) [redacted] (CX-1795C (T. Yang Dep. Tr. Vol. 1) at 42:5-8.).

Respondents also have relied upon Mr. Yuhao Li's testimony that [redacted] (RBr. at 121.). Documentary evidence, however,

overwhelmingly shows that Respondents have been actively working on their RGB SBS technology and have been for years. Respondents have manufactured and showcased RGB SBS technology. T [redacted] (*See* CX-0065C; CX-0067C; CX-0068C; CX-0091C; CX-0368C; CX-1011C; CX-1014C; CX-1037C; CX-1705C; CX-1746C; CX-1939C; CX-1941C; *see also* SBr. at 155-67 (SDC demonstrated substantial injury and threat of injury).)

Additionally, Mr. Li's testimony that he c [redacted] (RBr. at 121) is discredited by the fact that Respondents publicly showcased this product using this technology at the Society for Information Display Tradeshow held in San Jose in May 2024. Respondents [redacted] (CX-1796C (T. Yang Dep. Tr.) at 147:14-149:9.).

As demonstrated by certain documentary evidence, the activity between Respondents and both [redacted] and [redacted] are frequent and robust, and it is in direct competition with eMagin. While Respondents suggest [redacted], RBr. at 122-23, this assertion appears to be contradicted by record evidence. Moreover, according to Mr. Scully, eMagin is diligently working on securing supply contracts with [redacted] and [redacted] by developing RGB SBS validation samples in the United States. (Tr. (Sculley) at 870:19-24; *id*. at 870:1-12 (describing "breaking our necks" to complete work for [redacted] and [redacted] to secure contracts); *id*. at 874:1-11 ("It's an R&D contract, and in the end, you need prototypes. So we want to get them as soon as possible for both evaluations internally and externally.").) SDC has received no indication from [redacted] or [redacted] that it should slow down its RGB SBS development

work. In fact, SDC and [redacted] entered into an NDA in [redacted]. (*Id*. (C. Park) at 769:5-7; 771:19-772:10.).

Respondents argued that the threat of injury to SDC is "too speculative" because there are no contracts or set dates for mass production of RGB-SBS micro-OLED units. (RBr. at 122-23.). However, the actual work performed currently by Respondents and SDC to secure supply contracts for RGB-SBS micro-OLED constitutes competition. Because supply contracts can take years and multiple interim checkpoints to fully execute (*see* Tr. (C. Park) at 766:7-768:1), the competition between Respondents and SDC has substantial implications for both parties' supply contract revenue over the next few years, if not beyond. According to Mr. Cheol Han Park's testimony, when there is more than one potential supplier in the validation process, it can lead to immense pressure. (*Id.* at 768:2-18.). If another competing supplier is chosen, it becomes the de facto standard, which means all other future suppliers must conform to that standard. (*Id.*) If this is what has happened with Respondents' movement into the marketplace, and it appears so, then this has created difficulties, internal stress, and pressure in terms of SDC's development processes. (*Id.*).

As Mr. Klenk, SDC's economic expert testified, in this instance, there are only two potential suppliers—Respondents and SDC. Both Respondents and eMagin are in the same stage of the development process with [redacted] and [redacted]—they are both competing for micro-OLED supply contracts. (*Id*. (Klenk) at 1041:1-1042:16 (explaining that Respondents and eMagin are at the same stage in competition for supply contracts with [redacted] and [redacted] based on his review of internal business documents and testimony); SBr. at 159-67 (noting that Respondents and eMagin are in competition for supply contracts, supporting a finding of substantial injury).).

The injury requirement can be satisfied even where "the record does not show that [the complainant] has as yet been substantially damaged" so long as the record "sufficiently supports the holding that [the respondent's] actions have a tendency to injure substantially" the complainant's industry. *In re Von Clemm*, 229 F.2d 441, 445 (C.C.P.A. 1955). That holding applies to this case.

Respondents argued that eMagin's manufacturing will take place abroad in the future, and that eMagin will not be involved with the [redacted] work. (*See* RBr. at 124.). This argument is contradicted by testimony from both Mr. Park and Mr. Sculley in which they testified that SDC and eMagin are working together to develop and manufacture micro-OLED displays in the U.S. (Tr. (C. Park) at 771:16-18, 772:11-13 (noting that the development and manufacturing of the RGB SBS micro-OLED validation samples for [redacted] and [redacted] is occurring in the U.S. in direct partnership with eMagin); *id*. at 785:11-788:2 (noting that eMagin is involved in meeting each milestone with [redacted] because it "has the prominent technological advance in terms of micro-OLED RGB display"); *id*. (Sculley) at 835:13-837:1 (explaining that SDC and eMagin are working together for the [redacted] projects).).

Not a single witness testified that eMagin's mass production of RGB SBS micro-OLEDs would occur abroad in the future. Respondents' assertion to the contrary is pure attorney argument and speculation.

(v) Respondents' Arguments with Respect to eMagin and SDAL

Respondents argued that there is no actual injury or threat of injury to eMagin or SDAL. (*See* RBr. at 112-16 (SDAL), 116-25 (eMagin).). Respondents' arguments are unsupported; they are addressed below.

Respondents argued that there is no threat to eMagin's contract revenue because: (1) eMagin and SDC have continued to pursue and obtain new development contracts; (2) eMagin's headcount has increased since the Complaint in this Investigation was filed; and (3) [redacted] Respondents' argument misses the point. As Mr. Klenk, Mr. Sculley and Mr. Park noted in their testimony, Respondents' growth in the U.S. market creates a substantial risk right now of lost supply contracts. (Tr. (Klenk) at 1049:20-1050:10; *id.* (Sculley) at 840:13-18; *id.* (C. Park) at 771:10-15, 772:14-19.). As a matter of legal precedent, cited above, it is not dispositive whether there are executed contracts in place because the work that is occurring is competition between SDC and Respondents to secure contracts. (*See* Tr. (C. Park) at 766:7-768:1; *id*. (Klenk) at 1041:1-1042:16.).

[redacted]. (CBr. at 118-23; SBr. at 159 [redacted].").).

With respect to SDAL, Respondents argued that SDAL has not been harmed by Respondents' U.S. market entry and sales because there is no documentary support for Mr. Lee's testimony that SDAL's 2025 budget has decreased. According to Respondents' attorney argument, Mr. Lee's testimony should be dismissed. (RBr. at 113.). Yet, Mr. Lee has direct knowledge of SDAL's budget. Respondents have acknowledged that he is "a principal within SDC who is heavily involved with SDC's operations with SDAL." (*Id.*). *See Solid State*,

Comm'n Op. at 21 ("[T]here is no Commission requirement that sworn witness testimony directed to the domestic industry requirement cannot be credited without further corroboration by underlying documentation.".) Thus, Mr. Lee's testimony is valuable and creditable.

Respondents argued that they "re-confirmed" on cross-examination of Mr. Lee that the SDAL budget was going "according to plan" and thus could not have decreased. (RBr. at 114.). In fact, what Respondents asked Mr. Lee during the Hearing was about deposition testimony where he said that SDAL's budget for 2024 (a different year) was going "according to plan," at which point he responded: "That's how I answered the question." (Tr. (Y. Lee) at 808:2-4, 16.). This is not "re-confirming." Mr. Lee's deposition testimony was about the 2024 budget while his Hearing testimony on direct examination was about SDAL's 2025 budget proposals. Moreover, Mr. Lee's deposition occurred in June 2024, two months before SDC—after calculating a [redacted] revenue decrease based on lost OLED sales to [redacted]—made 2025 budget proposals and cut SDAL's budget. (*Id*. (Y. Lee) at 805:6-21.). On re-direct examination, Mr. Lee again confirmed that the 2025 SDAL budget proposals were made after his June 2024 deposition. (*Id*. (Y. Lee) at 817:12-20.). The implication is that Respondents improperly tried to tie Mr. Lee's testimony about a 2024 budget to a much-reduced 2025 SDAL budget proposal.

Respondents also argued that Mr. Lee "did not testify as to what factors went into suggesting that the SDAL R&D budget should be decreased." (RBr. at 114.). However, during the Hearing, Respondents did not ask Mr. Lee a single question on this point.

Respondents also have reinterpreted the meaning of the contents of Mr. Lee's sworn declaration and various SDAL research reports. This is so even after Respondents chose not to ask Mr. Lee any questions about the contents of those documents during the Hearing. (RBr. at

114 (interpreting figures in Mr. Lee's declaration); RBr. at 114-15 (interpreting whether projects listed in SDAL reports relate to OLED/micro-OLED R&D).).

Respondents' attorneys are neither fact nor expert witnesses. They do not have the applicable knowledge to determine whether a certain SDAL project is related to OLED R&D or not. Other than attorney argument, nothing Respondents pointed to changes that 100% of SDAL's work related to OLED and micro-OLED research occurs in the United States (Tr. (Y. Lee) at 802:16-19, 804:2-5, 805:2-5, 816:15-817:5); that there will be a decrease in SDAL's budget in 2025 due to SDC's loss of revenue (*id.* at 805:6-21); and that SDC's loss of revenue is due to lost sales to [redacted] for OLED displays—sales that SDC would have made had Respondents not misappropriated SDC's trade secrets and entered the OLED supply market (*id*. (C. Park) at 763:16-765:10; *id*. (Klenk) at 1049:10-13.).

b) Respondents Imported Thousands of Accused OLED Displays and Intend to Expand Their U.S. Market

Substantial injury, and threat of substantial injury, can occur if a respondent captures or threatens to capture a significant share of the domestic market upon entry in the U.S. market. *Akzo*, 808 F.2d at 1487. Respondents have demonstrated their clear intention to penetrate the U.S. micro-OLED market and to expand their reach into the U.S. smartphone OLED market. These actions substantially injure and threaten to continue to injure eMagin's and SDAL's domestic industry. *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op., at 64, 66 (assessing a respondents' "explicit intention to enter into the U.S. market" as one factor that could contribute to a threat of injury); *Railway Wheels*, Inv. No. 337-TA-655, FID at 82 (considering a respondent's "intention to penetrate the United States market").

As discussed in detail below, [redacted] Respondents have captured the largest OLED supply market share now purchased by [redacted]. [redacted] (CX-1831C.0011-13; CX-1838C.9-10; CX-1774C (Mu Dep. Tr. Vol. 2) at 200:13-20; CX-1795C (T. Yang Dep. Tr. Vol. 3) at 48:11-49:6.). [redacted]. (CX-1838C.0010.). [redacted]. (*Id.*). [redacted] (CX-1774C (Mu Dep. Tr. Vol. 2) at 202:9-15; CX-1795C (T. Yang Dep. Tr. Vol. 3) at 116:2-23; CX-1769C (Li Dep. Tr. Vol. 1) at 144:3-11 [redacted] (CX-1795C (T. Yang Dep. Tr. Vol. 1) at 48:11-50:7.). [redacted] (*Id.* at 86:14-87:1.).

As with smartphone OLED displays, the importation of micro-OLED samples into the U.S. is necessary for qualification purposes. [redacted]. As Mr. Klenk testified, the qualification process is a prerequisite for a company to prove it can mass-produce the

products for a U.S. customer. (Tr. (Klenk) at 1046:7-1047:1 ([redacted]); *id.* at 1047:3-9 [redacted]); CX-1024C; CX-1015C to CX-1020C; CX-1027C; CX-1028C.).

[redacted] (CX-1884C.).

[redacted] (CX-1884C.0052-0101.). [redacted] (*Id.* at 52.). R [redacted] (*Id.*).

[redacted] (CX-1884C.0053.). [redacted]

[redacted];" [redacted] (*Id.*).

Respondents' growth in the U.S. market creates a substantial risk of lost supply contracts and lost R&D contracts for eMagin. (Tr. (Klenk) at 1049:20-1050:10; *id*. (Sculley) at 840:13-18 ("Q. If Respondents were to win micro-OLED supply contract with companies like [redacted] and [redacted], would that impact eMagin? A. Well, I think it would in the future. We would have less contract revenue, because SDC would not be able to get the contract from [redacted] et cetera."); *id*. (C. Park) at 771:10-15 (Q. What would be the impact on SDC if Respondents were awarded a contract to supply [redacted] with RGB micro-OLEDs? A. Based on the experiences that we have relating to smartphones these days and also based on my experience in terms of my career, I think it's going to have a significant impact in terms of pricing and our revenue.); *id.* at 772:14-19 (similar for eMagin's [redacted] contracts).).

The competition between Respondents and eMagin/SDC is current and ongoing. The harm to eMagin is amplified by the fact that eMagin's success depends on contract revenue and its supply contracts with [redacted] and [redacted]. (Tr. (Sculley) at 870:13-18.). Partnerships with these customers are a "big deal for eMagin" and eMagin is diligently working on securing these supply contracts by developing RGB SBS validation samples in the United States. (*Id.* at 870:19-24; *id.* at 870:1-12 (describing "breaking our necks" to complete work for [redacted] and [redacted] to secure contracts); *id.* at 874:1-11 ("It's an R&D contract, and in the end, you need prototypes. So we want to get them as soon as possible for both evaluations internally and externally.").)

c) Respondents' Foreign Manufacturing Capacity of OLEDs and micro-OLEDs

Respondents have the substantial capacity to manufacture OLEDs and micro-OLED panels in China and can continue its substantial injuries to SDC. [redacted] Within China, Respondents have at least [redacted]. (CX-1774C (Mu Dep. Tr. Vol. 2) at 282:3-283:5; *see also* Tr. (Klenk) at 1037:17-1038:2.). [redacted]. (*See, e.g.*, CX-1916C to CX-1923C; CX-1928C.). [redacted]. (*See, e.g.*, CX-1916C to CX-1923C; CX-1928C.).

Respondents' substantial foreign manufacturing capacity enables Respondents to meet [redacted]'s supply requests and to continue taking SDC's share of sales from [redacted]. Respondents mass-produce their OLED displays, which they hen offer to [redacted] at lower price points, at Respondents' [redacted] in China. Respondents also have facilities in China that are [redacted]. (CX-1774C (Mu Dep. Tr. Vol. 2) at 283:6-12, 284:1-3 [redacted] Once [redacted] qualifies the samples, Respondents use [redacted]. (Tr. (Klenk) at 1037:17-1038:2 (discussing Respondents' foreign manufacturing facilities); CX-1774C (Mu Dep. Tr. Vol. 2) at 282:3-283:5.).

[redacted] (*Id.* at 285:13-286:8.) [redacted] (*Id.* at 288:15-22.) [redacted] (*See, e.g.*, CX-1916C to CX-1924C; CX-1926; CX-1928C.).

Because of [redacted]'s target pricing and Respondents' increasing share as an OLED supplier for [redacted], according to Mr. Park, SDC is on track for a [redacted] percent loss of revenue from [redacted] this year, which translates to a loss of [redacted] dollars. (Tr. (C. Park) at 763:16-24.). Also, according to Mr. Park, there are no other likely factors to which this revenue loss can be attributed other than from competition from Respondents. (RX-1453C (C. Park Dep. Tr.) at 180:7-181:10 (observing that there was "no major change in the product…no quality risk, nor … any issues related to manufacturing," and no "general decline in the world market" nor "decrease in demand").). Even if overall demand from [redacted] were stagnant, SDC would have anticipated constant rather than declining sales, but for the increased competition from Respondents.

Moreover, increased competition from [redacted] is unlikely to have caused SDC's revenue loss. As Mr. Park testified, [redacted] and Respondents do not supply displays to [redacted] for overlapping [redacted] products. (Tr. (C. Park) at 763:25-764:5.). [redacted] and SDC supply OLED displays for the [redacted] products, while Respondents and SDC supply OLED displays for the standard [redacted] products. Because there are no overlapping market segments between Respondents and [redacted], SDC can differentiate where the lost sales and lost revenue come from by "distinguish[ing] impact per vendor." (*Id.* at 791:11-792:2.). It follows that the lost sales and

revenue result from increased competition in the [redacted] segment (for which SDC and Respondents are suppliers), not the [redacted] (for which SDC and [redacted] are suppliers). (*Id.* at 763:25-764:5, 791:11-792:2.). SDC's [redacted] loss is therefore logically attributable to Respondents' competition.

Similarly, Respondents have established [redacted] (CX-0129C.3; CX-0128C.6; CX-1021C; CX-1022C; CX-1023C; CX-129C; CX-167C; CX-1708C.).

Respondents' substantial foreign manufacturing capacity for OLED and micro-OLED displays, combined with the fact that it is already selling [redacted] OLED displays to [redacted], is evidence of threat of substantial injury in the future. *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 64, 66 (considering respondents "substantial capacity to manufacture" when assessing the substantial injury prong). [redacted] (CX-0128C.0006-8; *see also* CX-1770C (Li Dep. Tr. Vol. 2) at 242:18- 243:9.).

[redacted] (CX-1838C.0007 ([redacted]).

[redacted].

(CX- 0167C.0002-0003.). [redacted] (CX-1795C (T. Yang Dep. Tr. Vol. 1) at 125:9-15.). [redacted] (*Id.* at 125:16-24.). [redacted] (*Id.* at 42:2-8.). [redacted] (CX-0129C.0003.). [redacted] (*Id*.). [redacted] (CX-0167C.0002-03.). [redacted] (*See, e.g.*, CX-1770C (Li Dep. Tr. Vol. 2) at 243:10-249:6 [redacted] *see also* CX-1796C (T. Yang Dep. Tr. Vol. 2) at 219:19-222:18.).

U.S. customers are fully informed of Respondents' foreign manufacturing capacity. (CX-0092C.0002 [redacted] CX-0091C.0007 [redacted]

[redacted]

[redacted]’s[redacted]); CX-0128C.0005-0007 [redacted]

[redacted] CX-0129C ([redacted]).).

d) Respondents’ Unfair Conduct Will Have Significant and Negative Long-Term Impacts on SDC’s Domestic Industry

Lost sales and profits can slow “[the complainant’s] growth” and its “recoupment of research and development costs” to show substantial injury to a domestic industry. *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm’n Op. at 51 (citing *Corning Glass Works v. Int’l Trade Comm’n*, 799 F.2d 1559, 1569 (Fed. Cir. 1986.). As described in detail above, both SDC and eMagin have already lost sales to Respondents, while Respondents competition threatens to substantially injure SDC and eMagin’s future product sales, in addition to eMagin’s contract revenue. These lost sales would affect SDC’s long-term ability to maintain its leadership in the OLED and micro-OLED markets.

According to Mr. Klenk’s testimony, SDC’s diminished profitability ultimately affects eMagin and SDAL. (Tr. (Klenk) at 1050:11-17.). If SDC and eMagin are not able to supply the next generation of AR/VR headsets and cannot generate revenue from supplying those contracts, then eMagin, as SDC’s principal entity responsible for conducting micro-OLED R&D, would see diminished R&D funds. (*Id.* at 1050:18-24.).

Likewise, “if there’s any reduction in terms of SDC sales, then what that means is that there would be reduction of its R&D expenditures, and since SDAL’s budget is included in SDC's R&D expenditures, SDAL’s budget would also increase -- will also decrease, that is.”

(*Id*. (Y. Lee) at 805:6-21.). Indeed, SDAL has already experienced a budget reduction for the coming year, totaling approximately [redacted] USD. (*Id.*; *id*. (Klenk) at 1050:25-1051:8 (noting how SDC's research budget for SDAL was cut due to SDC's declining revenue).). SDAL thus has less funding for work on its OLED projects for SDC, including funding for labor costs, project development costs, and investment costs. (Tr. (Y. Lee) at 805:1-6.).

Since eMagin and SDAL exist primarily to enhance SDC's OLED (including micro-OLED) production, injury to eMagin and SDAL will further result in loss to SDC and its subsidiaries, making it difficult for SDC to recoup the investments it has made in OLED and micro-OLED technology. Respondents' unfair conduct will continue to be a cause of injury to SDC's domestic industry.

e) Causal Nexus Between Respondents' Unfair Conduct and SDC's Injury

As discussed in detail above, Respondents' unfair conduct has allowed them to develop high quality OLED products on an expedited basis, which Respondents have imported into the United States. Those imports injure SDC and its subsidiaries. Indeed, it is Respondents' importation of the accused OLEDs and micro-OLEDs (including samples) for qualification purposes that enables Respondents to obtain qualification by U.S. customers, and ultimately to mass produce the qualified products. Without that qualification, Respondents would not be able to compete with SDC for sales to U.S. customers. As in *Raised Garden Beds*, causal nexus is established here by Respondents' misappropriation and importation of the products that misappropriated SDC's trade secrets, which allowed it to "enter the market quickly with [competitive products]." *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 50.

Furthermore, the connection between Respondents' misappropriation of SDC's OLED trade secrets and Respondents' growing presence in the micro-OLED market is "substantive and clearly foreseen." *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 64. Respondents are able to leverage their prior OLED experiences and reputation as a supplier to [redacted] to grow its presence in the micro-OLED market. (*See* Tr. (Klenk) at 1051:16-1052:6.). Respondents' unfair conduct allowed them to better position themselves in markets for cutting-edge OLED display products, such as RGB SBS micro-OLED displays.

Respondents' relationship with [redacted] demonstrates the causal link between Respondents' unfair conduct and the substantial injury and threat of substantial injury that SDC has suffered. (*See* Tr. (Klenk) at 1052:10-22.). Through Respondents' misappropriation of SDC's trade secrets, Respondents were able to develop enough business with [redacted] to build two factories in China dedicated to supplying displays for [redacted]'s products. (*See* CX-1774C (Mu Dep. Tr. Vol. 2) at 282:3-283:5; *see also* Tr. (Klenk) at 1037:17-1038:2.). Respondents' sales to [redacted] of OLED products increased Respondent's expertise in interacting with [redacted], including gaining knowledge of how to present products to [redacted] and how to pass [redacted]'s rigorous qualification process. (*Id.* at 1051:16-1052:6; Tr. (C. Park) at 761:18-761:24, 766:7-767:10.). With Respondents now established as an OLED supplier, Respondents can develop their business contacts to make future sales to [redacted]—for all OLED products, including RGB SBS micro-OLED displays. (*See* Tr. (Klenk) at 1051:16-1052:6; *see also* CX-1838C.0009-0010.).

Moreover, Respondents' relationship with [redacted] also has benefited from Respondents' misappropriation of SDC's trade secrets. [redacted] (CX-1796C (T. Yang Dep. Tr. Vol. 2)

at 188:16-189:10, 197:12-198:9.). [redacted]

[redacted] (*See generally* CX-1705C; *id.* .7 ([redacted] "[redacted]

[redacted] As with [redacted], Respondents' importation of accused OLEDs and micro-OLEDs (including samples) for qualification enables Respondents to be qualified by [redacted] which in turn enables Respondents to mass produce products for [redacted]. Those unfair importations have substantially injured SDC's domestic industry and threaten to further substantially injure SDC's domestic industry.

Respondents' importation of products made using misappropriated SDC trade secrets thus not only injures SDC, SDAL and eMagin today but also has laid the foundation that will allow Respondents to continue injuring SDC, SDAL and eMagin in the years to come. Respondents have diverted and are likely to continue to divert both sales and collaboration opportunities with customers in the United States away from SDC, SDAL and eMagin.

3. Conclusion

Accordingly, for the reasons discussed above, under section 337(a)(1)(A), Respondents' unfair trade acts constitute a threat or effect of injury to SDC's existing domestic industry and to the establishment of SDC's future domestic industry.

VIII. RESPONDENTS' STATUTE OF LIMITATIONS DEFENSE

Respondents contended that the three-year statute of limitations ("SOL") set forth in the Defend Trade Secrets Act ("DTSA")[120] applies to Section 337 and is a complete time bar to

[120] The DTSA was enacted May 11, 2016, and codified as 18 U.S.C. § 1836. The three-year SOL is set forth in 18 U.S.C. § 1836(d).

SDC's trade secret misappropriation claims. (RPBr. at 162-66; RBr. at 128; RRBr. at 67.). Specifically, Respondents argued that SDC's claim started to accrue in May 2019 when Respondents imported and showcased their OLED displays to SDC and other attendees at a trade show, i.e., the May 2019 SID Display Week trade conference ("May 2019 SID Conference"). (RBr. at 128; *see* Section VIII.B(1), *infra*.). According to Respondents, because SDC filed its Complaint in this Investigation on October 30, 2023, more than four (4) years after the May 2019 SID Conference, SDC's claim is time-barred under the DTSA's SOL. (RBr. at 128 (citing 18 U.S.C. § 1836(d).)

For the reasons discussed below, Respondents' SOL defense is not supported on two (2) grounds: (i) the DTSA SOL is inapplicable in Section 337 investigations; and (ii) even having considered Respondents' SOL defense on the merits, Respondents did not present sufficient evidence to demonstrate that SDC had the requisite knowledge, more than three (3) years prior to filing its Complaint, of Respondents' unfair acts such that the SOL would be implicated.

A. The DTSA SOL Is Not Applicable Here

Respondents argued that the Commission must apply the three-year SOL provision from the DTSA to Section 337 because the Commission is required to apply a "***single*** federal standard" for trade secret claims. (RBr. at 128 (emphasis added) (citing *TianRui*, 661 F.3d at 1327); *see also id.* at 129 (citing *Bone Cements*, Inv. No. 337-TA-1153, Comm'n Op. at 6).). According to Respondents, the DTSA "is that single federal standard." (*Id.* at 128-29.). However, as SDC and Staff correctly pointed out, Respondents' arguments with respect to this defense are based on misrepresentations of legal precedent. (CRBr. at 61; SRBr. at 30.).

As an initial matter, *TianRui*, upon which Respondents relied, issued in 2011, five (5) years before the DTSA was enacted. There, the Federal Circuit noted its preference for a "single

federal standard, rather than the law of a particular state" in ***dicta*** and recognized the Uniform Trade Secrets Act ("UTSA") and federal common law as appropriate sources to define the substantive elements of trade secret misappropriation. *TianRui*, 661 F.3d at 1327-28; *see also Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 10 (summarizing *TianRui*). Because the DTSA had not yet been enacted, the Federal Circuit in *TianRui* did not explicitly recognize it.

Post-*TianRui*, the Commission has consistently stated that the "federal standard" governing Section 337 trade secret misappropriation is not limited to a ***singular*** source, such as the DTSA, but instead draws from ***several*** bodies of law, including "the Restatement of Unfair Competition, the Uniform Trade Secrets Act ('UTSA'), federal statutes, and federal common law." *See, e.g.*, *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 21[121] (citing *TianRui*, 661 F.3d at 1327-28); *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 11 (citations omitted); *see also Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Prods. Containing Same* ("*Thyroid Hormone Receptor*"), Inv. No. 337-TA-1352, ID at 63-64 (Nov. 18, 2024).

Consistent with the Commission's post-*TianRui* opinions including, *inter alia*, *Raised Garden Beds* and *Botulinum Toxin*, the Commission noted in *Bone Cements*—which Respondents cited and also mischaracterized as identifying the DTSA and "all its statutory sections . . . as this single federal standard" (RBr. at 129)—that the "single federal standard" comprised ***multiple*** sources of law, including "the Restatement of Torts, the Defend Trade Secrets Act of 2016 (18 U.S.C. §§ 1831-39), and federal common law." *Bone Cements*, Inv. No.

[121] Notably, in *Raised Garden Beds*, the Commission based the elements of trade secret misappropriation on precedent that pre-dates the DTSA. *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 21 (citing *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 10 (citing *Certain Processes for the Mfg. of Skinless Sausage Casings* ("*Sausage Casings*"), Inv. No. 337-TA-148/169, ID (July 31, 1984)).

337-TA-1153, Comm'n Op. at 6.

As SDC and Staff observed, Respondents did not identify a single authority that affirmatively requires the Commission to apply the DTSA SOL provision to Section 337 investigations. (CRBr. at 61; *see also* SBr. at 176.).

Moreover, as Staff pointed out, Respondents wrongfully claimed that "[t]he application of the DTSA's statute of limitations to Section 337 is a matter of first impression." (SRBr. at 30; RPBr. at 162; *see also* RBr. at 130.). The Commission dealt with the precise issue when it determined ***not*** to review (in relevant part) the Initial Determination in *Botulinum Toxin* ("1145 ID"), where the primary holding with respect to the respondents' SOL defense squarely ***rejected*** the application of a statute of limitations to trade secret-based Section 337 investigations. *Botulinum Toxin*, Inv. No. 337-TA-1145, ID at 232 (July 6, 2020) ("As complainants correctly point out, section 337 does ***not*** itself contain a statute of limitations, or a similar statutory provision.") (emphasis added), *not rev'd in relevant part*, EDIS Doc. ID No. 720157, Comm'n Notice (Sep. 21, 2020).[122]

In addition, Respondents mischaracterized the 1145 ID's ***alternative*** holding on this issue. (RRBr. at 67 ("This non-binding determination supports BOE's position . . . . Judge Shaw ***applied*** the statute of limitations defense and merely found it unsuccessful under the facts there.") (emphasis in original).). Specifically, Respondents failed to mention that the cited portion of the ID is the second, alternative basis for rejecting the respondents' SOL defense.

[122] The respondents in *Botulinum Toxin* petitioned for review of the ID's holding that the SOL is inapplicable in Section 337 investigations, and in doing so, raised many of the same arguments that Respondents have raised in this Investigation. (*See* EDIS Doc. ID No. 716067, Respondents' Petition for Review of the FID at 94-95 (July 31, 2020) ("The ID erred in finding trade secret cases brought under Section 337 exempt from any statute of limitations. ID at 232.").). As discussed in the text above, the Commission did not review the ID's holding regarding the respondents' SOL defense.

That is, ***even if*** the SOL was applicable to Section 337 investigations, which the primary holding was that it is not, the respondents' defense also failed on the merits. *Botulinum Toxin*, Inv. No. 337-TA-1145, ID at 232-33 ("As complainants correctly point out, section 337 does not itself contain a statute of limitations, or a similar statutory provision. ***Furthermore***, there is nothing in the record to show that complainants were dilatory in pursuing relief or that the underlying allegations of trade secret misappropriation are time-barred under law.") (internal citation omitted) (emphasis added).

Respondents did not identify any portion of the DTSA, or legislative history underlying the DTSA, that the DTSA's SOL should apply to Section 337 Investigations. As SDC and Staff properly noted (CRBr. at 62; SBr. at 177), the plain text of the DTSA indicates that it is applicable only to "private civil actions." 18 U.S.C. § 1836(b). To the contrary, Section 337 investigations are not "private civil actions," but rather, are investigations conducted by the U.S. International Trade Commission. Had Congress intended for the DTSA's SOL to apply to Section 337, it could have done so, as it has done in the past. *See, e.g.*, 35 U.S.C. § 315(e)(2) ("The petitioner in an inter partes review of a claim in a patent under this chapter that results in a final written decision under section 318(a), or the real party in interest or privy of the petitioner, may not assert either in a civil action arising in whole or in part under section 1338 of title 28 ***or in a proceeding before the International Trade Commission under section 337 of the Tariff Act of 1930*** that the claim is invalid on any ground that the petitioner raised or reasonably could have raised during that inter partes review.") (emphasis added).

Additionally, DTSA's SOL provisions and Section 337 are not capable of "co-existence" or harmonization in the way Respondents proposed. (RBr. at 136.). The DTSA's SOL provides that "[a] civil action under subsection (b) may not be commenced later than 3 years after the date

on which the misappropriation with respect to which the action would relate is discovered or by the exercise of reasonable diligence should have been discovered. For purposes of this subsection, a continuing misappropriation constitutes a single claim of misappropriation." 18 U.S.C. § 1836(d). In other words, DTSA's SOL provision limits a plaintiff's relief under the DTSA based on when the plaintiff had requisite ***knowledge of the misappropriation***. *Id.* In contrast, Section 337 requires the Commission to issue relief when it ***finds importations or sales*** of articles associated with unfair acts or methods of competition, such as trade secret misappropriation. 19 U.S.C. § 1337(a)(1)(A) ("the following are unlawful, and when found by the Commission to exist . . ."); *see also Suprema, Inc. v. Int'l Trade Comm'n*, 796 F.3d 1338, 1345 (Fed. Cir. 2015) (en banc) ("Section 337 declares certain activities related to importation to be unlawful trade acts and directs the Commission generally to grant prospective relief if it has found an unlawful trade act to have occurred.").

Given that the DTSA's SOL is at odds with the Commission's statutory charge under Section 337, it makes little, if any, sense to apply the DTSA's SOL to Section 337. The DTSA and Section 337 involve different causes of action and provide different remedies. The DTSA covers "private civil actions" and limits a plaintiff's relief based on requisite knowledge of misappropriation, whereas Section 337 mandates that the U.S. International Trade Commission issue relief when it finds imports or sales associated with an unfair act, such as trade secret misappropriation.

For the foregoing reasons, Respondents' SOL defense lacks legal support and is not applicable on that basis.

B. Respondents' Defense Fails on the Merits

In the event that the DTSA's SOL is applicable, and Respondents' SOL defense is to be

considered, the defense fails on the merits.

Respondents properly noted that the "precondition" for a claim at the U.S. International Trade Commission is an importation. (RBr. at 129 (citing *Botulinum Toxin*, Inv. No. 337-TA-1145, ID at 233; 19 U.S.C. § 1337(a)(1)(A).). Respondents argued that when this "precondition" is taken together with the three-year SOL of the DTSA, "a trade secret misappropriation claim at the ITC is timely when a Complainant files their complaint within three years of the discovery of the first importation of an accused article that incorporates or was made by the misappropriated trade secrets." (*Id.*).

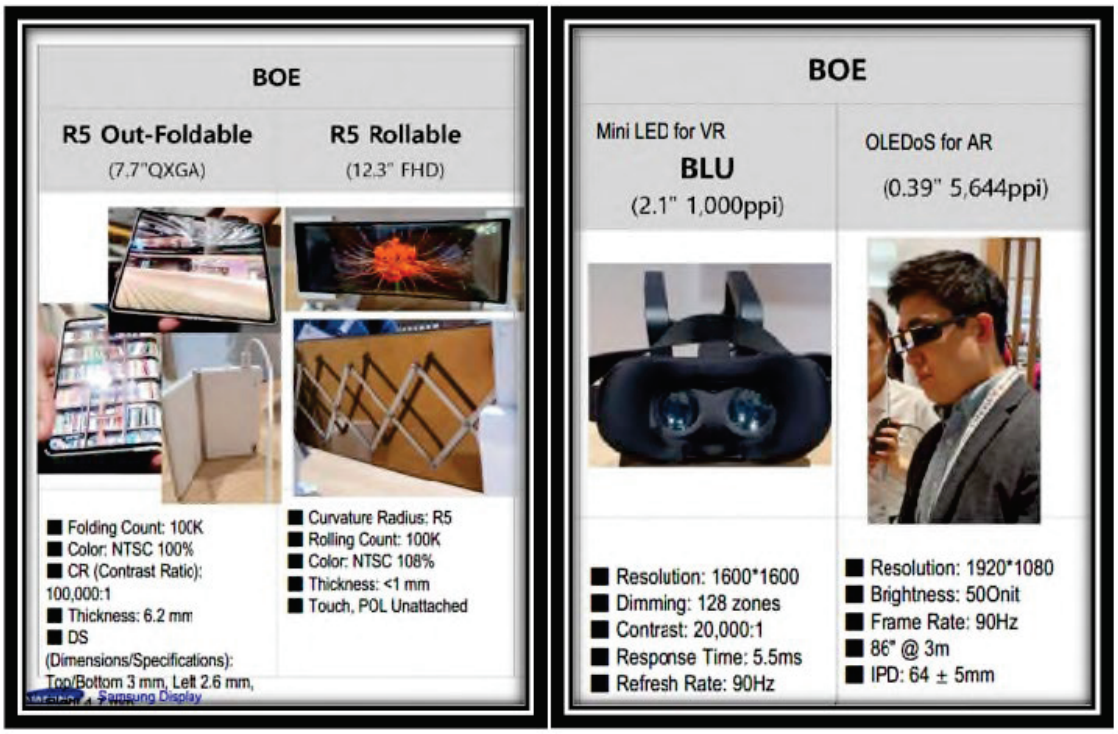
Based on this understanding, Respondents contended that SDC should have been aware of its trade secret misappropriation claims before October 30, 2020, the date on which the SOL will have been triggered based on the October 30, 2023 filing date of the Complaint in this Investigation. (RPBr. at 163.). Respondents argued that SDC had the requisite knowledge because of: (1) SDC's general awareness of Respondents' importation of their OLEDs through the May 2019 SID Conference and through SDC's "tracking" of Motorola RAZR phones that incorporate Respondents' OLEDs; and (2) SDC's filing of its Complaint based on the 2018/2019 South Korean criminal proceedings against Toptec, and SDC's follow-on South Korean civil complaint for trade secret misappropriation against Toptec in 2019. (RBr. at 131-35; RPBr. at 163-66.).

For the reasons discussed below, Respondents failed to present sufficient evidence that SDC in fact knew, or had reason to know, more than three (3) years prior to SDC filing its Complaint, that Respondents' products were ***made*** using SDC's misappropriated trade secrets and that those products were being ***imported*** into the United States.

1. May 2019 SID Conference

Respondents claimed that SDC had requisite notice of Respondents' trade misappropriation in May 2019, more than four (4) years before filing its Complaint, by attending the May 2019 SID Conference in the United States. According to Respondents, at the May 2019 SID Conference, SDC "engaged in corporate intelligence on BOE's OLED displays" by "view[ing]," taking pictures, and "gather[ing] data on [the accused displays'] specifications." (RBr. at 131 (citing RX-2388C).). Respondents argued that SDC's "corporate intelligence" involved generating "competitive intelligence reports," which "included detailed analyses of BOE's products and their specifications." (RBr. at 132.). Respondents identified RX-2388C, copied below, as an example of "SDC's competitive intelligence." (*Id.*).

Figure 98: Pictures of Respondents' OLED Displays from May 2019 SID Conference



(*Id.* (citing RX-2388C.0018, 0022) (which displays certain of Respondents' products that reflect different resolution and brightness of OLEDS for augmented reality ("AR") and for virtual reality ("VR"), and specifications for R5 "out foldable" and R5 Rollable products).).

However, during the Hearing, SDC's fact witness and SDC Principal, Mr. Y. Lee, clarified that when SDC attended such trade shows, SDC engaged in typical competitive intelligence, which did not include performing any technical analysis that would have uncovered misappropriation.

> Q. . . . So SDC attends trade shows such as SID Display Week, correct?
>
> A. Yes, it does.
>
> Q. And SDC tries to find out what its competitors are doing in the markets at these conferences, correct?
>
> A. I think I discussed this during my deposition as well. The reasons why SDC attends the SID conferences is because, first, SDC wants to make a presentation of its papers at SID, and, secondly, it is true display -- SDC's products that it developed at SID, and -- and on occasion there are some awards given by SID, and SDC attends those conferences to get awarded. And those attendees from SDC would get to see those products that are on display at SID.
>
> * * *
>
> Q. Thank you. If we could please pull up RX 2388C, and the Korean page is on page 5, the English page is page 18.
>
> A. Yes.
>
> Q. Mr. Lee, do you see on the top bullet point where it says, "need to maintain technological gap"?
>
> A. Yes.
>
> Q. And you just testified that this document is a follow up document presentation after a public trade show; is that right?
>
> A. Yes.
>
> Q. Does SDC evaluate competitors' products at these public trade shows in order to maintain its technological gap?
>
> A. I didn't quite understand your question. Are you asking if it does evaluate the products at those trade shows right there?
>
> Q. Yes, and generally, does SDC evaluate competitors' products in order to maintain its technological gap?

> A. ***What happens at these trade shows, we would only look at the products as they are displayed,*** but if you're talking about evaluations, the actual evaluations, it would be after those products are mass produced, we would buy them and we would conduct evaluation.

(Tr. (Y. Lee) at 809:15-810:2, 817:22-818:22 (discussing RX-2388C) (emphasis added); *see also* RX-1453C (C. Park Dep. Tr.) at 89:15-93:11.).

Moreover, experts who testified on behalf of both SDC and Respondents confirmed that none of them reverse engineered any end products that incorporated an SDC OLED, or were aware of instances where someone had reverse engineered SDC's trade secrets. (Tr. (D'Andrade) at 1256:23-1257:7 ("[Q.] [Y]ou did not attempt to reverse-engineer any end products incorporating an SDC OLED display to ascertain any of SDC's asserted trade secrets, right? A. That's correct. Q. And you're aware of no evidence of BOE reverse-engineering an end product incorporating an SDC OLED display to ascertain any of SDC's asserted trade secrets, right? A. That's correct."); Tr. (Glew) at 1376:10-19 ("Q. You did not reverse-engineer any end product incorporating an SDC OLED display to ascertain any of the SDC trade secrets that you were charged with analyzing in this investigation, correct? A. No. I relied on the documentation. Q. And you're not aware of any evidence of BOE reverse-engineering any end product incorporating an SDC OLED display to ascertain SDC trade secrets, right? A. Not for the trade secrets that I'm involved with, no."); Tr. (Katona) at 362:16-24 (re TS II.1), 377:5-16 (re TS III.1.h+s), 398:4-12 (re TS IV.2); Tr. (Lebby) at 586:21-587:2 (re TS IV.3), 561:24-562:8 (re TS VII.1).).[123]

Thus, Respondents failed to show how SDC could have known, based on mere observation, as SDC had done during the May 2019 SID Conference, that Respondents' OLED

[123] Drs. D'Andrade and Glew were Respondents' experts. (*See supra*, n.26, n.28.) Drs. Katona and Lebby were SDC's experts. (*See supra*, n.32, n.75.).

panels were ***manufactured*** using SDC's trade secrets and ***imported*** into the United States.

2. Motorola RAZR

Respondents' reliance on *Semiconductor Energy Lab'y Co., Ltd. v. BOE Tech. Grp. Co., Ltd., BOE Technology America, Inc., and Motorola Mobility LLC*, Case No. 3:20-cv-4297 (June 29, 2020 N.D. Cal.) ("2020 RAZR lawsuit"), a case involving claims of patent infringement of, *inter alia*, the Motorola RAZR, is misplaced.[124] (RBr. at 133.).

Respondents contended that "it was SDC's business practice to conduct competitive intelligence on BOE," and as part of that practice, SDC "tracked the U.S. launch of the Motorola RAZR" in May 2020.[125] (*Id.*). Respondents asserted that based on the complaint filed in the 2020 RAZR lawsuit, "SDC knew or should have known that BOE's OLED displays in the RAZR were imported into the U.S. at least by June 2020." (*Id.* (citing Respondents' Request for Receipt of Evidence Without Sponsoring Witness and Request for Judicial Notice, EDIS Doc. ID No. 834145, Ex. 4 (complaint) at 5-6, 8-9 (noting that plaintiff alleged that "BOE sells its . . . OLED displays . . . to Motorola . . . who install[s] the displays into their razr . . . phones, then import[s] them into the U.S. for marketing and sale to U.S. customers").).

Like their May 2019 SID Conference argument, Respondents failed to explain why SDC's awareness that an end-product, like the Motorola RAZR, that allegedly contained Respondents' micro-OLED glass, would necessarily indicate that SDC ***knew*** Respondents had misappropriated SDC's trade secrets. Neither does such an understanding (even if it applied to SDC) explain how SDC could have been placed on notice of the misappropriation of any of

[124] *See* Order No. 48 at 2, 5 (taking judicial notice of the 2020 RAZR lawsuit).

[125] Respondents manufactured the OLED display for the Motorola RAZR. (RX-1836C.0010.).

SDC's trade secrets from publicly available information of a patent litigation in which SDC was not a party.

3. South Korean Criminal and Civil Proceedings

Similarly, Respondents' contentions that legal proceedings in South Korea should have put SDC on notice are not persuasive. (RBr. at 134.).

As an initial matter, the 2018/2019 South Korean criminal proceedings against a number of individual defendants and third-party vendors that SDC used, such as Toptec and FAI, did not involve ***imports*** into the ***United States***. Similarly, the 2019 South Korean civil proceeding also did not involve ***imports*** into the ***United States***. (*See* CX-0454C.0001, .0004 (2021NO69, Suwon High Court of Justice, Criminal Division 2-3, Judicial Decision (part 1), dated March 7, 2023 (original decision delivered January 21, 2021));[126] CX-0455C (part 2 of CX-0454C); CX-0680C (2018 KaHap 10106, Suwon District Court, Civil Division No. 31, Decisions, dated July 3, 2018).). Those proceedings concerned ***Toptec's*** improper disclosure and sale and of SDC's trade secrets to, *inter alia*, Respondents in ***China***, and not whether ***Respondents*** were using any SDC trade secrets to ***manufacture*** OLEDs and ***sell/import*** them in/into the ***United States***. (Compl. at ¶¶ 59-61; CRBr. at 64; SBr. at 180.).

To support their allegations, Respondents stated the following:

> SDC's 30(b)(6) corporate representative for its lamination line technology, Jaeyoung Kim, testified that he participated in the Toptec South Korean criminal investigation and testified live at the criminal trial there in 2018. *See* RX-1593/CX-2261 (Jaeyoung Kim Dep.) at 27:24-28:23; *see also id.* at 30:21-31:9 (admitting that ***at least two*** other SDC representatives took part in the South Korean criminal investigation in 2018). Mr. Kim also explained that by October 2018 SDC's Head of the Equipment Purchasing Group knew that Toptec was trying to sell to BOE the

[126] The Suwon High Court Decision addressed the original decisions for 2018GOHAP586, 2018GOHAP616 and 2019GOHAP52, which the Suwon District Court issued on January 21, 2021. (CX-0454C.0004.).

> same equipment that Toptec sold to SDC—this is the same equipment that SDC now claims as its trade secrets. *Id.* at 55:10-18. Mr. Kim also admitted that during SDC's 2018 investigation he learned that the focus of the investigation was Toptec's attempts to sell lamination equipment to Chinese companies. *Id.* at 56:14-25.

(RBr. at 134 (emphasis in original).).

According to Respondents, "[w]ith knowledge of—and first-hand involvement in—the South Korean investigations, SDC filed a civil complaint [for trade secret misappropriation] against Toptec on January 15, 2019 (Case No. 2019 GA HAP 25304) . . . shortly after the first criminal indictment in 2018 against a Toptec employee." (*Id.* (citing *Samsung Display Corp. v. TOPTEC Corp.*, Case No. 2019 GA HAP 25304 (2019).).

The mere fact that SDC representatives "participated in" or "took part in" one or more of the South Korean criminal investigations and/or trials involving ***Toptec***, and that SDC later filed a civil complaint for trade secret misappropriation against ***Toptec***, again, does not sufficiently support Respondents' claim that SDC knew or should have known of ***Respondents'*** unfair acts. That the Head of SDC's Equipment Purchasing Group was aware in 2018 that Toptec was selling to Respondents, as well as Mr. J. Kim's understanding of the "focus" of the 2018 investigation, are also not evidence that SDC knew or should have known of ***Respondents'*** misappropriation of its SDC's trade secrets.

Additionally, as SDC noted, the 2018/2019 criminal proceedings against Toptec and other third parties were decided in 2021. (CRBr. at 64-65.). The Suwon High Court's related appellate opinion was issued in 2023. (CX-0454C.0001, .0004; CRBr. at 64-65.). Although SDC may have had suspicions of Toptec's unlawful activities in May 2019, enough to file criminal and civil complaints against Toptec and the additional third parties, SDC did not definitely know the outcomes of those proceedings until 2023.

Staff also argued that "BOE improperly attempt[ed] to use the [South Korean] proceedings against TOPTEC as a time bar for ***all*** of SDC's trade secret misappropriation claims." (SPBr. at 163 (emphasis in original).). According to Staff, the South Korean proceedings against Toptec are relevant to ***only*** trade secrets I.1.a. and I.2.a. (*Id.*). In response, Respondents argued that Staff's position fails because "SDC brought only ***one*** claim for trade secret misappropriation—it did not bring a separate claim for each asserted trade secret." (RBr. at 142 (citing Compl. at 12-33).). Specifically, Respondents argued that:

> The text of the DTSA states that "a continuing misappropriation constitutes a single ***claim*** of misappropriation." 18 U.S.C.A. § 1836(d) (emphasis added). The DTSA and the UTSA both reject the minority "separate accrual" theory. This is because, "[p]rior to UTSA, jurisdictions were split on whether the limitations period ran only from the initial misappropriation, or whether it was triggered anew with each act of misappropriation." *Kehoe Component Sales Inc. v. Best Lighting Prod., Inc.*, 796 F.3d 576, 583 (6th Cir. 2015). This split, however, changed upon the enactment of the UTSA:
>
> > The difference in the approaches rested on the underlying rationale for punishing the misappropriation of a trade secret. Jurisdictions that restarted the limitations period with each act of misappropriation did so on the theory that a trade secret is in the nature of property, which is damaged or destroyed by the adverse use…. By contrast, jurisdictions that ran the limitations period only from the initial act of misappropriation believed that it is the relationship between the parties at the time the secret is disclosed that is protected, and that the fabric of the relationship once rent is not torn anew with each added use or disclosure, although the damage suffered may thereby be aggravated…. The UTSA's declaration that 'a continuing misappropriation constitutes a single claim' expressly adopts the latter approach and rejects the former.

(RBr. at 142 (emphasis in original) (quoting *Kehoe*, 796 F.3d at 583).).

Respondents, again, misrepresented the law and the facts.

As Staff pointed out, SDC did not bring "only one claim for trade secret misappropriation." (SRBr. at 32.). SDC filed a complaint to remedy Respondents' violation of

Section 337 based on their misappropriation of trade secrets, which resulted in an Investigation involving ***16*** separate trade secrets across seven (7) distinct categories. (*See, e.g.*, EDIS Doc. ID No. 822288, Complainant's Final Identification of Trade Secrets (May 24, 2024); *see also* SBr. at xii-xiv.).

Respondents relied on the Sixth Circuit's decision in *B&P Littleford LLC v. Prescott Mach., LLC* for the proposition that the "DTSA contains a three-year statute of limitations and provides that a continuing misappropriation constitutes a single claim." (RBr. at 143 (citing and quoting *B&P Littleford, LLC v. Prescott Mach., LLC*, No. 20-1449, 2021 WL 3732313, at *5 (6th Cir. Aug. 24, 2021).). However, as Staff noted, that decision contradicts Respondents' position. (SRBr. at 33.). In *B&P Littleford*, the Sixth Circuit ***reversed*** the district court's grant of summary judgment in favor of the defendant's statute of limitations defense, and stated that "nothing in MUTSA, DTSA, or relevant caselaw suggests that a misappropriation of one trade secret can trigger the limitations period for a claim based on the misappropriation of a ***different*** trade secret." *Id.* at *6 (emphasis added).

Here, SDC's trade secrets from categories II.1, III.1, IV.1, IV.2, IV.3, and VII.1 are directed to ***different*** aspects of the OLED manufacturing process and are ***distinct*** from categories I.1 and I.2. Notably, the OLED manufacturing process for categories I.1 and I.2 are carried out in a separate facility (in [redacted]) from the other asserted trade secret manufacturing processes (in [redacted]). (*See, e.g.*, Tr. (S. Kim) at 672:13-24 (testifying that SDC's 3D lamination is performed in its "[redacted] facility"), 676:17-677:1 (comparing SDC's security procedures in its [redacted] facility with those in SDC's "[redacted] production facility").).

Even assuming, *arguendo*, that Respondents presented adequate evidence that SDC knew or should have known about the misappropriation of categories I.1 and I.2, which Respondents

have not, Respondents failed to explain how SDC's purported knowledge of Respondents' misappropriation of two trade secrets can and should be used as a trigger to bar SDC's misappropriation claims for the other asserted trade secrets.

C. Conclusion

In sum, the evidence upon which Respondents relied, i.e., tracking Respondents' activities based on publicly available information via a trade show or litigation, or suing Toptec in South Korea, do not adequately establish that SDC had knowledge (actual or constructive) of Respondents' use of SDC's trade secrets to manufacture their OLED or micro-OLED products and subsequently to import them into the United States.[127]

The evidence demonstrates only that SDC was generally aware that Respondents entered the U.S. market. This falls short of proof that SDC knew or should have known that Respondents were using SDC's trade secrets to manufacture and import products into the United States before October 30, 2020.

Accordingly, in addition to the legal deficiencies discussed above in Section VIII.B, Respondents' SOL defense fails factually on the merits.

IX. RECOMMENDATION ON REMEDY AND BOND

This decision recommends: (1) a Limited Exclusion Order ("LEO") with a standard certification provision after a Commission determination on imported products that are manufactured without the use of the misappropriated trade secrets; (2) a Cease-and-Desist Order

[127] The circumstances to which Respondents pointed are, at best, alleged "suspicions and fears" that misappropriation occurred, which courts have found do not trigger the SOL for an action of trade secret misappropriation. *See, e.g.*, *Pascal Metrics, Inc. v. Health Catalyst, Inc.*, No. N22C-01-175, 2023 WL 3019665, at *3 (Del. Super. Ct. Apr. 19, 2023) (quoting *Accenture Glob. Servs. GmbH v. Guidewire Software Inc.*, 691 F. Supp. 2d 577, 594 (D. Del. 2010) (quoting *Sokol Crystal Prod., Inc. v. DSC Commc'ns Corp.*, 15 F.3d 1427, 1430 (7th Cir. 1994)).

("CDO") against each Respondent, both domestic and foreign; and (3) a bond of 100% during the Presidential Review Period (PRP").

A. Legal Standard

Pursuant to Commission Rule 210.42, an administrative law judge ("ALJ") must issue a recommended determination on: (i) an appropriate remedy if the Commission finds a violation of Section 337, and (ii) an amount, if any, of the bond to be posted. 19 C.F.R. § 210.42(a)(1)(ii). When a Section 337 violation has been found, as has been found in this Investigation, "the Commission has the authority to enter an exclusion order, a cease-and-desist order, or both." *Certain Flash Memory Circuits and Prods. Containing the Same*, Inv. No. 337-TA-382, Comm'n Op. on the Issues Under Review and on Remedy, the Public Interest and Bonding at 26 (June 9, 1997).

B. A Limited Exclusion Order Is Warranted

Section 337 permits the Commission to issue either a limited exclusion order ("LEO"), which is directed against infringing products manufactured or imported by or on behalf of persons found in violation, or a general exclusion order, directed against all infringing products. *See* 19 U.S.C. § 1337(d). The Commission has "broad discretion in selecting the form, scope and extent of the remedy." *Viscofan, S.A. v. Int'l Trade Comm'n*, 787 F.2d 544, 548 (Fed. Cir. 1986.).

1. Scope of the Limited Exclusion Order

SDC requested that the Commission issue an LEO "barring from importation any OLED display modules (including micro-OLEDs) and components thereof manufactured by or on behalf of BOE that use SDC's trade secrets." (CBr. at 150; *see also* CPBr. at 163.).

In their Pre-Hearing Brief, Respondents argued that should "misappropriation

nonetheless be found, an exclusion should be nominal" because of, *inter alia*, the "scope of the negative impact such an order would have on the U.S. public interest." (RPBr. at 166.). As an initial matter, public interest was not delegated in this Investigation. *See, e.g.*, 88 Fed. Reg. at 84829 (Dec. 6, 2023); NOI at 1 (Nov. 30, 2023.). (*See also* SBr. at 181 n.52.). Moreover, beyond that single statement, Respondents did not elaborate or provide evidence or discussion of the public interest factors that may justify tailoring a remedial order. Respondents also did not assert this contention in their Initial Brief. (RBr. at 143-51.). Thus, Respondents have waived or abandoned any argument on this issue under Ground Rule 10.1. (Order No. 2, G.R. 10.1.).

Additionally, as Staff noted, in Respondents' Pre-Hearing Brief, Respondents "generally argued failure of proof regarding the head start[] periods for [their] misappropriation" (SRBr. at 34 (citing RPBr. at 166-68)), and "did not otherwise contest the scope of an exclusion order or request exceptions or modifications (e.g., adjudication of re-designs/non-accused products or manufacturing processes, a certification provision, or an exception for service/warranty/repair)" (SBr. at 181 (citing RPBr. at 166-68).).

In their Initial Post-Hearing Brief, Respondents contended for the ***first*** time that remedial orders should: (1) "be limited to the products at issue in this investigation, OLED displays used in phones and micro-OLEDs, and should not extend to non-accused products such as OLED displays used in the automotive industry"; and (2) "include a standard certification provision with respect to imported products that are not made using any trade secrets found to have been misappropriated."[128] (RBr. at 151 (citing *Certain Audio Players and Controllers, Components*

[128] Respondents also requested for the first time in their Initial Post-Hearing Brief that the remedial orders "exempt any displays to be supplied for service, warranty or repair purposes." (RBr. at 151.). As noted above, public interest was not delegated in this Investigation and is thus beyond the scope of this ID. *See*

Thereof, and Prods. Containing the Same ("*Audio Players*"), Inv. 337-TA-1191, Comm'n Op. at 24 (Feb. 1, 2022); *see also* RRBr. at 71.). Accordingly, Respondents have waived or abandoned argument on this issue under Ground Rule 7.2. (Order No. 2, G.R. 7.2.). *See also Certain Fitness Devices, Streaming Components Thereof, and Sys. Containing Same* ("*Fitness Devices*"), Inv. No. 337-TA-1265, Comm'n Op. at 19-23 (Mar. 23, 2023) (reversing ID and finding theory not included in pre-hearing brief was waived under the ALJ's Ground Rules); *Certain Comput. Network Security Equip. and Sys., Related Software, Components Thereof, and Prods. Containing Same*, Inv. No. 337-TA-1314, ID at 51, 88, 89, 111, 152-53, 256-57 (finding arguments not raised in pre-hearing briefs waived pursuant to Ground Rule 7.2) (unreviewed in relevant part).

Additionally, Respondents' new arguments presented in their Initial Post-Hearing Brief lack legal support. The Commission has held that the scope of "covered products" in remedial orders must match the plain language description of accused products in the Commission's NOI: "OLED display modules, OLED display panels, and components of OLED display modules or panels[,]" which is consistent with Commission practice. NOI at 2; *see, e.g.*, *Certain Toner Supply Containers and Components Thereof (II)*, Inv. No. 337-TA-1260, Comm'n Op. at 16 (Aug. 3, 2022) ("The Commission finds that the plain language description in the NOI should be used to define the 'covered articles' and 'covered products' in the remedial orders."). Respondents did not provide an explanation why all of their OLED products made using the misappropriated trade secrets should not be subject to the remedial orders.

Moreover, as Staff pointed out, Respondents' reliance on *Audio Players*, a patent-based

88 Fed. Reg. at 84829 (Dec. 6, 2023). *See, e.g.*, *Fitness Devices*, Inv. No. 337-TA-1265, Comm'n Op. at 89-92 (determining to include an exemption for repair and replacement on public interest grounds).

investigation, is misplaced. (SRBr. at 35-36 n.21.). On the same page of the Commission's Opinion to which Respondents cited, the Commission stated that "as is ***customary***," it "does ***not*** limit the LEO to cover products that were actually adjudicated to infringe the Asserted Patents, thus ensuring that the exclusion order affords [the complainant] 'complete relief' and cannot be 'easily circumvented.'" *Audio Players*, Inv. 337-TA-1191, Comm'n Op. at 24 (emphases added) (citations omitted).

Since a violation of Section 337 has been found in this Investigation, this decision recommends an LEO directed to Respondents' "OLED display modules, OLED display panels, and components of OLED display modules or panels" manufactured using the misappropriated trade secrets. NOI at 2. In addition, this decision recommends including the Commission's standard language that directs the LEO to Respondents' affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns. *Raised Garden Beds*, Inv. 337-1334, LEO at 2 (Mar. 21, 2024).

This decision also recommends the inclusion of a certification provision.[129] *Certain Road Construction Machines and Components Thereof*, Inv. No. 337-TA-1088, Comm'n Op., 2019 WL 6003332, at *27 (July 15, 2019); *Certain Composite Aerogel Insulation Materials and Methods for Manufacturing the Same*, Inv. No. 337-1003, Comm'n Op., at 62 (Feb. 22, 2018.). As Staff pointed out, the trade secrets at issue in this Investigation pertain to equipment and processes used in the manufacture of OLEDs such that it would not be "readily apparent by

[129] In its Post-Hearing Reply Brief, Staff noted that Respondents misrepresented Staff's position with respect to inclusion of a certification provision. (SRBr. at 37 n.22 (citing RBr. at 71 ("Staff argues that any LEO issued should not include a certification provision."); SBr. at 181).). Staff stated that it did not make "any such argument" but "argued that any certification provision should require BOE to first obtain a ruling from the Commission prior to importation." (*Id.* (citing SBr. at 181-82).).

inspection at the border whether an imported product is manufactured using the misappropriated trade secrets[.]" (SRBr. at 36 (citing *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 62).). In trade secret investigations, especially those involving manufacturing-related trade secrets, the Commission has customarily required "Respondents to obtain a ruling (via an advisory opinion or a modification proceeding) from the Commission prior to the importation of any accused products." *Botulinum Toxin*, Inv. No. 337-TA-1145, Comm'n Op. at 62 (citing *Canadian Tarpoly Co. v. USITC*, 640 F.2d 1322, 1326 (C.C.P.A. 1981) (affirming the Commission's authority to require an advisory opinion); 19 C.F.R. § 210.79 (advisory opinions); 19 C.F.R. § 210.76 (modification proceedings)); *see also Thyroid Hormone Receptor*, Inv. No. 337-TA-1352, Comm'n Op. at 76-77.

Because Respondents have not sought adjudication of imported products purportedly manufactured without use of the misappropriated trade secrets, there is no adjudicated basis for "differentiating products made using the trade secret from other [products] that would allow U.S. Customs and Border Protection (CBP) to determine whether an imported product is subject to the LEO." *Raised Garden Beds*, Inv. No. 337-TA-1334, Comm'n Op. at 53-54. "In similar circumstances, the Commission has required potential importers to obtain a ruling from the Commission prior to the importation of the articles." *Id.* at 54 (citing *Certain Balanced Armature Devices, Prods. Containing Same, and Components Thereof*, Inv. No. 337-TA-1186, Comm'n Op. at 33) (requiring Commission ruling before certification because CBP may not be able to determine whether products are made using trade secret); *Certain Opaque Polymers*, Inv. No. 337-TA-883, Comm'n Op. at 23-24 (Apr. 30, 2015) (requiring ruling from the Commission before certification because there is no evidence that products are made without using the trade secret and investigation would be necessary to determine whether new products are covered)).

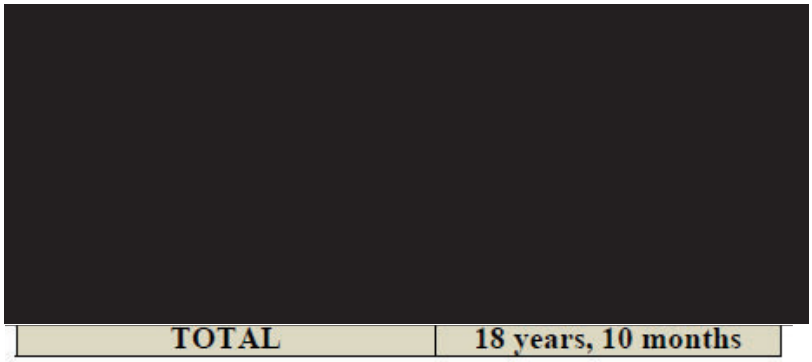
Accordingly, the recommended certification provision should only permit Respondents "to certify that articles are not covered by the LEO ***after a Commission determination on such articles***." *Id.* (emphasis added); *see also Raised Garden Beds*, Inv. No. 337-TA-1334, LEO at 3, ¶¶ 5-6 (Mar. 21, 2024)).

2. Duration of the Limited Exclusion Order

The Commission determines the length of an exclusion order in a trade secret case by assessing "the period of time it would have taken respondent independently to develop the technology using lawful means." *Viscofan*, 787 F.2d at 550; *see also Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 70; *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 82. The Commission has recognized that the length of time that it took a complainant to develop a trade secret is a relevant factor for determining the length of an exclusion order. *See Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 83. "[W]hen multiple trade secrets are at issue, the remedy may be determined by considering the trade secrets together." *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 70.

SDC's requested exclusion order duration is based on the cumulative length of time that it took SDC to develop each category of its trade secrets, which SDC summarized and is copied below in Figures 99 and 100.

Figure 99: Development Time of Trade Secret Categories



TOTAL	18 years, 10 months

(CBr. at 154.).

Figure 100: Timeline of Development Time of Trade Secret Categories



(CDX.0001C.0084.).

Based on the development times shown above in Figures 99 and 100, and the development times of each of SDC's asserted trade secret categories ***cumulatively***, i.e., adding successively the head start periods of each trade secret category, SDC contended that the duration of a limited exclusion order in this investigation should be ***18 years and 10 months***. (CBr. at 154.).

In their Pre-Hearing and Post-Hearing Reply Briefs, Respondents generally argued that SDC's argument with respect to head start time and remedy suffered from a failure of proof. To that end, Respondents argued that SDC did not provide and/or substantiate ***any*** alternative head

start periods: "Given that SDC has not substantiated its claims with sufficient evidence regarding the development time, whatever those claims may be, any exclusion order should be proportionately trivial" (RPBr at 167); "SDC fails to put forth sufficient evidence to justify its development times" (RRBr. at 70).

In their Initial Post-Hearing Brief, relying on the *Raised Garden Beds* ID, Respondents argued for the ***first*** time that "[b]ecause SDC put forth no evidence that the asserted trade secrets could not have been developed simultaneously, should the Commission find a violation with respect to multiple asserted trade secrets, the time periods of any exclusion orders should run concurrently." (RBr. at 144 (citing *Raised Garden Beds*, Inv. No. 337-TA-1334, ID at 142 (Sept. 15, 2023), *aff'd in relevant part*, Comm'n Op. at 52).) However, Respondents failed to specify what the concurrent "time periods" of the exclusion orders should be, let alone provide evidence to support their argument. (*Id.*). Respondents also provided more specific alternative head start periods for ***some***, but not all, of the trade secret categories, which were not disclosed or discussed in their Pre-Hearing Brief. (RBr. at 145-50.). These are fatal omissions for Respondents and consistent with omissions that marked many of Respondents' arguments, i.e., a failure to support and argue with proof from the outset. Thus, any arguments Respondents attempt to make on either of these issues is deemed abandoned or withdrawn under Ground Rule 7.2. (Order No. 2, G.R. 7.2.).

Also relying on *Raised Garden Beds*, Staff contended that because "there is insufficient evidence showing that the trade secret categories could not have been developed simultaneously[,] . . . the duration of the remedials order in this Investigation should be no more than the longest head start period of a misappropriated trade secret (i.e., TS I.1.a and I.2.a),

which would be [redacted]."[130] (SBr. at 187 (emphasis in original) (citing *Raised Garden Beds*, Inv. No. 337-TA-1334, ID at 140-42).). Alternatively, Staff argued that "the duration of the LEO should be no longer than the period spanning: (1) the earliest date on which SDC started development of any misappropriated trade secret, through (2) the most recent date that SDC completed development of any misappropriated trade secret." (SBr. at 187 n.56.).[131]

As SDC noted, the facts and circumstances in *Raised Garden Beds* are very different than those at issue here. (CBr. at 154-55.). In *Raised Garden Beds*, the misappropriation occurred at a single time, when an employee of complainant's supplier founded a new company (the respondent) and took the trade secret know-how with him to start the respondent company. *Raised Garden Beds*, Inv. No. 337-TA-1334, ID at 68-70. Here, Respondents' misappropriation occurred over a span of ***more than a decade***, during which time Respondents systematically and intentionally acquired different know-how, and poached SDC's methods and/or designs and/or processes, from different, ex-SDC employees and vendors at different times. (*See* Section VI.B-H, *supra*.). As the Overview, Section I.A, together with other sections of this ID discuss, the scope and breadth of the efforts Respondents made to steal and to use SDC's trade secrets suggest that the maximum possible remedy is warranted. Moreover, the facts compellingly support SDC's claims that: (i) Respondents "could ***not*** have independently developed the asserted trade secrets simultaneously (assuming BOE could independently develop them at all)";

[130] With respect to this approach, SDC observed that: "if the remedy duration were limited to the longest development time of any particular trade secret, a respondent would face no repercussions for misappropriating additional trade secrets and instead be incentivized to do so since there would be commercial benefits but no additional penalty at the ITC. A respondent that ***more extensively*** misappropriates trade secrets should not be treated more favorably than one that does not." (CBr. at 151 n.17 (emphasis in original).).

[131] Based on SDC's timeline of events with respect to development of the asserted trade secrets, Staff's alternative proposal appears to be the same as SDC's.

and (ii) "[i]t . . . would have been impossible for BOE to achieve simultaneous independent development because it only illicitly acquired those trade secrets over a nine-year time period (or, excluding TS III, a four-year time period)[.]" (CBr. at 155 (emphasis in original).).

Additionally, as evidenced by the Parties' briefing, the Commission has not definitively determined whether the length of the exclusion is determined by development times of each trade secret ***cumulatively*** or ***concurrently***. Rather, the Commission has applied different methods of calculating the duration time of an exclusionary order on a case-by-case basis.

For instance, in *Sausage Casings*, Inv. No. 337-TA-148/169, Comm'n Op. at 19, USITC Pub. 1624, (Dec. 1984), the Commission found that the remedial order should apply for a period of ***ten years*** and that "[t]o . . . conclude that [respondent] could have developed alternative technology for the misappropriated trade secrets in a relatively short time would be to give it the benefit of having had the misappropriated trade secrets for a period of years as a basis from which to work. We believe that this would be a wholly inequitable result." *Sausage Casings*, Inv. No. 337-TA-148/169, Comm'n Op. at 19. In arriving at its determination, the Commission found that the approach taken by the respondent and Staff "ignore[d] the interrelationships between and among the trade secrets and technology involved[.]" *Id.* In so finding, the Commission concluded that:

> It is true that some of those trade secrets consist of "certain aspects" of a machine, system, or standards. *See* ID at 360-361. However, to issue a remedial order based on the time necessary to develop each such aspect would ignore the fact that Viscofan had the benefit of the entire machine, system, or set of standards, including non-trade-secret elements, which it had misappropriated, from which to work in developing its "new technology." The trade secret aspects are not independent of the non-trade-secret aspects of the technology involved. Therefore, we have determined to consider a single independent development time for the six trade secrets found by the ALJ to have been misappropriated.

Sausage Casings, Inv. No. 337-TA-148/169, Comm'n Op. at 19; *see also Viscofan*, 787 F.2d at

550.

In *Rubber Resins*, where the respondents (like Respondents here) "were not successful in reverse-engineering most of Complainant's process and resorted to hiring Complainant's employees in order to copy Complainant's processes," the Commission set a single remedy period of 10 years because "the ***totality of [the 17 separate] asserted trade secrets would take at least 10 years to independently develop*** given the time it took Complainant to develop the process, even if not all of the asserted trade secrets are protectable." *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 83 (emphasis added).

In *Crawler Cranes*, the Commission determined the appropriate duration for the remedy to be 10 years by "[b]alancing the 25 years of baseline knowledge [complainant] had in its manufacturing processing with the shorter lead times provided to [respondents] through misappropriation of" certain asserted trade secrets. *Crawler Cranes*, Inv. No. 337-TA-887, Comm'n Op. at 71-70. However, in a lengthy footnote, Commissioner Schmidtlein disagreed and found that the duration of the LEO should be 25 years based on "unrebutted evidence suggesting that it would have taken [respondents] 25 years to independently arrive at [complainant's] welding techniques." *Id.* at 72 n.18 (also noting that "there is no evidence in the record indicating it would have taken [respondents] only 10 years to independently arrive at [complainant's] welding techniques"). Commissioner Schmidtlein distinguished the facts of *Crawler Cranes* from those of *Sausage Casings*, observing that the trade secrets at issue in *Crawler Cranes* "are not individual steps of a process and do not appear to be as interrelated as in *Sausage Casings*." *Id.* Thus, Commissioner Schmidtlein concluded that she was "not persuaded that [complainant] should be provided a 10-year remedy, instead of a 25-year remedy, simply because it suffered the misappropriation of other trade secrets with shorter development

times." *Id.* She explained that:

> In her view, doing so deprives [complainant] of the remedy it would otherwise deserve. Accordingly, based on the facts of this case she finds that the length of the remedy for the asserted trade secrets should be the trade secret with the longest development time, which the evidence shows is 25 years for [complainant's] welding techniques.

Id.

In a separate footnote, Commissioner Kieff joined the majority with respect to the 10-year duration, but wrote separately "to just make clear that he does not adopt either of the seeming rule of thumb approaches that appear to be suggested by either the majority or Commissioner Schmidtlein: what might be called a '*Sausage Casings* considered together' rule of thumb, which appears to be important to the majority's framework, or a 'longest development time' rule of thumb, which appears to be important to Commissioner Schmidtlein's framework." *Id.* at 73 n.19.

In sum, the Commission's position on how an exclusion duration should be calculated is evaluated and determined on a case-by-case basis. That the Commission members have been split on the approach more than suggests there is room to adjust the remedy period based on the facts and circumstances of the case, the scope of the theft, and the damage caused to the wronged complainant.

Here, as noted repeatedly throughout this decision, the evidence of record in this Investigation that demonstrates Respondents' misappropriation of SDC's asserted trade secrets is staggering and largely unrebutted with any countervailing evidence by Respondents. (*See* Section I.A, *supra* (Overview).). Given the facts and supporting evidence in this Investigation, the length of the LEO should be the combined time it took SDC to develop each of the asserted

trade secret categories ***cumulatively***, rather than concurrently.[132] Accordingly, this decision recommends an LEO duration time of ***15 years and 0.5 months***, or 180.5 months.

a) Category No. I: TS I.1.a (Lamination Line) and I.2.a (Vacuum Chamber)

The evidence supports a finding of SDC's identified head start period of [redacted], for the Lamination Line trade secrets. (*See* Tr. (Jokerst) at 887:9-888:9 (discussing CDX-0009C.0008, including SDC's development timeline from [redacted], and supporting documents and testimony).). Referencing her demonstrative copied below as Figure 101, Dr. Jokerst, SDC's expert, provided the following testimony:

> Q. And so now I'd like to go to slide 19 of your presentation and talk about your opinions concerning the head start that BOE received by using the SDC trade secrets. Okay?
>
> A. Yes. So we're returning to the timeline that I showed you earlier to give you some context for what we would be talking about.
>
> And so in [redacted] SDC asked two vendors for proposals for [redacted]. After two years of evaluation, we then saw SDC going to Pilot Unit 2 to developer, and then to mass production [redacted] and [redacted] fairly quickly.
>
> So from [redacted] and [redacted] through to [redacted], and, once again, the difference between [redacted] and [redacted] is that [redacted] had people involved in the lamination line doing parts of the process, whereas [redacted] was completely automated.
>
> And I'm cutting off the head start at [redacted] when [redacted] was ordered from Toptec, and that would be improvements, or a head start of [redacted].
>
> Q. Do you believe that's a conservative estimate of the head start BOE received?
>
> A. I think that's a conservative estimate, because delivery to SDC and the [redacted] proposal itself occurred later, but all of the information that was necessary to create the lami line was available when [redacted] was ordered. And so I think that is, although

[132] More recently, in Inv. No. 337-TA-1352, Chief Judge Cheney issued an ID in which he recommended a remedy duration of seven years based on what appears to be a similar approach. *Thyroid Hormone Receptor*, Inv. No. 337-TA-1352, ID at 220-27. The Commission agreed with the recommendation. *Thyroid Hormone Receptor*, Inv. No. 337-TA-1352, Comm'n Op. at 74 (May 29, 2025).

> conservative, a reasonable end date for the [redacted] information.
>
> Q. Now during that [redacted] period that you described for SDC's development to get to the [redacted] specifications, was that development work continuous?
>
> A. Yes. The documents that I saw showed a great deal of specification change, testing, these irrationalities, things that weren't working that they needed to fix, and so I saw in the documentation provided by SDC a great deal of change of these lami lines as a function of time.
>
> That's also confirmed by Mr. Kim last Friday in his testimony where he said he was involved in the continuous development of these lines. And, frankly, to stay competitive, those lines have to continue to be improving, which is exactly what he said they are doing to this very day.

(Tr. (Jokerst) at 903:2-904:18; *see also* CBr. at 31.).

Figure 101: Jokerst Demonstrative That Supports Respondents' [redacted] Head Start



(CDX-0009C.0019.).

For the first time in their Initial Post-Hearing Brief, Respondents challenged two periods of development for the described SDC trade secrets: (i) the development time of Pilot Unit No. 1 (January 2012 to January 2014); and (ii) the time period between the B2 and B3 equipment.

(*Compare* RBr. at 28-31 *with* RPBr. at 166-68.). According to Respondents, the appropriate head start Respondents would have gained would have been [redacted], "based on the period of time between the start of the design of Pilot Unit No. 2 to deployment of the Pilot Unit No. 2 on the [redacted] line ([redacted]) and the amount of time to modify a piece of equipment for mass production on the [redacted] line ([redacted])." (*Id.* at 30-31 (citing Tr. (D'Andrade) at 1175:19-1118:22; CX-0509C.0002 (RX-1941C)).).

As an initial matter, because Respondents' proposed head start was not raised or discussed in their Pre-Hearing Brief, Respondents have waived or abandoned any argument on this issue under Ground Rule 7.2. (Order No. 2, G.R. 7.2; *see also* Tr. at 1176:9-1178:9 ("JUDGE MCNAMARA: . . . That timeline, that contested timeline, is not in the pre-hearing brief. So that's out.").). Alternatively, even if Respondents' arguments are considered on the merits, Respondents' arguments are not sufficiently supported by the evidence.

Specifically, Respondents contended that "Dr. Jokerst's analysis of the period between [redacted] and Pilot Unit No. 2 falls short ([redacted]) because she admits that she never did a comparison of [redacted] and Pilot Unit No. 2, nor did she consider any evidence about what similarities or differences exist between [redacted] and Pilot Unit No. 2 to explain what work on [redacted] was incorporated into Pilot Unit No. 2 to justify including the work related to [redacted] in the head start calculation." (RBr. at 28 (citing Tr. (Jokerst) at 935:4-8, 935:17-23).).

Although Dr. Jokerst acknowledged that she did not indicate "on a component-by-component basis" the specific or explicit information from [redacted] that was included in the designs for Pilot Unit No. 2, she testified that "Pilot Unit 2, the request for proposal from Pilot Unit 2 contained a ***great deal of information that was gleaned from all of the experience***

associated with [redacted]." (Tr. (Jokerst) at 935:4-8, 935:20-23 (emphasis added).). One of SDC's engineers, Mr. S. Kim, also testified that development of Pilot Unit No. 2 was ***based on*** the study of the equipment of [redacted]. (Tr. (S. Kim) at 682:13-683:3 ("Q. So was there a [redacted], since we're looking at Pilot Unit 2? A. Yes, there was [redacted] before we made Pilot Unit 2. Q. So when did the development effort with respect to the [redacted] begin? A. To my understanding, [redacted] was made in -- the equipment was made in [redacted], and ***for us to develop Pilot Unit 2, the study of that equipment, which is*** [redacted], began in [redacted].") (emphasis added).).

While Dr. Jokerst's and Mr. Kim's testimonial evidence could be viewed as somewhat thin, given the breadth of evidence that demonstrates Respondents' staggering trade secret misappropriations, Respondents did not present sufficient, if any, compelling evidence why the development time of the evolution from [redacted] to Pilot Unit No. 2 should not be included in the development timeframe.

Respondents also argued that the time period between [redacted] should not be considered because "Toptec's design and development of Pilot Unit No. 2 did not benefit from YMK's work with SDC on [redacted]," and because Toptec submitted the same design proposal for Pilot Unit No. 2 in [redacted] that it submitted for [redacted] in [redacted]. (RBr. at 28-29.). However, unrebutted testimonial evidence by Mr. Kim establishes that SDC, and not Toptec, developed the core concepts and designs for SDC's 3D lamination equipment, as implemented in Pilot Unit No. 2, based on its analysis and evaluation of [redacted] in [redacted]. (Tr. (S. Kim) at 657:10-658:11.). Mr. Kim also testified that Toptec's [redacted] and [redacted] design proposals were not fit for SDC's needs, and lacked important functionality related to alignment, clamp-affixing, and vision. (*Id.* at 682:13-683:7.).

With respect to the period between [redacted] and [redacted], i.e., [redacted], Respondents asserted that the time frame should not be considered because CX-0509C.0002 indicates that [redacted] development ended in [redacted] and that [redacted] development began in [redacted]. (RBr. at 30.). During the Hearing, Mr. Kim explained that the dates shown on CX-0509C.0002 are the time periods for when SDC would "get the equipment ready for mass production," and do not indicate that work was complete. (Tr. (S. Kim) at 671:1-7.). Mr. Kim testified that during [redacted], SDC was converting its [redacted] lamination equipment from manual to an automated operation; SDC also was optimizing the associated automation process. He also confirmed that those improvements were carried into SDC's [redacted] equipment design. (*Id.* at 671:12-672:18; *see also* Tr. (Jokerst) at 904:4-18.).

Additionally, Respondents argued for the first time in their Initial Post-Hearing Brief that "SDC provided no evidence that it was solely responsible for the design of TS I.1.a/I.2.a" and that "Toptec performed the bulk of the design of each version of the 3D lamination line." (RBr. at 145 (citing CX-1388C; CX-0455C).). Again, Respondents have withdrawn or abandoned any argument on this issue under Ground Rule 7.2. (Order No. 2, G.R. 7.2.). Moreover, the evidence Respondents cited (CX-1388C and CX-0455C, which are the same document) is the 2023 Suwon High Court Decision concerning the criminal Suwon High Court Case 2021NO69 in South Korea against Toptec. Based on the South Korean ruling, it is not clear how the decision supports Respondents' argument or the broader notion that some, if any, contribution Toptec might have made undermines SDC's primary role in designing its own trade secrets. The Suwon High Court held that Toptec had no right to any of SDC's trade secrets without SDC's express permission because the NDA that SDC and Toptec executed bound them both to their Agreement and to protect the processes and secrets identified. (*See, e.g.*, CX-1388C.0079,

.0137.).

Additionally, Respondents' reliance on Mr. J. Kim's testimony for the assertion that "[a]ny contribution SDC had to the design of Pilot Unit No. 2 of the proposed lamination line only consisted of rudimentary drawings that could not be used to manufacture anything," which was not raised in their Pre-Hearing Brief, is unpersuasive and not supported. (RBr. at 145 (citing CX-2261C (J. Kim Dep. Tr.) at 65:12-66:1; 71:17-72:4).).

> THE WITNESS: . . . Samsung provided the first drawings and, utilizing those drawings, Toptec made the final drawings for Pilot 2. And in the ***first drawings provided by Samsung, the basic concept to make up the 3D -- 3D lamination equipment was all there***, and based on that, Toptec made the drawings for the finalized completed equipment.
>
> * * *
>
> Q. . . . Is it fair to say that the drawings Samsung provided to describe the basic concept were insufficient to manufacture the machine that is depicted in the picture under Pilot 2 of RX 352?
>
> * * *
>
> THE WITNESS: Based on the drawings that Samsung Provided alone, they could not manufacture this equipment; ***however, without Samsung's drawings, this equipment may not have been manufactured, so*** . . .

(CX-2261C (J. Kim Dep. Tr.) at 65:6-66:1 (emphases added).).

> Q. As a result of the testing, were modifications made to the Pilot 2 equipment?
>
> A. There were modifications made when we moved from Pilot 2 to the developer.
>
> Q. What modifications were made?
>
> * * *
>
> THE WITNESS: . . . [T]he biggest modification was there was [redacted] Pilot 2, but as it was sent to the developer, [redacted].

(*Id.* at 71:17-72:4.).

In the very next question, when Mr. Kim was asked "[w]ho decided to [redacted]

chamber," he responded that "[i]t was ***Samsung's*** decision." (*Id.* at 71:6-7 (emphasis added).). Because Respondents did not raise or make this argument or discuss it in their Pre-Hearing Brief, Respondents have waived or abandoned any argument on this issue under Ground Rule 7.2. (Order No. 2, G.R. 7.2). Ultimately, Mr. Kim's testimony does not persuasively support Respondents' contention that SDC was not mainly responsible for the design of the Lamination Line trade secrets.

Accordingly, the evidence demonstrates, and it is a finding, that the head start period for the Lamination Line trade secrets is [redacted].

b) Category No. II: TS II.1.a, II.1.b, II.1.c, and II.1.y (Glass Separation and Movement)

The evidence supports a finding that SDC's identified head start period of [redacted], for Respondents' misappropriation of the Glass Separation and Movement or GSM trade secrets is appropriate. (Tr. (Katona) at 369:5-13 (discussing CDX-0002C.0051, including describing SDC's development period from [redacted], Respondents' corresponding head start, and supporting documents); *see also* CBr. at 43-44.).

SDC contended that it began developing the trade secrets as early as [redacted]. (CPBr. at 45 (citing CX-0747C ([redacted])); *see also* Tr. (Katona) at 369:5-13.). SDC asserted that development ended on [redacted]. (CBr. at 45 (citing CX-0778C ([redacted]); *see also* Tr. (Katona) at 369:5-13.).

In their Pre-Hearing Brief, Respondents argued that "[a]t most, it would take a few days to a few months to develop the alleged II.1 trade secrets." (RPBr. at 51 (citing RX-1765 (Glew

Rebuttal Rpt.) at ¶ 92).). In their Initial Post-Hearing Brief, Respondents broke out the different sub-categories of trade secrets. Respondents contended that for trade secret II.1.a, SDC "would not have taken [redacted]" to develop what Dr. Glew described as the process of "[redacted]" (RBr. at 145 (citing Tr. (Glew) at 1292:5-10) (other citations omitted).). According to Respondents, "the only document SDC cited in its II.1.a trade secret description showing a [redacted] is dated [redacted], less than two months into the alleged development period for II.1.a." (*Id.* at 146 (citing CX-0563.0011; Tr. (Glew) at 1288:19-20).). Respondents seem to suggest that the development time should be "less than two months." For SDC's trade secrets II.1.b and II.1c, Respondents contended that "there would have been 'little or no development work required, because the supplier already had generated CAD drawings and had [redacted].'" (*Id.* (quoting Tr. (Glew) at 1299:17-25).). With respect to trade secret II1.y, Respondents stated that "[b]eyond installing the already available [redacted], SDC has not established what it did to develop this alleged trade secret." (*Id.* at 146-47.).

The contentions Respondents presented in their Initial Post-Hearing Brief with respect to SDC's separate trade secret sub-categories were not raised in their Pre-Hearing Brief. Respondents also did not assert an alternative head start of "a few days to a few months," which Respondents claimed in their Pre-Hearing Brief, in their Initial Post-Hearing Brief. Thus, any arguments Respondents may try to make on these issues are deemed abandoned, withdrawn, and/or waived under Ground Rules 7.2 and 10.1. (Order No. 2, G.R. 7.2 and 10.1.).

Accordingly, the evidence supports a finding that the head start period for SDC's GSM trade secrets is [redacted].

c) Category No. III: TS III.1.h+s ( )

As discussed above in Section VI.D, the evidence does not support a finding that Respondents violated Section 337 based upon misappropriation of SDC's trade secret Category III. If the Commission disagrees and finds that Respondents have violated Section 337 with respect to Trade Secret III, then in the alternative, the evidence supports a finding of a head start period of approximately .

SDC argued that that development of this trade secret began no later than when it "."[133] (CBr. at 45; CPBr. at 50.). Based on this start date, Dr Katona opined that the head start period is . (Tr. (Katona) at 389:19-390:1 (discussing CDX-0002C.0073); *see also* RBr. at 147 (agreeing that "Staff's estimated timeline of of development . . . is closer to the correct length.").).

However, as Staff pointed out, this head start period is overly broad because it includes time SDC took to develop not included in this trade secret. Dr. Katona testified that his proposed development period included SDC's time spent developing the . (*Id.* at 443:15-19 ("Q. In your development period do you include SDC's time spent developing the ? A. That is included in the timeline, yes. I believe that's -- I believe that's included, because the timeline, I think, had the start in the .").). Unlike Dr. Jokerst's and Mr. S. Kim's testimonies with respect to the Lamination Line trade secrets, and the role that the study of had on the development of Pilot Unit No. 2, Dr. Katona did not provide testimony that the played a

[133] PECVD is an acronym for "plasma enhanced chemical vapor deposition." (*See, e.g.*, CBr. at xi.).

significant role, if any, in developing the

SDC also explicitly stated in its Pre-Hearing Brief that "SDC began its development of the configuration by." (CPBr. at 46 (emphasis in original).).

Additionally, documents SDC cited in its Pre-Hearing and Initial Post-Hearing Briefs (CPBr. at 46-47; CBr. at 45) clearly indicate that SDC began work on the in (*See, e.g.*, CX-0577C.0003; CX-0576C.0071.). Specifically, CX-0576C.0071, a Samsung document copied below, reflects that SDC's development of the began on , and, as of , was projected to be completed around the end of or .

Figure 102: Timeline



(CX-0576C.0071; *see also* Tr. (Katona) at 445:16-446:16.).

Accordingly, the evidence demonstrates, and it is a finding, that the head start period for the trade secret is approximately

d) Category No. IV.1: TS IV.1.d and IV.1.e ( )

The evidence supports a finding that SDC's identified head start period of for Respondents' misappropriation of these trade secrets is appropriate. (*See* Tr. (Katona) at 336:22-337:13 (discussing SDC's development period from to , why that period is conservative, and supporting evidence), 350:24-351:11 (discussing CDX-0002C.0029, including describing SDC's development period and Respondents' corresponding head start, and supporting documents and testimony); *see also* CBr. at 57.).

Dr. Katona confirmed that the development period did not include time SDC took "to build prior generations of factories and produce data for Mr. Kim and others to analyze[.]" (Tr. (Katona) at 351:7-11; *see also id.* at 337:5-13 ("Q. Now, does your estimated time of , going from to , does that include any of SDC's development time in building the prior factories and using so that data could be analyzed? A. It does not. I heard Mr. Kim's testimony that he used data -- that without that data, he wouldn't have known to look at , but I have not included that in any of the time frame here.").).

Respondents contended that SDC's development timeline is not consistent with the evidence. (RBr. at 147.). Respondents relied upon, *inter alia*, Mr. J. Kim's testimony during cross-examination that " research really only 'began in earnest' around ." (RBr. at 147 (citing Tr. (J. Kim) at 173:12-9 (reading his deposition testimony at 162:8-12), 174:5-10.). However, Mr. Kim more fully explained during his direct examination that research began "around " of .

> Q. Mr. Kim, when did you first notice that there was a problem that needed to be addressed through ?

A. I think that was around [redacted].

Q. Now did your project of looking at the defect rate data and the [redacted] begin in [redacted]?

A. No. The time frame that I just mentioned, [redacted], was when we began the testing in earnest, but ***in actuality the research for the project began about*** [redacted] ***before, around*** [redacted].

(Tr. (J. Kim) at 168:3-13 (emphasis added).).

Moreover, Respondents did not raise or discuss this contention in their Pre-Hearing Brief. Thus, Respondents have abandoned or withdrawn any possible argument on this issue under Ground Rule 7.2. (Order No. 2, G.R. 7.2.).

Accordingly, the evidence demonstrates and supports a finding that the head start period for the Deposition Order trade secrets is [redacted].

e) Category No. IV.2: TS IV.2.b and IV.2.c (Defect Detection)

The evidence supports a finding that SDC's identified head start period of [redacted], or [redacted], for Respondents' misappropriation of the Defect Detection trade secrets is appropriate. (*See* Tr. (Katona) at 409:2-11 (discussing CDX-0002C.0106, including SDC's development period from [redacted], Respondents' corresponding head start, and supporting documents and testimony);[134] *see also* CBr. at 67-68.). Dr. Katona calculated the head start period based on "the first NDA with [redacted] from Mr. Ryu of [redacted], and the [redacted][.]" (Tr. (Katona) at 409:7-11;

[134] Staff noted that in his expert report and during his deposition, Dr. Katona opined that Respondents gained a head start of [redacted] by misappropriating these trade secrets. (SBr. at 185 n.55.). However, as Staff pointed out (*id.*), during cross-examination, Dr. Katona clarified that the [redacted] head start was a "mistake," and he explained that the [redacted] head start period was supported by other portions of his expert report that were cited within the section concerning Respondents' head start. (Tr. (Katona) at 429:21-431:2.).

CDX-0002C.0106; CX-0839C; CX-0669C.).

Respondents claimed that "SDC's proposed [redacted] development end date for these asserted trade secrets is not consistent with the record evidence." (RBr. at 148.). Respondents' expert, Dr. D'Andrade, testified that SDC created its [redacted] no later than [redacted]. (Tr. (D'Andrade) at 1207:4-17; CX-0671C.0002.). Respondents also argued that SDC's assertion that it began developing these trade secrets in [redacted] "appears unreliable" because the NDA upon which Dr. Katona relied to determine the starting date "makes no mention of [redacted] at all."[135] (RBr. at 149 (citing CX-0839C).).

Again, Respondents did not raise or discuss these contentions in their Pre-Hearing Brief. Thus, any argument Respondents attempt to make on these issues is deemed abandoned or withdrawn under Ground Rule 7.2. (Order No. 2, G.R. 7.2.).

Accordingly, the evidence demonstrates, and it is a finding, that the head start period for the Defect Detection trade secrets is [redacted].

f) Category No. IV.3: TS IV.3.a, IV.3.m, and IV.3.s.xiii (EVEN Equipment)

The evidence supports a finding that SDC's identified head start period of [redacted], or [redacted], for Respondents' misappropriation of trade secret ***IV.3.a*** is appropriate. (*See* Tr. (Lebby) at 570:6-571:11 (discussing CDX-0003.0071, including describing SDC's development period from [redacted], and supporting documents and testimony from SDC's witness Jaemork Park); *id.* at 586:3-16 (discussing CDX-0003.0091, including testifying that Respondents obtained a head start equivalent to SDC's development time); *see also* CBr. at 83-84.).

[135] [redacted] (*See, e.g.*, CX-2333C.0062.).

With respect to SDC's trade secrets ***IV.3.m and s.xiii***, although Dr. Lebby testified differently on direct examination, during his cross-examination, Dr. Lebby acknowledged that during his deposition, he opined that SDC's development for these two trade secrets did not begin on [redacted], but instead, began on [redacted], and concluded on [redacted].

Q. Can we please go to your deposition at 140, 1 14.

A. What was the page again?

Q. 140, 1 14.

Were you not asked, and did you not give the following answer?

"With reference to Trade Secret (m), is it not the case that the development of Trade Secret (m) began on [redacted], as you described in paragraph 171, and ***not*** [redacted], which you describe in paragraph 170, which is when SDC began developing the evaporation and encapsulation equipment itself?["]

"Answer. Given what I've written in paragraph 171, I think that's a fair observation. It certainly looks like the equipment was -- initiated development in [redacted]. ***Work on thermal issues, I noted in paragraph 171, started in*** [redacted]***. If that's the case, my calculation will change***."

Were you asked that question and did you give that answer in your deposition?

A. I gave that answer in my deposition.

Q. You can take that down.

SDC's development period for Trade Secret IV.3.m concluded on [redacted]; is that right?

A. Yes.

Q. So the development period, would you agree, for Trade Secret IV.3.m spanned the time period ***from*** [redacted]***, through*** [redacted]?

A. So certainly, given what I said in my deposition, that is a ***correct calculation***[.]

* * *

Q. Let's look at Trade Secret IV.3., s.xiii.

For this trade secret, is it not the case that development also began on [redacted], and ***not*** [redacted]?

A. So in my direct testimony earlier today, I indicated in [redacted] it showed an excerpt from that document, a cited document that indicated that the Samsung engineers already were aware of the issue and were starting to [redacted].

So I believe both the Trade Secret (m) plus s.xiii, at least from the standpoint of an engineering perspective, was already being contemplated in [redacted], but ***I agree it wasn't really implemented until*** [redacted] ***a lot later***.

Q. Let's pull up your expert report at pages 90 and 91, paragraphs 170 and 171. Paragraphs 170 and 171 appear under the section heading SDC's efforts to develop Trade Secret IV.3.m,s, right?

A. I've certainly written that in my opening report, I agree with you.

Q. And in paragraph 171, you state, "I understand that SDC began its development no later than [redacted], when SDC [redacted] evaporation production line."

Is that right?

A. ***I do write that in my expert report, and what you've read is absolutely correct on paragraph 171***. I just wanted to remind you that the demonstrative I showed this morning, CDX-0003.0072, indicated that work started in [redacted], that was all.

Q. Let me see if I can refresh your recollection. Let's go to your deposition transcript. I won't read it into the record, I'll just have you review it, at 142:2, through 143:1. And this is day one of your deposition.

A. I have just read that.

Q. And do you have an opinion as to how long it took SDC to develop Trade Secret IV.3.s.xiii?

A. I certainly believe it was the same time as (m), and that was initiated -- it is very clear that the Samsung engineers were aware of the problem in [redacted].

So, yes, there's a difference between what I wrote in my opening report and what I'm saying now, and I realize that.

(Tr. (Lebby) at 638:23-640:1, 640:6-642:1 (emphases added).).

In sum, the evidence demonstrates, and it is a finding, that the head start period for

SDC's trade secret IV.3.a of the EN/EV Line trade secrets is [redacted]. The evidence also supports a finding that the head start period for trade secrets IV.3.m and s.xiii is [redacted].

g) Category No. VII: TS VII.1.f and VII.1.r (Glass Removal Process)

The evidence supports a finding that SDC's identified head start period of [redacted] for the Carrier Glass Removal Process trade secrets is appropriate. (*See* Tr. (Lebby) at 542:19-544:13 (discussing CDX-0003.0032-0033, including describing SDC's [redacted] development period from [redacted], and supporting documents and testimony from SDC's witness Sang Hun Lee); *id.* at 561:4-11 (discussing CDX-0003.0047, including testimony that Respondents obtained a head start equivalent to SDC's development time); Tr. (S. Lee) at 505:21-25 ("Q. Okay. So when did SDC begin researching the [redacted]? A. That started in [redacted]. Q. And when did SDC complete that research? A. That was in [redacted]."); *see also* CBr. at 96.).

For the first in their Initial Post-Hearing Brief, Respondents contended that "SDC failed to provide a description or evidence with sufficient definiteness for the specific development timeline of SDC's TS VII.1.f and r" and that "[t]here is no evidence of any intermediate stages of development sufficient to show continuous development." (RBr. at 150 (citations omitted).) Again, Respondents did not raise or discuss these contentions in their Pre-Hearing Brief. Thus, any argument Respondents try to make on these issues is deemed abandoned or withdrawn under Ground Rule 7.2. (Order No. 2, G.R. 7.2.).

Accordingly, the evidence demonstrates, and it is a finding, that the head start period for the Carrier Glass Removal Process trade secrets is [redacted].

h) Conclusion

For the foregoing reasons, this decision recommends an LEO duration time of ***15 years and 0.5 months***, or 180.5 months.[136] *Viscofan*, 787 F.2d at 548 (noting that under section 337, "the Commission has broad discretion in selecting the form, scope and extent of the remedy, and judicial review of its choice of remedy necessarily is limited"); *see also id.* ("As the Supreme Court stated in the leading case of *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 66 S.Ct. 758, 90 L.Ed. 888 (1946), in words that are equally applicable to this case: 'The Commission has wide discretion in its choice of a remedy deemed adequate to cope with the unlawful practices in this area of trade and commerce. Here, as in the case of orders of other administrative agencies under comparable statutes, judicial review is limited. It extends no further than to ascertain whether the Commission made an allowable judgment in its choice of the remedy. . . . The Commission is the expert body to determine what remedy is necessary to eliminate the unfair or deceptive trade practices which have been disclosed. It has wide latitude for judgment and the courts will not interfere except where the remedy selected has no reasonable relation to the unlawful practices found to exist.'") (quoting *Jacob Siegel Co. v. Federal Trade Commission*, 327 U.S. 608, 611-13, 66 S.Ct. 758, 760, 90 L.Ed. 888 (1946)).

C. A Cease-and-Desist Order Is Warranted

Section 337 provides that in addition to, or in lieu of, the issuance of an exclusion order, the Commission may issue a Cease-and-Desist Order ("CDO") as a remedy for violation of Section 337. *See* 19 U.S.C. § 1337(f)(1). "Cease and desist orders are generally issued when, with respect to the imported infringing products, respondents maintain commercially significant

[136] The exclusion period runs "from the date of issuance of the exclusion order." *Rubber Resins*, Inv. No. 337-TA-849, Comm'n Op. at 83; *see also id.* at 83 n.11; *Lithium-Ion Batteries*, Inv. No. 337-TA-1159, Comm'n Op. at 44-45.

inventories in the United States ***or*** have significant ***domestic operations*** that could undercut the remedy provided by an exclusion order." *Certain Air Mattress Sys., Components Thereof, and Methods of Using the Same* ("*Air Mattress Systems*"), Inv. No. 337-TA-971, Comm'n Op. at 49 (June 20, 2017) (emphases added) (citing *Certain Table Saws Incorporating Active Injury Mitigation Tech. and Components Thereof* ("*Table Saws*"), Inv. No. 337-TA-965, Comm'n Op. at 4-6 (Feb. 1, 2017)) (other citations omitted). "A complainant seeking a CDO must demonstrate, based on the record, that this remedy is necessary to address the violation found in the investigation so as to not undercut the relief provided by the exclusion order." *Air Mattress Systems*, Inv. No. 337-TA-971, Comm'n Op. at 49 (citing *Certain Integrated Repeaters, Switches, Transceivers, and Prods. Containing Same*, Inv. No. 337-TA-435, USITC Pub. No. 3547 (Oct. 2002), Comm'n Op. at 27 (Aug. 16, 2002)).

SDC requested that the Commission issue CDOs in this Investigation because Respondents have significant ***domestic operations*** that could undercut an exclusion order's effectiveness. (CBr. at 159; CPBr. at 165-66.). SDC asserted that a CDO should be issued against ***all***, that is, both domestic and foreign, Respondents. (CBr. at 160-63.).

Respondents argued that "[i]n general, a cease-and-desist order is ***only*** appropriate when the respondent holds a commercially significant ***inventory*** of infringing products in the United States that could be sold after an exclusion order issues[.]" (RBr. at 152 (emphases added).).

Staff contended that a CDO should be issued only against ***domestic*** Respondent BOE Technology America Inc. ("BOE America"). (SBr. at 188; SRBr. at 37 n.23.).

Respondents did not address in their Pre-Hearing Brief whether BOE America's or the foreign Respondents' alleged "significant domestic operations" would undercut the relief provided by an LEO. (*See* RPBr. at 168.). Thus, Respondents have abandoned or withdrawn

argument on this issue under Ground Rule 7.2. (Order No. 2, G.R. 7.2.)

For the following reasons, this decision recommends that a CDO be issued against ***all*** Respondents, that is, both domestic and foreign Respondents, as SDC requested.

1. Respondents' Significant Domestic Operations Warrant a CDO

As an initial matter, Respondents' argument that issuance of a CDO is "only appropriate . . . when the respondent holds a commercially significant ***inventory*** of infringing products" (RBr. at 152) is a mischaracterization of the Commission's opinions. The Commission has held that in addition to significant domestic ***inventory***, a CDO can be issued based on significant domestic ***operations***, as is the case here. *See, e.g.*, *Air Mattress Systems*, Inv. No. 337-TA-971, Comm'n Op. at 49; *Table Saws*, Inv. No. 337-TA-965, Comm'n Op. at 4-6. The Commission has found that the presence of inventory is not a prerequisite for a CDO. *See Air Mattress Systems*, Inv. No. 337-TA-971, Comm'n Op. at 49.

As SDC pointed out, with respect to significant domestic ***operations***, Respondents "have employees in the U.S. who are engaged in sales and marketing activities as well as 'technical support' for customers 'prior to mass production.'" (CBr. at 159-60 (citing CX-1773C (Mu Dep. Tr. Vol. 1) at 89:9-13; CX-1774C (Mu Dep. Tr. Vol. 2) at 273:3-274:2; CX-1467C [redacted] In particular, SDC noted that Respondents' significant domestic operations also include the following categories of activities: (i) "[redacted] BOE representatives consistently attend the foremost display tradeshows in the U.S." ("Category 1"); (ii) "BOE imports [redacted] OLEDs to [redacted] for testing and qualification" ("Category 2"); (iii) "BOE imported [redacted] micro-OLED samples to U.S. customers" ("Category 3"); and (iv) BOE maintains a U.S. website to market and advertise its products" ("Category 4"). (*Id.* at 160;

see also CPBr. at 166.).

Respondents have engaged in these activities to undercut and to compete unfairly with SDC in the United States. For example, [redacted]. (CX-1832C.0078; *see also* CBr. at 119-20, 128-29.). Respondents have also used their tradeshow attendance in the United States to market their latest products to U.S. customers, including the RGB micro-OLED it presented at the most recent SID display week conference. (CX-2251C; CX-2258C; CX-1721C; CX-2259; CX-1774C (Mu Dep. Tr. Vol. 2) at 278:12-281:16; CX-1838C.0014.). As SDC noted, [redacted]. (CBr. at 130-31.). Such activities qualify as "significant domestic ***operations***." *See, e.g.*, *Air Mattress Systems*, Inv. No. 337-TA-971, Comm'n Op. at 49 (emphasis added).

Respondents offered rebuttal arguments that SDC failed to meet its burden in their Initial Post-Hearing Brief that were not raised in their Pre-Hearing Brief. (RBr. at 153-54.) Thus, any argument on this issue is deemed abandoned or withdrawn under Ground Rule 7.2. (Order No. 2, G.R. 7.2.)

Moreover, Respondents' rebuttal arguments with respect to Categories 1-4 that SDC identified are not persuasive. (RBr. at 153-54.). Without any compelling evidentiary support, Respondents argued that the "activities" SDC identified, i.e., Respondents' representatives' attendance at trade shows, Respondents' importation of micro-OLED samples to [redacted] and other U.S. customers, and Respondents' website marketing their products, do not "qualify as significant domestic operations in the U.S. that would undercut any potential exclusion order in this case." (*Id.* (citing *Marine Sonar Imaging Sys.*, Inv. No. 337-TA-926, Comm'n Op. at 57

(Nov. 18, 2015).). Respondents' arguments fail for the following reasons.

First, with respect to Category 1 above, Respondents contended that for one U.S. tradeshow during the pandemic, their representatives participated remotely. (RBr. at 153.). However, Respondents did not deny that they sent and do send [redacted] representatives to U.S. tradeshows. (*Id.*). Whether a trade show is attended remotely or in person, it seems obvious that the objective is the same: to learn information and when possible, to promote sales of one's own products. Second, with respect to Category 2 above, Respondents asserted, without any supporting evidence or legal citation, that sending such samples to [redacted] "would [not] rise to the level of 'significant domestic operations.'" (*Id.*). That argument ignores the arrangements that would have to be made in the United States to obtain and then to show samples. Third, with respect to Category 3, Respondents did not deny that they sent [redacted] to [redacted] and other U.S. customers. (*Id.*) It rings hollow for Respondents to argue that shipping samples into the United States do not require Respondents to provide operations and personnel to receive, unpack and prepare those samples for "shopping" and showing to prospective clients in the United Sates. Lastly, with respect to Category 4, i.e., Respondents' U.S. website, Respondents argued that SDC "neglect[ed] to mention that [Respondents do] not sell the accused products on that website." (*Id.*). However, as SDC pointed out, Respondents' website "clearly advertises those products next to a large 'Contact Us' button." (CRBr. at 66 (citing https://boe-us.com/products/vr-ar/#).).

In sum, Respondents' domestic operations, even if not quantified in dollars, are significant and warrant a CDO to prevent Respondents from continuing to engage in domestic activities that would serve to undercut exclusionary relief the Commission grants.

2. A CDO Should Be Issued Against All Respondents

"[T]he central purpose of remedial orders is to ensure ***complete*** relief to the domestic industry." *Certain Hardware Logic Emulation Sys. and Components Thereof*, Inv. No. 337-TA-383, Comm'n Op. on Remedy, Public Interest, and Bonding at 16 (Mar. 31, 1998) (emphasis added). The Commission issues CDOs to provide complainants with "complete relief" and prevent respondents from circumventing an exclusion order. *Certain Pressure Transmitters*, Inv. No. 337-TA-304, Comm'n Op. on Remedy, Public Interest, and Bonding at 8-9, USITC Pub. 2417 (Aug. 1991); *see also Air Mattress Systems*, Inv. No. 337-TA-971, Comm'n Op. at 49 (noting that the Commission may issue a CDO when respondents "have significant domestic operations that could undercut the remedy provided by an exclusion order").

As SDC pointed out, CDOs are not limited to ***domestic*** respondents and can issue against foreign respondents as well. (CBr. at 158.). Under certain circumstances, the Commission has issued CDOs against ***foreign*** respondents on several occasions. *See e.g.*, *Certain Wet Dry Surface Cleaning Devices*, Inv. No. 337-TA-1304, Cease and Desist Order Against TEK (Hong Kong) Science & Technology Ltd. at 2 (Dec. 18, 2023); *Certain Height-Adjustable Desk Platforms and Components Thereof*, Inv. No. 337-TA-1125, Order (Sept. 13, 2019) (collecting examples); *Certain Abrasive Prods. Made Using a Process for Powder Preforms, and Prods. Containing Same*, Inv. No. 337-TA-449, Comm'n Op. at 7 (July 26, 2002) (issuing a CDO against a Taiwanese respondent because it had a domestic agent, which sold the accused products on consignment for the respondent).

Additionally, the Commission's standard CDO provisions extend applicability of the CDO to those acting "for, with, or otherwise on behalf of" the respondent:

> The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business

> entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by section III, *infra*, for, with, or otherwise on behalf of, Respondent.

Certain Wet Dry Surface Cleaning Devices, Inv. No. 337-TA-1304, Cease and Desist Order Against TEK (Hong Kong) Science & Technology Ltd. at 2 (Dec. 18, 2023); *Certain Movable Barrier Operator Sys. and Components Thereof*, Inv. No. 337-TA-1118 (Remand), Cease and Desist Order Against Nortek, Inc. at 2 (Nov. 21, 2024), Cease and Desist Order Against Nortek Security & Control, LLC at 2 (Nov. 21, 2024).

In order to provide SDC with complete relief here, CDOs against all Respondents would prevent Respondents from circumventing an LEO. As discussed below, Respondents' lack of corporate separateness, their practice of creating shell and/or associated companies to evade liability, and their sanctioned discovery violations in this Investigation demonstrate that CDOs against all Respondents, domestic and foreign, are warranted.

First, as SDC noted, "there is no practical distinction between the various BOE Respondents because they function as a single entity." (CBr. at 161.). For example, one of Respondents' employees, [redacted] (*Id.* (emphasis in original).). [redacted] (CX-1773C (Mu Dep. Tr. Vol. 1) at 35:21-36:5, 49:18-49:20; CX-1774C (Mu Dep. Tr. Vol. 2) at 274:22-275:11.).

Second, according to SDC, [redacted] (CBr. at 162.). SDC argued that:

> [redacted]

[redacted] Sung Hyuk Won [redacted] . CX-1783C (Won Dep.) 140:1-19. Sung Gook Ahn [redacted] CX-1752C (Ahn Dep.) 40:1-17. Jae Ho Lee [redacted] . CX-1767C (Lee Dep.) 31:4-17. Chul-Young Kim [redacted] . CX-1763C (Kim Dep.) 58:1-20. Nam Yoo Kang [redacted] . CX-1761C (Kang Dep.) 115:19-25. [redacted]

(CBr. at 162.).

Lastly, SDC contended that Respondents' "conduct during discovery, including its spoliation of evidence and failure to provide micro-OLED discovery in violation of the ALJ's orders, underscores the likelihood that BOE would circumvent the relief provided by an LEO." (*Id.* at 162-63.).

Given the scope of Respondents' egregious trade secret misappropriations, and the scope of the corporate espionage in which Respondents engaged for years, as discussed above in Sections VI.B-H, it is a recommendation of this decision that a CDO be issued against ***all*** Respondents to prevent Respondents from circumventing an LEO that issues. Relief limiting an LEO to one Respondent would be inadequate given the scope of the trade secret theft and the loss in SDC's business and market share that resulted from the massive thefts. (*See* Sections VI.B-H, *supra*.).

D. A Bond During the Presidential Review Period Is Warranted

During the presidential review period ("PRP"), imported articles otherwise subject to a remedial order are entitled to conditional entry under bond. *See Certain Beverage Dispensing*

Sys. and Components Thereof, Comm'n Op., Inv. No. 337-TA-1130 at 26 (Mar. 26, 2020) (citing 19 U.S.C. § 1337(j)(3)). The amount of bond is determined by the Commission and must be enough to protect the complainant from injury. *See id.* "The Commission typically sets the bond based on the price differential between the imported infringing product and the domestic industry article or based on a reasonable royalty. However, where the available pricing or royalty information is inadequate, the bond may be set at one hundred (100) percent of the entered value of the infringing product." *Certain Loom Kits for Creating Linked Articles*, Inv. No. 337-TA-923, Comm'n Op., 2015 WL 5000874, *11 (June 26, 2015) (citations omitted).

Complainant bears the burden of establishing the need for a bond, including the amount of bond. *See, e.g.*, *Certain Rubber Antidegradants, Components Thereof and Prods. Containing Same*, USITC Pub. No. 3975, Inv. No. 337-TA-533, Comm'n Op. at 40 (April 2008); *Certain Coenzyme Q10 Prods. and Methods of Making Same*, Inv. No. 337-TA-790, Initial and Recommended Determination (Sept. 27, 2012) (recommending Commission not impose a bond because complainant failed in its burden to demonstrate the appropriate bond amount); *Certain Mobile Telephones and Wireless Commc'n Devices Featuring Digital Cameras, and Components Thereof*, Inv. No. 337-TA-703, Recommended Determination (Jan. 24, 2011) (recommending no bond because complainant did not meet its burden in providing evidence on the necessity of a bond); *Certain Liquid Crystal Display Devices and Prods. Containing the Same*, Inv. No. 337-TA-631, Comm'n Op. at 27-28 (July 14, 2009) (setting zero bond because complainant "simply claimed that it was impossible to conduct a price differential analysis" and "should not benefit from a lack of any effort to identify" relevant pricing information, particularly that which is in its possession).

The Commission frequently sets the bond based on the difference in sales prices between

the patented domestic product and the infringing product. *See, e.g.*, *Certain Microsphere Adhesives, the Process for Making Same, and Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24 (Oct. 19, 2000). In other instances, when a direct comparison between a patentee's product and the accused product is not possible, the Commission has set the bond at a reasonable royalty rate. *See, e.g., Certain Integrated Circuit Telecomm. Chips and Prods. Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Comm'n Op. at 41-43 (Aug. 3, 1993). Commission precedent allows for a 100 percent bond when it is not practical or possible to set the bond based on price differential. *Certain Voltage Regulators, Components Thereof and Prods. Containing Same* ("*Voltage Regulators*"), Inv. No. 337-TA-564, Comm'n Op. at 79 (Oct. 19, 2007). The purpose of the bond is to protect the complainant from any injury. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3).

Here, SDC contended that a bond during the PRP is warranted to protect it from injury because "[p]roducts made using SDC's trade secrets unfairly compete with SDC's products[.]" (CBr. at 163; *see also* CPBr. at 167.). SDC requested that the bond be "set at 100% because pricing information for future imported products is not readily available." (CBr. at 163; *see also* CPBr. at 167.).

Respondents asserted that based on the following arguments, no bond is appropriate: (i) SDC failed to "present any evidence or explanation that calculating a meaningful price differential between the accused products and SDC's alleged DI products is impractical" (RBr. at 154) (citations omitted); (ii) Mr. Klenk did not "request[] or receiv[e] actual SDC pricing data to do such a comparison" (*id.* (citations omitted)); and (iii) SDC had "no licenses to the trade secrets to use to evaluate bond, even though it claimed to have suffered lost licensing revenues as

part of its injury" (*id.* (citations omitted)).). Respondents also argued that "SDC's assertion that a price differential between BOE's and SDC's products is infeasible is inconsistent with SDC's injury arguments," where "SDC asserts that BOE's prices intentionally undercut SDC."[137] (RRBr. at 74 (citing CBr. at 141-42).). Thus, according to Respondents, SDC failed to meet its burden that a bond rate of 100% is appropriate. (RBr. at 154; RRBr. at 74.).

Like Respondents, Staff also took the position that SDC did not satisfy its burden with respect to the appropriate bond rate. (SBr. at 190.).

However, as both SDC and Staff pointed out, the evidence clearly reflects that there is competition between Respondents' accused products and SDC's domestic industry products. Equally as clearly (*see* Section VII.B, *supra*), Respondents are willing and able to undercut SDC on price for its OLED products and have done so at SDC's expense and loss. (CBr. at Section V.C.i, 163; SBr. at 189-90.). Consequently, in principle at least, Respondents' argument that SDC did not provide a comparison when SDC did not always have information to calculate a bond rate does not wash. Moreover, to not impose a 100% bond rate would allow Respondents to wrongly benefit from such an argument if the Respondents did not contest in their Pre-Hearing or Post-Hearing Briefs that SDC would suffer injury during the PRP. (RPBr. at 168-70; RBr. at 154-55; RRBr. at 74.). It bears repeating that the purpose of the bond is to protect the complainant from any injury. 19 U.S.C. § 1337(j)(3); 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3).

Respondents and Staff noted that Mr. Klenk did not offer a proposed bond rate or

[137] In the pages Respondents cited (CBr. 141-42), SDC addressed Respondents' ***past*** and continuous willingness to undercut SDC's prices, which resulted in injury to SDC. (*See* Section VII.B, *supra*, regarding injury.). Thus, SDC's argument—that pricing information for ***future*** imported products is not readily available—is not inconsistent with SDC's injury arguments, as Respondents contended.

conducted a price comparison to calculate a proposed bond rate. (RBr. at 154; SBr. at 190.). However, during the Hearing, Mr. Klenk provided the following explanation why he was ***unable*** to make that calculation.

> Q. And have you been able to quantify that bond?
>
> A. I have not. My understanding is that one mechanism for quantifying a possible bond amount is by looking at the amount of underselling or by how much a competitor or the Respondent is undercutting the Complainant's price.
>
> Here what we have are sufficient indications to know that such undercutting is happening, but, as BOE itself has offered testimony on, there's ***no systematic way to know BOE's prices***. Many of BOE's prices are contained in emails or verbally negotiated. And so there's ***no systematic way to know BOE's actual prices in order to compare them to SDC's***.

(Tr. (Klenk) at 1053:4-15 (emphases added); *see also id.* at 1094:11-14 ("Q. And you do not attempt to conduct a price comparison to calculate a proposed bond rate? A. No, I don't believe ***sufficient pricing data is available*** for that comparison.") (emphasis added).).

Additionally, SDC contended that the reason "SDC could not calculate a bond amount based on price differentials is because BOE refused to produce pricing data." (CRBr. at 67.).

[redacted] (CX-1774C (Mu Dep. Tr. Vol. 2) at 267:5-10.). [redacted] (CRBr. at 67.). [redacted] (Tr. (Klenk) at 1053:10-15; *see also id.* at 1094:11-14.).

Similar to the circumstances in *Voltage Regulators*, here, "wide price differentials

between [SDC's and Respondents'] products, lack of clear evidence relating to a reasonable royalty, and the need to insure that [SDC] is protected from injury weigh in favor of setting the importation bond at 100 percent entered value." *Voltage Regulators*, Inv. No. 337-TA-564, Comm'n Op. at 79 (agreeing with Staff that "the evidence does not allow precise calculations as to price differentials") (citation omitted).

Accordingly, it is a recommendation of this ID that a bond rate of 100% of the entered value is appropriate. Again, Respondents must not be allowed to benefit from the damage they caused to SDC.

X. WAIVER OR WITHDRAWAL OF RESPONDENTS' DEFENSES

Respondents did not raise in their Pre-Hearing Brief or offer any evidence during the Hearing to support its following Affirmative Defenses: (1) First Affirmative Defense for Failure to State a Claim; (2) Tenth Affirmative Defense of Unclean Hands; (3) Eleventh Affirmative Defense of Waiver, Laches, Equitable Estoppel, Unclean Hands, and Acquiescence; (4) Twelfth Affirmative Defense of Res Judicata and Collateral Estoppel; (5) Thirteenth Affirmative Defense of International Comity; (6) Fourteenth Affirmative Defense of Lack of Standing; (7) Fifteenth Affirmative Defense of Lack of Importation; (8) Sixteenth Affirmative Defense of License; (9) Seventeenth Affirmative Defense of Lawful Competition; (10) Eighteenth Affirmative Defense of Extraterritoriality; (11) Nineteenth Affirmative Defense of Scope of Investigation is Impermissibly Broad; (12) Twentieth Affirmative Defense of No Liability For Former SDC Employees; and (13) Twenty-First Affirmative Defense of Lack of Subject Matter Jurisdiction; (14). (Resp. at 18, 26-30.).

Consequently, it is a finding of this decision that Respondents have withdrawn, waived and/or abandoned the foregoing Affirmative Defenses 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).

XI. CONCLUSIONS OF FACT OR LAW: THIS INITIAL DETERMINATION FINDS A SECTION 337 VIOLATION BASED UPON RESPONDENTS' IMPORTATION OF ARTICLES MANUFACTURED USING MISAPPROPRIATED TRADE SECRETS

1. The Commission has statutory authority over this Investigation.

2. Importation has been satisfied.

3. SDC's Trade Secret I.1.a is protectible.

4. Respondents misappropriated and used SDC's Trade Secret I.1.a.

5. Respondents' misappropriation and use of SDC's Trade Secret I.1.a has caused and will cause a substantial injury to SDC's domestic industry.

6. SDC's Trade Secret I.2.a is protectible.

7. Respondents misappropriated and used SDC's Trade Secret I.2.a.

8. Respondents' misappropriation and use of SDC's Trade Secret I.2.a has caused and will cause a substantial injury to SDC's domestic industry.

9. SDC's Trade Secret II.1.a is protectible.

10. Respondents misappropriated and used SDC's Trade Secret II.1.a.

11. Respondents' misappropriation and use of SDC's Trade Secret II.1.a has caused and will cause a substantial injury to SDC's domestic industry.

12. SDC's Trade Secret II.1.b is protectible.

13. Respondents misappropriated and used SDC's Trade Secret II.1.b.

14. Respondents' misappropriation and use of SDC's Trade Secret II.1.b has caused and will cause a substantial injury to SDC's domestic industry.

15. SDC's Trade Secret III.1.h+s is not protectible.

16. SDC failed to prove that Respondents misappropriated and used SDC's Trade Secret III.1.h+s.

17. SDC failed to prove that Respondents' misappropriation and use of SDC's Trade Secret III.1.h+s has caused or will cause a substantial injury to SDC's domestic industry.

18. SDC's Trade Secret IV.1.d is protectible.

19. Respondents misappropriated and used SDC's Trade Secret IV.1.d.

20. Respondents' misappropriation and use of SDC's Trade Secret IV.1.d has caused and will cause a substantial injury to SDC's domestic industry.

21. SDC's Trade Secret IV.1.e is protectible.

22. Respondents misappropriated and used SDC's Trade Secret IV.1.e.

23. Respondents' misappropriation and use of SDC's Trade Secret IV.1.e has caused and will cause a substantial injury to SDC's domestic industry.

24. SDC's Trade Secret IV.2.b is protectible.

25. Respondents misappropriated and used SDC's Trade Secret IV.2.b.

26. Respondents' misappropriation and use of SDC's Trade Secret IV.2.b has caused and will cause a substantial injury to SDC's domestic industry.

27. SDC's Trade Secret IV.2.c is protectible.

28. Respondents misappropriated and used SDC's Trade Secret IV.2.c.

29. Respondents' misappropriation and use of SDC's Trade Secret IV.2.c has caused and will cause a substantial injury to SDC's domestic industry.

30. SDC's Trade Secret IV.3.a is protectible.

31. Respondents misappropriated and used SDC's Trade Secret IV.3.a.

32. Respondents' misappropriation and use of SDC's Trade Secret IV.3.a has caused and will cause a substantial injury to SDC's domestic industry.

33. SDC's Trade Secret IV.3.m is protectible.

34. Respondents misappropriated and used SDC's Trade Secret IV.3.m.

35. Respondents' misappropriation and use of SDC's Trade Secret IV.3.m has caused and will cause a substantial injury to SDC's domestic industry.

36. SDC's Trade Secret IV.3.s.xiii is protectible.

37. Respondents misappropriated and used SDC's Trade Secret IV.3.s.xiii.

38. Respondents' misappropriation and use of SDC's Trade Secret IV.3.s.xiii has caused and will cause a substantial injury to SDC's domestic industry.

39. SDC's Trade Secret VII.1.f is protectible.

40. Respondents misappropriated and used SDC's Trade Secret VII.1.f.

41. Respondents' misappropriation and use of SDC's Trade Secret VII.1.f has caused and will cause a substantial injury to SDC's domestic industry.

42. SDC's Trade Secret VII.1.r is protectible.

43. Respondents misappropriated and used SDC's Trade Secret VII.1.r.

44. Respondents' misappropriation and use of SDC's Trade Secret VII.1.r has caused and will cause a substantial injury to SDC's domestic industry.

45. If the Commission finds that there has been a violation of Section 337 of the Tariff Act of 1930, as amended, then a Limited Exclusion Order and a Cease-and-Desist Order against Respondents for a period of 180.5 months and a 100% bond during the Presidential Review Period are recommended.

XII. 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.

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) business days of the date of this document, the Parties shall jointly submit to the Office of the Administrative Law Judges through McNamara337@usitc.gov a statement whether they seek to have any confidential portion of this document. 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 colored highlighting clearly indicating any portion asserted to contain confidential business information. 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