

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Clark S. Cheney
Administrative Law Judge**

In the Matter of

**CERTAIN TONER SUPPLY CONTAINERS
AND COMPONENTS THEREOF (I)**

Investigation No. 337-TA-1259

**COMPLAINANTS' MOTION FOR AN ORDER TO SHOW CAUSE AND
ENTRY OF DEFAULT, AND DECLARATION UNDER
19 C.F.R. § 210.16(c)(2) OF INTENT TO SEEK GENERAL EXCLUSION ORDER**

Ground Rule 5.1 Certification

Pursuant to Ground Rule 5.1, on July 8, 2021, counsel for Complainants Canon Inc., Canon U.S.A., Inc., and Canon Virginia, Inc. (collectively, "Canon") provided the Commission Investigative Staff ("the Staff") with a draft of this motion and accompanying papers. On July 14, 2021, Canon provided the Staff with a revised draft, which the parties discussed that day. The Staff indicated that it does not oppose the motion and will be filing a response. As of the filing of this motion, no respondent is participating in this investigation.¹

* * *

Pursuant to the Commission's Rules of Practice and Procedure, Rule 210.16(b)(1)(i) (19 C.F.R. § 210.16(b)(1)(i)), Canon hereby moves for an order to show cause why the 15 below-

¹ Respondents Ninestar Corporation, Ninestar Image Tech Limited, Ninestar Technology Company, Ltd., Static Control Components, Inc., Easy Group, LLC, LD Products, Inc., and The Supplies Guys, Inc. already have been found in default. *See* Commission Determination (July 6, 2021). The ALJ issued an initial determination terminating the investigation as to Respondents General Plastic Industrial Co. Ltd., Katun Corporation, and Sun Data Supply, Inc. Order No. 10 (July 1, 2021). The remaining respondents, except for one discussed *infra* note 2, are the subject of this motion.

listed respondents (collectively, “Defaulting Respondents”) should not be found in default for failing to respond to the complaint and notice of investigation. Pursuant to Rule 210.16(b)(1)(ii), Canon also moves for an initial determination finding in default those Defaulting Respondents that fail to show the requisite cause.

The 15 Defaulting Respondents² subject to this motion are:

1. Sichuan XingDian Technology Co., Ltd. (“Sichuan XingDian”);
2. Sichuan Wiztoner Technology Co., Ltd. (“Sichuan Wiztoner”);
3. Copier Repair Specialists, Inc. (“Copier Repair Specialists”);
4. Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (“Digital Buyer”);
5. Ink Technologies Printer Supplies, LLC (“Ink Tech”);
6. Kuhlmann Enterprises, Inc. d/b/a Precision Roller (“Precision Roller”);
7. NAR Cartridges;
8. Zhuhai Henyun Image Co., Ltd. (“Zhuhai Henyun”);
9. Zinyaw LLC d/b/a TonerPirate.com and Supply District (“Zinyaw”);
10. Do It Wiser, Inc. d/b/a Image Toner (“Do It Wiser”);
11. MITOCOLOR INC. (“MITOCOLOR”);
12. Anhuivatengshangmaoyouxiangongsi (“Yatengshang”);
13. ChengDuXiangChangNanShiYouSheBeiYouXianGongSi (“ChengDuXiang”);

² This motion covers all of the remaining respondents in this investigation except for Shenzhenshi Keluodeng Kejiyouxiangongsi (“KenoGen”). On July 12, 2021, the Staff indicated that it would be inclined to oppose this motion to the extent it sought relief as to KenoGen, insofar as KenoGen was the one respondent served via *Amazon.com* that did not respond to the message sent to it. In order to streamline the issues in this motion and the investigation generally, Canon is separately moving to terminate the investigation as to KenoGen.

14. Hefeierlandianzishangwuyouxiangongsi (“Erlandianzishang”) and
15. Xianshi yanliangqu canqiubaihuodianshanghang (“CJ-us”).

Canon’s motion is accompanied by a memorandum in support, the declarations of Dennis J. McMahon and Andrew J. Kutas, and the exhibits thereto.

Declaration Under 19 C.F.R. § 210.16(c)(2) of Intent to Seek General Exclusion Order

Canon hereby declares, pursuant to 19 C.F.R. § 210.16(c)(2), that it seeks a general exclusion order in this investigation. In due course, Canon intends to file a motion for summary determination of violation by the respondents that are found in default, and a recommended determination on remedy, in which Canon will establish such violations and the factors of 19 C.F.R. § 210.50(c) through substantial, reliable, and probative evidence.

Dated: July 15, 2021

Respectfully submitted,

/s/ Michael P. Sandonato

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**CERTAIN TONER SUPPLY CONTAINERS
AND COMPONENTS THEREOF (I)**

Investigation No. 337-TA-1259

**MEMORANDUM IN SUPPORT OF COMPLAINANTS' MOTION
FOR AN ORDER TO SHOW CAUSE AND ENTRY OF DEFAULT**

TABLE OF CONTENTS

I.	Background.....	2
II.	Applicable Law.....	3
III.	The ALJ Should Issue an Order to Show Cause as to the Defaulting Respondents.....	5
	A. Service by Conventional Means (Original Complaint): Sichuan XingDian, Sichuan Wiztoner, Copier Repair Specialists, Digital Buyer, Ink Tech, Precision Roller, NAR Cartridges, and Zinyaw.....	6
	1. Sichuan XingDian and Sichuan Wiztoner	6
	2. Copier Repair Specialists.....	7
	3. Digital Buyer, Ink Tech, Precision Roller, NAR Cartridges, and Zinyaw	7
	4. Zhuhai Henyun.....	8
	B. Service by Conventional Means (Amended Complaint): Do It Wiser	8
	C. Service by Alternative Means (California Secretary of State): MITOCOLOR.....	9
	D. Service by Alternative Means (<i>Amazon.com</i>): Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-us.....	10
	1. Introduction.....	10
	2. CJ-us	12
	3. Yatengshang, ChengDuXiang, and Erlandianzishang	14
	4. Canon’s <i>Amazon.com</i> Messages Provided Sufficient Notice	19
	a. Reliability of <i>Amazon.com</i> Message Center	20
	b. Reliability of Online Storefront Recipients	23
	c. Analysis.....	27
IV.	The ALJ Should Find in Default Any Defaulting Respondent that Fails to Make the Necessary Showing in Response to the Order to Show Cause	31
V.	Conclusion	31

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Certain 4-Androstenediol,</i> Inv. No. 337-TA-440, Order No. 8 (Apr. 30, 2001)	4
<i>Certain Digital Photo Frames and Image Display Devices and Components Thereof,</i> Inv. No. 337-TA-807, Order No. 13 (Nov. 18, 2010).....	4
<i>Certain Electronic Devices Having Placeshifting or Display Replication Functionality and Products Containing Same,</i> Inv. No. 337-TA-878, Order No. 5 (June 11, 2013)	4
<i>Certain Intravascular Administration Sets and Components Thereof,</i> Inv. No. 337-TA-1048, Order No. 5 (May 23, 2017)	31
<i>Certain Intravascular Administration Sets and Components Thereof,</i> Inv. No. 337-TA-1048, Order No. 6 (June 13, 2017)	31
<i>Certain LED Photographic Lighting Devices and Components Thereof,</i> Inv. No. 337-TA-804, Order No. 9 (Nov. 23, 2011).....	5
<i>Certain Lighters,</i> Inv. No. 337-TA-575, Order No. 6 (Aug. 16, 2006).....	4
<i>Certain Magnifying Loupe Products and Components Thereof,</i> Inv. No. 337-TA-611, Order No. 9 (Mar. 21, 2008).....	4
<i>Certain Mounting Apparatuses for Holding Portable Electronic Devices and Components Thereof,</i> Inv. No. 337-TA-1086, Order No. 7 (Apr. 18, 2018)	31
<i>Certain Mounting Apparatuses for Holding Portable Electronic Devices and Components Thereof,</i> Inv. No. 337-TA-1086, Order No. 9 (May 8, 2018)	31
<i>Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles,</i> Inv. No. 337-TA-448, Order No. 4 (Mar. 30, 2001).....	4
<i>Certain Protective Cases and Components Thereof,</i> Inv. No. 337-TA-780, Order No. 15 (Oct. 19, 2011).....	5
<i>Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, and Products Containing Same,</i> Inv. No. 337-TA-489, Order No. 13 (May 13, 2003)	4

<i>Certain Tadalafil or Any Salt or Solvate Thereof and Products Containing Same,</i> Inv. No. 337-TA-539, Order No. 4 (Aug. 8, 2005).....	4
<i>Certain Toner Cartridges, Components Thereof, and Systems Containing Same,</i> Inv. No. 337-TA-1174, Comm'n Op. (Dec. 17, 2020).....	17, 30
<i>Certain Toner Cartridges, Components Thereof, and Systems Containing Same,</i> Inv. No. 337-TA-1174, Order No. 40 (ID/RD) (July 23, 2020).....	17, 30
<i>Certain Toner Cartridges, Components Thereof, and Systems Containing Same,</i> Inv. No. 337-TA-1174, Order No. 5 (Dec. 30, 2019).....	4, 8
<i>Chanel, Inc. v. Song Xu,</i> No. 2:09-CV-02610-CGC, 2010 WL 396357 (W.D. Tenn. Jan. 27, 2010).....	19
<i>Core Distrib., Inc. v. Doe I,</i> No. 16-cv-04059 (SRN/HB), 2018 WL 6178720 (D. Minn. Nov. 27, 2018).....	26
<i>Core Distrib., Inc. v. Doe I,</i> No. 16-cv-04059 (SRN/HB), slip op. (D. Minn. Mar. 23, 2017).....	26, 28
<i>Dae Sung Hi Tech. Co. v. Next Gen Prods.,</i> No. 2:19-cv-06262-SJO, 2020 WL 2046733 (C.D. Cal. Feb. 21, 2020).....	23
<i>Innovelis, Inc. v. AUCH,</i> No. CV 15-02661, slip op. (E.D. Pa. Aug. 13, 2015).....	22
<i>Kaneka Corp. v. Purestart Chem Enterprise Co.,</i> No. 16-CV-4861 (MKB)(SIL), 2017 WL 11509784 (E.D.N.Y. Oct. 17, 2017).....	24, 28, 29
<i>Keck v. Alibaba.com, Inc.,</i> No. 17-cv-05672-BLF, 2017 WL 10820533 (N.D. Cal. Dec. 20, 2017).....	29
<i>Keck v. Alibaba.com, Inc.,</i> No. 17-cv-05672-BLF, 2018 WL 3632160 (N.D. Cal. July 31, 2018).....	21, 28
<i>Mattel, Inc. v. Uenjoy LLC,</i> No. 18-cv-7896 (PKC), 2020 WL 2793005 (S.D.N.Y. May 29, 2020).....	25
<i>Mullane v. Cent. Hanover Bank & Tr. Co.,</i> 339 U.S. 306 (1950).....	19
<i>NOCO Co. v. Liu Chang,</i> No. 1:18-cv-2561, 2020 WL 533021 (N.D. Ohio Feb. 3, 2020).....	19, 20, 28
<i>NOCO Co. v. Shenzhen Anband Tech.,</i> No. 1:17CV2205, 2018 WL 1373822 (N.D. Ohio Mar. 19, 2018).....	25, 28

<i>Noco Co. v. Shenzhen Dika Na'er E-Commerce Co.</i> , No. 1:17CV2282, 2017 WL 11540638 (N.D. Ohio Nov. 22, 2017)	25
<i>NOCO Co. v. Shenzhen Lianfa Tong Tech. Co.</i> , No. 1:19-cv-1855, slip op. (N.D. Ohio Feb. 5, 2020).....	24
<i>Noco Co. v. SZ Jingxinghui Elecs. Tech. Co.</i> , No. 1:17CV2208, slip op. (N.D. Ohio Apr. 23, 2018).....	26
<i>Noco Co. v. Zhejiang Quingyou Elec. Commerce Co.</i> , 338 F.R.D. 100 (N.D. Ohio 2021)	19, 20, 21, 28, 29
<i>Noco Co. v. Zhejiang Quingyou Elec. Commerce Co.</i> , No. 1:20cv1170, 2021 WL 374617 (N.D. Ohio Feb. 3, 2021)	21
<i>Pearson Educ. Inc. v. Doe I</i> , No. 18-CV-7380 (PGG) (OTW), 2019 WL 6498305 (S.D.N.Y. Dec. 2, 2019).....	27
<i>Philips Oral Healthcare, LLC v. Shenzhen Sincere Mold Tech. Co.</i> , No. 2:18-cv-01032-TSZ, 2019 WL 1572675 (W.D. Wash. Apr. 11, 2019).....	26, 28
<i>Rio Props., Inc. v. Rio Int'l Interlink</i> , 284 F.3d 1007 (9th Cir. 2002)	19
<i>Rubie's Costume Co. v. Luo Li Jiang</i> , No. 18-cv-01531-RAJ, 2019 U.S. Dist. LEXIS 204379 (W.D. Wash. Nov. 25, 2019)	23
<i>Rubie's Costume Co. v. Luo Li Jiang</i> , No. 18-cv-01531-RAJ, slip op. (W.D. Wash. May 12, 2020)	23
<i>Rubie's Costume Co. v. Yiwu Hua Hao Toys Co.</i> , No. 2:18-cv-01530-RAJ, 2019 WL 6310564 (W.D. Wash. Nov. 25, 2019)	22
<i>Rubie's Costume Co. v. Yiwu Hua Hao Toys Co.</i> , No. 2:18-cv-01530-RAJ, slip op. (W.D. Wash. May 12, 2020).....	23
<i>Shenzhen Ruobilin Network Tech., Ltd. v. SJG-Lesn</i> , No. 16-cv-386-wmc, 2016 WL 6988868 (W.D. Wis. Nov. 29, 2016)	21
<i>Sicheng Xing v. P'ships & Unincorporated Ass'ns Identified on Schedule A</i> , No. 2:21-cv-00588-RGK-RAO, slip op. (C.D. Cal. Feb. 3, 2021)	22
<i>Sicheng Xing v. P'ships & Unincorporated Ass'ns Identified on Schedule A</i> , No. 2:21-cv-00588-RGK-RAO, slip op. (C.D. Cal. May 7, 2021).....	22
<i>Toyo Tire & Rubber Co. v. CIA Wheel Grp.</i> , No. SA CV 15-0246-DOC, 2016 WL 1251008 (C.D. Cal. Mar. 25, 2016).....	28

<i>TV Ears, Inc. v. Joyshiya Dev. Ltd.</i> , No. 3:20-cv-01708-WQH-BGS, 2021 WL 165013 (S.D. Cal. Jan. 19, 2021)	21, 24, 28
<i>Winner’s Sun Plastic & Elec. (Shenzhen) Co. v. P’ships & Unincorporated Ass’ns Identified on Schedule “B”</i> , No. 2:19-cv-00980, slip op. (D. Nev. Aug. 14, 2019)	26
<i>Word Ape, LLC v. Pawico</i> , No. 2:20-cv-01768-DWC, 2021 WL 768293 (W.D. Wash. Jan. 4, 2021), <i>report and recommendation adopted</i> , 2021 WL 765005 (Feb. 26, 2021)	25

Statutes

Cal Corps. Code § 1702(a).....	9
Cal Corps. Code § 1702(b)	9

Other Authorities

19 C.F.R. § 201.14(a).....	5, 6, 7, 8, 10, 13
19 C.F.R. § 201.16	5, 29
19 C.F.R. § 201.16(a)(4).....	4
19 C.F.R. § 201.16(b)(4).....	4
19 C.F.R. § 201.16(d)	3
19 C.F.R. § 201.16(e).....	4
19 C.F.R. § 201.16(f)	4
19 C.F.R. § 210.13	3, 5
19 C.F.R. § 210.13(a).....	3
19 C.F.R. § 210.16	3
19 C.F.R. § 210.16(a)(1).....	3, 4, 5
19 C.F.R. § 210.16(b)(1)(i).....	5
19 C.F.R. § 210.16(b)(1)(ii).....	5, 31
19 C.F.R. § 210.59(c).....	3
86 Fed. Reg. 19284	2

Fed. R. Civ. P. 4(f).....21

Complainants Canon Inc., Canon U.S.A., Inc., and Canon Virginia, Inc. (collectively, “Canon”) submit this memorandum in support of Canon’s motion for an order to show cause why the 15 below-listed respondents (collectively, “Defaulting Respondents”) should not be found in default for failing to respond to the complaint and notice of investigation, and for an initial determination finding in default those Defaulting Respondents that fail to show the requisite cause.

The 15 Defaulting Respondents subject to Canon’s motion are:

1. Sichuan XingDian Technology Co., Ltd. (“Sichuan XingDian”);
2. Sichuan Wiztoner Technology Co., Ltd. (“Sichuan Wiztoner”);
3. Copier Repair Specialists, Inc. (“Copier Repair Specialists”);
4. Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (“Digital Buyer”);
5. Ink Technologies Printer Supplies, LLC (“Ink Tech”);
6. Kuhlmann Enterprises, Inc. d/b/a Precision Roller (“Precision Roller”);
7. NAR Cartridges;
8. Zhuhai Henyun Image Co., Ltd. (“Zhuhai Henyun”);
9. Zinyaw LLC d/b/a TonerPirate.com and Supply District (“Zinyaw”);
10. Do It Wiser, Inc. d/b/a Image Toner (“Do It Wiser”);
11. MITOCOLOR INC. (“MITOCOLOR”);
12. Anhuiyatengshangmaoyouxiangongsi (“Yatengshang”);
13. ChengDuXiangChangNanShiYouSheBeiYouXianGongSi (“ChengDuXiang”);
14. Hefeierlandianzishangwuyouxiangongsi (“Erlandianzishang”); and
15. Xianshi yanliangqu canqiubaihuodianshanghang (“CJ-us”).

I. Background

Canon filed its complaint on March 8, 2021, naming 26 respondents. On the same day, Canon sued the respondents in various district court civil actions for infringing the patents asserted in this investigation. The Commission issued its notice of investigation on April 7, 2021, which was published in the Federal Register on April 13, 2021 at 86 Fed. Reg. 19284, instituting this investigation as to all of the respondents named in Canon's complaint. On June 4, 2021, Canon filed an amended complaint that corrected the name of Do It Wiser.

Shortly after the notice of investigation issued, Canon took steps to effect service on the respondents in this investigation, in accordance with the Commission's March 19, 2020 Temporary Change to the Filing Procedure and the instructions provided in the Commission's March 8, 2021 email to Canon's counsel. As set forth in Canon's April 21, 2021 letter attaching proofs of service of the complaint, notice of investigation, and related materials ("First Proof of Service") (EDIS Doc. ID 740618), with respect to several of the Defaulting Respondents, the complaint and notice of investigation were either successfully delivered or, in one instance, the addressee refused delivery. *See id.* at Exs. 7, 8, 11-13, 16, 17, 19, 25, 26 thereto.

As to the Defaulting Respondents for which the delivery was not successful, Canon filed a motion for leave to effect personal service through alternative means, which was granted in Order No. 6 on June 3, 2021. As set forth in Canon's June 15, 2021 letter attaching proofs of service of the complaint, amended complaint, notice of investigation, and related materials ("Second Proof of Service") (EDIS Doc. ID 744776), with respect to those Defaulting Respondents and Do It Wiser, the complaint, amended complaint, and notice of investigation were successfully delivered. *See id.* at Exs. 1-4, 6, 7 thereto.

As of the date of this motion, none of the Defaulting Respondents has entered an appearance, responded to the complaint and the notice of investigation, or otherwise participated

in this investigation. Although seven of the Defaulting Respondents have agreed to consent judgments and permanent injunctions in the parallel district court actions,¹ such resolutions pertain only to the district court actions, and do not resolve any issues in this investigation as between Canon and those Defaulting Respondents. While Canon agreed to resolve the district court actions as to those Defaulting Respondents, Canon made clear to them and/or their counsel that Canon intends to prove violations of Section 337 in this investigation to support its request for a general exclusion order, and left it up to them whether to contest Canon's efforts to prove such violations.²

II. Applicable Law

Under Commission Rule 210.16, “[a] party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in § 210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.” 19 C.F.R. § 210.16(a)(1). Rule 210.13, in turn, provides that “respondents shall have 20 days from the date of service of the complaint and notice of investigation ... within which to file a written response” (with certain exceptions inapplicable here³). 19 C.F.R. § 210.13(a). Where the complaint and the notice of investigation are served by mail, the time to respond is adjusted by an additional three calendar days for domestic recipients. 19 C.F.R. § 201.16(d). Where the complaint and the notice of investigation are served by express delivery,

¹ As of the filing of this motion, the Defaulting Respondents whose related district court actions have become resolved by consent judgment and permanent injunction are Copier Repair Specialists, Digital Buyer, Ink Tech, NAR Cartridges, Precision Roller, Zinyaw, and Do It Wiser.

² Canon is providing a courtesy copy of this motion to all counsel who have appeared on behalf of the Defaulting Respondents in the parallel district court actions.

³ A notice of investigation may order a time for response other than 20 days, 19 C.F.R. § 210.13(a), but that was not done here. *See* Notice of Investigation at 6.

the time to respond is adjusted by an additional one day for domestic recipients or by an additional five days for foreign recipients. 19 C.F.R. § 201.16(e). No additional time is added for electronic service. 19 C.F.R. § 201.16(f). Finally, service by mail “is complete upon mailing of the document,” while service by express delivery “is complete upon submitting the document to the express delivery service or depositing it in the appropriate container for pick-up by the express delivery service.” 19 C.F.R. § 201.16(a)(4), (b)(4).

An affirmative return receipt of the complaint and the notice investigation is not a prerequisite to finding default. Rather, under longstanding Commission practice, that these documents have not been returned as undelivered is a “sufficient indication of receipt to justify the issuance of a show-cause order” under Rule 210.16(a)(1). *See, e.g., Certain Electronic Devices Having Placeshifting or Display Replication Functionality and Products Containing Same*, Inv. No. 337-TA-878, Order No. 5 at 2 (June 11, 2013) (quoting *Certain Digital Photo Frames and Image Display Devices and Components Thereof*, Inv. No. 337-TA-807, Order No. 13 at 3 (Nov. 18, 2010)); *Certain Magnifying Loupe Products and Components Thereof*, Inv. No. 337-TA-611, Order No. 9 at 2 (Mar. 21, 2008) (citing *Certain Lighters*, Inv. No. 337-TA-575, Order No. 6 (Aug. 16, 2006) and *Certain Sildenafil or Any Pharmaceutically Acceptable Salt Thereof, such as Sildenafil Citrate, and Products Containing Same*, Inv. No. 337-TA-489, Order No. 13 (May 13, 2003)); *Certain Tadalafil or Any Salt or Solvate Thereof and Products Containing Same*, Inv. No. 337-TA-539, Order No. 4 at 3 (Aug. 8, 2005) (citing *Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles*, Inv. No. 337-TA-448, Order No. 4 (Mar. 30, 2001) and *Certain 4-Androstenediol*, Inv. No. 337-TA-440, Order No. 8 (Apr. 30, 2001)).

Also, if a respondent refuses delivery, that is “a sufficient indication of receipt to justify the issuance of a show-cause order under Commission Rule 210.16(a)(1).” *Certain Toner*

Cartridges, Components Thereof, and Systems Containing Same, Inv. No. 337-TA-1174, Order No. 5 at 2 (Dec. 30, 2019) (citing *Certain LED Photographic Lighting Devices and Components Thereof*, Inv. No. 337-TA-804, Order No. 9 at 3 (Nov. 23, 2011) and *Certain Protective Cases and Components Thereof*, Inv. No. 337-TA-780, Order No. 15 at 2-3 (Oct. 19, 2011)).

If a respondent fails to appear under Rule 210.16(a)(1), then “a party may file a motion for ... an order directing respondent to show cause why it should not be found in default.” 19 C.F.R. § 210.16(b)(1)(i). “If the respondent fails to make the necessary showing ..., the administrative law judge shall issue an initial determination finding the respondent in default.” 19 C.F.R. § 210.16(b)(1)(ii).

III. The ALJ Should Issue an Order to Show Cause as to the Defaulting Respondents

The ALJ should issue an order to show cause as to the Defaulting Respondents because they were served with the complaint and the notice of investigation but failed to respond to the same. As discussed below, the time for them to respond under Commission Rules 210.13, 201.14(a), and 201.16 was, at the latest, July 12, 2021. This deadline has passed, yet the Defaulting Respondents did not respond to the complaint and the notice of investigation.

For reference, the service dates and response deadlines of the Defaulting Respondents are as follows:

Defaulting Respondent	Service Date	Response Deadline
Sichuan XingDian	April 9, 2021	May 6, 2021
Sichuan Wiztoner	April 9, 2021	May 6, 2021
Copier Repair Specialists	April 9, 2021	May 4, 2021
Digital Buyer	April 9, 2021	May 3, 2021
Ink Tech	April 9, 2021	May 3, 2021
Precision Roller	April 9, 2021	May 3, 2021
NAR Cartridges	April 9, 2021	May 3, 2021
Zhuhai Henyun	April 9, 2021	May 6, 2021
Zinyaw	April 9, 2021	May 3, 2021

Defaulting Respondent	Service Date	Response Deadline
Do It Wiser	June 4, 2021 (Amended Complaint ⁴)	June 28, 2021
MITOCOLOR	June 18, 2021 (Effective Date)	July 12, 2021
Yatengshang	June 8, 2021	June 28, 2021
ChengDuXiang	June 14, 2021	July 6, 2021
Erlandianzishang	June 14, 2021	July 6, 2021
CJ-us	June 4, 2021	June 28, 2021

**A. Service by Conventional Means (Original Complaint):
Sichuan XingDian, Sichuan Wiztoner, Copier Repair Specialists,
Digital Buyer, Ink Tech, Precision Roller, NAR Cartridges, and Zinyaw**

1. Sichuan XingDian and Sichuan Wiztoner

Defaulting Respondent	Service Date	Response Deadline
Sichuan XingDian	April 9, 2021	May 6, 2021
Sichuan Wiztoner	April 9, 2021	May 6, 2021

Sichuan XingDian and Sichuan Wiztoner each were served on April 9, 2021 by FedEx, with these respondents having accepted their deliveries on April 12. First Proof of Service at 2 & Exs. 7, 8 thereto. Because these respondents were served by express delivery to addresses in China (*id.*), their responses to the complaint and notice of investigation were due 25 days after service, or May 6, 2021 (as computed by 19 C.F.R. § 201.14(a)). These respondents have not so responded or otherwise appeared or participated in this investigation; for example, they did not attend the June 15, 2021 case management conference and have not attended any discovery committee meeting, including those held on June 23 and July 14, 2021.

⁴ Canon served Do It Wiser with the original complaint on April 9, 2021, and with the amended complaint on June 4, 2021. Because the amended complaint corrects Do It Wiser's name, Canon relies on the later service date of the amended complaint for purposes of calculating Do It Wiser's response deadline. And, although the amended complaint impacted only Do It Wiser, Canon did serve the amended complaint on the other Defaulting Respondents. Amended Complaint (EDIS Doc. ID 744006) at Certificate of Service.

2. Copier Repair Specialists

Defaulting Respondent	Service Date	Response Deadline
Copier Repair Specialists	April 9, 2021	May 4, 2021

Copier Repair Specialists was served on April 9, 2021 by U.S. mail, with the delivery having been completed on April 13. First Proof of Service at 2 & Ex. 11 thereto. Because this respondent was served by mail to an address in the United States (*id.*), its response to the complaint and notice of investigation was due 23 days after service, or May 4, 2021 (as computed by 19 C.F.R. § 201.14(a)). This respondent has not so responded or otherwise appeared or participated in this investigation; for example, it did not attend the June 15, 2021 case management conference and has not attended any discovery committee meeting, including those held on June 23 and July 14, 2021.

3. Digital Buyer, Ink Tech, Precision Roller, NAR Cartridges, and Zinyaw

Defaulting Respondent	Service Date	Response Deadline
Digital Buyer	April 9, 2021	May 3, 2021
Ink Tech	April 9, 2021	May 3, 2021
Precision Roller	April 9, 2021	May 3, 2021
NAR Cartridges	April 9, 2021	May 3, 2021
Zinyaw	April 9, 2021	May 3, 2021

Digital Buyer, Ink Tech, Precision Roller, NAR Cartridges, and Zinyaw each were served on April 9, 2021 by FedEx, with these respondents having accepted their deliveries on April 12. First Proof of Service at 2-3 & Exs. 12, 16, 17, 19, 26 thereto. Because these respondents were served by express delivery to addresses in the United States (*id.*), their responses to the complaint and notice of investigation were due 21 days after service, or May 3, 2021 (as computed by 19 C.F.R. § 201.14(a)). These respondents have not so responded or otherwise appeared or participated in this investigation; for example, they did not attend the June 15, 2021

case management conference and have not attended any discovery committee meeting, including those held on June 23 and July 14, 2021.

4. Zhuhai Henyun

Defaulting Respondent	Service Date	Response Deadline
Zhuhai Henyun	April 9, 2021	May 6, 2021

Zhuhai Henyun was served on April 9, 2021 by FedEx, with this respondent having refused its delivery on April 12. First Proof of Service at 3 & Ex. 25 thereto. Such refusal is “a sufficient indication of receipt to justify the issuance of a show-cause order” *Certain Toner Cartridges, Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1174, Order No. 5 at 2 (Dec. 30, 2019). Because this respondent was served by express delivery to an address in China (*id.*), its response to the complaint and notice of investigation was due 25 days after service, or May 6, 2021 (as computed by 19 C.F.R. § 201.14(a)). This respondent has not so responded or otherwise appeared or participated in this investigation; for example, it did not attend the June 15, 2021 case management conference and has not attended any discovery committee meeting, including those held on June 23 and July 14, 2021.

B. Service by Conventional Means (Amended Complaint): Do It Wiser

Defaulting Respondent	Service Date	Response Deadline
Do It Wiser	June 4, 2021 (Amended Complaint)	June 28, 2021

Do It Wiser was served (with the amended complaint that corrected Do It Wiser’s name and copies of the other service documents) on June 4, 2021 by FedEx, with this respondent having accepted its delivery on June 9. Second Proof of Service at 4 & Ex. 7 thereto. Because this respondent was served by express delivery to an address in the United States (*id.*), its response to the complaint and notice of investigation was due 21 days after service, or June 28, 2021 (as computed by 19 C.F.R. § 201.14(a)). This respondent has not so responded or

otherwise appeared or participated in this investigation; for example, it did not attend the June 15, 2021 case management conference and has not attended any discovery committee meeting, including that held on July 14, 2021. Indeed, counsel representing Do It Wiser in its parallel district court action expressed that it does not intend to participate in this investigation. Mot. Am. Compl. (EDIS Doc. ID 741007) at 3.

C. Service by Alternative Means (California Secretary of State): MITOCOLOR

Defaulting Respondent	Service Date	Response Deadline
MITOCOLOR	June 18, 2021 (Effective Date)	July 12, 2021

Per Order No. 6, the service documents for MITOCOLOR were personally served via the California Secretary of State (“CA SOS”), by hand delivery on a person employed in the CA SOS’s office in the capacity of assistant or deputy in accordance with Cal Corps. Code § 1702(a), on June 8, 2021. Second Proof of Service at 1-2 & Ex. 1 thereto. The CA SOS’s office confirmed that it forwarded the documents to MITOCOLOR’s registered address, in accordance with Cal Corps. Code § 1702(b). Kutas Decl.⁵ Ex. A (CA SOS Record of Service of Process). Additionally, to ensure that MITOCOLOR had notice of this investigation, Canon delivered courtesy copies of the service documents, including a cover letter with an electronic download link, to MITOCOLOR’s newly designated agent for service of process. Kutas Decl. ¶ 4; Kutas Decl. Ex. B (cover letter to MITOCOLOR’s new agent).

Pursuant to Cal Corps. Code § 1702(a), service became effective on June 18, 2021, ten days after the documents were delivered to the CA SOS. MITOCOLOR’s response to the complaint and notice of investigation was due 20 days after service, or July 12, 2021 (as

⁵ “Kutas Decl. ¶ ___” refers to the numbered paragraphs of the accompanying Declaration of Andrew J. Kutas in Support of Complainants’ Motion for an Order to Show Cause and Entry of Default. “Kutas Decl. Ex. ___” refers to the exhibits to that declaration.

computed by 19 C.F.R. § 201.14(a)). This respondent has not so responded or otherwise appeared or participated in this investigation; for example, it did not attend the June 15, 2021 case management conference and has not attended any discovery committee meeting, including that held on July 14, 2021.

D. Service by Alternative Means (*Amazon.com*):
Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-us

1. Introduction

Once both of Order No. 6 in this investigation and corresponding Order No. 7 in Inv. No. 337-TA-1260 issued, Canon commenced its efforts to effect alternative service on these respondents through the contact links on their respective *Amazon.com* seller profile pages.

As detailed below, over the course of one or more messages, Canon's outreach to each of these respondents included providing an identification of the accused products that Canon purchased from that respondent (with product description and Amazon's identification and order numbers), a link to download service documents, a PDF attachment with a cover letter and service documents,⁶ an encouragement for that respondent's owner or manager to review the documents, and a description of the potential consequences for failure to appear. Although the download link in the message body was provided with some interspersed spaces (which would have to be deleted after pasting the URL into a web browser), *see infra* § III.D.2, the attached cover letter did provide the download link intact, and indeed, to date, one respondent has

⁶ The PDF attachment included the cover letter, the complaint, and the notice of investigation in a combined file. The download link included these documents (separately) plus the Commission's cover letter to the respondent, the public complaint exhibits, Canon's supplements to the complaint, the Commission's mediation brochure and related materials, the Commission's determination not to review the ALJ's initial determination amending the complaint, and Canon's amended complaint. *See* McMahon Decl. Ex. A at 5-6; McMahon Decl. Ex. B at 5-6; McMahon Decl. Ex. C at 5-6; McMahon Decl. Ex. D at 5-6.

successfully accessed the link and downloaded its service documents, *see infra* § III.D.4. Also, the download link was unique for each respondent, such that Canon was able to track which of them accessed their respective links. *See* Kutas Decl. ¶ 10; *compare* McMahon Decl.⁷ Ex. A at 5, *with* McMahon Decl. Ex. B at 5, *and* McMahon Decl. Ex. C at 5, *and* McMahon Decl. Ex. D at 5 (cover letters showing a different download link for each of these respondents). Each cover letter provided additional context, including identification of the investigations naming the recipient as a respondent and a list of the service documents. *See* McMahon Decl. Ex. A at 5-6; McMahon Decl. Ex. B at 5-6; McMahon Decl. Ex. C at 5-6; McMahon Decl. Ex. D at 5-6.

In Exhibits A-D of the accompanying McMahon Declaration, the *Amazon.com* messages are provided in several forms: (i) *Amazon.com*'s Seller Messaging Assistant, which has a texting- or chat-like interface; (ii) *Amazon.com*'s Message Center, which has an email-like interface with an "Inbox" and "Sent Messages"; and/or (iii) email notifications from *Amazon.com* to Canon's counsel's email address.⁸

- Canon's initial messages were sent using the Seller Messaging Center, and versions of these messages before and after sending are included in McMahon Decl. Exs. A-D, as the "before" version shows the message's PDF attachment, while the "after" version has a timestamp and confirmatory text.

⁷ "McMahon Decl. ¶ ___" refers to the numbered paragraphs of the accompanying Declaration of Dennis J. McMahon in Support of Complainants' Motion for an Order to Show Cause and Entry of Default. "McMahon Decl. Ex. ___" refers to the exhibits to that declaration.

⁸ The timestamp in the Seller Messaging Assistant reflects local time (EDT), while the timestamp in the Message Center appears to reflect Amazon's time zone (PDT), the timestamp in the body of *Amazon.com* emails appear to reflect Coordinated Universal Time (UTC), and the timestamp in the header of *Amazon.com* emails reflects local time (EDT). Kutas Decl. ¶ 7 n.3.

- Copies of the initial outgoing messages that also appear in *Amazon.com*'s Message Center within "Sent Messages" are included in these exhibits as well, as confirmation that those messages were in fact transmitted.
- The respondents' responses to these messages are included in the exhibits in the form of email notifications from *Amazon.com*.
- Canon's replies to these responses were sent directly in the Message Center within "Inbox," and they are included in the exhibits. These Inbox replies show the respondents' responses directly below the replies, like an email trail.
- Copies of these replies also appear in *Amazon.com*'s Message Center within "Sent Messages," and they too are included in the exhibits.

2. CJ-us

Defaulting Respondent	Service Date	Response Deadline
CJ-us	June 4, 2021	June 28, 2021

A first message to CJ-us was sent on June 4, 2021, at about 7:08 PM EDT. McMahon Decl. ¶ 24; McMahon Decl. Ex. D at 1-6. However, the "Sent Messages" version of this message revealed that an email address and the download link were stripped, apparently by an *Amazon.com* filtering process. McMahon Decl. ¶¶ 9, 24; *see* McMahon Decl. Ex. D at 2-3. Further, after this first message was sent, an email from *Amazon.com* was sent to Canon's counsel stating that the "email to [CJ-us] cannot be delivered due to an issue with one or more attachments." McMahon Decl. ¶¶ 8, 24; *see* McMahon Decl. Ex. D at 7. Notwithstanding that language, the body of the message appeared in the Message Center, and as explained below, CJ-us did respond. McMahon Decl. ¶ 24.

Due to the email from *Amazon.com* regarding the PDF attachment as well as the download link stripping, a second message to CJ-us was sent on June 4, 2021 at about 7:34 PM

EDT. McMahon Decl. ¶ 25; McMahon Decl. Ex. D at 8-11. This second message attached the same PDF and added spaces within the download link URL, which enabled it to go through without being filtered. McMahon Decl. ¶¶ 9, 25; McMahon Decl. Ex. D at 8-11. This second message did not result in an email from *Amazon.com* indicating an issue with the PDF attachment. McMahon Decl. ¶ 25.

On June 4, 2021 between about 10:22 PM and 11:01 PM EDT—a few hours after Canon’s initial outgoing messages—CJ-us sent five response messages via *Amazon.com*. McMahon Decl. ¶ 26; McMahon Decl. Ex. D at 12-16. In its responses, CJ-us purported not to understand the nature of Canon’s outreach, asked Canon to “describe [the] problem in detail,” and provided various links and information about replacement product listings. *See* McMahon Decl. Ex. D at 12-16. Canon replied on June 7, 2021, elaborating on the context of these communications, explaining that the legal proceedings involved allegations of patent infringement in the ITC, and encouraging the recipient within CJ-us to have its owner or manager review the documents, with a warning of potential consequences for failure to appear or respond, and reattaching the same PDF as from the initial message. *See* McMahon Decl. ¶ 27; McMahon Decl. Ex. D at 20-23. Due to similar issues regarding the PDF attachment, two copies of this June 7 follow-up message were sent, at about 10:43 PM EDT, with the second copy having been sent along with its PDF attachment. McMahon Decl. ¶ 27.

Because Canon’s June 4, 2021 messages to CJ-us were successfully sent and (at least for one message) included the PDF attachment, CJ-us was served on June 4. Because it was served by electronic means, its response to the complaint and notice of investigation was due 20 days after service, or June 28, 2021 (as computed by 19 C.F.R. § 201.14(a)). This respondent has not so responded or otherwise appeared or participated in this investigation; for example, it did not

attend the June 15, 2021 case management conference and has not attended any discovery committee meeting, including that held on July 14, 2021.

3. Yatengshang, ChengDuXiang, and Erlandianzishang

Defaulting Respondent	Service Date	Response Deadline
Yatengshang	June 8, 2021	June 28, 2021
ChengDuXiang	June 14, 2021	July 6, 2021
Erlandianzishang	June 14, 2021	July 6, 2021

Canon initially attempted to serve these respondents on June 4, 2021, but there were conflicting indications of whether Canon’s messages to these respondents were actually transmitted. Kutas Decl. ¶¶ 5-8. Following troubleshooting of those issues:

- A message to Yatengshang was sent on June 8, 2021 at about 12:55 PM EDT. McMahon Decl. ¶ 10; McMahon Decl. Ex. A at 1-6. This message appears among the “Sent Messages” in the Message Center, and it did not result in an email from *Amazon.com* indicating an issue with the PDF attachment. McMahon Decl. ¶ 10; McMahon Decl. Ex. A at 3-4.
- A first message to ChengDuXiang was sent on June 8, 2021 at about 9:02 PM EDT. McMahon Decl. ¶ 12; McMahon Decl. Ex. B at 1-6. This message appears among the “Sent Messages” in the Message Center, but it resulted in an email from *Amazon.com* indicating an issue with the PDF attachment. McMahon Decl. ¶ 12; McMahon Decl. Ex. B at 3-4, 7.
- A first message to Erlandianzishang was sent on June 9, 2021 at about 9:16 PM EDT. McMahon Decl. ¶ 18; McMahon Decl. Ex. C at 1-6. This message appears among the “Sent Messages” in the Message Center, but it resulted in an email from *Amazon.com* indicating an issue with the PDF attachment. McMahon Decl. ¶ 18; McMahon Decl. Ex. C at 3-4, 7.

On June 8, 2021, Yatengshang's download link was accessed, with the cover letter having been viewed at about 7:35 PM EDT, and the service documents having been downloaded at about 8:03 PM EDT. Kutas Decl. Ex. C (ShareFile notifications). Canon is confident that Yatengshang accessed the link and downloaded the documents because (i) each respondent's download link is unique and different from the one another's, (ii) the unredacted links were not revealed outside of Canon's counsel beyond the messages to the respondents, and (iii) of the limited number of people within Canon's outside counsel who could see the links, no one accessed them. Kutas Decl. ¶ 10.

On June 11, 2021, at about 3:23 AM EDT, about 3:27 AM EDT, and about 3:30 AM EDT, respectively, ChengDuXiang, Erlandianzishang, and Yatengshang each sent a response message via *Amazon.com*. Notably, although Canon's outgoing messages to these three respondents were sent many hours apart from one another over the course of two days, these respondents responded at virtually the same time. *See* McMahon Decl. ¶¶ 10-12, 14, 18, 20; McMahon Decl. Ex. A at 2, 7 (Yatengshang initial successful outgoing message on June 8, 2021 at about 12:55 PM EDT and response on June 11, 2021 at about 3:30 AM EDT); McMahon Decl. Ex. B at 2, 10 (ChengDuXiang initial successful outgoing message on June 8, 2021 at about 9:02 PM EDT and response on June 11, 2021 at about 3:23 AM EDT); McMahon Decl. Ex. C at 2, 10 (Erlandianzishang initial successful outgoing message on June 9, 2021 at about 9:16 PM EDT and response on June 11, 2021 at about 3:27 AM EDT). These three responses were sent too close together in time to be dismissed as a coincidence, given the disparity in when Canon's messages were sent, the varying days-long gaps between outgoing messages and responses, and the fact that the responses were sent during mid-afternoon in China's time zone (between about 3:23 PM CST and about 3:30 PM CST), as opposed to the start or close of business.

Further, the response messages of Yatengshang, ChengDuXiang, and Erlandianzishang shared similar word usage, message structure, and tone. Each response began with an apology for the respondent's "mistake", then noted that the "relevant product[s]" were removed, and ended with the respondent's "best regards." Each response was consistent with an understanding that Canon's outgoing message involved allegations of patent infringement, with Yatengshang and ChengDuXiang pledging that a reoccurrence "will not happen" and Erlandianzishang assuring that it had "let all the company staff know about this incident." *See* McMahon Decl. Ex. A at 7; McMahon Decl. Ex. B at 10; McMahon Decl. Ex. C at 10.

Yatengshang, ChengDuXiang, and Erlandianzishang are connected in even more ways. For example, each of these respondents acquired its accused products from the same source, respondent Do It Wiser, used the same non-Canon model numbers for its accused products, and sold the accused products in the same configuration—a five-pack of two toner supply containers with black toner and one toner supply container each with cyan, magenta, and yellow toner. *See* Amended Complaint (EDIS Doc. ID 744006) at ¶¶ 113-114 (using Do It Wiser model numbers 08-07.0-ITCANON3325K1, 08-07.0-ITCANON3325C1, 08-07.0-ITCANON3325M1, 08-07.0-ITCANON3325Y1, and 08-09.0-ITCANON3325K1); *compare* Complaint Ex. 124 (EDIS Doc./Att. ID 736197-1614331) at 6-7, *with* Complaint Ex. 125 (EDIS Doc./Att. ID 736197-1614332) at 6-7, *and* Complaint Ex. 127 (EDIS Doc./Att. ID 736197-1614334) at 6 (shipping packaging for the accused products of Yatengshang, ChengDuXiang, and Erlandianzishang, each showing "Do It Wiser" and the same address in Hebron, KY in the return address). Moreover, each of these respondents' *Amazon.com* seller profile pages contains an identical message to the consumer, that "[respondent's storefront name] is committed to providing each customer with the highest standard of customer service." *Compare* Complaint Ex. 171 (EDIS Doc./Att. ID

736199-1614381), *with* Complaint Ex. 172 (EDIS Doc./Att. ID 736199-1614382), *and* Complaint Ex. 176 (EDIS Doc./Att. ID 736199-1614386).

It thus is apparent that at least these three respondents are connected, which is not surprising given that companies—including in the specific industry of this investigation—have been known to sell patent-infringing products on *Amazon.com* under multiple names and storefronts. *See Certain Toner Cartridges, Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1174, Comm’n Op. at 14-15 (Dec. 17, 2020); *Certain Toner Cartridges, Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1174, Order No. 40 (ID/RD) at 137 (July 23, 2020); Kutas Decl. Ex. D at ¶ 30 (1106 investigation joint stipulation and article noting that some companies sell products on *Amazon.com* under different seller names so that “if Amazon receives complaints about certain listings and ultimately decides to suspend or shut down that seller, only a piece of the company’s business is affected”).

Moreover, taking at face value Erlandianzishang’s response that it had “let *all* the company staff know about this incident” (emphasis added) this would include the owners, directors, managers, and/or anyone else within the company who could make decisions with respect to litigation. Erlandianzishang’s apparent connection with Yatengshang and ChengDuXiang, coupled with the fact that each of their responses were sent after Yatengshang’s service documents were downloaded, strongly suggests that these three respondents received actual notice of the investigation by virtue of Canon’s *Amazon.com* messages.

Nevertheless, subsequent to these responses, Canon realized that the initial successful outgoing messages to ChengDuXiang and Erlandianzishang may not have included their respective PDF attachments. When Canon had sent its initial outgoing messages to these two respondents and received the emails from Amazon regarding their PDF attachments, Canon promptly attempted to resend the messages. McMahon Decl. ¶ 13; McMahon Decl. Ex. B at 8-9

(ChengDuXiang outgoing message on June 8 at about 9:05 PM EDT); McMahon Decl. ¶ 19; McMahon Decl. Ex. C at 8-9 (Erlandianzishang outgoing message on June 9 at about 9:17 PM EDT). But Canon later discovered that these attempts to resend the initial outgoing messages did not appear among the “Sent Messages” in the Message Center. McMahon Decl. ¶¶ 15, 21. Thus, out of an abundance of caution, on June 14, 2021, follow-up messages resending the PDF attachments were sent to these respondents, and at least one follow-up message per respondent both did not result in an email from *Amazon.com* indicating an issue with the PDF attachment and appeared in the “Sent Messages” in the Message Center. McMahon Decl. ¶¶ 15-16, 21-22; McMahon Decl. Ex. B at 11-19; McMahon Decl. Ex. C at 11-14.

Because Canon’s June 8, 2021 message to Yatengshang was successfully sent and included the PDF attachment, Yatengshang was served on June 8. Because it was served by electronic means, its response to the complaint and notice of investigation was due 20 days after service, or June 28, 2021. This respondent has not so responded or otherwise appeared or participated in this investigation; for example, it did not attend the June 15, 2021 case management conference and has not attended any discovery committee meeting, including that held on July 14, 2021.

Because Canon’s June 14, 2021 messages to ChengDuXiang and Erlandianzishang were successfully sent and (at least for one message per respondent) included the PDF attachment, Canon treats ChengDuXiang and Erlandianzishang as having been served on June 14 out of an abundance of caution, despite Canon’s earlier messages to these respondents to which they responded, and their apparent links to each other and Yatengshang (which downloaded the service materials and also responded). Because they were served by electronic means, their responses to the complaint and notice of investigation were due 20 days after service, or July 6, 2021. These respondents have not so responded or otherwise appeared or participated in this

investigation; for example, they did not attend the June 15, 2021 case management conference and have not attended any discovery committee meeting, including that held on July 14, 2021.

4. Canon's *Amazon.com* Messages Provided Sufficient Notice

The ALJ should find that Canon's *Amazon.com* messages to each of Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-us provided "notice reasonably calculated, under all the circumstances, to apprise [them] of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Although apparently less common in the ITC, in the context of plaintiffs attempting to serve foreign defendants that sell infringing goods on online marketplaces, where the defendants' only known, reliable contact information is electronic in nature and connected to their online storefronts, numerous courts have permitted electronic service because "online merchants depend on electronic communication for their livelihood and often rely solely upon such means of communication in their interactions with customers." *See, e.g., Noco Co. v. Zhejiang Quingyou Elec. Commerce Co.*, 338 F.R.D. 100, 106 (N.D. Ohio 2021) (citing *Chanel, Inc. v. Song Xu*, No. 2:09-CV-02610-CGC, 2010 WL 396357, at * 4 (W.D. Tenn. Jan. 27, 2010); *NOCO Co. v. Liu Chang*, No. 1:18-cv-2561, 2020 WL 533021, at *3 (N.D. Ohio Feb. 3, 2020) (internal quotation marks and alterations omitted); *cf. Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017-18 (9th Cir. 2002) (observing that the defendant "structured its business such that it could be contacted *only* via its email address [and] listed no easily discoverable street address" and reasoning that "when faced with an international e-business scofflaw, playing hide-and-seek with the federal court, email may be the only means of effecting service of process"). As such, courts have usually granted alternative service through electronic means on online merchant defendants when satisfied that the communications would likely go through.

a. **Reliability of *Amazon.com* Message Center**

In similar situations as here in district court cases, where plaintiffs have sought to serve defendants exclusively through *Amazon.com* or similar websites, most courts have allowed such service, finding it to be a reliable means of service. In most of these cases, either the defendants appeared in response to the service or did not appear and the cases progressed to varying stages of default (up to default judgment), indicating that the court was satisfied with service despite it not drawing a response from a defendant. Indeed, in the cases where the defendant did not actually respond, the courts were often satisfied as long as the messages did not result in bounce-backs or other delivery failure notifications.

For example, in *NOCO v. Liu Chang*, the court noted the critical importance of online communications for online merchant defendants and was satisfied that service would be likely to reach the defendant because the plaintiff had sent previous messages, at least two of which did not bounce back, and with the defendant responding to one. *NOCO v. Liu Chang*, 2020 WL 533021, at *3.⁹ In a similar case, the court granted service via Amazon’s Message Center as to one defendant, noting that service “through Amazon Message Center is appropriate and reasonably calculated to apprise [that defendant] of the instant lawsuit” because that defendant sells its accused products entirely through *Amazon.com*, and a waiver package sent through the Message Center “appeared to have been instantly relayed and did not bounce back.” *Noco v. Zhejiang Quingyou*, 338 F.R.D. at 106. It added, “[c]ourts have authorized electronic service

⁹ The plaintiff filed a proof of service through *Amazon.com* (see Kutas Decl. Ex. E), and the case concluded in default judgment. Default Judgment, *NOCO v. Liu Chang*, No. 1:18-cv-2561 (N.D. Ohio May 19, 2020).

under similar circumstances, particularly where a defendant’s business takes place online and the defendant has provided an incomplete or incorrect physical address.” *Id.*¹⁰

Additional courts have granted alternative service under similar circumstances. *See, e.g., Keck v. Alibaba.com, Inc.*, No. 17-cv-05672-BLF, 2018 WL 3632160, at *3-*4 (N.D. Cal. July 31, 2018) (granting alternative service via *AliExpress.com* as to certain defendants where messages through that site’s contact portal did not return as undeliverable or generate error messages because that method “comport[ed] with constitutional notions of due process”)¹¹; *Shenzhen Ruobilin Network Tech., Ltd. v. SJG-Lesn*, No. 16-cv-386-wmc, 2016 WL 6988868, at *2 (W.D. Wis. Nov. 29, 2016) (finding it likely that the defendants would receive actual notice via *Amazon.com*’s messaging system because the plaintiff’s previous outreach through the portal resulted in the defendants removing the plaintiff’s *Amazon.com* listing and changing their company names)¹²; *TV Ears, Inc. v. Joyshiya Dev. Ltd.*, No. 3:20-cv-01708-WQH-BGS, 2021 WL 165013, at *4-*5 (S.D. Cal. Jan. 19, 2021) (analyzing online contact forms separately from email addresses, expressing satisfaction that such service was reasonably calculated to apprise the defendants of the action because the plaintiff’s counsel had sent messages through them,

¹⁰ Although alternative service was denied as to two other defendants based on the court’s analysis of Fed. R. Civ. P. 4(f) and the Hague Convention, the court granted alternative service as to these defendants on reconsideration. *Noco v. Zhejiang Quingyou*, No. 1:20cv1170, 2021 WL 374617 (N.D. Ohio Feb. 3, 2021). The plaintiff then filed proofs of service with screenshots of the *Amazon.com* messages (*see* Kutas Decl. Ex. F), and the clerk entered default against the defendants. Clerk’s Entry of Default, *Noco v. Zhejiang Quingyou*, No. 1:20cv1170 (N.D. Ohio Apr. 22, 2021).

¹¹ The clerk entered default as to the storefront defendants, although the case proceeded against Alibaba itself and related defendants. Clerk’s Entries of Default, *Keck*, No. 17-cv-05672-BLF (Feb. 9, 2018; Jan. 10, 2019).

¹² Following service, one defendant made contact and settled with the plaintiff, and default judgment was granted as to the remaining defendants. Motion to Extend Time, *Shenzhen Ruobilin*, No. 16-cv-386-wmc (W.D. Wis. Dec. 30, 2016); Default Judgment, *Shenzhen Ruobilin*, No. 16-cv-386-wmc (W.D. Wis. June 9, 2017).

none of which resulted in bounce-backs or undeliverable message notifications, some of which provided confirmation of the message being transmitted, and one of which elicited an email response); *Innovelis, Inc. v. AUCH*, No. CV 15-02661, slip op. at n.1 (E.D. Pa. Aug. 13, 2015) (Kutas Decl. Ex. G)¹³; *Sicheng Xing v. P'ships & Unincorporated Ass'ns Identified on Schedule A*, No. 2:21-cv-00588-RGK-RAO, slip op. at 6 (C.D. Cal. Feb. 3, 2021) (Kutas Decl. Ex. H).¹⁴

In a few cases, there was evidence that the plaintiffs' communications attempting to serve process through *Amazon.com* did not successfully go through, such that the court did not credit this form of service (but did credit other forms, if used). However, Canon notes that, here, while it initially encountered similar issues in sending messages, it worked around these issues and is confident that messages with download links and PDF attachments eventually got through to each of the respondents as discussed *supra* § III.D.1-4. As such, the present facts are materially different from the following cases. See *Rubie's Costume Co. v. Yiwu Hua Hao Toys Co.*, No. 2:18-cv-01530-RAJ, 2019 WL 6310564, at *1, *3-*4 (W.D. Wash. Nov. 25, 2019) (initially granting alternative service via a combination of email and *Amazon.com*); Proof of Service, *Rubie's v. Yiwu Hua Hao*, No. 2:18-cv-01530-RAJ (W.D. Wash. Feb. 27, 2020) (attaching a letter from an Amazon legal assistant stating that the contact "from a brand or legal

¹³ These defendants did not appear, so the court entered default judgment against them. Default Judgment, *Innovelis*, No. CV 15-02661 (E.D. Pa. May 19, 2016).

¹⁴ Following this order, the court granted a motion by the defendants to set aside their default on procedural grounds because the plaintiff did not actually effect service of process through the *Amazon.com* contact link, but rather emailed them to a paralegal at Amazon's outside counsel and asked that person to email the documents to the defendants' email addresses associated with their *Amazon.com* storefronts, without proof that this then occurred. See *Sicheng Xing*, slip op. at 3 (C.D. Cal. May 7, 2021) (Kutas Decl. Ex. I). That said, these defendants acknowledged that they did eventually receive notice of the lawsuit through the *Amazon.com* central messaging system—just in a procedurally improper and untimely manner that warranted setting aside default. See Kutas Decl. Ex. J (highlighted supporting factual declarations) at ¶ 2 of each ("[Defendant] received the notice of the lawsuit on April 1, 2021 via Amazon seller central messaging system").

representative to a Seller would not constitute the intended use of the feature[, so] these contacts were not delivered successfully” but noting that a successful contact through the messaging feature would be sent to the email address that Amazon provided to the plaintiff) (Kutas Decl. Ex. K); *Rubie’s v. Yiwu Hua Hao*, slip op. at 2 (W.D. Wash. May 12, 2020) (confirming sufficiency of service by email alone) (Kutas Decl. Ex. L); *Rubie’s Costume Co. v. Luo Li Jiang*, No. 18-cv-01531-RAJ, 2019 U.S. Dist. LEXIS 204379, at *1-*2 (W.D. Wash. Nov. 25, 2019); Proof of Service, *Rubie’s v. Luo Li Jiang*, No. 18-cv-01531-RAJ (W.D. Wash. Feb. 27, 2020) (Kutas Decl. Ex. M); *Rubie’s v. Luo Li Jiang*, slip op. at 1-2 (W.D. Wash. May 12, 2020) (Kutas Decl. Ex. N) (same as *Rubie’s v. Yiwu Hua Hao*); *Dae Sung Hi Tech. Co. v. Next Gen Prods.*, No. 2:19-cv-06262-SJO (JEMX), 2020 WL 2046733, at *2, *4 (C.D. Cal. Feb. 21, 2020) (setting aside default after the defendant argued that it did not actually receive the summons or initial notice of the action, with the defendant suggesting that that communication was “blocked by Amazon as spam,” and in the absence of details of the plaintiff’s communication efforts).

b. Reliability of Online Storefront Recipients

Where a defendant does business on and communicates with customers exclusively through its online storefront, various courts have found that personnel responsible for online storefront communications or similar roles are appropriate recipients for purposes of providing notice of a legal proceeding, such that they authorized service through electronic means such as email and online marketplace contact forms. While some courts required additional indicia of reliability, such as preexisting communications with confirmed receipt or responses, others were satisfied where the communications did not result in bounce-backs or delivery failures. In these cases, either the defendants did not appear and the cases progressed to varying stages of default, signifying the court’s acceptance of service; defendants did appear in response, indicating that electronic service of process succeeded; or the plaintiffs filed voluntary notices of dismissal as to

certain defendants, implying that those defendants did make contact, and the plaintiffs settled with them.

For example, in *Kaneka Corp. v. Purestart Chem Enterprise Co.*, No. 16-CV-4861 (MKB)(SIL), 2017 WL 11509784 (E.D.N.Y. Oct. 17, 2017), the court granted alternative service of process on the defendant's email address, *sales5@purestartchem.com*. *Id.* at *3. Not only did this email address contact customers for sales purposes, but it was also used in correspondence with the plaintiff's counsel, including prior receipt of a courtesy copy of the complaint. *Id.* at *1-*2. Similar to the messages Canon received from Yatengshang, ChengDuXiang, and Erlandianzishang, the defendant's communications to the plaintiff's counsel focused on its own actions and knowledge as opposed to the litigation, including that it allegedly was unaware of the plaintiff's patent it was accused of infringing, that it had provided a sample of its accused product to a customer, that it would stop selling the product, and that it did not know the product's manufacturer. *Id.* at *2; *see* Kutas Decl. Ex. O (correspondence with the email address to be served). Because the defendant conducted its business through email and used this email address to correspond with the plaintiff's counsel, the court concluded that service on this email address was reasonably calculated to apprise the defendant of the pendency of the action and afford it an opportunity to present its objection. *Id.* at *3.¹⁵

Additional cases have permitted alternative service as to email addresses apparently used for sales, support, and other customer-facing purposes. *See, e.g., TV Ears*, 2021 WL 165013, at *4-*5 (permitting service on the email address *support@simolio.com*); *NOCO Co. v. Shenzhen Lianfa Tong Tech. Co.*, No. 1:19-cv-1855, slip op. at 5-6 (N.D. Ohio Feb. 5, 2020) (permitting

¹⁵ After the defendant was served and failed to appear, the court granted default judgment. Default Judgment, *Kaneka* No. 16-CV-4861 (MKB)(SIL) (E.D.N.Y. June 29, 2018).

alternative service on a defendant via a combination of online message centers on *Amazon.com* and *eBay.com*, Facebook Messenger, and the email addresses *aftersale-service-us@beatit-sz.com* and *sara@beatit-sz.com*) (Kutas Decl. Ex. P)¹⁶; *Noco Co. v. Shenzhen Dika Na'er E-Commerce Co.*, No. 1:17CV2282, 2017 WL 11540638, at *1 (N.D. Ohio Nov. 22, 2017) (granting alternative service via email and Facebook Messenger where a prior email from the plaintiff to the defendant elicited a sophisticated response saying that the defendant “did not accept electronic email service but demanded service through alternatives under applicable federal law or judge-authorized means”); Proof of Service, *Noco v. Shenzhen Dika*, No. 1:17CV2282 (N.D. Ohio Nov. 29, 2017) (showing the defendant’s email address to be *support@suaoki.com*) (Kutas Decl. Ex. Q); *NOCO Co. v. Shenzhen Anband Tech.*, No. 1:17CV2205, 2018 WL 1373822, at *1, *3 (N.D. Ohio Mar. 19, 2018) (granting alternative service via a combination of email and *Amazon.com*’s messaging system where the plaintiff’s transmittal of waiver of service packages via these means did not bounce back); Memorandum in Support of Motion for Leave to Serve Through Alternative Means at 2, *NOCO v. Shenzhen Anband*, No. 1:17CV2205 (N.D. Ohio Jan. 19, 2018) (showing the defendant’s email address to be *sales@anbond.com*) (Kutas Decl. Ex. R)¹⁷; *Mattel, Inc. v. Uenjoy LLC*, No. 18-cv-7896 (PKC), 2020 WL 2793005, at *5 (S.D.N.Y. May 29, 2020) (denying a motion to vacate a default judgment where the defendant was served via an email address associated with its website domain name registration); *Word Ape, LLC v. Pawico*, No. 2:20-cv-01768-DWC, 2021 WL 768293, at *1 (W.D. Wash. Jan. 4, 2021) (granting alternative service via a combination messaging through the defendant’s

¹⁶ Shortly after the plaintiff effected service, this defendant appeared in the case. Notice of Appearance, *NOCO v. Shenzhen Lianfa*, No. 1:19-cv-1855 (N.D. Ohio Feb. 25, 2020).

¹⁷ The defendant did not appear, and the court entered a default judgment. Default Judgment, *NOCO v. Shenzhen Anband*, No. 1:17CV2205 (N.D. Ohio Aug. 6, 2018).

Facebook page and email addresses: *info@pawico.com* and another associated with the defendant's website domain), *report and recommendation adopted*, 2021 WL 765005 (Feb. 26, 2021).¹⁸

Other courts have permitted service through a combination of email and online storefront communications, implicitly accepting that the recipients are appropriate. *See, e.g., Core Distrib., Inc. v. Doe I*, No. 16-cv-04059 (SRN/HB), slip op. at 7-10 (D. Minn. Mar. 23, 2017) (finding email and *Amazon.com* messages reasonably calculated to provide notice—even though the subject defendants had not responded to the plaintiff's previous communications through these means—because the defendants (i) were required to provide valid email addresses to Amazon and (ii) presumably relied at least partially, if not entirely, on electronic communications through these means, given that they provided incomplete mailing addresses or otherwise had no alternative, reasonable means of contact) (Kutas Decl. Ex. S)¹⁹; *Noco Co. v. SZ Jingxinghui Elecs. Tech. Co.*, No. 1:17CV2208, slip op. at 2, 5 (N.D. Ohio Apr. 23, 2018) (Kutas Decl. Ex. T)²⁰; *Winner's Sun Plastic & Elec. (Shenzhen) Co. v. P'ships & Unincorporated Ass'ns Identified on Schedule "B"*, No. 2:19-cv-00980, slip op. at 1-2 (D. Nev. Aug. 14, 2019) (granting alternative service on defendants with storefronts on *Amazon.com* or *eBay.com* via the email addresses the defendants had provided to those marketplaces) (Kutas Decl. Ex. U)²¹; *Philips*

¹⁸ After the defendant was served, the clerk entered default. Clerk's Entry of Default, *Word Ape*, No. 2:20-cv-01768-DWC (W.D. Wash. Mar. 17, 2021).

¹⁹ Default judgment was eventually granted as to these defendants. *See Core Distrib.*, 2018 WL 6178720, at *2-*3 (D. Minn. Nov. 27, 2018).

²⁰ The defendant did not appear, and the court entered a default judgment. Default Judgment, *Noco v. SZ Jingxinghui*, No. 1:17CV2208 (N.D. Ohio July 27, 2018).

²¹ After the plaintiff conducted discovery on Amazon and eBay to obtain the defendants' email addresses, it served the defendants via email, and one defendant appeared, while default was entered as to the others. *See Stipulation to Extend Time to Answer, Winner's Sun*, No. 2:19-

Oral Healthcare, LLC v. Shenzhen Sincere Mold Tech. Co., No. 2:18-cv-01032-TSZ, 2019 WL 1572675, at *5-*6 (W.D. Wash. Apr. 11, 2019) (although the plaintiff’s efforts to serve process and subsequent case filings via email and *Alibaba.com* electronic contact features sometimes were undeliverable or not marked read by the recipient, the court was “reasonably satisfied” that each defendant received at least one email whose delivery did not fail or multiple *Alibaba.com* messages marked as read, such that the defendant received notice of the action sufficient to grant default judgment); *Pearson Educ. Inc. v. Doe I*, No. 18-CV-7380 (PGG) (OTW), 2019 WL 6498305, at *1, *3 (S.D.N.Y. Dec. 2, 2019) (granting alternative service via email addresses that the defendants provided to Amazon because where the “Defendants have run, and continue to run, an online business, their email addresses are likely their primary mode of communication”).²²

c. Analysis

The ALJ should find that Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-us were sufficiently served because Canon’s *Amazon.com* messages were delivered to each of them, and this procedure was reasonably calculated to provide notice to them.

As described *supra* § III.D.1-4, Canon sent messages to each of these respondents that explained the litigation context of Canon’s outreach, identified the respondent’s accused products, provided a unique link to download service documents, encouraged the respondent’s owner or manager to review the documents, and warned of potential consequences if the respondent failed to appear. Each respondent received one or more messages through the

cv-00980 (D. Nev. Feb. 14, 2020); Clerk’s Entry of Default, *Winner’s Sun*, No. 2:19-cv-00980 (Feb. 21, 2020).

²² The defendants did not appear, and the court eventually issued an order of default against them. Order of Default, *Pearson*, No. 18-CV-7380 (PGG) (OTW) (S.D.N.Y. Nov. 25, 2020).

communication interface that (individually or in aggregate) contained this information, including the PDF attachment, as evidenced by the “Sent Messages” versions of Canon’s successful communications in the *Amazon.com* Message Center coupled with the absence of notifications that an initial or follow-up message’s PDF attachment was omitted. McMahon Decl. Ex. A at 1-6 (Yatengshang initial successful outgoing message and cover letter to PDF attachment); McMahon Ex. B at 1-6, 16-19 (ChengDuXiang initial successful outgoing message, follow-up message, and cover letter to PDF attachment); McMahon Ex. C at 1-6, 11-14 (Erlandianzishang initial successful outgoing message, follow-up message, and cover letter to PDF attachment); McMahon Ex. D at 5-6, 8-11, 20-23 (CJ-us initial successful outgoing message without link filtering, follow-up message, and cover letter to PDF attachment).

These four respondents sent response messages through *Amazon.com*, *see supra* § II.D.2-4, which exceeds the standard that a number of courts have acknowledged for successful electronic service, *i.e.*, that actual confirmation of receipt is not necessary to find that the messages were reasonably calculated to provide notice. *See Noco v. Zhejiang Quingyou*, 338 F.R.D. at 106; *Keck*, 2018 WL 3632160, at *3-*4; *TV Ears*, 2021 WL 165013, at *4-*5; *NOCO v. Shenzhen Anband*, 2018 WL 1373822, at *1, *3; *Core Distrib.*, slip op. at 7-10 (Kutas Decl. Ex. S); *Philips*, 2019 WL 1572675, at *5-*6; *cf. Toyo Tire & Rubber Co. v. CIA Wheel Grp.*, No. SA CV 15–0246–DOC (DFMx), 2016 WL 1251008, at *3 (C.D. Cal. Mar. 25, 2016) (“Many cases have found service of process by email to be reasonably calculated to provide actual notice when the test email is not returned as undeliverable or bounced back.”). These circumstances are similar to those in other cases, where the reliability of the electronic communications was confirmed by the defendants’ responses to the plaintiffs. *See, e.g., NOCO v. Liu Chang*, 2020 WL 533021, at *3; *TV Ears*, 2021 WL 165013, at *4-*5; *Kaneka*, 2017 WL 11509784, at *3.

Indeed, three of the respondents that responded to Canon’s messages—Yatengshang, ChengDuXiang, and Erlandianzishang—did so in a manner that suggested that they fully understood the situation and its seriousness, but decided not to appear in this investigation. *See supra* § II.D.3. In addition, in response to CJ-us’s request to “describe [the] problem in detail,” Canon provided more details elaborating on the context of its outreach, explaining the nature of the ITC proceeding, encouraging that CJ-us’s owner or manager review the provided documents, and sternly warning of the potential consequences for failing to respond to the complaint or otherwise participate in the investigation. *See* McMahon Decl. ¶ 27; McMahon Decl. Ex. D at 20-23. As compared to what service via express delivery under 19 C.F.R. § 201.16 would entail—with the service documents arriving at the respondent’s location addressed to no individual in particular, and with limited ability for the respondent to ask questions or interact with the complainant—these electronic communications are highly reliable. Canon’s electronic communications were sent to someone responsible for engaging with customers and Amazon at an online merchant that depends on those types of electronic communications (and, realistically, no other means) for its livelihood. *See, e.g., Noco v. Zhejiang Quingyou*, 338 F.R.D. at 106. Thus, the *Amazon.com* message is reasonably calculated to provide notice. *See Keck*, 2017 WL 10820533, at *3-*4 (N.D. Cal. Dec. 20, 2017) (where the subject defendants had received and responded to messages through the online message systems of *Alibaba.com* and *AliExpress.com*, service via these means was reasonably calculated to provide notice and in fact was “the method most likely to apprise [them] of the action”); *see generally supra* § III.D.5.b (the weight of authority permitting service via customer-related email addresses and/or online marketplace storefronts).

Moreover, as to Yatengshang, ChengDuXiang, and Erlandianzishang, their communications are of the same general character as the defendant’s in *Kaneka*, *supra* p. 24, in

which the court authorized alternative service. These three respondents' communications to Canon acknowledged or at least were consistent with an awareness of the seriousness of the proceedings and focused on their own conduct, including statements that the respondent had removed the accused product listing and (expressly by Yatengshang and ChengDuXiang, implicitly by Erlandianzishang) that they would not let it happen again. Further, the actions of each individual one of these three should be imputed to the other two, given the evidence that these respondents are connected to each other. As noted *supra* § III.D.3, even though these respondents received Canon's initial *Amazon.com* messages at disparate times spanning two days, they responded days later at essentially identical times (within three, four, or seven minutes of one another), in the middle of their afternoons, with uncannily similar messages sharing overall structures and even specific words and phrases. See McMahon Decl. ¶¶ 10-12, 14, 18, 20; McMahon Decl. Ex. A at 2, 7 (Yatengshang initial successful outgoing message on June 8, 2021 at about 12:55 PM EDT and response on June 11, 2021 at about 3:30 AM EDT); McMahon Decl. Ex. B at 2, 10 (ChengDuXiang initial successful outgoing message June 8, 2021 at about 9:02 PM EDT and response on June 11, 2021 at about 3:23 AM EDT); McMahon Decl. Ex. C at 2, 10 (Erlandianzishang initial successful outgoing message on June 9, 2021 at about 9:16 PM EDT and response on June 11, 2021 at about 3:27 AM EDT); see also *Certain Toner Cartridges, Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1174, Comm'n Op. at 14-15 (Dec. 17, 2020); *Certain Toner Cartridges, Components Thereof, and Systems Containing Same*, Inv. No. 337-TA-1174, Order No. 40 (ID/RD) at 137 (July 23, 2020); Kutas Decl. Ex. D at ¶ 30 (1106 investigation joint stipulation). Notably, Yatengshang accessed its link to the service documents and downloaded them before these respondents responded on *Amazon.com*. Kutas Decl. Ex. C (ShareFile notification). And Erlandianzishang averred in its *Amazon.com* response that it had "let all the company staff know about this incident," which includes

everyone within the company who could make decisions with respect to litigation. Imputing these actions to all three, the ALJ should conclude that each of them actually retrieved or reviewed the service documents, and that someone with sufficient decision-making authority for each respondent did so. Thus, there is additional strong evidence that Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-us received notice, and they should be ordered to show cause as to why they should not be found in default.

IV. The ALJ Should Find in Default Any Defaulting Respondent that Fails to Make the Necessary Showing in Response to the Order to Show Cause

After issuing the order to show cause, the ALJ should find in default any Defaulting Respondents that fail to make the necessary showing in response. This result is commonplace and, at any rate, mandated by Rule 210.16(b)(1)(ii). *See, e.g., Certain Mounting Apparatuses for Holding Portable Electronic Devices and Components Thereof*, Inv. No. 337-TA-1086, Order Nos. 7 (Apr. 18, 2018) (granting motion for order to show cause) and 9 (May 8, 2018) (initial determination finding in default the respondents that did not respond to the order to show cause); *Certain Intravascular Administration Sets and Components Thereof*, Inv. No. 337-TA-1048, Order Nos. 5 (May 23, 2017) and 6 (June 13, 2017) (same).

V. Conclusion

For the foregoing reasons, Canon respectfully requests that the ALJ (i) order the Defaulting Respondents to show cause why they should not be found in default and (ii) issue an initial determination of default for those Defaulting Respondents that fail to show the requisite cause.

Dated: July 15, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2021, copies of the foregoing were filed and served as indicated below.

/s/ Andrew Kutas
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