

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

In the Matter of

**Certain Integrated Solar Power Systems and
Components Thereof**

Investigation No. 337-TA-_____

COMPLAINT UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED

Complainants

Westinghouse Solar, Inc.
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Campbell, California 95008

Andalay Solar, Inc.
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Campbell, California 95008

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Proposed Respondents

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I. INTRODUCTION

1. Complainant Westinghouse Solar, Inc., formerly known as Akeena Solar, Inc., is a designer, manufacturer and distributor of solar power systems, including solar panels with integrated racking, wiring, and grounding (DC solar panels) and panels that also have integrated microinverters (AC solar panels). In 2007, Westinghouse introduced the world's first solar panel with integrated racking, wiring and grounding (the "Andalay System") for residential and commercial rooftop customers. Complainant Andalay Solar, Inc. ("Andalay") is a wholly-owned subsidiary of Westinghouse Solar, Inc., and is the owner of each of the patents and patent applications that cover the Andalay System Technology. Akeena Solar, Inc., and Andalay entered into an exclusive worldwide license agreement that permits Akeena Solar, Inc., and Andalay to manufacture, distribute and market the Andalay System under Westinghouse's name (the "License Agreement"). In March 2011, Akeena Solar, Inc., formally changed its name to Westinghouse Solar, Inc. Westinghouse Solar, Inc., in turn, undertakes all efforts to design, manufacture, market, distribute and sell the Andalay System in the domestic market. Westinghouse Solar, Inc. and Andalay are collectively referred to herein as "Westinghouse."

2. The innovative Andalay System incorporates solar panels, racks and wiring integrated together with each other and with grounding mechanisms in a cohesive manner never previously accomplished in the solar power industry. The result is a new "plug and play" solar panel technology that significantly reduces solar panel installation time and costs, as well as provides reliability and aesthetics when compared to other solar power systems on the market.

3. The Andalay System is a result of pioneering and innovative work by Barry Cinnamon (Westinghouse's Founder, CEO and President) in the design of integrated solar panel

technologies. Andalay, a wholly-owned subsidiary of Westinghouse Solar, Inc., by virtue of an assignment from Mr. Cinnamon, owns U.S. Patent Nos. 7,406,800 (the “’800 Patent”), issued by the United States Patent and Trademark Office (“PTO”) on August 5, 2008, and 7,987,641 (the “’641 Patent”), issued by the PTO on August 2, 2011, which cover key aspects of Westinghouse’s Andalay System technology.

4. Proposed respondent Zep Solar, Inc. (“Zep”) is a competing designer, manufacturer and distributor of solar power components that developed and, in 2009, began marketing the so-called “Zep System” — a self described photovoltaic (“PV”) module-integrated system for installation hardware. Proposed respondents Canadian Solar Inc. and Canadian Solar (USA), Inc. (collectively, “Canadian Solar,” and with Zep, “Respondents”) are international manufacturers of, among other things, PV modules and solar power systems. Zep licenses certain design aspects of its Zep System to Canadian Solar who then incorporates that technology into the design and manufacture of certain of Canadian Solar’s panels. The Zep System infringes the ’800 and ’641 Patents.

5. Westinghouse files this Complaint pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon Respondents’ unlawful importation into the United States, the sale for importation, and/or the sale within the United States after importation, of the Zep System and certain solar panels that incorporate the Zep System technology (the “Accused Products”).

6. On information and belief, the Respondents import the Accused Products into the United States and sell the Accused Products in the United States to the detriment of an established United States domestic industry. As set forth more fully below, Westinghouse believes that the

Respondents cause the Accused Products to be manufactured by currently unknown Chinese (and possibly other countries) entities. After inquiry and investigation, Westinghouse has been unable to determine with reasonable certainty which Chinese entity or entities are involved in the manufacture of the Accused Products. However, Westinghouse believes that discovery in this matter will reveal the identities of such Chinese entities, and may, upon discovery, seek leave to add those entities as additional respondents to this action.

7. Respondents' importation into the United States, offer for sale, sale and/or use of the Accused Products in the United States either directly or indirectly infringes Claims 6 and 10 of the '800 Patent and Claim 1 of the '641 Patent owned by Westinghouse.

8. Westinghouse seeks, as relief, a permanent exclusion order barring the Accused Products from entry into the United States. Westinghouse also seeks as relief cease and desist orders prohibiting the importation, sale, offer for sale, advertising, or the soliciting of the Accused Products encompassed by the asserted claims of the '800 and '641 Patents.

9. On information and belief, the Harmonized Tariff Schedule sections covering the Accused Products include at least the following: DC Solar Panels (8541.40.60.20), AC Solar Panels (8501.31.80), and Parts (8541.90.0000).

II. THE PARTIES

A. Complainants

10. Westinghouse Solar, Inc. is a Delaware corporation with a principal place of business in Campbell, California. Andalay, a California corporation, is a wholly-owned subsidiary

of Westinghouse Solar, Inc., is the division responsible for the Andalay System, and also has its principal place of business in Campbell, California.

11. Andalay, by virtue of several assignments from Mr. Cinnamon and other co-inventors, is the owner of each of the patents and patent applications that cover the Andalay System Technology. Andalay otherwise does not conduct any business operations of its own. Instead, Westinghouse Solar, Inc., pursuant to rights granted to it by the License Agreement, undertakes all efforts to design, manufacture, market and sell the Andalay System in the domestic market.

12. Westinghouse is a designer, manufacturer and distributor of solar power systems, including solar panels with integrated racking, wiring and grounding (DC solar panels) and panels that also have integrated microinverters (AC solar panels) for residential and commercial rooftop customers. Westinghouse designs, markets and sells its solar power system to solar installers, trade workers, dealers, distributors, OEM partners, home builders, and retail home improvement outlets in the United States.

13. Founded in 2001, Westinghouse has focused its business on the development, manufacture and distribution of solar power systems, also referred to as photovoltaic (PV) system. Photovoltaics is the field of technology and research related to the conversion of solar energy directly into electricity. Westinghouse is led by Mr. Cinnamon, who has been involved in the solar industry since the late 1970's. In 2007, Westinghouse first introduced for sale in the market its DC power "plug and play" solar technology called the Andalay System. In 2009, Westinghouse introduced a version of the Andalay System, that produces safe household AC power and has built-in, racking, wiring, grounding and microinverters. Worldwide sales totaled approximately \$29 million in 2010.

B. Proposed Respondents

14. On information and belief, Zep is a California corporation with its principal place of business in San Rafael, California. Zep is a designer and manufacturer of solar panel mounting systems — the Zep System — that involves solar panel frames that interlock together with specialized couplings to form a grounded and rigid structural grid for solar panels. The Zep System is designed to mate with solar panels manufactured with a specialized slot in the PV frame — a solar panel framing design that Zep calls the “Zep Groove,” thus making the solar panel “Zep Compatible” — that enables the coupling and grounding of solar panels. Zep markets and sells the Zep System to distributors and direct purchasers throughout the United States.

15. On information and belief, Zep licenses its Zep System technology to foreign manufacturers, such as Canadian Solar and others, in exchange for consideration, knowing that its licensees are manufacturing products that incorporate and/or are compatible with the Zep System, which are subsequently imported into the United States for widespread distribution and sale in the United States. Westinghouse is informed and believes that this consideration is a license fee and/or commitment by the manufacturers to buy from Zep (or Zep’s distributors) the Zep System. On further information and belief, through industry knowledge, contacts and other information, Zep utilizes several Chinese or other non-U.S. entities for the manufacture and importation of some or virtually all of the products that it sells in the United States. At this time, Westinghouse lacks sufficient information to determine which of these Chinese entities manufacture or import the Accused Products since they are not labeled as to their origination. Westinghouse is confident that through discovery and investigation the actual identities of the manufacturer(s) and importer(s) of Zep’s products will be learned.

16. On information and belief, Canadian Solar Inc. is a Canadian corporation with its principal place of business in Kitchener, Ontario. Canadian Solar (USA), Inc., is a Delaware corporation with its principal place of business in San Ramon, California. Canadian Solar is a solar panel manufacturer and producer. Among other things, Canadian Solar, through a licensing agreement with Zep, manufactures and imports into the United States “Zep-Compatible” solar panels that utilize and incorporate the Zep System technology. More specifically, Canadian Solar manufactures and imports into the United States solar panels that are designed and manufactured with the so-called “Zep Groove” — a specialized slot in the solar panel frame that is designed to permit the solar panel to lock into Zep’s mounting system.

17. On information and belief, and as indicated on its website at <http://www.canadiansolar.com/en/our-company/r-d-and-manufacturing/>, Canadian Solar manufactures its products, including the Accused Products, through seven wholly-owned manufacturing subsidiaries across China, and then imports the Accused Products into the United States. At this time, Westinghouse lacks sufficient information to determine the true identities of these seven wholly-owned manufacturing subsidiaries. Westinghouse, however, is confident that through discovery and investigation, the actual identities of the manufacturers and/or importer(s) of the Accused Products will be learned.

18. On information and belief, Zep has licensed its Zep System technology to foreign manufacturers other than Canadian Solar that permits the foreign manufacturers to incorporate Zep’s framing design (the so-called “Zep Groove”) into their solar panel productions. One such manufacturer is Trina Solar Limited (“Trina”), a Cayman Island corporation with its principal place of business in the People’s Republic of China. Trina is an international solar panel manufacturer

and producer. On information and belief, and as indicated on its website at <http://phx.corporate-ir.net/phoenix.zhtml?c=206405&p=irol-newsArticle&ID=1584722&highlight=>, Trina has entered into a licensing agreement with Zep that permits Trina to manufacture and import into the United States solar panels that, similar to Canadian Solar, utilize and incorporate the Zep System technology — the so-called “Zep Groove.” On information and belief, Trina is in the process of manufacturing its Zep-Compatible solar panels but has not yet launched its Zep-Compatible solar panels in the United States. Upon confirmation that Trina has commenced importing its Zep-Compatible solar panels into the United States, Westinghouse intends to seek to amend this complaint to add Trina as a respondent.

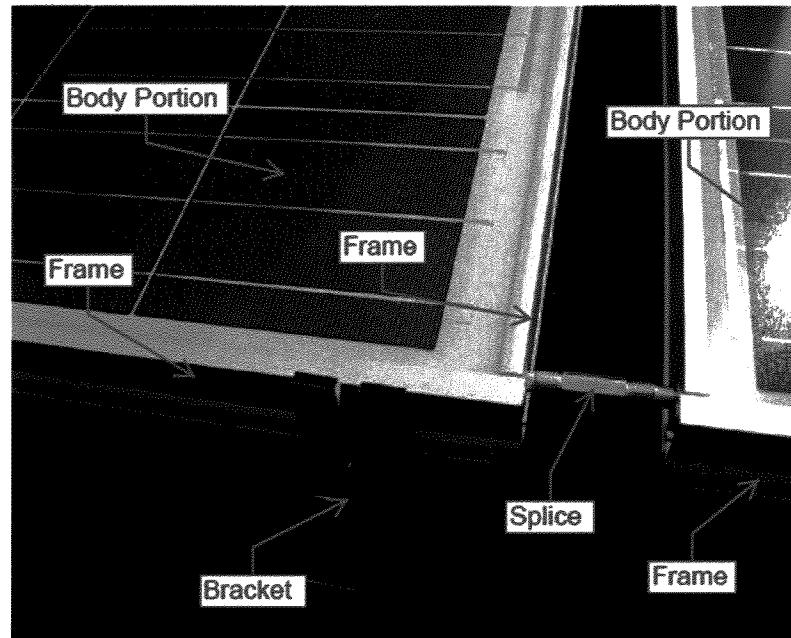
19. On information and belief, Yingli Green Energy Company Limited, a Cayman Island corporation with its principal place of business in the People’s Republic of China, along with its U.S. subsidiary Yingli Green Energy Americas, Inc. (collectively, “Yingli”), has also entered into a license agreement. On information and belief, and according to Yingli’s website at <http://ir.yinglisolar.com/phoenix.zhtml?c=213018&p=irol-newsArticle&ID=1584204&highlight=>, the license agreement permits Yingli to manufacture and import into the United States solar panels that, similar to Canadian Solar and Trina, utilize and incorporate the Zep System technology — the so-called “Zep Groove.” On information and belief, Yingli is in the process of manufacturing its Zep-Compatible solar panels but has not yet launched its Zep-Compatible solar panels in the United States. Upon confirmation that Yingli has commenced importing its Zep-Compatible solar panels into the United States, Westinghouse intends to seek to amend this complaint to add Yingli as a respondent.

III. THE TECHNOLOGY AND PRODUCTS AT ISSUE

20. The technologies at issue relate to a solar panel with integrated racking and grounding. While the patented invention is best and most appropriately described by the claims set out in the patent, the following paragraph describes in general terms the Andalay System (please note that nothing in the following paragraph, and nothing in this complaint, should be construed as a construction of any of the claims of the '800 and '641 Patents nor any other issued patent or patent application that covers the Andalay System technology).

21. The Andalay System incorporates solar panels, racks for connecting the solar panel to a roof, wiring, and grounding mechanisms, integrated together with each other, in a cohesive manner never previously accomplished in the solar power industry. Westinghouse has four U.S. and four foreign patents for the Andalay System technology. Several other U.S. and foreign patent applications that cover the Andalay System technology are working their way through the PTO and foreign patent offices. The Andalay System's solar panels are modular and may stand alone, but are specially-designed to attach together as an integrated system in whatever number is desired by the customer, using splices with coupling and securing mechanisms for connecting and securing solar panels directly and seamlessly together in a structurally rigid fashion. All racking, grounding and wiring connections are integrated with the solar panels. The result is unparalleled reliability, in that there are fewer parts to fail, fewer roof penetrations, and fewer and shorter wire connections subject to pinching, abrasion or decay compared to any prior solar panel technologies or devices. The Andalay System's improved design also better withstands the weather, high rooftop winds, and helps to prevent panels from loosening as a result of heating and cooling cycles. It additionally provides a smooth, streamlined aesthetic unique in the solar power industry. Because there are

fewer parts to install, the Andalay System substantially reduces installation time, providing great benefit to installers. The technology is depicted in the picture below.



IV. U.S. PATENT NO. 7,406,800 — ONE OF THE PATENTS AT ISSUE

A. Identification of the Patent and Ownership by Westinghouse

22. The patent at issue is U.S. Patent No. 7,406,800 (the “’800 Patent”) entitled “Mounting System for a Solar Panel.” A certified copy of the ’800 Patent is attached to the Complaint as Exhibit 1.

23. The ’800 Patent issued on August 5, 2008, based on Application No. 11/849,069 (Publication No. 2005/0257453), which was filed on May 18, 2004. Thus, the ’800 Patent will expire on May 18, 2024.

24. Barry Cinnamon and Emanuel Edward Levy are the named inventors of the ’800 Patent. Andalay, a wholly-owned subsidiary of Westinghouse Solar, Inc., is and at all times

relevant to this action was, owner by assignment of all right, title, and interest to the '800 Patent. A certified copy of the assignment is attached to the Complaint as Exhibit 2.

25. Andalay, by virtue of this assignment and others from Mr. Cinnamon and other co-inventors, is the owner of each of the patents and patent applications that cover the Andalay System Technology. Andalay otherwise does not conduct any business operations of its own. Instead, Westinghouse Solar, Inc., pursuant to rights granted to it by the License Agreement, undertakes all efforts to design, manufacture, market and sell the Andalay System in the domestic market.

26. Together with this Complaint, Westinghouse has filed four copies of the prosecution history of the '800 Patent as Appendix A. On September 15, 2011, Westinghouse ordered a certified copy of the prosecution history for the '800 Patent from the PTO. Westinghouse expects to receive the certified copy of the prosecution history no later than October 10, 2011, at which time it will supplement this Complaint by filing the certified copy of the prosecution history of the '800 Patent. Westinghouse has filed four copies of the '800 Patent and technical references identified in the '800 Patent as Appendix B.

B. Non-Technical Description of the Patented Invention

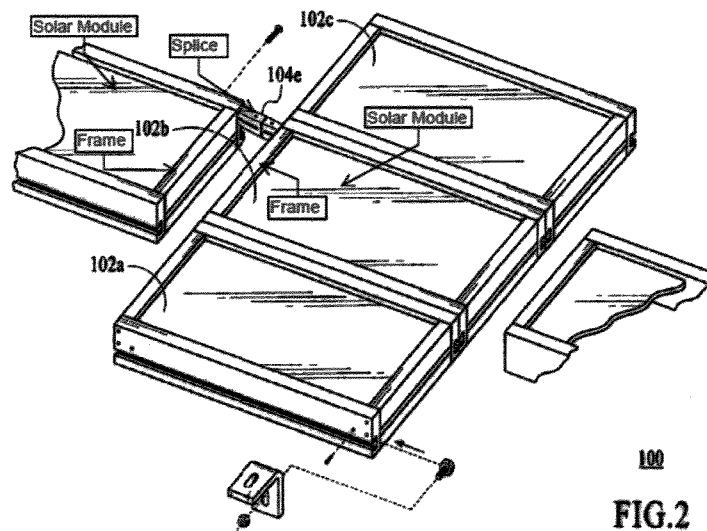
27. While the patented invention is best and most appropriately described by the claims set out therein (again please note that nothing in the following paragraphs, and nothing in this complaint, should be construed as a construction of any of the claims of the '800 Patent nor any other issued patent or patent application that covers the Andalay System technology), the following paragraphs describe in general terms the invention of the '800 Patent.

28. The technology at issue relates to solar modules (also called panels) containing photovoltaic (PV) cells. Photovoltaics is the field of technology and research related to the conversion of solar energy (*i.e.*, sunlight) directly into electricity.

29. The '800 Patent is directed to an integrated solar module frame and racking system for a solar panel. Splices couple the solar modules together into a larger rooftop array structure composed of multiple modules. The racking system allows the solar modules to connect to a roof through use of brackets. The integrated solar module frame and racking system allows for rapid installation of the solar panel on a roof with a minimal number of parts required for assembly. Individual solar modules may be easily added and connected to existing modules as desired.

30. Each solar module combines to form a larger solar array. Each solar module has a frame. A plurality of splices are used to couple the frames of the plurality of solar modules together by inserting each end of each splice into two adjacent solar module frames. Each splice provides rigidity to the frames when the solar modules are coupled together. Each splice comprises a body for coupling two solar modules together, a coupling mechanism on the body for causing a press-fit coupling of two solar modules, and includes a securing mechanism for securing the body to at least one of the two solar modules. In one aspect, the solar module includes connectors sockets, designed so that improper wiring is prevented by the shape of the connector socket. In another aspect, a raised feature on the splice provides a stop for the splice. Another raised feature on the splice provides a grounding path for one or more of the splices.

31. Figure 2 of the '800 Patent is reproduced below, with two solar modules, the frames of the solar modules, and a splice highlighted.



C. Foreign Counterparts to the '800 Patent

32. The foreign counterparts to the '800 Patent are (i) Australian Patent No. 2005248343, based on Australian Patent Application No. 2005248343, (ii) Canadian Patent Application No. 2,566,296, (iii) Chinese Patent Application No. 200580015652.1, (iv) European Patent Application No. 05749341.3, (v) Israeli Patent Application No. 179166, (vi) Indian Patent No. 243626, based on Indian Patent Application No. 1322/MUMNP/2006, (vii) Japanese Patent Application No. 2007/527321, (viii) Korean Patent No. 751614, based on Korean Patent Application No. 2006-7026456, and (ix) Mexican Patent No. 274182, based on Mexican Patent Application No. Pa/a/2006/013332.

C. Licenses under the '800 Patent

33. Westinghouse has granted two licenses relating to the '800 Patent to Suntech Power Holdings Co., Ltd. and Kyocera Corporation, respectively.

V. U.S. PATENT NO. 7,987,641 — ONE OF THE PATENTS AT ISSUE

A. Identification of the Patent and Ownership by Westinghouse

34. The patent at issue is U.S. Patent No. 7,987,641 (the “’641 Patent”) entitled “Mounting System for a Solar Panel.” A certified copy of the ’641 Patent is attached to the Complaint as Exhibit 3.

35. The ’641 Patent issued on August 2, 2011, based on Application No. 11/851,914 (Publication No. 2007/0295393), which was filed on September 7, 2007. The ’641 Patent is a divisional of U.S. Patent Application No. 10/849,069, which was filed on May 18, 2004. Thus, the ’641 Patent will expire on May 18, 2024.

36. Barry Cinnamon is the named inventor of the ’641 Patent. Andalay, a wholly-owned subsidiary of Westinghouse Solar, Inc., is and at all times relevant to this action was, owner by assignment of all right, title, and interest to the ’641 Patent. A certified copy of the assignment is attached to the Complaint as Exhibit 4.

37. Andalay, by virtue of this assignment and others from Mr. Cinnamon and other co-inventors, is the owner of each of the patents and patent applications that cover the Andalay System Technology. Andalay otherwise does not conduct any business operations of its own. Instead, Westinghouse Solar, Inc., pursuant to rights granted to it by the License Agreement, undertakes all efforts to design, manufacture, market and sell the Andalay System in the domestic market.

38. Together with this Complaint, Westinghouse has filed a certified copy and three additional copies of the prosecution history of the ’641 Patent as Appendix C. Westinghouse has

filed four copies of the '641 Patent and technical references identified in the '641 Patent as Appendix D.

B. Non-Technical Description of the Patented Invention

39. While the patented invention is best and most appropriately described by the claims set out therein (again please note that nothing in the following paragraphs, and nothing in this complaint, should be construed as a construction of any of the claims of the '641 Patent nor any other issued patent or patent application that covers the Andalay System technology), the following paragraphs describe in general terms the invention of the '641 Patent.

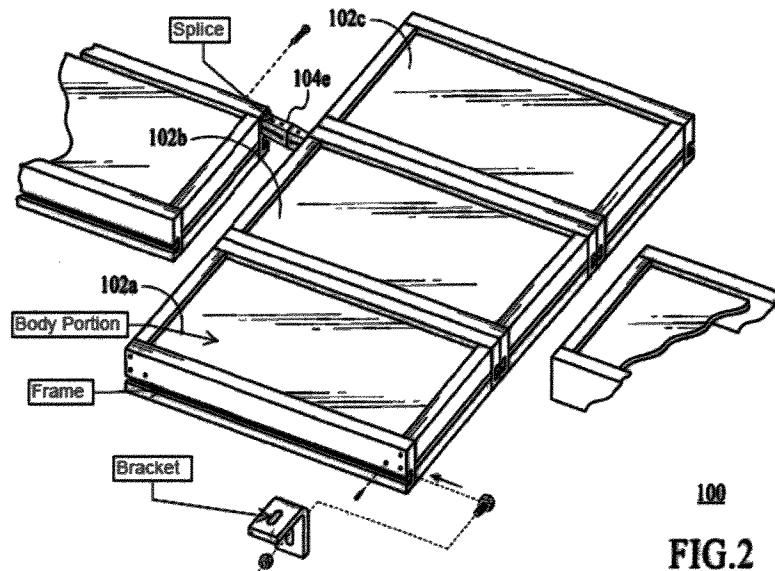
40. The technology at issue relates to solar modules (also called panels) containing photovoltaic (PV) cells. Photovoltaics is the field of technology and research related to the conversion of solar energy (*i.e.*, sunlight) directly into electricity.

41. The '641 Patent is directed to an integrated solar module frame and racking system for a solar panel. Splices couple the solar modules together into a larger rooftop array structure composed of multiple modules. The racking system allows the solar modules to connect to a roof through use of brackets. The integrated solar module frame and racking system allows for rapid installation of the solar panel on a roof with a minimal number of parts required for assembly. Individual solar modules may be easily added and connected to existing modules as desired.

42. Each solar module has a body portion with a frame and at least one splice that rigidly couples the frames of adjacent solar modules together. The splice has a body for coupling the frames of adjacent solar modules together and a securing mechanism for securing the adjacent solar

modules together. A bracket securely attaches the solar module to a roof. The bracket is located along any portion of the frame.

43. Figure 2 of the '641 Patent is reproduced below, with a body portion, frame, bracket, and splice of the solar module highlighted.



C. Foreign Counterparts to the '641 Patent

44. The foreign counterparts to the '641 Patent are (i) Australian Patent No. 2005248343, based on Australian Patent Application No. 2005248343, (ii) Canadian Patent Application No. 2,566,296, (iii) Chinese Patent Application No. 200580015652.1, (iv) European Patent Application No. 05749341.3, (v) Israeli Patent Application No. 179166, (vi) Indian Patent No. 243626, based on Indian Patent Application No. 1322/MUMNP/2006, (vii) Japanese Patent Application No. 2007/527321, (viii) Korean Patent No. 751614, based on Korean Patent Application No. 2006-7026456, and (ix) Mexican Patent No. 274182, based on Mexican Patent Application No. Pa/a/2006/013332.

D. Licenses under the '641 Patent

45. Westinghouse has granted two licenses relating to the '641 Patent to Suntech Power Holdings Co., Ltd. and Kyocera Corporation, respectively.

VI. RELATED LITIGATION

46. Akeena Solar and Andalay initiated a lawsuit on October 22, 2009, against Zep and several of Zep's distributors, in the United States District Court, Northern District of California, in the case styled *Akeena Solar, Inc., et al. v. Zep Solar, Inc., et al.*, Case No. CV 09 5040 (the "'800 Patent Lawsuit"). In the '800 Patent Lawsuit, Plaintiffs bring claims against Zep and its distributors for patent infringement of the '800 Patent and seek a declaratory judgment of non-infringement of U.S. Patent No. 7,592,537, owned by Zep. On January 27, 2010, Zep filed with the PTO a Request for Inter Partes Reexamination of the '800 Patent under 35 U.S.C. §§ 311-318 and 37 C.F.R. § 1.902, *et seq.* (the "First Reexamination of the '800 Patent"). Zep submitted prior art to the PTO, which, according to Zep, raised substantial new questions of patentability that were not already considered during the prosecution of the '800 Patent. On March 26, 2010, the PTO rejected Zep's request on the ground that it failed to point out each substantial new question of patentability raised by the prior art and did not provide a detailed explanation of the pertinency and manner of applying the prior art to every claim for which reexamination was requested. On April 9, 2010, the PTO granted Zep a reexamination request filing date of April 2, 2010. On April 14, 2010, the District Court in the '800 Patent Lawsuit granted Zep's motion to stay the '800 Patent Lawsuit pending the First Reexamination of the '800 Patent. At the conclusion of the First Reexamination of the '800 Patent, the PTO cancelled nine of the twelve claims of the '800 Patent. On June 7, 2011, Zep submitted a request for *inter partes* reexamination of three remaining claims of the '800 Patent (the

“Second Reexamination of the ’800 Patent”). The Second Reexamination of the ’800 Patent is still ongoing. In the meantime, the ’800 Patent Lawsuit remains stayed pending the Second Reexamination of the ’800 Patent.

47. Zep and two of its licensees, Trina Solar (U.S.), Inc., and Changzhou Trina Solar Energy Co., Ltd. (collectively, “Plaintiffs”), initiated a lawsuit on August 2, 2011, against Westinghouse and Akeena Solar, Inc., in the United States District Court, Northern District of California, in the case styled *Zep Solar, Inc., et al. v. Westinghouse Solar, Inc., et al.*, Case No. CV 11 3800 (the “’641 Patent Lawsuit”). In the ’641 Patent Lawsuit, Plaintiffs seek a declaratory judgment of non-infringement and invalidity of the ’641 Patent. Westinghouse has until October 11, 2011 to respond to the complaint in the ’641 Patent Lawsuit.

48. On August 5, 2011, Zep filed with the PTO a request for *inter partes* reexamination of the ’641 Patent. Zep submitted prior art to the PTO, which, according to Zep, raises substantial new questions of patentability that were not already considered during the prosecution of the ’641 Patent. On August 9, 2011 the PTO rejected Zep’s request on the ground that it failed to provide a detailed explanation of the pertinency of the cited prior art, and the manner of applying the cited prior art to the claims of the ’641 Patent. Zep re-filed its reexamination request on August 18, 2011. On August 29, 2011, the PTO granted Zep a reexamination request filing date of August 18, 2011. On September 23, 2011, the PTO issued an Office Action, rejecting claims 1-3 under prior art submitted by Zep. No further action has been taken in the reexamination proceeding.

VII. UNLAWFUL AND UNFAIR ACTS OF THE RESPONDENTS – PATENT INFRINGEMENT

49. On information and belief, Respondents unlawfully make, sell for importation, import, and/or sell after importation into the United States the Zep System and solar power systems that incorporate and/or are compatible with the Zep System that either directly or indirectly infringe Claims 6 and 10 of the '800 Patent and Claim 1 of the '641 Patent. Further, in violation of 35 U.S.C. § 271(b), Zep unlawfully induces Canadian Solar and other of its licensees to infringe Claims 6 and 10 of the '800 Patent and Claim 1 of the '641 Patent by actively encouraging Canadian Solar and its foreign licensees to infringe through importation by way of its license agreements, knowing that such acts of importation will infringe Westinghouse's valid U.S. Patents. *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 179 L. Ed. 2d 1167 (2011); *Water Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668. A claim chart that applies Claim 6 of the '800 Patent to the Zep System is attached to the Complaint as Exhibit 5. A claim chart that applies Claim 6 of the '800 Patent to the Zep-Compatible Canadian Solar solar panel is attached to the Complaint as Exhibit 6. A claim chart that applies Claim 10 of the '800 Patent to the Zep System is attached to the Complaint as Exhibit 7. A claim chart that applies Claim 10 of the '800 Patent to the Zep-Compatible Canadian Solar solar panel is attached to the Complaint as Exhibit 8. A claim chart that applies Claim 1 of the '641 Patent to the Zep System is attached to the Complaint as Exhibit 9. A claim chart that applies Claim 1 to the Zep-Compatible Canadian Solar solar panel is attached to the Complaint as Exhibit 10. Further discovery may reveal that other of Respondents' products infringe on these patents.

VIII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

50. On information and belief, Respondents make, import into the United States, sell for importation into the United States, and/or sell after importation into the United States the Accused Products. The specific instances of importation or sales of the Accused Products described in the following paragraph are representative examples of the unlawful importation and/or sale after importation of the Accused Products.

51. Zep licenses its Zep System technology to foreign manufacturers, such as Canadian Solar, Trina and Yingli, in exchange for consideration, knowing that its licensees are manufacturing products that incorporate and/or are compatible with the Zep System, which are subsequently imported into the United States for widespread distribution and sale in the United States. Westinghouse is informed and believes that this consideration is a license fee and/or commitment by the manufacturers to buy from Zep (or its distributors) the Zep System. Zep boasts of its relationships with Canadian Solar, Trina and Yingli, publicly touts its licensing activities with these foreign suppliers, and encourages other foreign suppliers to enter into similar licensing arrangements to become “Zep Compatible” on its website at <http://www.zepsolar.com/modules.html>. Zep, in other words, induces the importation of the infringing Zep System by foreign manufacturers like Canadian Solar, Trina and Yingli Zep. Such inducement is in violation of Section 337. *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 179 L. Ed. 2d 1167 (2011); *Water Techs. Corp. v. Calco, Ltd.*, 850 F.2d 660, 668.

52. Furthermore, through industry experience and contacts and other information, Zep utilizes several Chinese or other non-U.S. entities for the manufacture and importation of some or virtually all of the products that it sells in the United States. The Zep System is comprised of,

among other things, components, clips, racks, and aluminum pieces that are mass produced and are typically, consistent with industry standard, supplied by foreign sources. This industry standard seems to be confirmed by Zep's own advertised purchasing practices. On Zep's website, at <http://www.zepsolar.com/jobs.html>, Zep is currently posting a job position for a so-called "Purchasing Specialist/Guru". The job description states that this person will "assist the Manufacturing Operations team with strategic sourcing/procurement, engineering and manufacturing interfaces, issuing and evaluating RFQs, PO's, etc., contract issues and negotiations, cost reduction opportunities and overall supplier management." Importantly, a stated job task is to "[i]ssue RFQs to multiple suppliers for multiple commodities (NA, Canada and Asia)." A desired qualification is "[d]irect experience in procuring and managing freight in NA and Asia."

53. Zep, who claims to sell its products in North America and Europe, has also filed at least three trademarks under the name "Zep Solar, Inc." with the China Trademark Office (CTO) that cover all aspects of the Zep System, including: photovoltaic modules connectors, photovoltaic solar cell modules, solar battery, fasteners of metal, scaffolding of metal, waterproof board of metal, rivet nut column of metal, anchors, locks of metal, alloys of common metal, screws of metal, bolts, ironmongery, cramps of metal (crampons), frames of metal for placing solar panels, frames of metal for supporting solar cell modules, frames of metal for supporting photovoltaic modules, frames of metal for supporting solar thermal collector, and buckles of common metal (ironmongery).

54. As described in Exhibit 11, the Declaration of Ed Beyer, a representative sample of a Zep System was purchased in the United States. On information and belief, the Zep System and/or components thereof, was manufactured by one or more Chinese entities, imported into the United States by Zep Solar and/or one or more Chinese entities, and then sold by Zep Solar after

importation. At this time, Westinghouse lacks sufficient information to determine which Chinese entities manufacture or import the Accused Products since they are not labeled as to their origination. Westinghouse is confident that through discovery and investigation, the actual identities of the manufacturer(s) and importer(s) of Zep's products will be learned.

55. As described in Exhibit 12, the Declaration of Lori A. Hawkins, a representative sample of a Zep-Compatible Canadian Solar solar panel was purchased in the United States. On information and belief, the solar power system was manufactured by one or more Chinese entities, imported into the United States by Canadian Solar and/or one or more Chinese entities, and then sold by Canadian Solar after importation. At this time, Westinghouse lacks sufficient information to determine which of Canadian Solar's wholly-owned Chinese subsidiaries manufactured and/or imported the representative solar panels since they are not labeled as to their origination.

IX. THE DOMESTIC INDUSTRY

56. In accordance with Section 337(a)(2)-(3), an industry in the United States exists, namely the solar power industry, for products protected by the '800 and '641 Patents. Westinghouse is widely recognized as a pioneering installer, designer and manufacturer of solar power systems that has devoted its entire existence to serving the solar power needs of residential and commercial customers tied to the electric power grid. Its efforts have proven successful.

57. From the time of its inception until September 2010, Westinghouse was both a designer and manufacturer of solar power systems and a solar power system installer. Indeed, from inception to September 2010, Westinghouse completed approximately 10,000 solar power installations for customers in California, New York, New Jersey, Pennsylvania, Colorado and

Connecticut. Westinghouse grew substantially during this time period, generating approximately \$42 million in gross revenue in 2008.

58. Westinghouse capitalized on its extensive experience as an installer, as well as its experience as a designer and manufacturer, when it introduced the Andalay System in 2007. Upon introduction of the Andalay System, Westinghouse began to transition all of its installation sales to the Andalay System. Quickly, the demand for the Andalay System was greater than Westinghouse could serve as an installer. So, starting in 2009, Westinghouse began re-selling the Andalay System through a growing authorized dealer network that includes important distribution partnerships with Lowe's Home Improvement Stores, Lennar Homes, and Lennox International. By mid-2010, Westinghouse made the strategic decision to exit the installation business completely and expand its sales of solar power systems to dealers and other solar installers throughout the United States, including California, by far the largest solar market in the United States. Westinghouse's business is now focused solely on design and manufacturing activities, and sales of its solar power systems to solar installers, trade workers, dealers, distributors, OEM partners, home builders, and retail home improvement outlets.

59. Westinghouse's success is attributable to the significant employment of labor and capital and substantial investments in its exploitation of the '800 and '641 Patents, and other patents protecting the Andalay System¹, in the United States. The Andalay System is at the heart of Westinghouse's success and has the awards to show for it. In addition to winning the 2009 Popular Mechanics Breakthrough Award, the Andalay System has earned Westinghouse the SEIA Industry Innovator Award in 2009, the Innovative Housing Technology Award in 2008, the International

¹ Westinghouse has two other U.S. patents — U.S. Patent Nos. 7,832,157, and 7,866,098.

Design Excellence Award in 2008, and the PCBC Cool Product Award in 2008. As set forth in detail in the Declaration of Barry Cinnamon, attached as Exhibit 13 to the Complaint, Westinghouse has expended a significant amount of time, effort and money on the research, development, manufacturing, sales, distribution, marketing and customer support related to the Andalay System. These significant investments are all related, in part, to the '800 and '641 Patents.

A. Westinghouse Practices the Invention of the '800 and '641 Patents

60. Westinghouse's Andalay System that is sold and supported in the United States practices both Claims 6 and 10 of the '800 Patent, and Claim 1 of the '641 Patent. Exhibit 14 depicts an example of the Andalay System, including the invention of the '800 Patent. Exhibit 15 depicts an example of the Andalay System, including the invention of the '641 Patent. Exhibit 16 includes a claim chart demonstrating that the Andalay System practices Claim 6 of the '800 Patent. Exhibit 17 includes a claim chart demonstrating that the Andalay System practices Claim 10 of the '800 Patent. Exhibit 18 includes a claim chart demonstrating that the Andalay System practices Claim 1 of the '641 Patent.

61. Westinghouse's Andalay System practices the invention disclosed in the '800 and '641 Patents because the invention offers numerous advantages to Westinghouse's customers, including the following: (i) there are fewer roof-assembled parts and less roof-top labor required compared to industry standard rack-mounted solar panel products and technology; (ii) the low profile panel design looks like a beautiful, energy producing skylight and eliminates unsightly racking and exposed wires; (iii) the built-in wiring connections improve reliability; (iv) the AC panels deliver 5% to 25% more energy compared to ordinary panels while at the same time producing safe household AC and having built in panel level monitoring, racking, wiring,

grounding and microinverters; and (v) the Andalay System complies with the National Electric Code and UL wiring and grounding requirements in a way that is efficient for the installer and reliable for many years.

B. Westinghouse Employs a Significant Amount of Labor and Capital and Has Substantially Invested on Its Exploitation of the '800 and '641 Patents in the United States

62. As set forth in further detail in the Confidential Declaration of Barry Cinnamon, Westinghouse employs over 36 employees in the United States, whose work can be categorized within four core functions — research and development, operations, sales and marketing and general/administrative. Westinghouse's headquarters, a 5,800 square foot facility, is located in Campbell, California. Westinghouse also maintains a 25,000 square foot warehouse in San Jose, California.

63. Westinghouse markets and sells its Andalay System and related products to a network of authorized dealers across the country, including both national and regional dealers such as Lowe's Home Improvement Stores, Lennar Homes, Icon Solar Power, LLC, Econ Solar Group, Real Goods Solar, and REC Solar. Westinghouse has also established an extensive sales and marketing program that incorporates a mix of print, web and other media advertisements as well as participation in industry trade shows and individual discussions with prospective authorized dealers. In 2010 alone, Westinghouse incurred \$1,182,444 in sales and marketing expenses related to the Andalay System.

64. For the calendar years 2009-2010, the total costs incurred in the United States by Westinghouse that are attributable to the design, manufacture, marketing, sale and distribution of its Andalay System — the system that practices the invention of the '800 and '641 Patents — are at

least \$37,247,005 as set forth in detail in Westinghouse's Form 10-K Annual Report for the period ending December 31, 2010, filed with the U.S. Securities and Exchange Commission on February 24, 2011, a copy of which is attached as Exhibit 19.

X. RELIEF

65. Westinghouse respectfully requests that the United States International Trade Commission:

(a) Institute an immediate investigation pursuant to Section 337(b)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, into the violations by proposed Respondents of Section 337 arising from the importation into the United States, and/or sale within the United States after importation, of proposed Respondents' solar power systems, including the Zep System and any solar power systems that incorporate and/or are compatible with the Zep System and other products that infringe one or more claims of U.S. Patent Nos. 7,406,800 and 7,987,641.

(b) Schedule and conduct a hearing, pursuant to Section 337(c), for purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337 and, following the hearing, determine that there has been a violation of Section 337.


(c) Issue a permanent exclusion order, pursuant to Section 337(d), excluding from entry into the United States Respondents' solar power systems, including the Zep System and any solar power systems that incorporate and/or are compatible with the Zep

System and other products that infringe one or more claims of U.S. Patent Nos. 7,406,800 and 7,987,641.

(d) Issue a permanent order, pursuant to Section 337(f), directing proposed Respondents to cease and desist from importing, selling, offering for sale, using, demonstrating, promoting, marketing, and/or advertising in the United States, or otherwise transferring outside the United States for sale in the United States proposed Respondents' solar power systems, including the Zep System and any solar power systems that incorporate and/or are compatible with the Zep System and other products that infringe one or more claims of U.S. Patent Nos. 7,406,800 and 7,987,641.

(e) Grant all such other and further relief as it deems appropriate under the law, based upon the facts complained of herein as determined by the investigation.

Dated: October 3, 2011



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