

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN GAS SPRING NAILER
PRODUCTS AND COMPONENTS
THEREOF**

**Investigation No. 337-TA-1082
(Remand)**

**NOTICE OF A COMMISSION REQUEST FOR WRITTEN SUBMISSIONS PURSUANT
TO A COURT REMAND**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“the Commission”) has determined to request written submissions following a remand from the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”).

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 20, 2017, based on a complaint filed on behalf of Kyocera Senco Brands Inc. (now known as Kyocera Senco Industrial Tools, Inc.) (“Kyocera”) of Cincinnati, Ohio. 82 FR 55118-19 (Nov. 20, 2017). The complaint, as amended and supplemented, alleged violations of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain gas spring nailer products and components thereof by reason of infringement of, *inter alia*, certain claims of U.S. Patent Nos. 8,267,296 (“the ’296 patent”); 8,27,297 (“the ’297 patent”); 8,387,718 (“the ’718 patent”); 8,286,722 (“the ’722 patent”); and 8,602,282 (“the ’282 patent”). The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named as a respondent Hitachi Koki U.S.A., Ltd. (now known as Koki Holdings America Ltd.) (“Koki”) of Braselton, Georgia. The Office of Unfair Import Investigations did not participate in the investigation. Prior to the evidentiary hearing,

the parties stipulated that the '718 patent was the only remaining patent at issue because no violation could be shown as to the '296, '297, '722, and '282 patents based on claim construction and an evidentiary ruling excluding Kyocera's expert testimony with respect to proving infringement under the doctrine of equivalents, but not literal infringement. *See Initial Determination* (Jun. 7, 2019) at 1-2, *unreviewed by Comm'n Notice* (Aug. 14, 2019) ("the August 14, 2019 Determination").

On March 5, 2020, having found asserted claims 1, 10, and 16 of the '718 patent infringed and not invalid and the domestic industry requirement satisfied, the Commission issued its final determination finding a violation of section 337. 85 FR 14244-46 (Mar. 11, 2020). The Commission issued a limited exclusion order directed against Koki's infringing products and a cease and desist order directed against Koki. *Id.*

Both Kyocera and Koki timely appealed the August 14, 2019 Determination and the Commission's final determination, respectively, to the Federal Circuit. The separate appeals were subsequently consolidated. On January 21, 2022, the Court issued a decision vacating and remanding (for further proceedings consistent with the Court's opinion) the Commission's finding of a violation of section 337. *Kyocera Senco Indus. Tools Inc. v. ITC*, 22 F.4th 1369 (Fed. Cir. 2022). Specifically, the Federal Circuit: (1) ruled that Kyocera's expert testimony should have been excluded for both infringement under the doctrine of equivalents and literal infringement; (2) reversed the Commission's finding that the "lifter member" limitation was not means-plus-function; (3) held that the "initiating a driving cycle" limitation cannot be met by pressing the exit end of a safety contact element against a workpiece; and (4) affirmed the Commission on all other issues on appeal. The Court's mandate issued on March 14, 2022, returning jurisdiction to the Commission for the remanded issues.

Pursuant to the Court's remand, the Commission requests written submissions from the parties to address the specific further proceedings to be conducted on remand.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions regarding what further proceedings must be conducted to comply with the January 21, 2022 judgment of the U.S. Court of Appeals for the Federal Circuit in *Kyocera Senco Indus. Tools Inc. v. ITC*, 22 F.4th 1369 (Fed. Cir. 2022).

Written submissions must be filed no later than the close of business on **April 7, 2022**. Reply submissions must be filed no later than the close of business on **April 14, 2022**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1082) in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures*,

https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on March 28, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: March 28, 2022