

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

**NOTICE OF COMMISSION DETERMINATION TO EXTEND THE TARGET DATE
FOR COMPLETION OF THE INVESTIGATION**

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 extend the target date for completion of the investigation to March 5, 2020.

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 are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (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. (“Kyocera”) of Cincinnati, Ohio. 82 *Fed. Reg.* 55118-19 (Nov. 20, 2017). The complaint, as amended and supplemented, alleges violations of section 337 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 certain claims of U.S. Patent Nos. 8,011,547 (“the ’547 patent”); 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 alleges the existence of a domestic industry. The

Commission's notice of investigation named Hitachi as a respondent. The Office of Unfair Import Investigations is not participating in the investigation. The '547 patent has been terminated from the investigation and the notice of investigation was amended to add claim 30 of the '297 patent to the investigation. Order No. 13 (June 4, 2018), *unreviewed by* Comm'n Notice (June 22, 2018); Order No. 15 (June 19, 2018), *unreviewed by* Comm'n Notice (July 9, 2018), 83 *Fed. Reg.* 32685-66 (July 15, 2018). Prior to the evidentiary hearing, the parties stipulated that the '718 patent is the only remaining patent at issue since no violation could be shown as to the '296, '297, '722, and '282 patents based on an evidentiary ruling limiting the scope of testimony of Kyocera's expert. *See* ID at 1-2.

On June 7, 2019, the ALJ issued a final ID finding no violation of section 337 as to the '718 patent based on non-infringement and the failure of Kyocera to establish the existence of a domestic industry ("DI") that practices the '718 patent. Specifically, the ID finds that neither Hitachi's accused products nor Kyocera's domestic products satisfy the "system controller" limitation of the asserted claims. The ID also includes a recommended determination on remedy and bonding ("RD") during the period of Presidential review. The RD recommends an LEO directed to gas spring nailer products and components thereof that infringe the asserted claims of the '718 patent, and recommends a CDO directed against Hitachi. The RD does not recommend issuance of a bond.

On August 14, 2019, the Commission determined to review the ID in part and remand in part. *See* Comm'n Notice (Aug. 14, 2019). Specifically, the Commission determined to review the ID's finding that Kyocera did not establish: (1) either direct or induced infringement of the asserted claims of the '718 patent, and (2) practice of the asserted claims by Kyocera's DI products to satisfy the DI requirement. The Commission also determined to review the ID's finding that Kyocera demonstrated sufficient activities and investments relating to the articles protected by the '718 patent to satisfy the DI requirement. *Id.* The Commission remanded the issues of whether Kyocera has established, by a preponderance of the evidence, that: (1) the remaining limitations (irrespective of the "system controller" limitation) of the asserted claims of the '718 patent are met by Hitachi's accused products; (2) the remaining limitations of the asserted claims are practiced by Kyocera's DI products; and (3) Hitachi induced infringement of the asserted claims. *Id.*

On October 28, 2019, the ALJ issued an RID finding no violation of section 337 as to the '718 patent based on non-infringement and the failure of Kyocera to establish the existence of a domestic industry that practices the '718 patent. Specifically, the RID finds that: (1) neither Hitachi's accused products nor Kyocera's DI products satisfy the "displacement volume" limitation (*i.e.*, "(A) a hollow cylinder comprising a cylindrical wall with a movable piston therewith, said hollow cylinder containing a displacement volume created by a stroke of said piston") and the "initiating a driving cycle" limitation (*i.e.*, "initiating a driving cycle by pressing said exit end against a workpiece and actuating said trigger, thereby causing said fastener driving mechanism to force the driver member to move toward said exit end and drive a fastener into said workpiece") of the asserted claims; and (2) Kyocera failed to establish that Hitachi possesses the requisite specific intent to induce infringement of the claims.

On November 12, 2019, Kyocera petitioned, and Hitachi contingently petitioned, for review of the RID. On November 20, 2019, Kyocera and Hitachi each filed a response in opposition to the other party's petition for review.

On December 12, 2019, the Commission determined to review the RID in part. Specifically, the Commission determined to review the RID's finding that Kyocera did not establish: (1) direct infringement of the asserted claims with respect to the "displacement volume" and "initiating a driving cycle" limitations; (2) practice of the asserted claims by Kyocera's DI products with respect to these limitations; and (3) induced infringement of the asserted claims. 84 *Fed. Reg.* 69391-92 (Dec. 18, 2019). The Commission determined not to review the remainder of the RID. *Id.* The Commission also requested the parties to respond to certain questions concerning the issues under review with respect to the ID and RID, and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *Id.*

On January 3 and 10, 2020, Kyocera and Hitachi each filed a brief and a reply brief, respectively, on all issues for which the Commission requested written submissions.

The Commission has determined to extend the target date for completion of the investigation to March 5, 2020.

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: February 27, 2020