

**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 REVIEW IN PART AND  
REMAND IN PART A FINAL INITIAL DETERMINATION FINDING NO VIOLATION  
OF SECTION 337**

**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 review in part and remand in part a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337.

**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 <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://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, 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 as a respondent Hitachi Koki U.S.A., Ltd. (“Hitachi”) of Braselton, Georgia. 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). 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 his final ID finding no violation of section 337 as to the ’718 patent. The ID finds that Hitachi’s accused products do not infringe asserted claims 1, 10, and 16 (the “asserted claims”) of the ’718 patent, and that Kyocera has not satisfied the technical prong of the domestic industry requirement with respect to this patent. Specifically, the ID finds that the “system controller” limitation of these claims is not met by Hitachi’s accused products or practiced by Kyocera’s domestic industry products. The ID also finds that the asserted claims are not invalid under 35 U.S.C. 103, 112 for obviousness or indefiniteness, respectively, and that Kyocera has satisfied the economic prong of the domestic industry requirement with respect to the ’718 patent. In the same document, the ALJ recommended that if the Commission finds a violation it should issue a limited exclusion order directed to Hitachi’s infringing products and a cease and desist order directed to Hitachi.

On June 24, 2019, Kyocera petitioned, and Hitachi contingently petitioned, for review of the final ID. On July 2, 2019, Kyocera and Hitachi each filed a response in opposition to the other party’s petition for review.

Having reviewed the record of the investigation, including the parties’ briefing, the Commission has determined to review and remand the subject ID in part. Specifically, the Commission has determined to review the ID’s finding that Kyocera did not establish: (1) either direct or induced infringement of the asserted claims; and (2) practice of the asserted claims by Kyocera’s domestic industry products to satisfy the domestic industry requirement. The Commission has 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 domestic industry requirement. The Commission has also determined to remand to the ALJ, as set forth in the Commission’s Order accompanying this notice, 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 are met by Hitachi’s accused products; (2) the remaining limitations of the asserted claims are practiced by Kyocera’s domestic industry products; and (3) Hitachi induced infringement of the asserted claims. The Commission has determined not to review the remainder of the ID.

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.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is stylized with a large initial "L" and "B".

Lisa R. Barton  
Secretary to the Commission

Issued: August 14, 2019