

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
(Modification)**

**NOTICE OF A COMMISSION DETERMINATION TO ADOPT A RECOMMENDED
DETERMINATION; TERMINATION OF THE MODIFICATION PROCEEDING**

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 adopt a recommended determination (“RD”) of the presiding chief administrative law judge (“CALJ”) finding that redesigned products of respondent Koki Holdings America Ltd. (“Koki”) of Braselton, Georgia are not covered by the limited exclusion order (“LEO”) and cease and desist order (“CDO”) issued in the underlying investigation. The Commission has terminated the modification proceeding.

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*, claims 1, 10, and 16 of U.S. Patent Nos. 8,387,718 (“the ’718 patent”). The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named Koki as a respondent. The Office of Unfair Import Investigations did not participate in

the investigation.

On March 5, 2020, the Commission issued its final determination finding a violation of section 337 based on infringement of the asserted claims of the '718 patent. 85 FR 14244-46 (Mar. 11, 2020). The Commission issued an LEO directed against Koki's infringing products, and a CDO directed against Koki. *Id.* On July 1, 2020, Koki filed an appeal to the U.S. Court of Appeals for the Federal Circuit, which is currently pending (Appeal No. 20-2050).

On June 30, 2020, U.S. Customs and Border Protection ("CBP") issued a ruling, pursuant to 19 CFR Part 177, that the redesigned products are outside of the scope of the LEO issued in the investigation. *See* RX-1001 (CBP Ruling); CX-1017C (Ltr. Requesting CBP Ruling). In response, on August 17, 2020, Kyocera petitioned for institution of a modification proceeding, requesting the Commission to determine if the redesigned products are outside of the scope of the LEO and CDO. On August 27, 2020, Koki opposed the petition.

On September 16, 2020, the Commission instituted a modification proceeding to determine whether the redesigned products are covered by the LEO and CDO. *See* 85 FR 59543-44 (Sept. 22, 2020); Comm'n Order (Sept. 16, 2020). On October 22, 2020, the Commission issued a revised modification institution order that clarified that the presiding ALJ would consider, in the first instance, any issues regarding potentially impermissible arguments raised by Kyocera in the course of the modification proceeding. *See* Revised Comm'n Order (Oct. 22, 2020).

On July 2, 2021, the CALJ issued the subject RD finding that Koki's redesigned products are not covered by the LEO and CDO.

On July 16, 2021, Kyocera submitted comments on the RD. On July 22, 2021, Koki filed a response to Kyocera's comments.

Having reviewed the record and the parties' submissions, the Commission has determined to adopt the RD's finding that the redesigned products do not infringe claims 1, 10, and 16 of the '718 patent and thus are not covered by the LEO and CDO. The Commission has issued a contemporaneous order indicating that the redesigned products are exempt from the scope of the LEO and CDO.

The modification proceeding is terminated.

The Commission vote for this determination took place on August 4, 2021.

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', enclosed within a circular flourish.

Lisa R. Barton
Secretary to the Commission

Issued: August 4, 2021