

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN BLOWERS AND
COMPONENTS THEREOF**

**Investigation No. 337-TA-1217
(Sanctions)**

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW IN PART AN INITIAL
DETERMINATION (ORDER NO 38), AND ON REVIEW, TO AFFIRM WITH
CERTAIN MODIFICATIONS; TERMINATION OF THE PROCEEDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an Initial Determination (“ID”) (Order No. 38, Remand of Order No. 36 on Sanctions), issued by the Administrative Law Judge (“ALJ”) on April 14, 2022, imposing non-monetary sanctions. On review, the Commission has determined to affirm the ID with the modification set forth below.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, D.C. 20436, telephone (202) 205-3042. 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 on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On September 8, 2020, the Commission instituted the original, underlying investigation based on a complaint filed by Regal Beloit America, Inc. of Beloit, Wisconsin (“Regal” or “Complainant”). 85 FR 55491-92 (Sept. 8, 2020). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain blowers and components thereof by reason of infringement of one or more of claims 1, 2, 7-10, and 15 of U.S. Patent No. 8,079,834 (“the ’834 patent”). *Id.* at 55492. The Commission’s notice of investigation named as respondents East West Manufacturing, LLC of Atlanta, Georgia, and East West Industries of Binh Duong, Vietnam (collectively, “East West” or “Respondents”). *Id.* at 55492. The Office of Unfair Import Investigations (“OUII”) did not participate as a party in the original investigation. *Id.*

On November 12, 2020, the Commission terminated the original investigation based upon a consent order stipulation and entry of a consent order. 85 FR 73511 (Nov. 18, 2020).

On January 15, 2021, Regal filed a complaint at the Commission alleging that East West's redesigned blower infringes the asserted patent claims in violation of the consent order. On February 19, 2021, the Commission instituted a formal enforcement proceeding, pursuant to Commission Rule 210.75(a), to determine whether a violation of the consent order issued in the original investigation has occurred and to determine what, if any, enforcement measures are appropriate. 86 FR 10335 (Feb. 19, 2021). The enforcement proceeding named East West as the respondents. *Id.* OUII was named as a party in the enforcement proceeding. *Id.*

On March 1, 2021, East West filed a motion for sanctions alleging that Regal and its attorneys tampered with and misrepresented the accused redesigned blower in the enforcement complaint. Regal and OUII filed responses thereto on March 11, 2021, and March 18, 2021, respectively. The ALJ further permitted the private parties to file replies and sur replies to the sanctions briefing. EID at 16.

The ALJ held an evidentiary hearing from July 20-23, 2021 and received post-hearing briefs thereafter. On September 22, 2021, the ALJ held a supplemental hearing on the sanctions motion. EID at 18.

On December 14, 2021, the ALJ issued the enforcement initial determination ("EID") finding no violation of the consent order. On December 14, 2021, the ALJ also issued Order No. 36 denying the motion for monetary sanctions, but granting nonmonetary sanctions, including a warning and a direction to redact all misrepresentations in the Enforcement Complaint.

On January 4, 2022, Regal filed a petition for review of the EID, and Respondents filed a contingent petition for review of the EID and a petition for review of Order No. 36. On January 10, 2022, the parties filed reply submissions. On February 11, 2022, the Commission determined to review the EID and Order No. 36. 87 FR 9085-86 (Feb. 17, 2022).

On review, the Commission affirmed the EID with certain modifications set forth in a Commission opinion and terminated the enforcement proceeding. 87 FR 15454-55 (Mar. 18, 2022). The Commission bifurcated its review of Order No. 36 from its review of the EID and remanded Order No. 36 to the ALJ for issuance of a revised order regarding sanctions in a separate sanctions proceeding. *Id.*; Order Remanding Order No. 36 (Mar. 14, 2022).

On April 14, 2022, the ALJ issued the subject ID (Order No. 38), regarding remand of Order No. 36. The ID confirmed that Order No. 36 did not recommend monetary sanctions because East West did not strictly follow the safe harbor provision of 19 CFR 210.4(d)(1)(i). Order No. 38 at 2. The ID further confirmed that Order No. 36 recommended *non-monetary sanctions* pursuant to 19 CFR 210.4(d) and 19 C.F.R. § 210.4(c), according to the procedural authority of 19 CFR 210.4(d)(1)(ii). *Id.* at 3.

On April 21, 2022, East West filed a petition for review of Order No. 38. On April 25, 2022, Regal filed a petition for review of Order No. 38. On April 28, 2022, Regal and OUII filed responses to East West's petition. On May 2, 2022, East West and OUII filed responses to Regal's petition.

Having examined the record of this investigation, including Order Nos. 36 and 38, the petitions for review, and the responses thereto, the Commission has determined to affirm Order Nos. 36 and 38 with the following modification: The Commission has determined to take no position on whether a strict reading of the safe harbor provision of Commission Rule 210.4(d)(1)(i) (19 CFR 210(d)(1)(i)) is required. The Commission has determined to limit the sanction to Regal and its lead counsel, Mr. Norman and Mr. Jinkins.^{1, 2}

The Commission's vote on this determination took place on May 16, 2022. Regal and its lead counsel, Mr. Norman and Mr. Jinkins, are sanctioned in accordance with the ALJ's recommendation in Order Nos. 36 and 38.

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 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: May 16, 2022

¹ The Commission notes that Regal filed a corrected complaint in compliance with Order No. 36 on January 7, 2022. *See* Complainant Regal Beloit America, Inc.'s Notice of Compliance with Order No. 36 (Jan. 7, 2022).

² In Vice Chair Stayin's view, the misconduct by Regal and its lead counsel warrants more severe penalties, including but not necessarily limited to monetary sanctions.