

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington D.C. 20436

In the Matter of

**CERTAIN CONNECTING DEVICES
("QUICK CLAMPS") FOR USE WITH MODULAR
COMPRESSED AIR CONDITIONING UNITS,
INCLUDING FILTERS, REGULATORS, AND
LUBRICATORS ("FRL'S") THAT ARE PART OF
LARGER PNEUMATIC SYSTEMS AND THE
FRL UNITS THEY CONNECT**

Inv. No. 337-TA-587

ORDER

The Commission instituted this investigation on November 13, 2006, based on a complaint filed by Norgren, Inc. ("Norgren") of Littleton, Colorado. 71 Fed. Reg. 66193 (Nov. 13, 2006). An amended complaint was filed on October 25, 2006. A supplement to the complaint was filed on November 1, 2006. The amended complaint alleged violations of section 337 of the Tariff Act of 1930 (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 devices for modular compressed air conditioning units and the FRL units they connect by reason of infringement of claims 1-9 of U.S. Patent No. 5,372,392 ("the '392 patent"). The amended complaint also alleged that a domestic industry exists with regard to the '392 patent under subsection (a)(2) of section 337. The amended complaint named SMC Corporation of Japan; SMC Corporation of America of Indianapolis, Indiana (collectively, "SMC"); AIRTAC of China; and MFD Pneumatics ("MFD") of Chicago, Illinois as the respondents and requested a limited exclusion order and a cease and desist order.

On July 13, 2007, the Commission determined not to review an initial determination terminating the investigation with respect to MFD and AIRTAC on the basis of a consent order stipulation and consent order. On February 13, 2008, the ALJ issued his final ID finding no violation of section 337 in the investigation. Specifically, the ALJ found that SMC's accused products do not infringe the asserted claims (claims 1-5, 7, and 9) of the '392 patent. He also found that the asserted claims are not invalid for obviousness under his claim construction. On April 18, 2008, the Commission determined not to review the ALJ's initial determination that there is no violation of section 337 with respect to SMC, 73 Fed. Reg. 21157 (Apr. 18, 2008).

Norgren appealed the Commission's final determination to the U.S. Court of Appeals for the Federal Circuit ("the Court"). On May 26, 2009, the Court issued its judgment, reversing-in-part the Commission's claim construction, reversing the Commission's determination of noninfringement, vacating the Commission's determination of nonobviousness, and remanding the investigation with instructions for the Commission to evaluate obviousness in the first instance based upon the Court's construction of the claim term "generally rectangular ported flange." *Norgren Inc. v. International Trade Comm'n*, No. 2008-1415 (Fed. Cir. May 26, 2009). The mandate of the Court issued on September 9, 2009.

Upon consideration of this matter, it is hereby ORDERED that:

(1) The investigation is remanded to the chief administrative law judge, Judge Paul J. Luckern, for designation of a presiding administrative law judge to conduct proceedings consistent with the May 26, 2009, judgment of the U.S. Court of Appeals for the Federal Circuit in *Norgren Inc. v. International Trade Commission*, No. 2008-1415, including issuance of a final initial determination on violation. The final initial determination will be processed in accordance with Commission rules 210.42(a) and 210.43-.46. The ALJ may otherwise conduct the remand proceedings as he deems appropriate, including reopening the record.

(2) The Secretary to the Commission shall serve a copy of this Order upon each party to the investigation.

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: October 1, 2009