

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN BLOWERS AND
COMPONENTS THEREOF**

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

**NOTICE OF A COMMISSION DETERMINATION FINDING NO VIOLATION OF
THE CONSENT ORDER; TERMINATING THE ENFORCEMENT PROCEEDING;
AND REMANDING ORDER NO. 36**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to bifurcate its review of Order No. 36 from its review of the EID in the enforcement proceeding. The Commission has determined to affirm the enforcement initial determination (“EID”) issued on December 14, 2021, finding no violation of the consent order issued in the above-referenced section 337 enforcement investigation with the modifications set forth in the accompanying Commission opinion. The enforcement proceeding is terminated. The Commission has determined to remand Order No. 36 to the Administrative Law Judge (“ALJ”) for issuance of a revised order regarding sanctions as set forth in the Commission remand order. The Commission will consider Order No. 36 in the separate sanctions proceeding.

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 with respect to Respondents based upon a consent order stipulation and entry of a consent order. 85 FR 73511 (Nov. 18, 2020). The Consent Order directs East West to “not sell for importation, import or sell after importation the Subject Articles ... except under consent or license from Complainant.” Consent Order at ¶ 5. The Consent Order defines “Subject Articles” as “certain blowers and components thereof that infringe claims 1, 2, 7-10, and 15 of the ’834 Patent.” *Id.* at ¶ 3.

On January 15, 2021, Regal filed an enforcement complaint at the Commission alleging that East West’s redesigned blower infringes claims 1, 2, 7-10, and 15 of the ’834 patent 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 respondents named in the enforcement proceeding are the same as the respondents named in the original investigation, *i.e.*, East West Manufacturing, LLC of Atlanta, Georgia, and East West Industries of Binh Duong, Vietnam. *Id.* OUII was named as a party in the enforcement proceeding. *Id.*

On March 1, 2021, East West filed a motion for monetary and other 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. Regal opposed the motion and asked for monetary sanctions in its response. The presiding Administrative Law Judge (“ALJ”) further permitted the private parties to file replies and sur-replies to the sanctions briefing. EID at 16.

On June 29, 2021, the ALJ issued a *Markman* Order (Order No. 22), styled “*Markman* Claim Constructions With Abbreviated Rationales” (*Markman* Order I). On July 13, 2021, the ALJ issued Order No. 23, clarifying Order No. 22.

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 October 29, 2021, the ALJ issued Order No. 32 (*Markman* Order II), providing extensive explanations as to the adopted constructions in Order No. 22.

On December 14, 2021, the ALJ issued the subject EID finding no violation of the Consent Order. The EID found that the parties do not contest personal jurisdiction, and that the Commission has *in rem* jurisdiction over the accused products. EID at 19-20. The EID noted that the private parties filed a “Joint Stipulation on Importation and Sales,” describing “the

number of units of the Accused or Redesigned Blower that East West imported and sold.” *Id.* at 20. The EID found that Regal failed to show that East West’s redesigned blower infringes asserted claims 1, 2, 7-10, and 15 of the ’834 patent, and thus failed to show a violation of the consent order. *See id.* at 9-10. The EID stated that “in the event the Commission were to find to the contrary, an imposed civil penalty should be *de minimus* and not the maximum civil penalty that Regal has proposed.” *Id.* at 10. Specifically, the EID recommended that “East West disgorge its profits plus an additional one-half of its profits from any sales that violated the Consent Order.” *Id.* at 10-11.

On December 14, 2021, the ALJ also issued Order No. 36 denying East West’s motion for monetary sanctions. The ALJ issued a public warning to Regal, citing the Commission’s sanctions authority under Commission Rule 210.4(c) and (d), 19 CFR 210.4(c), (d), and ordered Regal to correct potentially misleading portions of 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 replied to the petitions for review.

On February 11, 2022, the Commission determined to review the EID and Order No. 36. 87 FR 9085–86 (Feb. 17, 2022).

Pursuant to 19 CFR 210.25, the Commission has determined to bifurcate its review of Order No. 36 from its review of the EID. Upon review of the parties’ submissions, the EID, and the evidence of record, the Commission has determined to affirm the EID’s finding that Regal failed to show that East West violated the Consent Order with the modifications set forth in the accompanying Commission opinion. The enforcement proceeding is terminated. The Commission has determined to remand Order No. 36 to the ALJ for a revised order regarding sanctions as set forth in the Commission remand order. The Commission will consider Order No. 36 in the separate sanctions proceeding.

The Commission’s vote on this determination took place on March 14, 2022.

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: March 14, 2022