

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, DC 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**

**Investigation No. 337-TA-587**

**NOTICE OF COMMISSION DECISION TO REVIEW A FINAL INITIAL  
DETERMINATION; SCHEDULE FOR FILING WRITTEN SUBMISSIONS  
ON THE ISSUE UNDER REVIEW AND ON REMEDY, THE PUBLIC  
INTEREST, AND BONDING**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination ("ID") on remand issued by the presiding administrative law judge ("ALJ") and denied motions to file reply and sur-reply briefs in connection with the petitions for review.

**FOR FURTHER INFORMATION CONTACT:** Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3116. 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, DC 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 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 Corp. 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 ID 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. Specifically, the ALJ found that there had been an importation of SMC’s accused products and that none of the accused products infringe the asserted claims of the ‘392 patent. He also found that the asserted claims are not invalid due to obviousness. He further found that Norgren satisfies the domestic industry requirement with respect to the ‘392 patent. On February 25, 2008, the ALJ issued a recommended determination on remedy and bonding in the event the Commission reversed his finding of no violation of section 337.

On April 18, 2008, the Commission determined not to review the ID and terminated the investigation based on the finding of no violation of section 337. *73 Fed. Reg.* 21157 (Apr. 18, 2008). Norgren appealed 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, and vacating the Commission’s determination of nonobviousness. *Norgren Inc. v. Int’l Trade Comm’n*, No. 2008-1415 (Fed.Cir. May 26, 2009). The Court remanded 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.”

Following receipt of the Court’s September 9, 2009, mandate, the Commission ordered the investigation remanded to the Chief ALJ for designation of a presiding ALJ to conduct proceedings in accordance with the Court’s judgment. The Chief Judge reassigned the investigation to the ALJ who presided over the original investigation. The ALJ held an evidentiary hearing on April 21, 2010, at which all parties were represented. The parties also fully briefed the merits.

On August 5, 2010, the ALJ issued the final ID on remand in which he determined that the asserted claims are not invalid for obviousness. SMC and the Commission investigative attorney (“IA”) have petitioned for review of the ID. Norgren has filed a response in opposition to the petitions. The IA and Norgren have also moved to file reply and sur-reply briefs, respectively, in connection with the petitions for review.

Having examined the record of this investigation, including the final ID on remand, the petitions for review, the response in opposition to the petitions, and the motions for leave to file a reply to the response and a sur-reply to the reply to the response, the Commission has determined to review the ID on the issue of obviousness and has determined to deny the motions for additional briefing.

On review, the Commission requests written submissions on the issue under review, particularly the sub-issues of (a) whether the SMC old-style clamp is generally rectangular and (b) whether adding a hinge to one side of a generally rectangular clamp would have been obvious to one skilled in the art in 1993. The Commission also requests that the parties include in their submissions responses to the following queries, with supporting citations to the evidentiary record:

1. Is the ID's finding that the SMC old-style clamp is not "generally rectangular" contrary to the Court's holding in *Norgren Inc. v. Int'l Trade Comm'n*, No. 2008-1415 (Fed.Cir. May 26, 2009) (Slip Op. at 6-7) that the SMC and Norgren FRL flanges, which seem to have "intervening sloped sides" and "octagonal" and other appearances, are "generally rectangular"?
2. How, if at all, does the addition of a hinge to swing open and closed one side of a generally rectangular clamp affect the clamp's ability to seal as claimed in the '392 patent?
3. Applying a flexible standard, please identify the teaching(s), motivation(s), or suggestion(s), if any, that existed pre-invention that would have made it obvious to a person of ordinary skill in the art in 1993 to combine a hinge with a generally rectangular clamp used in a pressure air system.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers.

The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written submissions on the issue under review as set forth above. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration date of the '392 patent and state the HTSUS number under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on October 21, 2010. Reply submissions must be filed no later than the close of business on November 1, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42-.46 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-.46).

By order of the Commission.

/s/

Marilyn R. Abbott  
Secretary to the Commission

Issued: October 7, 2010