

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

**NOTICE OF COMMISSION DETERMINATION TO EXTEND THE DATE FOR
DETERMINING WHETHER TO REVIEW A FINAL INITIAL DETERMINATION
FINDING NO VIOLATION OF SECTION 337**

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 extend the date for determining whether to review a final initial determination (“ID”) to August 14, 2019.

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 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, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 20, 2017, based on a complaint filed on behalf of Kyocera Senco Brands Inc. (“Kyocera”) of Cincinnati, Ohio. 82 *Fed. Reg.* 55118-19 (Nov. 20, 2017). The complaint, as amended and supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, 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 certain claims of U.S. Patent Nos. 8,011,547; 8,267,296; 8,27,297; 8,387,718 (“the ’718 patent”); 8,286,722; and 8,602,282. The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named as a respondent Hitachi Koki U.S.A., Ltd. (“Hitachi”) of Braselton, Georgia. The Office of Unfair Import Investigations is not participating in the investigation. The ’547

patent has been terminated from the investigation and claim 30 of the '297 patent was added to the investigation. Order No. 13 (June 4, 2018), *unreviewed by* Comm'n Notice (June 22, 2018); Order No. 15 (June 19, 2018), *unreviewed by* Comm'n Notice (July 9, 2018). Prior to the evidentiary hearing, the parties stipulated that the '718 patent is the only remaining patent at issue. *See* ID at 1-2.

On June 7, 2019, the presiding administrative law judge ("ALJ") issued his final ID finding no violation of section 337 as to the '718 patent. The ID finds that Hitachi's accused products do not infringe asserted claims 1, 10, and 16 of this patent, and that Kyocera's domestic industry products do not practice the '718 patent. Specifically, the ID finds that the "system controller" limitation of these claims is not met by Hitachi's accused products or practiced by Kyocera's domestic industry products. The ID also finds that the asserted claims are not invalid under 35 U.S.C. 103 and 112 for obviousness or indefiniteness, respectively, and that Kyocera's investments and activities satisfied the economic prong of the domestic industry requirement with respect to the '718 patent. In the same document, the ALJ recommended that if the Commission finds a violation it should issue a limited exclusion order directed to Hitachi's infringing products and a cease and desist order directed to Hitachi.

On June 24, 2019, Kyocera petitioned, and Hitachi contingently petitioned, for review of the final ID. On July 2, 2019, Kyocera and Hitachi each filed a response in opposition to the other party's petition for review.

The Commission has determined to extend the date for determining whether to review the final ID to August 14, 2019.

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.



Lisa R. Barton
Secretary to the Commission

Issued: July 25, 2019