

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1005 (Remand)]

Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production; Notice of a Commission Determination Vacating the Portion the Final Determination Relating To United States Patent No. 6,180,373 and the Limited Exclusion Order Based Thereon

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to vacate the portion of its final determination relating to United States Patent No. 6,180,373 (“the ‘373 patent’”) and its limited exclusion order based thereon.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3115. 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 <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: On June 27, 2018, the United States Court of Appeals for the Federal Circuit found that a portion of the consolidated appeal in *Ajinomoto Co., Inc. v. International Trade Commission*, Appeal Nos. 2018-1590, -1629, was moot by reason of the expiration of the ‘373 patent and remanded the investigation to the Commission to determine whether to vacate the portion of the underlying final determination relating to the ‘373 patent.

The Federal Circuit appeal at issue stemmed from *Certain L-Tryptophan, L-Tryptophan Products, and Their Methods of Production*, Investigation No. 337-TA-1005. This investigation was instituted based on a complaint

filed by Complainants Ajinomoto Co., Inc. of Tokyo, Japan and Ajinomoto Heartland Inc. of Chicago, Illinois (collectively, “Complainants”). See 81 FR 38735-36 (June 14, 2016). The complaint, as supplemented, alleged 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 L-tryptophan, L-tryptophan products, and their methods of production by reason of infringement of certain claims of U.S. Patent No. 7,666,655 (“the ‘655 patent’”) and U.S. Patent No. 6,180,373 (“the ‘373 patent’”). See *id.* The notice of investigation identified CJ CheilJedang Corp. of Seoul, Republic of Korea, CJ America, Inc. of Downers Grove, Illinois, and PT CheilJedang Indonesia of Jakarta, Indonesia (collectively, “Respondents”) as respondents in this investigation. See *id.* The Office of Unfair Import Investigations was not a party to the investigation. See *id.*

On August 11, 2017, the Administrative Law Judge issued his final initial determination finding no violation of section 337. On December 18, 2017, the Commission reversed and found a section 337 violation with respect to both the ‘655 and the ‘373 patents. The ‘373 patent expired on January 30, 2018.

On February 27, 2018, Respondents filed a notice of appeal of the Commission’s final determination with the Court of Appeals for the Federal Circuit. Their appeal was consolidated with Complainant’s appeal filed on February 16, 2018. In addition, on May 25, 2018, Respondents filed a corrected motion that sought partial dismissal of the appeal with respect to the now-expired ‘373 patent, vacatur of the related portions of the Commission’s final determination, and remand to the Commission with an instruction to dismiss the related portion of the complaint. The Commission did not file a response to Respondents’ motion. On June 4, 2018, Complainants filed a response to Respondents’ motion and indicated that while it agreed to the partial dismissal of the appeal, it objected to the vacatur of the portion of the Commission’s final determination.

On June 27, 2018, the Federal Circuit granted Respondents’ motion “to the extent that this matter is remanded for the limited purposes of allowing the Commission to address whether to vacate its final determinations relating to the ‘373 patent.” *Ajinomoto Co., Inc. v. Int’l Trade Comm’n*, Consolidated Appeal Nos. 18-1590, -1629, Order at 3

(ECF No. 38) (Fed. Cir. June 27, 2018). The Federal Circuit retained jurisdiction over the remainder of the appeal, which it affirmed on August 6, 2019. *Ajinomoto Co., Inc. v. Int’l Trade Comm’n*, 932 F.3d 1342 (Fed. Cir. 2019). A petition for writ of certiorari was filed with the Supreme Court on February 24, 2020. *CJ CheilJedang Corp. v. Int’l Trade Comm’n*, No. 19-1062 (filed Feb. 24, 2020).

The Commission has determined to vacate the portion of its final determination relating to the ‘373 patent and its limited exclusion order based thereon. The Commission’s opinion is being issued concurrently herewith. The Commission hereby terminates this investigation.

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.

Issued: March 5, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020-04934 Filed 3-10-20; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1082]

Certain Gas Spring Nailer Products and Components Thereof; Notice of Commission Determination Finding a Violation of Section 337; Issuance of Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

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 find a violation of section 337. Specifically, the Commission has determined to affirm in part, reverse in part, and modify in part both an initial determination (“ID”) and a remand initial determination (“RID”) of the presiding administrative law judge (“ALJ”). The Commission has issued a limited exclusion order (“LEO”) directed against infringing gas spring nailer products and components thereof of respondent Hitachi Koki U.S.A., Ltd. (“Hitachi”) of Braselton, Georgia and a cease and desist order (“CDO”) directed

against Hitachi. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT:

Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 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, DC 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 FR 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 ("section 337"), 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 ("the '547 patent"); 8,267,296 ("the '296 patent"); 8,27,297 ("the '297 patent"); 8,387,718 ("the '718 patent"); 8,286,722 ("the '722 patent"); and 8,602,282 ("the '282 patent"). The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Hitachi as a respondent. The Office of Unfair Import Investigations is not participating in the investigation. The '547 patent has been terminated from the investigation and the notice of investigation was amended to add claim 30 of the '297 patent 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), 83 FR 32685-66 (July 15, 2018). Prior to the evidentiary hearing, the parties stipulated that the '718 patent is the only remaining patent at issue because no violation could be

shown as to the '296, '297, '722, and '282 patents based on an evidentiary ruling limiting the Kyocera's expert's testimony. *See* ID at 1-2. At the hearing, Kyocera asserted claims 1, 10, and 16 (the "asserted claims") of the '718 patent. *Id.* at 2, 21.

On June 7, 2019, the ALJ issued a final ID finding no violation of section 337 as to the '718 patent based on non-infringement and the failure of Kyocera to establish the existence of a domestic industry ("DI") that practices the '718 patent. Specifically, the ID finds that Kyocera failed to show that the accused products or the domestic industry products practice the asserted claims. The ID also finds that Kyocera satisfied the economic prong of the DI requirement under section 337(a)(3)(B). The ID also includes a recommended determination on remedy and bonding ("RD") during the period of Presidential review. The RD recommends an LEO directed to gas spring nailer products and components thereof that infringe the asserted claims of the '718 patent, and recommends a CDO directed against Hitachi. The RD does not recommend imposing a bond.

On August 14, 2019, the Commission determined to review the ID in part and remand in part. *See* Comm'n Notice (Aug. 14, 2019). Specifically, the Commission determined to review the ID's finding that Kyocera did not establish: (1) Either direct or induced infringement of the asserted claims of the '718 patent, and (2) practice of the asserted claims by the DI products to satisfy the DI requirement. The Commission also determined to review the ID's finding that Kyocera has satisfied the economic prong of the DI requirement. *Id.* The Commission remanded the issues of whether Kyocera has established, by a preponderance of the evidence, that: (1) The remaining limitations (irrespective of the "system controller" limitation, *i.e.*, "a circuit configured to control operation based on received input signals") of the asserted claims of the '718 patent are met by the accused products; (2) the remaining limitations of the asserted claims are practiced by the DI products ("the DI products"); and (3) Hitachi induced infringement of the asserted claims. *Id.*

On October 28, 2019, the ALJ issued an RID finding no violation of section 337 as to the '718 patent based on non-infringement and the failure of Kyocera to establish the existence of a domestic industry that practices the '718 patent. Specifically, the RID finds that: (1) Neither the accused products nor the DI products satisfy the "displacement volume" limitation (*i.e.*, "(A) a hollow cylinder comprising a cylindrical wall

with a movable piston therewith, said hollow cylinder containing a displacement volume created by a stroke of said piston") and the "initiating a driving cycle" limitation (*i.e.*, "initiating a driving cycle by pressing said exit end against a workpiece and actuating said trigger, thereby causing said fastener driving mechanism to force the driver member to move toward said exit end and drive a fastener into said workpiece") of the asserted claims; and (2) Kyocera failed to establish that Hitachi possesses the requisite specific intent to induce infringement of the claims.

On November 12, 2019, Kyocera petitioned, and Hitachi contingently petitioned, for review of the RID. On November 20, 2019, Kyocera and Hitachi each filed a response in opposition to the other party's petition for review.

On December 12, 2019, the Commission determined to review the RID in part. Specifically, the Commission determined to review the RID's finding that Kyocera did not establish: (1) Direct infringement of the asserted claims with respect to the "displacement volume" and "initiating a driving cycle" limitations; (2) practice of the asserted claims by the DI products with respect to these limitations; and (3) induced infringement of the asserted claims. 84 FR 69391-92 (Dec. 18, 2019). The Commission determined not to review the remainder of the RID. *Id.* The Commission also requested the parties to respond to certain questions concerning the issues under review with respect to the ID and RID, and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *Id.*

On January 3 and 10, 2020, Kyocera and Hitachi each filed a brief and a reply brief, respectively, on all issues for which the Commission requested written submissions. Having reviewed the record in this investigation, including the final ID, the RID, and the parties' written submissions, the Commission has determined to find a violation of section 337. Specifically, the Commission has determined that: (1) The accused and DI products meet the "system controller," "displacement volume," and "initiating a driving cycle" limitations of the asserted claims 1, 10, and 16 of the '718 patent, and therefore the accused products infringe these claims; (2) the DI products practice these claims and therefore Kyocera has satisfied the technical prong of the DI requirement; (3) Hitachi has induced infringement of the asserted claims; and (4) Kyocera has

satisfied the economic prong of the DI requirement under section 337(a)(3)(C). The Commission reverses the ID's and RID's findings to the contrary and takes no position on the ID's finding that Kyocera has satisfied the economic prong of the DI requirement under section 337(a)(3)(B). Accordingly, the Commission finds a violation based on Hitachi's induced infringement of the asserted claims. The Commission has issued an opinion explaining the basis for the Commission's determination.

Having found a violation of section 337 as to the '718 patent, the Commission has determined that the appropriate form of relief is an LEO prohibiting the entry of unlicensed gas spring nailer products and components thereof that infringe one or more of claims 1, 10, and 16 of the '718 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of Hitachi, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. Appropriate relief also includes a CDO prohibiting Hitachi from conducting any of the following activities in the United States: Importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for gas spring nailer products and components thereof that infringe one or more of claims 1, 10, and 16 of the '718 patent.

The Commission has further determined that the public interest factors enumerated in sections 337(d)(1) and 337(f)(1) (19 U.S.C. 1337(d)(1) and 1337(f)(1)) do not warrant denying relief. Finally, the Commission has determined that no bond is required during the period of Presidential review (19 U.S.C. 1337(j)). The Commission's order was delivered to the President and to the United States Trade Representative on the day of its issuance.

The Commission has terminated this investigation. 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.

Issued: March 5, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020-04925 Filed 3-10-20; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1157]

Certain Female Fashion Dresses, Jumpsuits, Maxi Skirts, and Accoutrements; Notice of a Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 9) granting a joint motion to terminate the investigation based on a settlement agreement. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. 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 <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 May 29, 2019, based on a complaint filed on behalf of Style Pantry LLC ("Style Pantry") of Beverly Hills, California. 84 FR 24816 (May 29, 2019). The complaint, as amended, 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 female fashion dresses, jumpsuits, maxi skirts, and accoutrements by reason of false

designation, false description, dilution, and obtaining sales by false claim of association, the threat or effect of which is to destroy or substantially injure an industry in the United States. The notice of investigation named Amazon.com Inc. ("Amazon") of Seattle, Washington; Xunyun, Jiaying Xunyun Imp & Exp Co. Ltd of Zhejiang, China; and Jianzhang Liao, Pinkqueen Apparel Inc. of Xiamen, China as respondents. The Office of Unfair Import Investigations ("OUII") was also named as a party in this investigation.

Respondents Xunyun, Jiaying Xunyun Imp & Exp Co. Ltd and Jianzhang Liao, Pinkqueen Apparel Inc. were found in default pursuant to 19 CFR 210.16, for failure to respond to the complaint and notice of investigation. See Order No. 7 (Dec. 3, 2019), *not rev'd by Comm'n Notice* (Dec. 26, 2019).

On January 22, 2020, Style Pantry and Amazon filed a joint motion to terminate the investigation based on a settlement agreement. On February 3, 2020, OUII filed a response in support of the motion.

On February 4, 2020, the ALJ issued the subject ID granting the joint motion to terminate pursuant to Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)). See Order No. 9 at 1-2 (Feb. 4, 2020). The ALJ found that the motion to terminate complies with the Commission's rules, and there is no evidence that terminating this investigation by settlement would be contrary to the public interest. *Id.* at 2. No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

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.

Dated: March 5, 2020.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2020-04924 Filed 3-10-20; 8:45 am]

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