

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-587]

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; Notice of Commission Decision To Reverse an Initial Determination on Remando the Administrative Law Judge; Termination of the Investigation With a Determination of no Violation of Section 337 Because the Asserted Claims of the Asserted Patent Are Invalid for Obviousness

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the initial determination on remand (“RID”) of the presiding administrative law judge (“ALJ”) and has terminated the investigation with a finding of no violation of section 337 of the Tariff Act of 1930 because the asserted claims of U.S. Patent No. 5,372,392 (“the ‘392 patent’”) are invalid for obviousness.

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 FR 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 certain claims of 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 of the Tariff Act of 1930 (19 U.S.C. 1337). 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 FR 21157 (Apr. 18, 2008). Norgren appealed to the U.S. Court of Appeals for the Federal Circuit (“the Court”).

On May 26, 2009, in an unpublished, non-precedential decision, the Court reversed in part the Commission’s claim construction, reversed the Commission’s determination of noninfringement based upon the new claim construction, and vacated the Commission’s determination of nonobviousness. *Norgren Inc. v. Int’l Trade Comm’n*, No. 2008-1415 (Fed. Cir. May 26, 2009), 2009 U.S. App. LEXIS 10984. 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 RID in which he determined that the asserted claims are not invalid as obvious. SMC and the Commission investigative attorney (“IA”) petitioned for review of the ID. Norgren filed a response in opposition to the petitions. On October 7, 2010, the Commission determined to review the RID on the issue of obviousness. The Commission also requested further briefing. 75 FR 63198 (Oct. 14, 2010). The parties have responded to the notice of review, fully briefing obviousness as well as the issues of remedy, the public interest, and bonding.

Upon its review of the issue of obviousness, and based upon the administrative record in this investigation, including the RID, original ID, exhibits, transcripts, and party arguments, the Commission has determined to reverse the ALJ’s finding that the asserted claims of the ‘392 patent are nonobvious, find no violation of section 337 because the claims are invalid as obvious, and terminate the investigation with a finding of no violation.

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 section 210.45(c) of the Commission’s Rules of Practice and Procedure (19 CFR 210.45(c)).

By order of the Commission.

Issued: March 8, 2011.

James R. Holbein,

Acting Secretary to the Commission.

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DEPARTMENT OF JUSTICE

United States Parole Commission

Record of Vote of Meeting Closure; (Pub. L. 94-409) (5 U.S.C. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a