

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN BLOWERS AND  
COMPONENTS THEREOF**

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

**ORDER REMANDING ORDER NO. 36<sup>1</sup>**

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 Fed. Reg. 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

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<sup>1</sup> Commissioner Schmidlein does not join the majority’s determination to remand the sanctions issue to the ALJ. She sees no need for the ALJ to further specify and explain the directives set out in Order No. 36. She would affirm Order No. 36 sanctioning Regal under Commission Rule 210.4(d)(1)(ii) (19 C.F.R. § 210(d)(1)(ii)), but would take no position on whether a strict reading of the safe harbor provision of Commission Rule 210.4(d)(1)(i) (19 C.F.R. § 210(d)(1)(i)) is required.

respect to Respondents based upon a consent order stipulation and entry of a consent order. 85 Fed. Reg. 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 Fed. Reg. 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. The presiding Administrative Law Judge (“ALJ”) further permitted the private parties to file replies and sur-replies to the sanctions briefing. EID at 16.

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 December 14, 2021, the ALJ issued an enforcement initial determination (“EID”) finding no violation of the Consent Order issued in the original investigation. Also on December 14, 2021, the ALJ 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 C.F.R. § 210.4(c), (d), and ordered Regal to correct potentially misleading portions of the enforcement complaint. Order 36 addresses both Regal’s statements relating to Respondents’ alleged admissions of infringement in the consent order stipulation and with respect to images and narrative descriptions of the Respondents’ Redesigned Blower.

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 Fed. Reg. 9085–86 (Feb. 17, 2022).

Upon consideration of this matter, the Commission hereby ORDERS that:

- A. Order No. 36 is remanded for the ALJ to specify and explain whether she intends that the directives issued to Regal that are set out in Order 36 – a warning and a direction to redact all misrepresentations in the Enforcement Complaint – constitute nonmonetary sanctions under 19 C.F.R. § 210.4(c) and (d); and, if so, to (1) specify whether the directives in Order 36 were issued pursuant to 19 C.F.R. § 210.4(d)(1)(i) or (ii); and (2) identify the attorneys, law firms, or parties that have violated 19 C.F.R. 210.4(c) or are responsible for the violation, and to whom the sanctions apply;
- B. The presiding ALJ shall issue a revised Order No. 36 as an initial determination within thirty (30) days of the issuance of this Order, but may otherwise conduct the proceedings as she sees fit and may extend this deadline with an initial determination;

- C. Under 19 C.F.R. § 210.25, the Commission has determined to bifurcate this sanctions proceeding from the enforcement proceeding by terminating the enforcement proceeding with a finding of no violation of the consent order and by remanding Order 36 to the ALJ for a revised order regarding sanctions in this separate sanctions proceeding (*see* Notice of a Commission Determination Finding No Violation of the Consent Order; Terminating the Enforcement Proceeding; and Remanding Order No. 36);
- D. The parties, or any person or entity identified as a result of paragraph A.(2) above, may petition for review of the corrected Order within ten (10) days after service of the Order. Any party may file a response to the petition(s) within five (5) business days after service of the petition(s);
- E. Reissued Order No. 36 shall become the determination of the Commission thirty (30) days after the date of service of the Order, unless the Commission has ordered review of the Order or certain issues therein under Rule 210.45, or by order has changed the effective date of the Order;
- F. If the Commission determines to review the Order, the Commission shall make its final determination within thirty (30) days of the Commission ordered review; and
- G. Notice of this Order shall be served on the parties to this investigation.

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: March 14, 2022