

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

**In the Matter of**

**CERTAIN AUTOMOTIVE PARTS**

**Investigation No. 337-TA-557**

**NOTICE OF COMMISSION DETERMINATION TO WAIVE RECONSIDERATION  
RULE DEADLINE AND TO EXTEND TARGET DATE**

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

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to waive the deadline for filing a motion for reconsideration and to extend the target date in the above-captioned investigation from May 4, 2007 to June 6, 2007. Extension of the target date will permit the Commission to consider a motion for reconsideration of its determination not to review the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on December 4, 2006, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3112. 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, S.W., Washington, D.C. 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 January 4, 2006, based on a complaint filed by Ford Global Technologies, LLC (“Ford”) of Dearborn, Michigan. An amended complaint was filed on December 12, 2005, and a supplemental letter was filed on December 22, 2005. The amended complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive parts by reason of infringement of U.S. Design Patent Nos. D496,890 (“the ‘890 patent”), D493,552 (“the ‘552 patent”), D497,579 (“the ‘579 patent”), D503,135 (“the ‘135 patent”), D496,615 (“the

'615 patent"), D502,561 ("the '561 patent"), D492,044 ("the '044 patent"), D491,119 ("the '119 patent"), D503,912 ("the '912 patent") and D495,979 ("the '979 patent"). The complaint named the following as respondents: Keystone Automotive Industries, Inc. of Pomona, California; U.S. Autoparts Network, Inc. of Carson, California; Gordon Auto Body Parts Co., Ltd. of Taiwan; Y.C.C. Parts Manufacturing Co., Ltd. of Taiwan; TYC Brother Industrial Co., Ltd. of Taiwan; and Depo Auto Parts Ind. Co., Ltd. of Taiwan (collectively "the Respondents"). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. On August 3, 2006, the Commission issued a notice not to review an ID granting partial termination of this investigation as to the '801, '685, '299, '658 patents.

On December 4, 2006, the ALJ issued the final ID, finding that the '119, '912, and '979 patents are invalid due to public use; that the '890, '552, '135, '579, '561, '044, and '615 patents are not invalid, are enforceable, and are infringed; and that there is a domestic industry involving the patents in issue. Thus, he found a violation of section 337 of the Tariff Act of 1930, as amended.

On December 15, 2006, Ford and the Respondents filed petitions for review. Ford sought review of the ALJ's finding that the '119, '912 and '979 patents are invalid as anticipated. The Respondents petitioned for review of the ALJ's findings that patents '119, '912, '979, '890, '552, '579, '135, '615, '561, and '044 were not anticipated, obvious or unenforceable, and of Orders No. 7 and 12, in which the ALJ denied certain affirmative defenses. The Office of Unfair Import Investigations opposed both petitions for review. On December 15, 2006, all parties filed responses to the petitions for review.

On December 26, 2006, the Commission determined to extend the deadline for determining whether to review the ALJ's ID by 60 days to March 20, 2007, and to extend the target date for completion of the investigation by 60 days to May 4, 2007.

On March 20, 2007, the Commission issued a notice of its decision not to review the ID. The notice indicated that the Commission sought comments from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding. On March 20, 2007, the Commission issued a notice of its decision not to review the ID. The notice indicated that the Commission sought comments from the parties to the investigation, interested government agencies, and any other interested parties on the issues of remedy, the public interest, and bonding.

On March 30, 2007, the Commission received comments from Ford, the Respondents, the IA, and from interested parties including Public Citizen Inc., the Center for Auto Safety, the Automotive Aftermarket Association, the National Association of Mutual Insurance Companies, and Property Casualty Insurers Association of America. The investigation is currently before the Commission for determinations on remedy, public interest and bonding.

On May 1, 2007, the Commission received a petition from the Respondents requesting that in light of the Supreme Court's April 30, 2007 decision in *KSR International Co. v. Teleflex Inc.*, 530 U.S. \_\_\_\_ (2007) ("KSR"), the Commission reconsider its determination not to review the ALJ's final ID finding that the '890, '552, '135, '579, '561, '044, and '615 patents were not obvious and therefore not invalid. The Respondents contend that the Supreme Court's decision in *KSR* significantly alters the legal framework applicable to patent obviousness determinations, including those reached in this investigation. Accordingly, they characterize the subject matter of the petition as relating to a "new question" to which the Respondents "had no opportunity to submit arguments." See, Commission Rule 210.47. The Respondents state that they filed the petition for reconsideration as soon as possible after the Supreme Court handed down its decision in *KSR*.

Having considered the Respondents' request for leave to file a petition for review beyond the deadline of Commission Rule 210.47, which requires petitions for reconsideration to be filed within 14 days after service of a Commission determination, the Commission has determined to waive Commission Rule 210.47 and to accept the Respondents' petition for reconsideration. The Commission has also determined to extend the target date for this investigation to June 6, 2007 to permit the Commission to consider the Respondents' motion.

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 210.4 and 210.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.4, 210.51).

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: May 4, 2007

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

In the Matter of:

CERTAIN AUTOMOTIVE PARTS

Inv. No. 337-TA-557

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SECRETARY  
OF THE COMMISSION

**RESPONDENTS' PETITION FOR RECONSIDERATION OF THE COMMISSION'S  
FINAL DETERMINATION BASED ON NEW SUPREME COURT DECISION AND  
REQUEST FOR LEAVE TO FILE PETITION BEYOND THE 14 DAY LIMIT OF  
COMMISSION RULE 210.47**

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## I. INTRODUCTION

Pursuant to Commission Rule 210.47, all Respondents request reconsideration of the March 20, 2007 Commission Determination not to review, and hence to adopt, the Administrative Law Judge's Initial Determination in this investigation that none of the following design patents at issue is obvious: D496,890; D493,552; D497,579; D503,135; D496,615; D502,561; and D492,044. Respondents also request leave to file this petition beyond the 14 days provided for in Rule 210.47. Reconsideration is justified in light of a Supreme Court decision issued just one day ago that significantly alters the legal framework applicable to patent obviousness determinations, including those reached in this investigation. Further, since the decision just issued, the petition is confined to a "new question" as to which Respondents "had no opportunity to submit arguments." Commission Rule 210.47.

## II. ARGUMENT

Yesterday, the Supreme Court handed down its decision in *KSR International Co. v. Teleflex Inc.*, 530 U.S. \_\_\_\_ (2007) ("KSR") (Copy attached). In that decision, the Court considered the Federal Circuit's longstanding test of obviousness under 35 U.S.C. § 103, which required a "teaching, suggestion, or motivation" to combine the prior art ("TSM test"). The Court declared that "when a court transforms the general principle [of the TSM test] into a rigid rule that limits the obviousness inquiry, as the Court of Appeals did here, it errs." [Op. at 15].

As the Court stated:

In many fields it may be that there is little discussion of obvious techniques and combinations, and it often may be the case that market demand, rather than scientific literature, will drive design trends. Granting patent protection to advances that would occur in the ordinary course without real innovation retards progress . . . .

[Op. at 15]. The Court further observed that “[i]f a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” [Op. at 13].

Respondents respectfully submit that yesterday’s important Supreme Court decision in *KSR* warrants reconsideration of the March 20, 2007 Commission Determination not to review, and hence to adopt, the Administrative Law Judge’s Initial Determination in this case that none of the following design patents at issue is obvious: D496,890; D493,552; D497,579; D503,135; D496,615; D502,561; and D492,044. (Those seven patents are directed to an exterior component designed exclusively for the F-150 model truck, and the Commission ultimately found a violation of Section 337 based on infringement of each of those patents). The ALJ reached this result despite recognizing that Ford’s prior public use of the inventors’ own designs, which Ford conceded were the best and closest prior art, anticipated three other Ford design patents also covering components for the F-150.

Under Commission Rule 210.47, a party wishing to petition for reconsideration of a Final Determination ordinarily must do so within 14 days of service of the Commission’s determination, and the petition “must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments.” Respondents petition addresses a new question, and the petition was filed as soon as possible after the *KSR* opinion was issued.

The Supreme Court’s ruling in *KSR* unquestionably raises a new question; it impacts and alters the legal framework under which the obviousness of all patents, including the above design patents, must be assessed. Indeed, in holding that none of these designs was obvious despite Ford’s prior public use, the ALJ relied on a “rigid rule that limits the obviousness inquiry,” the same rigid rule that the Supreme Court deemed improper in *KSR*.

As two representative examples, the ALJ expressly relied on the now discredited “teaching, suggestion, motivation” approach to conclude that the ‘044 and the ‘890 patents are not obvious:

Moreover, any holding of obviousness requires that there be some teaching or suggestion in the prior art whereby it would have been obvious to a designer of ordinary skill to make the particular selection and combination made by the patentees. The administrative law judge however finds lacking in the evidence a suggestion in the prior art of the appearance of the claimed design as a visual whole.

[Initial Determination at 106]

As with the ‘044 patent, there was no testimony by respondents’ expert regarding the overall visual impressions the prior art designs and the claimed design in issue created nor how the ornamental quality of the combination was suggested in the prior art .

[*Id.* at 117].

Moreover, the ALJ found all of the above-identified patents non-obvious despite finding that Ford made only minor changes to the publicly used prior art designs, [*Id.* at 49], despite crediting testimony from Ford’s corporate representative that those minor changes were “too slight . . . for an ordinary observer to notice” [*Id.* at 49, n.18], and despite the absence of evidence that those minor, imperceptible differences were beyond the skill of ordinary automobile designers.

In now recognizing that “the [obviousness] analysis need not seek out precise teachings directed to the specific subject matter of the challenged claims, [and that] a court can take account of the inferences and creative steps a person of ordinary skill in the art would employ,” [Op. at 14], the *KSR* decision seems to foreclose the analytical path the ALJ relied upon in this case. Indeed, under the rationale and perspective expressed by the Supreme Court in *KSR*, it would appear that the minor refinements that the ALJ found non-obvious in fact epitomize the

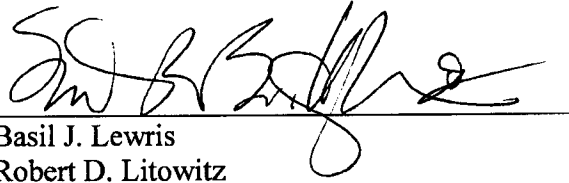
sort of obvious “advances that would occur in the ordinary course without real innovation” [Op. at 15] that the Court spoke of in *KSR*. And most tellingly, the ALJ credited testimony of Ford’s design expert. But that expert testified at trial that, in his opinion, no automobile design is obvious. [Olsen, Trial Tr. at 1360:11-1361:9]. Design patents are not exempt from the statutory test for obviousness [35 U.S.C. § 171], and they are not exempt from The Supreme Court’s ruling in *KSR*. The legal framework applied by the ALJ to assess design patent obviousness is incompatible with *KSR*.

Had the Supreme Court issued *KSR* within the 14 day-window following the Commission’s March 20, 2007 ruling, a petition for reconsideration clearly would have been warranted and timely. But as the Court did not issue the *KSR* decision until yesterday, Respondents plainly had no opportunity to raise these issues before. Respondents therefore respectfully request leave to raise them now through this petition for reconsideration. Respondents further urge that this petition be granted to give the Commission the opportunity to evaluate the record evidence on the issue of the obviousness in light of this important new Supreme Court precedent.

### **III. CONCLUSION**

Because the *KSR* decision raises significant questions concerning the Commission’s non-obviousness determination with respect to the seven patents that served as the basis for the Commission’s ultimate finding that Respondents violated Section 337, Respondents’ petition for reconsideration should be granted.

Respectfully submitted,



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Dated: May 1, 2007

CERTIFICATE OF SERVICE

I, Todd Bagchi, hereby certify that on May 1, 2007, a copy of the forgoing document was filed and served as indicated:

The Honorable Marilyn R. Abbott, Secretary  
U.S. International Trade Commission  
500 E Street, S.W., Room 112  
Washington, D.C. 20436  
**(Original and 14 Copies)**

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- Via Overnight Courier
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