

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

In the Matter of

**CERTAIN INK CARTRIDGES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-565

**Consolidated Enforcement Proceeding and
Enforcement Proceeding II**

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW
AN ENFORCEMENT INITIAL DETERMINATION FINDING
A VIOLATION OF CEASE AND DESIST ORDERS AND A CONSENT ORDER;
SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON CIVIL PENALTIES**

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 an enforcement initial determination (“EID”) of the presiding administrative law judge (“ALJ”) in the above-captioned proceeding finding a violation of cease and desist orders and a consent order. The Commission is requesting briefing on the amount of civil penalties for violation of the orders.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-3041. Copies of all nonconfidential 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 (<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 the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation in this matter on March 23, 2006, based on a complaint filed by Epson Portland, Inc. of Oregon; Epson America, Inc. of California; and Seiko Epson Corporation of Japan (collectively, “Epson”). 71 *Fed. Reg.* 14720 (March 23, 2006). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (“section 337”) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of claim 7 of U.S. Patent No. 5,615,957; claims 18, 81, 93, 149, 164, and 165 of U.S. Patent No. 5,622,439; claims

83 and 84 of U.S. Patent No. 5,158,377; claims 19 and 20 of U.S. Patent No. 5,221,148; claims 29, 31, 34, and 38 of U.S. Patent No. 5,156,472; claim 1 of U.S. Patent No. 5,488,401; claims 1-3 and 9 of U.S. Patent No. 6,502,917; claims 1, 31, and 34 of U.S. Patent No. 6,550,902; claims 1, 10, and 14 of U.S. Patent No. 6,955,422; claim 1 of U.S. Patent No. 7,008,053; and claims 21, 45, 53, and 54 of U.S. Patent No. 7,011,397. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 24 companies located in China, Germany, Hong Kong, Korea, and the United States. Several respondents were terminated from the investigation on the basis of settlement agreements or consent orders or were found in default.

On October 19, 2007, after review of the ALJ's final ID, the Commission made its final determination in the investigation, finding a violation of section 337. The Commission issued a general exclusion order, a limited exclusion order, and cease and desist orders directed to several domestic respondents. The Commission also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d), (f), and (g) did not preclude issuance of the aforementioned remedial orders, and that the bond during the Presidential period of review would be \$13.60 per cartridge for covered ink cartridges. Certain respondents appealed the Commission's final determination to the United States Court of Appeals for the Federal Circuit ("Federal Circuit"). On January 13, 2009, the Federal Circuit affirmed the Commission's final determination without opinion pursuant to Fed. Cir. R. 36. *Ninestar Technology Co. et al. v. International Trade Commission*, Appeal No. 2008-1201.

On February 8, 2008, Epson filed two complaints for enforcement of the Commission's orders pursuant to Commission rule 210.75. Epson proposed that the Commission name five respondents as enforcement respondents. On May 1, 2008, the Commission determined that the criteria for institution of enforcement proceedings were satisfied and instituted consolidated enforcement proceedings, naming the five following proposed respondents as enforcement respondents: Ninestar Technology Co., Ltd.; Ninestar Technology Company, Ltd.; Town Sky Inc. (collectively, the "Ninestar Respondents"), as well as Mipo America Ltd. ("Mipo America") and Mipo International, Ltd (collectively, the "Mipo Respondents"). On March 18, 2008, Epson filed a third enforcement complaint against two proposed respondents: Ribbon Tree USA, Inc. (dba Cana-Pacific Ribbons) and Apex Distributing Inc. (collectively, the "Apex Respondents"). On June 23, 2008, the Commission determined that the criteria for institution of enforcement proceedings were satisfied and instituted another formal enforcement proceeding and named the two proposed respondents as the enforcement respondents. On September 18, 2008, the ALJ issued Order No. 37, consolidating the two proceedings.

On April 17, 2009, the ALJ issued his Enforcement Initial Determination (EID) in which he determined that there have been violations of the Commission's cease and desist orders and a consent order and recommended that the Commission impose civil penalties for such violations.

On April 29, 2009, the Ninestar Respondents filed a petition for review of the EID. On May 7, 2009, Epson and the Commission investigative attorney filed responses to the petition for

review.

Having considered the EID, the petition for review, the responses thereto, and other relevant portions of the record, the Commission has determined not to review the EID. The Commission may levy civil penalties for violation of the cease and desist orders and consent order.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the amount of civil penalties to be imposed. Such submissions should address the April 17, 2009, recommended determination by the ALJ on civil penalties. The written submissions must be filed no later than close of business on July 3, 2009. Reply submissions must be filed no later than the close of business on July 13, 2009. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.16 and 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16 and 210.75).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: June 19, 2009