

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

In the Matter of

**CERTAIN INK CARTRIDGES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-565

**Consolidated Enforcement Proceeding and
Enforcement Proceeding II**

**NOTICE OF COMMISSION DETERMINATIONS ON CIVIL PENALTIES;
TERMINATION OF ENFORCEMENT PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to levy civil penalties in the above-captioned proceeding after finding violations of cease and desist orders and a consent order issued in the original investigation. The Commission has terminated the proceedings.

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 consent order and recommended that the Commission impose civil penalties for such violations. The Ninestar Respondents filed a timely petition for review. The Commission considered the EID, the petition for review, the responses thereto, and other relevant portions of the record and determined not to review the EID on June 19, 2009.

The Commission then requested separate briefing concerning the imposition of civil penalties for violation of the cease and desist orders and a consent order. Epson, the Ninestar Respondents, and the Commission investigative attorney filed written submissions and responses thereto.

Based upon its consideration of the EID, the submissions of the parties, and the entire record in this proceeding, the Commission adopts the EID's analysis concerning civil penalties, except as otherwise noted or supplemented in its order and opinion (to be issued later). However, while the Commission adopts the EID's recommended penalty with respect to the Mipo Respondents and the Apex Respondents, the Commission has determined to impose a lesser penalty on the Ninestar Respondents.

Accordingly, and subject to final adjudication of any appeal of the same, the Commission has determined to impose a civil penalty in the amount of \$11,110,000 against the Ninestar Respondents, jointly and severally. Against the Mipo Respondents, the Commission has determined to impose a civil penalty in the amount of \$9,700,000 jointly and severally, and the Commission has determined to impose a civil penalty in the amount of \$700,000 jointly and severally against the Apex Respondents.

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

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: August 17, 2009