

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

In the Matter of

**CERTAIN PRINTING AND IMAGING
DEVICES AND COMPONENTS THEREOF**

Investigation No. 337-TA-690

**NOTICE OF COMMISSION DETERMINATION TO REVIEW-IN-PART A FINAL
DETERMINATION FINDING A VIOLATION OF SECTION 337; SCHEDULE FOR
FILING WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON
REMEDY, THE PUBLIC INTEREST, AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review a portion of the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on September 23, 2010 finding a violation of section 337 and to request briefing on the issues under review and on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-1999. 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 October 26, 2009, based on a complaint filed by Ricoh Company, Ltd. of Tokyo, Japan; Ricoh Americas Corporation of West Caldwell, New Jersey; and Ricoh Electronics, Inc. of Tustin, California (collectively “Ricoh”). 74 *Fed. Reg.* 55065 (Oct. 26, 2009). The complaint alleged, *inter alia*, 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 printing and imaging devices and components thereof by reason of infringement of U.S. Patent Nos. 6,209,048 (“the ‘048 patent”); 6,212,343 (“the ‘343 patent”); 6,388,771 (“the ‘771 patent”); 5,764,866 (“the ‘866 patent”); and 5,863,690 (“the ‘690 patent”). The complaint named Oki Data

Corporation of Tokyo, Japan and Oki Data Americas, Inc. of Mount Laurel, New Jersey (collectively “Oki”) as respondents.

On September 23, 2010, the ALJ issued his final ID finding that Oki violated section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain printing and imaging devices and components thereof by reason of infringement of several claims in the ‘690 patent. The ALJ found that Oki has not violated section 337 with respect to the ‘048, ‘343, ‘771, and ‘866 patents. Along with the ID, the ALJ issued a recommended determination on remedy and bonding (“RD”). Complainant Ricoh, respondent Oki, and the Commission investigative attorney (“IA”) filed petitions for review of the ID on October 6, 2010. Ricoh, Oki, and the IA each filed responses to the petitions for review on October 14, 2010.

Having examined the record of this investigation, including the ALJ’s final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. In particular, the Commission has determined to review all findings and conclusions relating to whether a violation of section 337 has occurred with respect to the ‘343 and ‘690 patents.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

The ‘343 Patent

(1) The Commission has determined to review all findings relating to the limitation “a direction orthogonal to a longitudinal direction of the developing roller,” as recited in the asserted claims of the ‘343 patent.

(a) Please state your position on the meaning of “a longitudinal direction of the developing roller,” as recited in the asserted claims. How does your position differ from the ALJ’s construction?

(b) Specifically, does “a longitudinal direction” include any line extending parallel to the central axis of the roller? Or, does this refer to the central axis itself?

(c) Please state your position on the meaning of “*a direction orthogonal* to a longitudinal direction of the developing roller.” Please take into account that the planar blade is bent along its entire width, and do not confine your analysis to two-dimensional cross-sections.

(d) Assuming “a longitudinal direction” can include any line extending parallel to the central axis of the roller, can “a direction orthogonal” refer to a direction that

is not perpendicular to the surface of the roller, *i.e.*, a tangent extending through the surface of the roller?

(e) Given the planar shape of the blade contacts the roller in three dimensions along the entire width of the blade, and is bent along the entire width of the blade, is there any bend that would not meet the “direction orthogonal” limitation?

(f) How does your answer to (d) comport with the preferred embodiment of the ‘343 patent shown in Figures 8A and 8B? Is the blade 17 shown in Figures 8A and 8B bent in “a direction orthogonal to a longitudinal direction of the developing roller?”

(g) How do your answers to (a) through (e) affect the ALJ’s findings regarding infringement, validity, and domestic industry?

(2) The Commission has determined to review the ALJ’s construction of “a lower edge,” as recited in the asserted claims of the ‘343 patent. The asserted claims of the ‘343 patent recite, among other things:

wherein the blade includes a wide-width part . . . and ***a narrow-width part . . . configured . . . to be [sic] bend in a direction orthogonal*** to a longitudinal direction of the developing roller . . . and the narrow-width part is disposed ***downstream of the contact point of the blade and the roller part*** . . . in the rotation direction.

JX-4 (‘343 patent), col. 25, ll. 16-30 (emphasis added).

(a) Please explain whether the language emphasized above informs the meaning of “a lower edge.”

(b) Can the claimed “a lower edge” refer to an edge of the “narrow-width part,” an edge of the “wide-width part,” or both?

(c) If the narrow-width part of the blade is bent away from the roller such that the edge opposite the boundary between the wide-width part and the narrow-width part does not contact the roller, as shown in Figures 8A, 8B, and 12, how should “a lower edge” be construed?

(d) Can “a lower edge thereof contacts the roller part of the developing roller” refer to contact between the roller and an area extending from the lower edge of the blade to a point on the blade slightly above the lower edge?

(e) How do your answers to (a) through (d) affect the ALJ’s findings regarding infringement, validity, and domestic industry?

The '690 Patent

(1) The Commission has determined to review the ALJ's determination of the level of ordinary skill in the art of the '690 patent. See ID at 99. Please comment on what the level of ordinary skill in the art is with respect to the '690 patent. Please provide specific citations to the record and testimony. Although the parties are invited to brief their respective positions generally on this issue, the Commission is specifically interested in answers to the following questions:

- (a) Would it be appropriate for the Commission to modify the ALJ's determination to add the fields of applied rheology and/or applied material science to the types of experience that would satisfy the three-year minimum requirement in the ALJ's determination?
- (b) Would it be appropriate for the Commission to modify or remove the ALJ's determination to remove the three-year minimum experience requirement altogether?
- (c) Would it be appropriate for the Commission to modify the ALJ's familiarity requirement by, for example, requiring familiarity with at least one (as opposed to all) of the following technological areas: heat transfer, fuser roller design and technology, toner rheology, toner adhesion, release agent management, nip geometry, image fixing, paper path geometry, contact angle and surface roughness characteristics and testing of xerographic user rollers?
- (d) Would it be appropriate for the Commission to modify the ALJ's familiarity requirement to remove any technological areas not directly related to the interaction between a toner and a fuser roller?

(2) The Commission has determined to review the ALJ's determination that the asserted claims of the '690 patent are not anticipated.

- (a) What are the "above-mentioned surface physical properties" mentioned in column 6, lines 4-5 of the '690 patent?
- (b) Please comment on whether examples 1 and 2 of the '690 patent inform the patent's statement in column 6 that PTFE (polytetrafluoroethylene) and polytetrafluoroethylene/perfluoralkylvinylether (PFA) are "[s]pecific examples of materials for the fixing member which easily satisfy the above-mentioned surface physical properties."
- (c) Under what circumstances (if any) would a PTFE fuser roller not have an adhesion constant ratio of less than about 8.0 when measuring receding and static

contact angles using 2-nitropropane and n-heptane, respectively, as set forth in the '690 patent?

(d) To what extent is the adhesion constant ratio dependent on the surface roughness of the fuser roller and composition of the toner? How does the subject matter of dependent claims 9-16 inform your response, if at all?

(e) Is it appropriate under current legal precedent to consider the asserted patent's disclosure in determining what would be inherent in the prior art?

(f) Please comment on whether the dependent claims of the '690 patent are anticipated or obvious, assuming claim 1 of the '690 patent is found to be anticipated.

(g) What materials are the OL 400 rollers and OL 1200 rollers coated with? Has this material changed since the critical date of the '690 patent?

(3) Please state your position with respect to contributory infringement by Oki of the asserted claims of the '690 patent.

(4) Please provide a summary of Ricoh's annual labor costs associated with the C200 domestic product. Please isolate costs by year and indicate any possible trends.

(5) Are the C200 MFP's "articles protected by the ['690] patent" under section 337(a)(2)?

As to the '048, '771, and '866 patents, the Commission has determined that Oki did not violate section 337. The Commission has determined to review and take no position on the following findings and conclusions in the ID, however:

(1) the finding that the Taylor reference ("A Telerobot on the World Wide Web") (RX-281) does not anticipate or render obvious claims 19-21 and 23 of the '048 patent;

(2) the finding that U.S. Patent Nos. 5,657,448 and 5,784,622 do not anticipate or render obvious the asserted claims of the '048 patent;

(3) the ALJ's determination not to construe the following claim terms in the '048 patent: "descriptor," "resource identifier defining a resource and its location," "command," and "interconnected, on-line documents";

(4) the construction of "communications mechanism" in claim 19 of the '048 patent and associated findings on the issues of infringement, domestic industry, and validity;

(5) the finding that Japanese Published Application No. JP H07-306934 does not anticipate or render obvious the asserted claims of the '771 patent; and

(6) the finding that claim 13 of the '771 patent is infringed.

The Commission has determined to review the ALJ's findings that the claim terms "scan means," "print means," "copy means," and "test means" of the '866 patent, and the claim terms "scanning means," "means for setting an operation code," and "a code unit for setting an operation code" of the '771 patent do not render the asserted claims indefinite. Upon review, the Commission has determined that the terms at issue are not indefinite under the relevant standard set forth in *Aristocrat Technologies. v. International Game Technology*, 521 F.3d 1328, 1337 (Fed. Cir. 2008). The Commission adopts the ALJ's substantive analysis of these issues set forth in his Order No. 29 (May 4, 2010).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested

government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommendation on remedy and bonding set forth in the RD. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the '690 and '343 patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Thursday December 9, 2010. Reply submissions must be filed no later than the close of business on Friday December 17, 2010. 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 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* 19 C.F.R. § 210.6. 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 in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: November 22, 2010