

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

In the Matter of

**CERTAIN INKJET INK SUPPLIES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-691

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN INITIAL
DETERMINATION TERMINATING THE INVESTIGATION AS TO CLAIMS 7 AND
10 OF U.S. PATENT NO. 6,089,687 AND CLAIMS 2 AND 3 OF U.S. PATENT NO.
6,264,301 AND FINDING A VIOLATION OF SECTION 337; SCHEDULE FOR
SUBMISSIONS ON REMEDY, 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 not to review an initial determination (“ID”) (Order No. 18) issued by the presiding administrative law judge (“ALJ”) terminating the investigation as to claims 7 and 10 of U.S. Patent No. 6,089,687 and claims 2 and 3 of U.S. Patent No. 6,264,301 and finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3042. 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 (<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: This investigation was instituted on October 29, 2009, based upon a complaint filed by Hewlett-Packard Company of Palo Alto, California (“HP”) on September 23, 2009, and supplemented on October 7, 2009. 74 *Fed. Reg.* 55856 (Oct. 29, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain inkjet ink supplies and components thereof that infringe certain claims of U.S. Patent Nos. 6,959,985 (“the ’985 patent”); 7,104,630 (“the ’630 patent”); 6,089,687 (“the ’687 patent”); and 6,264,301 (“the ’301 patent”). The complaint named

as respondents Zhuhai Gree Magneto-Electric Co. Ltd. of Guangdong, China (“Zhuhai”); InkPlusToner.com of Canoga Park, California (“InkPlusToner”); Mipo International Ltd. of Kowloon, Hong Kong (“Mipo International”); Mextec Group, Inc. d/b/a Mipo America Ltd. of Miami, Florida (“Mextec”); Shanghai Angel Printer Supplies Co. Ltd. of Shanghai, China (“Shanghai Angel”); SmartOne Services LLC d/b/a InkForSale.net of Hayward, California (“SmartOne”); Shenzhen Print Media Co., Ltd. of Shenzhen, China (“Shenzhen Print Media”); Comptree Ink d/b/a Meritline, ABCInk, EZ Label, and CDR DVDR Media of City of Industry, California (“Comptree”); Zhuhai National Resources & Jingjie Imaging Products Co., Ltd. of Guangdong, China (“Zhuhai National”); Tatrix International of Guangdong, China (“Tatrix”); and Ourway Image Co., of Guangdong China (“Ourway”).

On February 17, 2010, the Commission determined not to review an ID (Order No. 9) finding seven respondents, Mipo International, Mextec, Shanghai Angel, Shenzhen Print Media, Zhuhai National, Tatrix, and Ourway in default pursuant to Commission Rule 210.16. On March 19, 2010, the Commission determined not to review an ID (Order No. 11) terminating the investigation as to respondent Comptree based upon a settlement agreement. Also on March 19, 2010, the Commission determined not to review an ID (Order No. 12) terminating the investigation as to respondent Zhuhai based upon a consent order. On March 31, 2010, the Commission determined not to review an ID (Order No. 13) terminating the investigation as to respondent InkPlusToner based upon a settlement agreement. On June 7, 2010, the Commission determined not to review an ID (Order No. 14) terminating the investigation as to respondent SmartOne based upon a settlement agreement.

On June 3, 2010, the Commission determined not to review an ID (Order No. 17) terminating the investigation as to the '985 patent and the '630 patent.

On June 17, 2010, HP filed an unopposed motion pursuant to Commission Rule 210.21(a) to withdraw all allegations related to claims 7 and 10 of the '687 patent and claims 2 and 3 of the '301 patent from the complaint, and to terminate the investigation with respect to those claims.

On May 7, 2010, HP moved for summary determination on the issues of domestic industry, importation, and violation of section 337. Pursuant to Commission Rule 210.16(c)(2), 19 C.F.R. § 216(c)(2), HP also stated that it was seeking a general exclusion order and a cease and desist order against Mextec. On June 2, 2010, the Commission investigative attorney submitted a response in support of a finding that a domestic industry exists and that the defaulting respondents, Mipo International, Mextec, Shanghai Angel, Shenzhen Print Media, Zhuhai National, Tatrix, and Ourway have violated section 337 by infringing claims 6 and 9 of the '687 patent and claims 1, 5, and 6 of the '301 patent.

On August 30, 2010, the presiding administrative law judge issued the subject ID, Order No. 18, granting: (1) HP's motion to terminate the investigation as to claims 7 and 10 of the '687 patent and claims 2 and 3 of the '301 patent, and (2) HP's motion for summary determination of violation of section 337 with respect to the defaulting respondents. He also

recommended a general exclusion order, a cease and desist order directed to domestic respondent Mextec, and a 100 percent bond to permit importation during the period of Presidential review.

No petitions for review were filed. The Commission has determined not to review the subject ID.

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 are 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. 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, 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 recommended determination by the ALJ on remedy and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the 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, October 28, 2010. Reply submissions must be filed no later than the close of business on Thursday, November 4, 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: October 7, 2010