

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

In the Matters of

**CERTAIN INK CARTRIDGES AND
COMPONENTS THEREOF**

**Investigation Nos. 337-TA-565/946
(Advisory Opinion Proceeding)**

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING A JOINT MOTION TO TERMINATE THE
ADVISORY OPINION PROCEEDING BASED ON A SETTLEMENT AGREEMENT;
TERMINATION OF THE ADVISORY OPINION PROCEEDING**

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. 6) granting a joint motion to terminate the consolidated advisory opinion proceeding in the above-captioned investigations based on a settlement agreement. The consolidated advisory opinion proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. 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 SW, Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://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 Inv. No. 337-TA-565 on March 23, 2006, based on a complaint filed by Epson Portland, Inc. of Hillsboro, Oregon, Epson America, Inc. of Long Beach, California, and Seiko Epson Corporation of Nagano-Ken, Japan (collectively, “Epson”). 71 FR 14720 (Mar. 23, 2006). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain claims of U.S. Patent Nos. 5,615,957; 5,622,439; 5,158,377; 5,221,148; 5,156,472; 5,488,401; 6,502,917; 6,550,902; 6,955,422; 7,008,053; and 7,011,397. The Commission’s notice of investigation named 24 respondents including Ninestar Technology Company Ltd. of Montclair, California (“Ninestar”). The Office of Unfair Import Investigations (“OUII”) participated in the investigation. 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, the Commission issued a general exclusion order (“GEO”) and a limited exclusion order.

The Commission also issued cease and desist orders (“CDO”) directed to several domestic respondents.

The Commission instituted Inv. No. 337-TA-946 on January 27, 2015, based on a complaint filed by Epson. 80 FR 4314-16 (Jan. 27, 2015). That complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain claims of U.S. Patent Nos. 8,366,233; 8,454,116; 8,794,749; 8,801,163; and 8,882,513. The Commission’s notice of investigation named numerous respondents. OUII participated in the investigation. All the participating respondents were terminated from the investigation as a result of settlement agreements and/or consent motion stipulations. A number of the named respondents defaulted. On October 28, 2015, the presiding administrative law judge (ALJ) issued an initial determination granting Epson’s motion for summary determination of violation of section 337 by the defaulting respondents. Based on evidence of a pattern of violation and difficulty ascertaining the source of the infringing products, the Commission issued a GEO and CDOs directed to two defaulted domestic respondents on May 26, 2016.

On April 26, 2017, Ninestar, Ninestar Image Tech. Ltd., and Apex Microtech Ltd. (collectively, “Requesters”) filed a request for a consolidated advisory opinion proceeding in both investigations pursuant to Commission Rule 210.79 (19 C.F.R. § 210.79). Specifically, Requesters seek an advisory opinion that will declare that their refurbished Epson ink cartridges remanufactured using empty Epson ink cartridges collected from the United States are outside the scope of the GEOs and CDOs issued in both investigations. Requesters also ask that the consolidated advisory opinion proceeding be conducted in an expedited manner pursuant to Commission Rule 210.2 (19 C.F.R. § 210.2), without a formal hearing or discovery. Epson filed a timely response opposing the request. Thereafter, Requesters filed a motion for leave to file a reply to Epson’s response.

On June 16, 2017, the Commission determined to institute a consolidated advisory opinion proceeding in both investigations and referred the request to the Chief ALJ to designate a presiding ALJ. 82 FR 27723 (Jun. 16, 2017). Epson, the Requesters, and OUII were named as parties to the proceeding. The Commission also determined to deny Requesters’ motion for leave to file a reply.

On November 17, 2017, Epson and the Requesters filed a joint motion to terminate the consolidated advisory opinion proceeding based on a settlement agreement. The joint motion included a confidential version of the settlement agreement. A public version of the agreement was filed with the public version of the joint motion. That same day, OUII filed a response in support of the joint motion. On November 22, 2017, the ALJ issued the subject ID (Order No. 6) granting the joint motion to terminate the consolidated advisory opinion proceeding. No petitions for review were filed.

The Commission has determined not to review the subject ID. The Commission agrees with the ALJ that the joint motion to terminate the consolidated advisory opinion proceeding complies with the Commission’s rules for termination and that there is no evidence that termination of the proceeding will adversely affect the public interest. Order No. 6 at 2-3.

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 part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: December 7, 2017