

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

In the Matter of

CERTAIN TONER CARTRIDGES AND
COMPONENTS THEREOF

Investigation No. 337-TA-740

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION GRANTING COMPLAINANT'S MOTION FOR SUMMARY
DETERMINATION OF VIOLATION OF SECTION 337**

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 the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 26) granting complainant's motion for summary determination of violation of Section 337 in Inv. No. 337-TA-740, *Certain Toner Cartridges and Components Thereof*.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 12, 2010, based on a complaint filed by Lexmark International, Inc. of Lexington, Kentucky ("Lexmark"). 75 *Fed. Reg.* 62564-65 (Oct. 12, 2010). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("Section 337"), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,337,032; 5,634,169; 5,758,233; 5,768,661; 5,802,432; 5,875,378; 6,009,291; 6,078,771; 6,397,015; 6,459,876; 6,816,692; 6,871,031; 7,139,510; 7,233,760; and 7,305,204. The complaint further alleges the existence of a domestic industry.

The Commission's notice of investigation named as respondents Ninestar Image Int'l, Ltd. of Guangdong, China; Seine Image International Co. Ltd. of New Territories, Hong Kong; Ninestar Technology Company, Ltd. of Piscataway, New Jersey; Ziprint Image Corporation of Walnut, California; Nano Pacific Corporation of South San Francisco, California; IJSS Inc. (d/b/a/ TonerZone.com Inc. and Inkjet Superstore) of Los Angeles, California; Chung Pal Shin of Cerritos, California; Nectron International, Inc. of Sugarland, Texas; Quality Cartridges Inc. of Brooklyn, New York; Direct Billing International Incorporated (d/b/a/ Office Supply Outfitter and d/b/a The Ribbon Connection) of Carlsbad, California; E-Toner Mart, Inc. of South El Monte, California; Alpha Image Tech of South El Monte, California; ACM Technologies, Inc. of Corona, California; Virtual Imaging Products Inc. of North York, Ontario; Acecom Inc. – San Antonia (d/b/a/ Inksell.com) of San Antonia, Texas; Ink Technologies Printer Supplied, LLC (d/b/a/ Ink Technologies LLC) of Dayton, Ohio; Jahwa Electronics Co., Ltd of Chungchongbuk-do, South Korea; Huizhou Jahwa Electronics Co., Ltd. of Guangdong Province, China; Copy Technologies, Inc. of Atlanta, Georgia; Laser Toner Technology, Inc. of Atlanta, Georgia; C&R Service, Incorporated of Corinth, Texas; Print-Rite Holdings Ltd., of Chai Wan, Hong Kong ("Print-Rite"); and Union Technology Int'l (M.C.O.) Co., Ltd. of Rodrigo Rodrigues, Macao. The Commission determined not to review an ID terminating the investigation as to Print-Rite based on a settlement agreement. Commission Notice (Jan. 10, 2011). The Commission determined to review and affirm several IDs (Order Nos. 15-19) finding several respondents in default under Commission Rules 210.16(a)(2) and (b)(2) based on those respondents' elections to default. Commission Notice (Mar. 3, 2011) (Order Nos. 15-16); Commission Notice (Mar. 11, 2011) (Order Nos. 17-18); Commission Notice (Mar. 11, 2011) (Order No. 19). The Commission determined not to review several other IDs (Order Nos. 23-24) finding the remaining respondents in default. Commission Notice (Mar. 23, 2011) (Order No. 23); and Commission Notice (April 6, 2011) (Order No. 24).

On April 25, 2011, Lexmark filed a motion pursuant to Commission Rule 210.18 (19 C.F.R. § 210.18) for summary determination of violation of Section 337 and requesting issuance of a general exclusion order and cease and desist orders against defaulting respondents. On May 5, 2011, the Commission investigative attorney filed a response supporting the motion, on the condition that Lexmark submit (1) a declaration from its expert, Charles Reinholtz, averring that the statements in his expert report are true and correct, and (2) a declaration from Andrew Gardner that the accused products do not have any substantial non-infringing uses. Lexmark filed the submissions per the IA's request.

On June 1, 2011, the ALJ issued the subject ID granting Lexmark's motion for summary determination of violation of Section 337. No petitions for review of the ID were filed. The ID also contained the ALJ's recommended determination of remedy and bonding. Specifically, the ALJ recommended issuance of a general exclusion order and cease and desist orders against the defaulting respondents. The ALJ further recommended that the Commission set a 100% bond during the period of Presidential review.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined not to review the 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 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: 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 Monday, August 1, 2011. Reply submissions must be filed no later than the close of business on Monday, August 8, 2011. 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/
James R. Holbein
Secretary to the Commission

Issued: July 12, 2011