

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INKJET INK CARTRIDGES
WITH PRINTHEADS AND COMPONENTS
THEREOF**

Investigation No. 337-TA-723

**NOTICE OF THE COMMISSION'S FINAL DETERMINATION FINDING A
VIOLATION OF SECTION 337; ISSUANCE OF A GENERAL EXCLUSION ORDER;
AND TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has issued a general exclusion order prohibiting importation of infringing inkjet ink cartridges with printheads and components thereof.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., 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 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 June 25, 2010, based on a complaint filed by Hewlett-Packard Company of Palo Alto, California and Hewlett-Packard Development Company, L.P., of Houston, Texas (collectively "HP"). 75 *Fed. Reg.* 36442 (June 25, 2010). 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 cartridges with printheads and components thereof by reason of infringement of various claims of United States Patent Nos. 6,234,598 ("the '598 patent"); 6,309,053 ("the '053 patent"); 6,398,347 ("the '347 patent"); 6,481,817 ("the '817 patent"); 6,402,279 ("the '279 patent"); and 6,412,917 ("the '917 patent"). The '917 patent was subsequently terminated from the investigation. The complaint named the following entities as respondents: MicroJet Technology Co., Ltd. of Hsinchu City, Taiwan

("MicroJet"); and Asia Pacific Microsystems, Inc. of Hsinchu City, Taiwan ("APM"); Mipo Technology Limited of Kowloon, Hong Kong ("Mipo Tech."); Mipo Science & Technology Co., Ltd. of Guangzhou, China ("Mipo"); Mextec d/b/a Mipo America Ltd. of Miami, Florida ("Mextec"); SinoTime Technologies, Inc. d/b/a All Colors of Miami, Florida ("SinoTime"); and PTC Holdings Limited of Kowloon, Hong Kong ("PTC").

Respondents Mipo, Mipo Tech., SinoTime, and Mextec were subsequently terminated from the investigation. Respondent MicroJet defaulted. Respondent PTC did not participate in the hearing and failed to file post-hearing briefs. Pursuant to 19 C.F.R. §§ 210.17(d) and (e), the ALJ drew an adverse inference against PTC that "PTC imported accused products into the United States, that those products were manufactured by MicroJet, and that those products contain ICs [integrated circuits] made by APM." Final Initial Determination ("ID") at 29.

On June 10, 2011, the Administrative Law Judge ("ALJ") issued his final ID, finding a violation of section 337 by the respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over APM. The ALJ also found that there has been an importation into the United States, sale for importation, or sale within the United States after importation of the accused inkjet ink cartridges with printheads and components thereof. Regarding infringement, the ALJ found that MicroJet and PTC directly infringe claims 1-6 and 8-10 of the '598 patent; claims 1-6 and 8-17 of the '053 patent; claims 1, 3-5, and 8-12 of the '347 patent; claims 1-14 of the '817 patent; and claims 9-15 of the '279 patent. The ALJ also found that MicroJet induces infringement of those claims. The ALJ further found that APM does not directly infringe the asserted claims of the '598 and does not induce infringement of the asserted patents. The ALJ, however, found APM liable for contributory infringement. With respect to invalidity, the ALJ found that the asserted patents were not invalid. Finally, the ALJ concluded that an industry exists within the United States that practices the '598, '053, '347, '817, and '279 patents as required by 19 U.S.C. § 1337(a)(2).

On June 24, 2011, HP filed a contingent petition for review of the ID. On June 27, 2011, APM and the Commission investigative attorney filed petitions for review of the ID. On July 5, 2011, the parties filed responses to the various petitions and contingent petition for review.

On August 11, 2011, the Commission determined to review a single issue in the final ID and requested briefing on the issue it determined to review, and on remedy, the public interest and bonding. 76 *Fed. Reg.* 51055 (Aug. 17, 2011). Specifically, the Commission determined to review the finding that HP failed to establish by a preponderance of the evidence that Respondent APM induced infringement of the asserted patents.

On August 25, 2011, the parties filed written submissions on the issue under review, remedy, the public interest, and bonding. On September 1, 2011, the parties filed reply submissions. Although Respondent PTC failed to appear at the hearing and failed to file post-hearing briefs, resulting in the ALJ drawing an adverse inference against PTC (ID at 29), PTC filed a letter dated August 24, 2011, responding to the issue under review. However, by failing to file a post-hearing brief, PTC has waived any arguments it has or may have had about any


issues in this investigation. *See* Order No. 2, Ground Rule 11.1. Accordingly, the Commission declines to consider PTC's submission.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined that there is a violation of section 337. The Commission has determined to reverse the ALJ's finding that HP failed to establish by a preponderance of the evidence that Respondent APM induced infringement of the asserted patents, and finds that HP established by a preponderance of the evidence that APM induced infringement of the asserted patents. The Commission adopts the ALJ's findings in all other respects.

The Commission has further determined that the appropriate remedy is a general exclusion order prohibiting the entry of inkjet ink cartridges with printheads and components thereof that infringe any of the asserted claims. The Commission has also determined that the public interest factors enumerated in section 337(d) (19 U.S.C. §§ 1337(d)) do not preclude issuance of the general exclusion order. Finally, the Commission has determined that a bond of 100 percent of the entered value is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)) of inkjet ink cartridges with printheads and components thereof that are subject to the order. The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

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, 210.50.

By order of the Commission.


James R. Holbein
Secretary to the Commission

Issued: October 24, 2011

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

In the Matter of

**CERTAIN INKJET INK CARTRIDGES WITH
PRINTHEADS AND COMPONENTS THEREOF**

Inv. No. 337-TA-723

GENERAL EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale of certain inkjet ink cartridges with printheads and components thereof that infringe claims 1-6 and 8-10 of United States Patent No. 6,234,598 (“the ’598 patent”); claims 1-6 and 8-17 of United States Patent No. 6,309,053 (“the ’053 patent”); claims 1, 3-5, and 8-12 of United States Patent No. 6,398,347 (“the ’347 patent”); claims 1-14 of United States Patent No. 6,481,817 (“the ’817 patent”); and claims 9-15 of United States Patent No. 6,402,279 (“the ’279 patent”).

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determinations on the issues of remedy, the public interest, and bonding. The Commission has determined that a general exclusion from entry for consumption is necessary to prevent circumvention of an exclusion order limited to products of named persons. Accordingly, the Commission has determined to issue a general exclusion order prohibiting the unlicensed importation of inkjet ink cartridges with printheads and components thereof.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the general exclusion order, and that there shall be a 100% bond during the period of Presidential review.

Accordingly, the Commission hereby **ORDERS** that:

1. Inkjet ink cartridges with printheads and components thereof that infringe one or more of claims 1-6 and 8-10 of the '598 patent; claims 1-6 and 8-17 of the '053 patent; claims 1, 3-5, and 8-12 of the '347 patent; claims 1-14 of the '817 patent; and claims 9-15 of the '279 patent are excluded from entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, except under license of the patent owner or as provided by law.

2. Notwithstanding paragraph 1 of this Order, the aforesaid inkjet ink cartridges with printheads and components thereof are entitled to entry into the United States for consumption, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100% of the entered value of the products pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (*70 Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative and until such time as the United States Trade Representative notifies the Commission that this Order is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this Order.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import inkjet ink cartridges with printheads and components thereof that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made

appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.


4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to inkjet ink cartridges with printheads and components thereof that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

6. The Commission Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and U.S. Customs and Border Protection.

7. Notice of this Order shall be published in the *Federal Register*.

By order of the Commission.



James R. Holbein
Secretary to the Commission

Issued: October 24, 2011

**CERTAIN INKJET INK CARTRIDGES WITH PRINTHEADS 337-TA-723
AND COMPONENTS THEREOF**

CERTIFICATE OF SERVICE

I, James Holbein, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, Rett Snotherly, Esq., and the following parties as indicated, on **October 24, 2011**


James Holbein, Secretary
U.S. International Trade Commission
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**On Behalf of Complainants Hewlett-Packard Company
and Hewlett-Packard Development Company, L.P.:**

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**On Behalf of Respondent Asia Pacific
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