

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

In the Matter of

**CERTAIN INK CARTRIDGES
AND COMPONENTS THEREOF**

Inv. No. 337-TA-565

**NOTICE OF COMMISSION DETERMINATION TO REVIEW PORTIONS
OF A FINAL INITIAL DETERMINATION; 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 portions of the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on March 30, 2007, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, telephone 202-205-3041, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436. Copies of all nonconfidential 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 (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 23, 2006, based on a complaint filed by Epson Portland, Inc. of Oregon; Epson America, Inc. of California; and Seiko Epson Corporation of Japan. 71 *Fed. Reg.* 14720 (March 23, 2006). The complaint, as amended, alleged 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 ink cartridges and components thereof by reason of infringement of claim 7 of U.S. Patent No. 5,615,957 (“the ‘957 patent”); claims 18, 81, 93, 149, 164, and 165 of U.S. Patent No. 5,622,439 (“the ‘439 Patent”); claims 83 and 84 of U.S. Patent No. 5,158,377 (“the ‘377 Patent”); claims 19 and 20 of U.S. Patent No. 5,221,148 (“the ‘148 patent”); claims 29, 31, 34, and 38 of U.S. Patent No. 5,156,472 (“the ‘472 Patent”); claim 1 of U.S. Patent No. 5,488,401 (“the ‘401 Patent”); claims 1-3 and 9 of U.S. Patent No. 6,502,917 (“the ‘917 Patent”); claims 1, 31, and 34 of U.S. Patent No. 6,550,902 (“the ‘902 Patent”); claims 1, 10, and 14 of U.S. Patent No. 6,955,422 (“the ‘422 Patent”); claim 1 of U.S. Patent No. 7,008,053 (“the ‘053 Patent”); and claims 21, 45, 53, and 54 of U.S. Patent No. 7,011,397 (“the ‘397 Patent”). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 24 companies located in China, Germany, Hong Kong, Korea, and the United States. The current target date for completion of the investigation is August 29, 2007.

On March 30, 2007, the presiding ALJ issued a final ID in the investigation finding a violation of section 337 and recommending the issuance of remedial orders. Respondents and the IA filed petitions for review of the ID on April 13, 2007. Responses were filed on April 17, 2007. The parties have also filed additional comments concerning whether the ALJ’s analysis of obviousness is consistent with the decision of the United States Supreme Court in *KSR Int’l v. Teleflex Inc.*, No. 04-1350, slip op. (April 30, 2007).

Having considered the ID, the petitions for review, the responses thereto, and other relevant portions of the record, the Commission has determined to review those portions of the ALJ’s final ID concerning:

- 1) the claim construction of the terms “contacts” (claims 1, 2, 3, and 9 of the ‘917 patent; claims 1, 31, and 34 of the ‘902 patent); “overhang”(definition and location) (claims 1, 31, and 34 of the ‘902 patent); and “ink supply tank” (sponge patents);
- 2) infringement of claims employing those terms by those products for which review was sought, *viz.* infringement of claims 1, 2, 3, and 9 of the ‘917 patent (RC-6, RC-10); claims 1, 31, and 34 of the ‘902 patent (RC-2, RC-6 to RC-10); and of the sponge patents (claim 7 of the ‘957 patent, claims 19 and 20 of the ‘148 patent, claims 83 and 84 of the ‘377 patent, and claim 164 of the ‘439 patent) (RC-2);
- 3) invalidity for obviousness of claims 1, 2, 3, and 9 of the ‘917 patent, claim 1 of the ‘053 patent and claim 1 of the ‘422 patent, whether the ALJ’s conclusions with respect to obviousness are consistent with the Supreme Court’s decision in

KSR International Co. v. Teleflex Inc. (April 30, 2007), and whether additional evidence and fact-finding is required with respect to obviousness. If a party argues that the Commission should review obviousness on the current record, it should detail its arguments concerning why the asserted claims are (or are not) invalid for obviousness.

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 respondents 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).

With respect to remedy, the parties should address, the extent to which the ALJ's findings concerning defaulting and settling respondents, such as those that pertain to claim 165 of the '439 patent, claims 45, 53, and 54 of the '397 patent, and claims 29, 31, 34, and 38 of the '472 patent, are based on "substantial, reliable, and probative evidence" of a violation of section 337 so as to support issuance of a general exclusion order.

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 President has 60 days to approve or disapprove the Commission's action. 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. The Commission also requests that complainants provide the expiration dates of the asserted patents and the HTSUS numbers of the allegedly infringing goods.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly

referenced to the record in this investigation. 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 March 30, 2007, recommended determination by the ALJ on remedy and bonding. Complainants and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on July 13, 2007. Reply submissions must be filed no later than the close of business on July 20, 2007. 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 (or portion thereof) 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 section 201.6 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 201.6. 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 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-.46).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: June 29, 2007