

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN TONER CARTRIDGES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1106

**NOTICE OF A COMMISSION DETERMINATION TO REVIEW AN INITIAL
DETERMINATION GRANTING RESPONDENTS' MOTIONS FOR SUMMARY
DETERMINATION OF NON-INFRINGEMENT; REQUEST FOR WRITTEN
SUBMISSIONS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the initial determination ("ID") (Order No. 40) of the presiding administrative law judge ("ALJ") granting certain respondents' respective motions for summary determination of non-infringement. The Commission is requesting written submissions from the parties.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 708-2310. 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 this investigation on March 29, 2018, based on a complaint filed on behalf of Canon Inc. of Tokyo, Japan; Canon U.S.A. Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, "Canon" or "Complainants"). 83 FR 13516-17. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based upon 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. 9,746,826; 9,836,026; 9,841,727 ("the '727 patent"); 9,841,728 ("the '728 patent"); 9,841,729; 9,857,764; 9,857,765; 9,869,960; and

9,874,846. The Commission’s notice of investigation named numerous respondents, including: Ninestar Corporation and Ninestar Image Tech Limited, both of Guangdong, China; Ninestar Technology Company, Ltd. of City of Industry, California; and Static Control Components, Inc. of Stanford, North Carolina (collectively, “Ninestar”); Print-Rite N.A., Inc. of La Vergne, Tennessee; Union Technology International (M.C.O.) Co. Ltd. of Rodrigues, Macau; Print-Rite Unicorn Image Products Co. Ltd. of Zhuhai, China; The Supplies Guys, Inc. of Lancaster, Pennsylvania; and LD Products, Inc. of Long Beach, California (collectively, “Print-Rite”); and Aster Graphics, Inc. of Placentia, California; Aster Graphics Co., Ltd. of Guangdong, China; and Jiangxi Yibo E-tech Co., Ltd. of Jiangxi, China (collectively, “Aster”; all collectively, “the Active Respondents”). The Office of Unfair Import Investigations (“OUII”) is also a party to the investigation. The ’727 and ’728 patents have been terminated from the investigation. *See* Order No. 18 (June 28, 2018), *unreviewed by* Comm’n Notice (July 23, 2018).

All other respondents have been found in default or terminated from the investigation based on withdrawal of Canon’s allegations as to those respondents. *See, e.g.*, Order No. 11 (May 2, 2018) (ID finding eleven respondents in default); *unreviewed by* Comm’n Notice (May 23, 2018); Order No. 30 (Oct. 22, 2018) (ID terminating the investigation as to a single respondent); *unreviewed by* Comm’n Notice (Nov. 19, 2018). Specifically, the following thirty-five respondents have been found in default: Arlington Industries, Inc. of Waukegan, Illinois; Ourway US Inc. of City of Industry, California; Print After Print, Inc. d/b/a OutOfToner.com of Phoenix, Arizona; GPC Trading Co. Limited d/b/a GPC Image of Kowloon, Hong Kong; ACM Technologies, Inc. of Corona, California; Ourway Image Tech. Co., Ltd., Ourway Image Co., Ltd., and Zhuhai Aowei Electronics Co., Ltd., all of Zhuhai, China; Acecom, Inc. – San Antonio d/b/a InkSell.com of San Antonio, Texas; Bluedog Distribution Inc. of Hollywood, Florida; i8 International, Inc. d/b/a Ink4Work.com of City of Industry, California; Ink Technologies Printer Supplies, LLC of Dayton, Ohio; Linkyo Corp. d/b/a SuperMediaStore.com of La Puente, California; CLT Computers, Inc. d/b/a Multiwave and MWave of Walnut, California; Imaging Supplies Investors, LLC d/b/a SuppliesOutlet.com, SuppliesWholesalers.com, and OnlineTechStores.com of Reno, Nevada; Online Tech Stores, LLC d/b/a SuppliesOutlet.com, SuppliesWholesalers.com, and OnlineTechStores.com of Grand Rapids, Michigan; Fairland, LLC d/b/a ProPrint of Anaheim Hills, California; 9010-8077 Quebec Inc. d/b/a Zeetoner of Quebec, Canada; World Class Ink Supply, Inc. of Woodbury, New Jersey; EIS Office Solutions, Inc. and Zinyaw LLC d/b/a TonerPirate.com, both of Houston, Texas; eReplacements, LLC of Grapevine, Texas; Garvey’s Office Products, Inc. of Niles, Illinois; Master Print Supplies, Inc. d/b/a HQ Products of Burlingame, California; Reliable Imaging Computer Products, Inc. of Northridge, California; Frontier Imaging Inc. of Compton, California; Hong Kong BoZe Company Limited d/b/a Greensky of New Kowloon, Hong Kong; Apex Excel Limited d/b/a ShopAt247 of Rowland Heights, California; Billiontree Technology USA Inc. d/b/a Toner Kingdom of City of Industry, California; Kuhlmann Enterprises, Inc. d/b/a Precision Roller of Phoenix, Arizona; FTrade Inc. d/b/a ValueToner of Staten Island, New York; V4INK, Inc. of Ontario, California; Do It Wiser LLC d/b/a Image Toner of Alpharetta, Georgia; Global Cartridges of Burlingame, California; and Kingway Image Co., Ltd. d/b/a Zhu Hai Kingway Image Co., Ltd. of Zhuhai, China.

On November 28, 2018, Print-Rite and Aster each moved for summary determination that their respective accused products do not infringe the asserted patents. On the same date,

Ninestar filed an unopposed motion for leave to file a motion for summary determination that its accused products do not infringe the asserted patents. All motions were contingent on the ALJ construing the asserted claims to require a pivotable coupling member. On December 10, 2018, Canon stated in its response to the two pending summary determination motions that it would not oppose the motions for summary determination of non-infringement if the ALJ found such a claim construction. On the same date, OUII filed a response supporting all of the motions for summary determination of non-infringement, including Ninestar's non-pending motion.

On February 28, 2019, the ALJ issued her *Markman* Order (Order No. 38) construing the asserted claims to require a pivotable coupling member. On March 6, 2019, Ninestar moved, based on the *Markman* Order's claim construction, for summary determination of non-infringement. On March 8, 2019, Canon stated in its response to Ninestar's motion that it would not oppose the motion based on the *Markman* Order. On the same day, Canon stated that it "is not seeking any remedial orders under the ALJ's construction such that the ALJ may issue an initial determination under [19 C.F.R. 210.42(c)] terminating the investigation in its entirety." See Joint Submission Regarding Pending Motions for Summary Determination (March 8, 2019).

On March 13, 2019, the ALJ issued the subject ID (Order No. 40) granting each motion for summary determination of non-infringement. On March 25, 2019, Canon and the Active Respondents each petitioned for review of the subject ID. On April 1, 2019, Canon and the Active Respondents each filed a response in opposition to the other party's petition for review. On the same date, OUII filed a response in opposition to each petition for review.

Having reviewed the record of the investigation, including the *Markman* Order and the parties' briefing, the Commission has determined to review the subject ID and the underlying *Markman* Order in the entirety.

As noted above, the Commission has found thirty-five respondents in default. Based on language in Complainants' motion for summary determination of infringement, however, it appears that Canon's allegations against all accused products (*i.e.*, both active and defaulting respondents) are contingent on the Commission adopting Canon's proposed claim construction. Accordingly, assuming the Commission affirms the *Markman* Order and the subject ID, the Commission is interested in responses to the following questions:

- (A) Is Canon still seeking relief against the defaulting respondents?
- (B) If Canon is still seeking relief against the defaulting respondents, does, *inter alia*, the statement that "The accused Type A-I products all have coupling members that move in the axial direction" (*see* Mem. in Support of Canon's Mot. for Summary Det. at 1) (1) affect the Commission's presumption of the facts alleged in the complaint to be true and (2), if so, does this affect the Commission's authority to issue a remedy against the defaulting respondents?

The parties are requested to brief only the discrete questions presented above, with reference to the applicable law and record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings.

WRITTEN SUBMISSIONS: Parties are required file initial submissions in response to this notice by no later than May 20, 2019. Response submissions are due by May 27, 2019. The parties should limit their initial and response submissions to 15 pages each.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission’s Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (“Inv. No. 337-TA-1106”) in a prominent place on the cover page and/or the first page. (See Handbook on Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

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 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel¹, solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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.



Lisa R. Barton
Secretary to the Commission

Issued: May 6, 2019

¹ All contract personnel will sign appropriate nondisclosure agreements.