

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN TONER SUPPLY CONTAINERS
AND COMPONENTS THEREOF (II)**

Investigation No. 337-TA-1260

**NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION FINDING CERTAIN RESPONDENTS IN DEFAULT**

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. 15) of the presiding administrative law judge (“ALJ”) finding certain respondents in default based on failure to respond to the complaint and notice of investigation and failure to show cause why they should not be found in default.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On April 13, 2021, the Commission instituted this investigation based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, “Canon”). 86 FR 19287-88 (Apr. 13, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner supply containers and components thereof by reason of infringement of certain claims of thirteen patents: U.S. Patent Nos. 10,209,667; 10,289,060; 10,289,061; 10,295,957; 10,488,814; 10,496,032; 10,496,033; 10,514,654; 10,520,881; 10,520,882; 8,565,649 (“the ’649 patent”); 9,354,551 (“the ’551 patent”); and 9,753,402 (“the ’402 patent”). *Id.* at 19287. The complaint further alleges that a domestic industry exists. *Id.*

The Commission instituted two separate investigations based on the complaint and defined the scope of the present investigation as whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the '649, '551, and '402 patents as to the accused products identified in the notice of investigation. *Id.* The notice of investigation named eleven respondents: Sichuan XingDian Technology Co., Ltd. (“Sichuan XingDian”) of Sichuan, China; Sichuan Wiztoner Technology Co., Ltd. (“Sichuan Wiztoner”) of Sichuan, China; Anhuiyatengshangmaoyouxiangongsi (“Yatengshang”) of Ganyuqu, China; ChengDuXiangChangNanShiYouSheBeiYouXianGongSi (“ChengDuXiang”) of SiChuanSheng, China; Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (“Digital Buyer”) of Los Angeles, California; Do It Wiser, LLC d/b/a Image Toner (“Do It Wiser”) of Wilmington, Delaware; Hefeierlandianzishangwuyouxiangongsi (“Erlandianzishang”) of Chengdushi, China; MITOCOLOR INC. (“MITOCOLOR”) of Rowland Heights, California; Xianshi yanliangqu canqiubaihuodianshanghang (“CJ-us”) of Shanxisheng, China; Zhuhai Henyun Image Co., Ltd. (“Zhuhai Henyun”) of Zhuhai, China (collectively, the “Defaulting Respondents”); and Shenzhenshi Keluodeng Kejiyouxiangognsi (“KenoGen”) of Guangdong, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.* at 19287-88. The question of whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the remaining patents is the subject of the severed investigation based on the same complaint, Inv. No. 337-TA-1259. *See* 86 FR 19284-86 (Apr. 13, 2021).

On May 27, 2021, the Commission determined to amend the complaint and notice of investigation to change the identification of respondent Do It Wiser from “Do It Wiser, LLC d/b/a Image Toner” to “Do It Wiser, Inc. d/b/a Image Toner” and to make related changes in paragraph 31 of the complaint. Order No. 6 (May 17, 2021), *unreviewed by* 86 FR 29806-07 (June 3, 2021). On September 7, 2021, the Commission determined to partially terminate the investigation based on withdrawal of the allegations in the complaint as to: (i) claim 2 of the '649 patent; (ii) claims 2, 3, 6, and 7 of the '551 patent; (iii) claims 25-27, 39-41, and 46 of the '402 patent; and (iv) respondent KenoGen. Order No. 10 (Aug. 12, 2021), *unreviewed by* Comm’n Notice (Sept. 7, 2021); Order No. 12 (Aug. 13, 2021), *unreviewed by* Comm’n Notice (Sept. 7, 2021).

Each Defaulting Respondent received notice of the complaint and notice of investigation no later than June 18, 2021. Order No. 11, at 2-6 (Aug. 13, 2021). On July 15, 2021, Canon moved for an order directing the ten Defaulting Respondents to show cause why they should not be found in default for failing to respond to the complaint and notice of investigation. On July 26, 2021, OUII filed a response in support of Canon’s motion. No other responses were filed. On August 5, 2021, Canon filed a notice of supplemental authority regarding its motion.

On August 13, 2021, the ALJ issued Order No. 11 (i) finding that each Defaulting Respondent received notice of the complaint and notice of investigation, yet did not file responses thereto or otherwise participate in this investigation, and (ii) directing the Defaulting Respondents to show cause, no later than August 31, 2021, as to why they should not be found in default. Order No. 11, at 6-7. On September 10, 2021, the ALJ issued Order No. 13 extending the deadline to respond to Order No. 11 to September 24, 2021, for five of the Defaulting

Respondents (MITOCOLOR, Yatengshang, ChengDuXiang, Erlandianzishang, and CJ-us) to ensure that they had an adequate opportunity to respond. On September 27, 2021, Canon and OUII filed a joint motion seeking an ID finding the Defaulting Respondents in default for failing to respond to Order No. 11. None of the Defaulting Respondents filed a response to Order No. 11.

On September 29, 2021, the ALJ issued the subject ID (Order No. 15) finding the Defaulting Respondents in default, pursuant to Commission Rule 210.16 (19 CFR 210.16), for failing to respond to the complaint and notice of investigation and failing to show cause why they should not be found in default. ID at 1-2. The subject ID also denies as moot the joint motion of September 27, 2021. *Id.* at 2. No petitions for review of the subject ID were filed.

The Commission has determined not to review the subject ID. The following ten respondents are in default in this investigation: (1) Sichuan XingDian; (2) Sichuan Wiztoner; (3) Yatengshang; (4) ChengDuXiang; (5) Digital Buyer; (6) Do It Wiser; (7) Erlandianzishang; (8) MITOCOLOR; (9) CJ-us; and (10) Zhuhai Henyun.

The Commission vote for this determination took place on October 29, 2021.

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: October 29, 2021