

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

In the Matter of

**CERTAIN INK CARTRIDGES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-565

**Consolidated Advisory Opinion and
Modification Proceedings**

**INSTITUTION OF CONSOLIDATED
ADVISORY OPINION AND MODIFICATION PROCEEDINGS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted consolidated advisory opinion and modification proceedings.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-3041. 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) 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 the underlying investigation in this matter 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 (collectively "Epson"). 71 *Fed. Reg.* 14720 (March 23, 2006). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 ("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; claims 18, 81, 93, 149, 164 and 165 of U.S. Patent No. 5,622,439; claims 83 and 84 of U.S. Patent No. 5,158,377; claims 19 and 20 of U.S. Patent No. 5,221,148; claims 29, 31, 34 and 38 of U.S. Patent No. 5,156,472; claim 1 of U.S. Patent No. 5,488,401; claims 1-3 and 9 of U.S. Patent No. 6,502,917; claims 1, 31 and 34 of U.S. Patent No. 6,550,902; claims 1, 10 and 14 of U.S. Patent No. 6,955,422; claim 1 of U.S. Patent No. 7,008,053; and claims 21, 45, 53 and 54 of U.S. Patent No. 7,011,397. 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. Several respondents were terminated from the investigation on the basis of settlement agreements or consent orders or were found in default.

On March 30, 2007, the presiding administrative law judge (ALJ) issued a final ID in the investigation finding a violation of section 337 with respect to certain respondents. He found the asserted claims valid and infringed by certain respondents' products. He recommended issuance of a general exclusion order and cease and desist orders directed to certain respondents and bond in the amount of \$13.60 per cartridge during the Presidential review period.

On October, 19, 2007, after review, the Commission made its final determination in the investigation, finding a violation of section 337. The Commission issued a general exclusion order, limited exclusion order, and cease and desist orders directed to several domestic respondents. The Commission also determined that the public interest factors enumerated in 19 U.S.C. § 1337(d), (f), and (g) did not preclude issuance of the aforementioned remedial orders, and that the bond during the Presidential review period would be \$13.60 per cartridge for covered ink cartridges.

On December 13, 2010, two respondents in the underlying investigation, Ninestar Technology Co., Ltd. and Ninestar Technology Company, Ltd. ("Ninestar U.S.") (collectively, "Ninestar"), filed a joint request for an advisory opinion proceeding and a petition for modification of the general exclusion order and a cease and desist order issued by the Commission to Ninestar U.S. On February 3, 2011, Epson filed a petition for modification of the general exclusion order and the cease and a desist order issued to Ninestar U.S.

After examining the submissions by Ninestar and Epson, the Commission has determined to institute consolidated advisory opinion and modification proceedings to determine whether Ninestar's R-Series ink cartridges infringe any of the patent claims included in the general exclusion order or the cease and desist order issued to Ninestar U.S. in the investigation and what, if any, modifications to the general exclusion order and/or the cease and desist order issued to Ninestar U.S. are appropriate.

The Commission has referred the consolidated proceedings to the Chief Administrative Law Judge to designate a presiding administrative law judge. The following entities are named as parties to the proceedings: (1) complainant Epson; (2) respondents Ninestar Technology Co., Ltd. and Ninestar U.S. The Office of Unfair Import Investigations will not be participating as a party in this investigation.

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 210.76 and 210.79 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.76, 210.79).

By order of the Commission.

/s/

James R. Holbein
Acting Secretary to the Commission

Issued: March 18, 2011