

In the Matter of

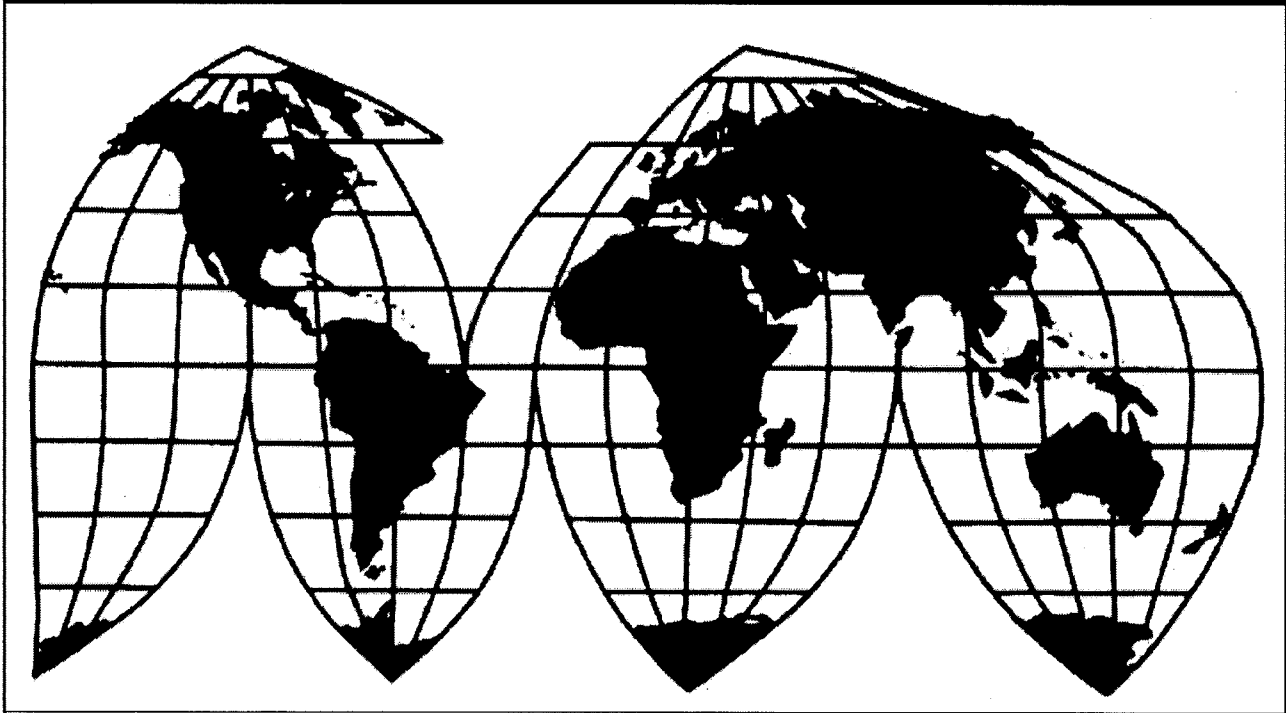
**CERTAIN DIGITAL PHOTO FRAMES
AND IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

337-TA-807

Publication 4549

July 2015

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

**Irving Williamson, Chairman
Daniel Pearson, Commissioner
Shara Aranoff, Commissioner,
Dean Pinkert, Commissioner
David Johanson, Commissioner
Meredith Broadbent, Commissioner**

**Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436**

U.S. International Trade Commission

Washington, DC 20436

www.usitc.gov

In the Matter of

CERTAIN DIGITAL PHOTO FRAMES AND IMAGE DISPLAY DEVICES AND COMPONENTS THEREOF

337-TA-807



UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES
AND IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-807

**NOTICE OF ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE AND
DESIST ORDERS DIRECTED AGAINST DEFAULTING RESPONDENTS;
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and has issued a limited exclusion order directed against infringing products of the following respondents previously found in default: Nextar Inc. ("Nextar") of La Verne, California; WinAccord Ltd. of Taipei, Taiwan and WinAccord U.S.A., Inc. of San Jose, California (collectively, "the WinAccord respondents"); Aiptek International Inc. ("Aiptek") of Hsinchu, Taiwan; and Pandigital, Inc. ("Pandigital") of Dublin, California (collectively, "the defaulting respondents"). The Commission has also issued cease and desist orders directed against these defaulting respondents.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., 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, 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 September 27, 2011, based on a complaint filed by Technology Properties Limited, LLC ("TPL") of Cupertino, California. 76 *Fed. Reg.* 59737-38. The complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, 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

digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 (“the ’623 patent”); 7,162,549; 7,295,443; and 7,522,424. The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named twenty respondents including Nextar; the WinAccord respondents; Aiptek; Pandigital; Action Electronics Co., Ltd. (“Action”) of Taoyuan County, Taiwan; Aluratek, Inc. (“Aluratek”) of Tustin, California; Audiovox Corporation (“Audiovox”) of Happaug, New York; CEIVA Logic, Inc. (“CEIVA”) of Burbank, California; Circus World Displays Ltd. (“Circus”) of Niagra Falls, Canada; Coby Electronics Corporation (“Coby”) of Lake Success, New York; Curtis International, Ltd. (“Curtis”) of Ontario, Canada; Digital Spectrum Solutions, Inc. (“Digital Spectrum”) of Irvine, California; Eastman Kodak Company (“Eastman Kodak”) of Rochester, New York; Mustek Systems, Inc. (“Mustek”) of Hsinchu Taiwan; Royal Consumer Information Products, Inc. (“Royal Consumer”) of Somerset, New Jersey and Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York (collectively, “the Sony respondents”); Transcend Information, Inc. (“Transcend”) of Taipei, Taiwan; and Viewsonic Corporation (“Viewsonic”) of Walnut, California. The complaint and notice of investigation were served on all respondents. *See* Notice of Investigation, Certificate of Service (Sept. 22, 2011) (EDIS Document 459720). No Commission investigative attorney participated in the investigation.

On November 10 and 30, 2011, respectively, the Commission determined not to review initial determinations (“IDs”) issued by the presiding administrative law judge (“ALJ”) terminating the investigation as to Coby and Aluratek based on settlement agreements. On December 21, 2011, the Commission determined not to review an ID terminating the investigation as to Circus based on a settlement agreement. On January 25, 2012, the Commission determined not to review an ID terminating the investigation as to Curtis based on a settlement agreement. On February 10 and 23, 2012, respectively, the Commission determined not to review IDs terminating the investigation as to Royal Consumer and Viewsonic based on settlement agreements. On March 16, 2012, the Commission determined not to review an ID terminating the investigation as to CEIVA based on a settlement agreement. On April 11, 2012, the Commission determined not to review IDs terminating the investigation as to Eastman Kodak and Mustek, respectively, based on consent order stipulations. On May 24, 2012, the Commission determined not to review an ID terminating the investigation as to Audiovox based on a settlement agreement. Also, on May 24 and 29, 2012, respectively, the Commission determined not to review IDs terminating the investigation as to the ’623 patent with respect to Pandigital, and terminating Digital Spectrum, based on consent order stipulations. On June 20, 2012, the Commission determined not to review an ID terminating the investigation as to Action based on a consent order stipulation. On July 26, 2012, the Commission determined not to review an ID terminating the investigation as to Transcend based on a consent order stipulation. On October 3, 2012, the Commission determined not to review an ID terminating the investigation as to the Sony respondents based on a consent order stipulation.

On December 6 and 22, 2011, respectively, the ALJ issued IDs finding Nextar, the WinAccord respondents, and Aiptek in default, pursuant to 19 C.F.R. § 210.16, because these respondents did not respond to the complaint and notice of investigation, or to Order Nos. 13 and/or 15 to show cause why it should not be found in default. On January 3 and 9, 2012,

respectively, the Commission determined not to review the IDs finding Nextar, the WinAccord respondents, and Aiptek in default. The Commission found that the statutory requirements of section 337(g)(1)(A)-(E) (19 U.S.C. § 1337(g)(1)(A)-(E)) were met with respect to Aiptek, Nextar, and the WinAccord respondents. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission rule 210.16(c) (19 C.F.R. § 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

On March 8, 2012, complainant TPL filed a declaration requesting immediate relief against defaulting respondent Aiptek under Commission rule 210.16(c)(1), 19 C.F.R. § 210.16(c)(1), which it later withdrew.

On October 9, 2012, the ALJ issued Order No. 47, directing Pandigital to show cause why it should not be found in default and in violation of section 337 pursuant to 19 C.F.R. § 210.17 because it did not file a pre-hearing statement and brief as required by the ALJ's Procedural Schedule. As of November 7, 2012, Pandigital had not responded to Order No. 47 and the ALJ issued an ID finding Pandigital in default and in violation of section 337. He also extended the target date in this investigation to March 7, 2013.

On December 7, 2012, the Commission determined not to review the ID finding Pandigital in default and in violation of section 337. The Commission also requested public briefing on remedy, the public interest, and bonding with respect to Pandigital, Aiptek, Nextar, and the WinAccord respondents and requested that TPL address certain issues related to remedy and bonding. *77 Fed. Reg.* 74220-21 (Dec. 13, 2012). On December 21, 2012, TPL submitted responsive briefing including a proposed limited exclusion order directed to the covered products of Pandigital, Aiptek, Nextar, and the WinAccord respondents and cease and desist orders directed to each of the defaulting respondents.

The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting: (1) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Pandigital or one of the WinAccord respondents, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns; (2) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Nextar or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns; and (3) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Aiptek or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns. Appropriate relief also includes cease and desist orders prohibiting: (1) Pandigital or either of the WinAccord respondents from conducting any of the following activities

in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent; (2) Nextar from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent; and (3) Aiptek from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent.

The Commission has further determined that the public interest factors enumerated in sections 337(d), (f), and (g)(1) (19 U.S.C. §§ 1337(d), (f), and (g)(1)) do not preclude issuance of the limited exclusion order or the cease and desist orders. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)). The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated 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 210.16(c), 210.17, 210.41, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16(c), 210.17, 210.41, and 210.50).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

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

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

LIMITED EXCLUSION ORDER

The Commission has found Respondent Pandigital, Inc. (“Pandigital”) in default pursuant to 19 C.F.R. § 210.17, and Respondents Aiptek International Inc. (“Aiptek”); Nextar Inc. (“Nextar”); WinAccord Ltd. (“WinAccord Ltd.”); and WinAccord U.S.A., Inc. (“WinAccord USA”) (all collectively, “Respondents”) in default pursuant to section 337(g)(1) and 19 C.F.R. § 210.16 for failing to respond to a Notice of Investigation and a Complaint that alleged a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), with respect to the unlawful importation and sale within the United States after importation of certain digital photo frames and image display devices and components thereof by reason of infringement of one or more of claims 9, 11-12, and 14 of U.S. Patent No. 7,295,443 (“the ’443 patent”); claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”); or claims 1, 7, 11, 17, 19, and 21 of U.S. Patent No. 7,162,549 (“the ’549 patent”).

Having reviewed the record in this investigation, including the written submissions of complainant, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the ’443

patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, and that are manufactured by, or on behalf of, or are imported by or on behalf of one or more of Respondents.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d)(1) and (g)(1) do not preclude issuance of the limited exclusion order. Finally, the Commission has determined that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value of the articles in question.

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

1. Digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, and that are manufactured by, or on behalf of, or are imported by or on behalf of, Pandigital, WinAccord USA, or WinAccord Ltd or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents, except under license of the patent owner or as provided by law.

2. Digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, and that are manufactured by, or on behalf of, or are imported by or on behalf of, Nextar or any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents, except under license of the patent owner or as provided by law.

3. Digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, and that are manufactured by, or on behalf of, or are imported by or on behalf of, Aiptek or any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents, except under license of the patent owner or as provided by law.

4. Notwithstanding paragraphs 1-3 of this Order, the aforesaid digital photo frames, image display devices, 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 percent of the entered value of imported digital photo frames, image display devices, and components thereof 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 action is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this action.

5. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to the procedures it establishes, persons seeking to import digital photo frames, image display devices, 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 paragraphs 1-3 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 this certification.

6. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to infringing digital photo frames, image display devices, 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.

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

8. The 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.

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

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Nextar, Inc., 1661 Fairplex Drive, La Verne, California 91750, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 14 of U.S. Patent No. 7,295,443 (“the ’443 patent”) or claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.

(C) “Respondent” shall mean Nextar, Inc., 1661 Fairplex Drive, La Verne, California 91750.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 14 of the ’443 patent or claims 25-26 and 28-29 of the ’424 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the

Order. For the remaining term of the patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443 and '424 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to

the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VI.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443 and '424 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT WinAccord Ltd., 12F, No. 225, Sec. 5, Nan Jing E. Road, Song Shan District, Taipei, Taiwan 105, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of U.S. Patent No. 7,295,443 (“the ’443 patent”), claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”), or claims 1, 7, 11, 17, 19, and 21 of U.S. Patent No. 7,162,549 (“the ’549 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens

Creek Boulevard, Suite 100, Cupertino, California 95014.

(C) “Respondent” shall mean WinAccord Ltd., 12F, No. 225, Sec. 5, Nan Jing E. Road, Song Shan District, Taipei, Taiwan 105.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443, '424, and '549 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have

truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered

products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443, '424, and '549 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT WinAccord U.S.A., Inc., 2526 Qume Drive, Suite 24, San Jose, California 95131, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of U.S. Patent No. 7,295,443 (“the ‘443 patent”), claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ‘424 patent”), or claims 1, 7, 11, 17, 19, and 21 of U.S. Patent No. 7,162,549 (“the ‘549 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.

(C) “Respondent” shall mean WinAccord U.S.A., Inc., 2526 Qume Drive, Suite 24, San Jose, California 95131.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the ’443 patent, claims 25-26 and 28-29 of the ’424 patent, or claims 1, 7, 11, 17, 19, and 21 of the ’549 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443, '424, and '549 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have

truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered

products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443, '424, and '549 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Aiptek International Inc., No. 19, Industry E. Road IV., Science Park, Hsinchu 300, Taiwan, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 11-12 of U.S. Patent No. 7,295,443 (“the ‘443 patent”) or claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ‘424 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.
- (C) “Respondent” shall mean Aiptek International Inc., No. 19, Industry E. Road IV., Science Park, Hsinchu 300, Taiwan.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 11-12 of the ’443 patent or claims 25-26 and 28-29 of the ’424 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the patents, Respondent shall not:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products;

(D) solicit U.S. agents or distributors for imported covered products; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443 and '424 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that

Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the

proceeding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443 and '424 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a large, stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

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

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Pandigital, Inc., 6375 Clark Avenue, Suite 100, Dublin, California 94568, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of U.S. Patent No. 7,295,443 (“the ’443 patent”), claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”), or claims 1, 7, 11, 17, 19, and 21 of U.S. Patent No. 7,162,549 (“the ’549 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.

(C) “Respondent” shall mean Pandigital, Inc., 6375 Clark Avenue, Suite 100, Dublin, California 94568.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the ’443 patent, claims 25-26 and 28-29 of the ’424 patent, or claims 1, 7, 11, 17, 19, and 21 of the ’549 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443, '424, and '549 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have

truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered

products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443, '424, and '549 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** was served upon the Office of Unfair Import Investigations and the following parties as indicated on **March 12, 2013**



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street SW, Room 112A
Washington, D.C. 20436

FOR COMPLAINANT TECHNOLOGY PROPERTIES LIMITED, LLC:

James C. Otteson, Esq.
AGILITY IP LAW, LLC
149 Commonwealth Drive, Suite 1033
Menlo Park, CA 94025

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

FOR RESPONDENT DIGITAL SPECTRUM SOLUTIONS, INC.:

Robert D. Fish
FISH & ASSOCIATES PC
2603 Main Street, Suite 1000
Irvine, CA 92614

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

RESPONDENT PANDIGITAL, INC.

Daphne Masin
Assignee of Pandigital, Inc.
**CREDIT MANAGEMENT ASSOCIATION
ADJUSTMENT BUREAU**
40 East Verdugo Ave.
Burbank, CA 91502

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

Jeremy E. Rosenthal
Credit Managers Association Handling Assignment for
the Benefit of Creditors of Pandigital, Inc.
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, CA 90013

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES
AND IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-807

**NOTICE OF ISSUANCE OF A LIMITED EXCLUSION ORDER AND CEASE AND
DESIST ORDERS DIRECTED AGAINST DEFAULTING RESPONDENTS;
TERMINATION OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and has issued a limited exclusion order directed against infringing products of the following respondents previously found in default: Nextar Inc. ("Nextar") of La Verne, California; WinAccord Ltd. of Taipei, Taiwan and WinAccord U.S.A., Inc. of San Jose, California (collectively, "the WinAccord respondents"); Aiptek International Inc. ("Aiptek") of Hsinchu, Taiwan; and Pandigital, Inc. ("Pandigital") of Dublin, California (collectively, "the defaulting respondents"). The Commission has also issued cease and desist orders directed against these defaulting respondents.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., 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, 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 September 27, 2011, based on a complaint filed by Technology Properties Limited, LLC ("TPL") of Cupertino, California. 76 *Fed. Reg.* 59737-38. The complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, 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

digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 (“the ’623 patent”); 7,162,549; 7,295,443; and 7,522,424. The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named twenty respondents including Nextar; the WinAccord respondents; Aiptek; Pandigital; Action Electronics Co., Ltd. (“Action”) of Taoyuan County, Taiwan; Aluratek, Inc. (“Aluratek”) of Tustin, California; Audiovox Corporation (“Audiovox”) of Happaug, New York; CEIVA Logic, Inc. (“CEIVA”) of Burbank, California; Circus World Displays Ltd. (“Circus”) of Niagra Falls, Canada; Coby Electronics Corporation (“Coby”) of Lake Success, New York; Curtis International, Ltd. (“Curtis”) of Ontario, Canada; Digital Spectrum Solutions, Inc. (“Digital Spectrum”) of Irvine, California; Eastman Kodak Company (“Eastman Kodak”) of Rochester, New York; Mustek Systems, Inc. (“Mustek”) of Hsinchu Taiwan; Royal Consumer Information Products, Inc. (“Royal Consumer”) of Somerset, New Jersey and Sony Corporation of Tokyo, Japan; Sony Corporation of America of New York, New York (collectively, “the Sony respondents”); Transcend Information, Inc. (“Transcend”) of Taipei, Taiwan; and Viewsonic Corporation (“Viewsonic”) of Walnut, California. The complaint and notice of investigation were served on all respondents. *See* Notice of Investigation, Certificate of Service (Sept. 22, 2011) (EDIS Document 459720). No Commission investigative attorney participated in the investigation.

On November 10 and 30, 2011, respectively, the Commission determined not to review initial determinations (“IDs”) issued by the presiding administrative law judge (“ALJ”) terminating the investigation as to Coby and Aluratek based on settlement agreements. On December 21, 2011, the Commission determined not to review an ID terminating the investigation as to Circus based on a settlement agreement. On January 25, 2012, the Commission determined not to review an ID terminating the investigation as to Curtis based on a settlement agreement. On February 10 and 23, 2012, respectively, the Commission determined not to review IDs terminating the investigation as to Royal Consumer and Viewsonic based on settlement agreements. On March 16, 2012, the Commission determined not to review an ID terminating the investigation as to CEIVA based on a settlement agreement. On April 11, 2012, the Commission determined not to review IDs terminating the investigation as to Eastman Kodak and Mustek, respectively, based on consent order stipulations. On May 24, 2012, the Commission determined not to review an ID terminating the investigation as to Audiovox based on a settlement agreement. Also, on May 24 and 29, 2012, respectively, the Commission determined not to review IDs terminating the investigation as to the ’623 patent with respect to Pandigital, and terminating Digital Spectrum, based on consent order stipulations. On June 20, 2012, the Commission determined not to review an ID terminating the investigation as to Action based on a consent order stipulation. On July 26, 2012, the Commission determined not to review an ID terminating the investigation as to Transcend based on a consent order stipulation. On October 3, 2012, the Commission determined not to review an ID terminating the investigation as to the Sony respondents based on a consent order stipulation.

On December 6 and 22, 2011, respectively, the ALJ issued IDs finding Nextar, the WinAccord respondents, and Aiptek in default, pursuant to 19 C.F.R. § 210.16, because these respondents did not respond to the complaint and notice of investigation, or to Order Nos. 13 and/or 15 to show cause why it should not be found in default. On January 3 and 9, 2012,

respectively, the Commission determined not to review the IDs finding Nextar, the WinAccord respondents, and Aiptek in default. The Commission found that the statutory requirements of section 337(g)(1)(A)-(E) (19 U.S.C. § 1337(g)(1)(A)-(E)) were met with respect to Aiptek, Nextar, and the WinAccord respondents. Accordingly, pursuant to section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission rule 210.16(c) (19 C.F.R. § 210.16(c)), the Commission presumed the facts alleged in the complaint to be true.

On March 8, 2012, complainant TPL filed a declaration requesting immediate relief against defaulting respondent Aiptek under Commission rule 210.16(c)(1), 19 C.F.R. § 210.16(c)(1), which it later withdrew.

On October 9, 2012, the ALJ issued Order No. 47, directing Pandigital to show cause why it should not be found in default and in violation of section 337 pursuant to 19 C.F.R. § 210.17 because it did not file a pre-hearing statement and brief as required by the ALJ's Procedural Schedule. As of November 7, 2012, Pandigital had not responded to Order No. 47 and the ALJ issued an ID finding Pandigital in default and in violation of section 337. He also extended the target date in this investigation to March 7, 2013.

On December 7, 2012, the Commission determined not to review the ID finding Pandigital in default and in violation of section 337. The Commission also requested public briefing on remedy, the public interest, and bonding with respect to Pandigital, Aiptek, Nextar, and the WinAccord respondents and requested that TPL address certain issues related to remedy and bonding. *77 Fed. Reg. 74220-21* (Dec. 13, 2012). On December 21, 2012, TPL submitted responsive briefing including a proposed limited exclusion order directed to the covered products of Pandigital, Aiptek, Nextar, and the WinAccord respondents and cease and desist orders directed to each of the defaulting respondents.

The Commission has determined that the appropriate form of relief includes a limited exclusion order prohibiting: (1) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Pandigital or one of the WinAccord respondents, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns; (2) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Nextar or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns; and (3) the unlicensed entry of digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, which are manufactured abroad by or on behalf of, or are imported by or on behalf of, Aiptek or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or its successors or assigns. Appropriate relief also includes cease and desist orders prohibiting: (1) Pandigital or either of the WinAccord respondents from conducting any of the following activities

in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent; (2) Nextar from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent; and (3) Aiptek from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames and image display devices and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent.

The Commission has further determined that the public interest factors enumerated in sections 337(d), (f), and (g)(1) (19 U.S.C. §§ 1337(d), (f), and (g)(1)) do not preclude issuance of the limited exclusion order or the cease and desist orders. Finally, the Commission has determined that a bond in the amount of 100 percent of the entered value of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)). The Commission's orders were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated 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 210.16(c), 210.17, 210.41, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.16(c), 210.17, 210.41, and 210.50).

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: March 13, 2013

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

LIMITED EXCLUSION ORDER

The Commission has found Respondent Pandigital, Inc. ("Pandigital") in default pursuant to 19 C.F.R. § 210.17, and Respondents Aiptek International Inc. ("Aiptek"); Nextar Inc. ("Nextar"); WinAccord Ltd. ("WinAccord Ltd"); and WinAccord U.S.A., Inc. ("WinAccord USA") (all collectively, "Respondents") in default pursuant to section 337(g)(1) and 19 C.F.R. § 210.16 for failing to respond to a Notice of Investigation and a Complaint that alleged a violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), with respect to the unlawful importation and sale within the United States after importation of certain digital photo frames and image display devices and components thereof by reason of infringement of one or more of claims 9, 11-12, and 14 of U.S. Patent No. 7,295,443 ("the '443 patent"); claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 ("the '424 patent"); or claims 1, 7, 11, 17, 19, and 21 of U.S. Patent No. 7,162,549 ("the '549 patent").

Having reviewed the record in this investigation, including the written submissions of complainant, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443

patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, and that are manufactured by, or on behalf of, or are imported by or on behalf of one or more of Respondents.

The Commission has determined that the public interest factors enumerated in 19 U.S.C. §§ 1337(d)(1) and (g)(1) do not preclude issuance of the limited exclusion order. Finally, the Commission has determined that the bond during the period of Presidential review shall be in the amount of 100 percent of the entered value of the articles in question.

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

1. Digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, and that are manufactured by, or on behalf of, or are imported by or on behalf of, Pandigital, WinAccord USA, or WinAccord Ltd or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents, except under license of the patent owner or as provided by law.

2. Digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, and that are manufactured by, or on behalf of, or are imported by or on behalf of, Nextar or any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents, except under license of the patent owner or as provided by law.

3. Digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, and that are manufactured by, or on behalf of, or are imported by or on behalf of, Aiptek or any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents, except under license of the patent owner or as provided by law.

4. Notwithstanding paragraphs 1-3 of this Order, the aforesaid digital photo frames, image display devices, 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 percent of the entered value of imported digital photo frames, image display devices, and components thereof 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 action is approved or disapproved but, in any event, not later than sixty (60) days after the date of receipt of this action.

5. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to the procedures it establishes, persons seeking to import digital photo frames, image display devices, 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 paragraphs 1-3 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 this certification.

6. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to infringing digital photo frames, image display devices, 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.

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

8. The 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.

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

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a large, stylized flourish at the end.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Aiptek International Inc., No. 19, Industry E. Road IV., Science Park, Hsinchu 300, Taiwan, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 11-12 of U.S. Patent No. 7,295,443 (“the ’443 patent”) or claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.
- (C) “Respondent” shall mean Aiptek International Inc., No. 19, Industry E. Road IV., Science Park, Hsinchu 300, Taiwan.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term "covered products" shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the patents, Respondent shall not:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products;

(D) solicit U.S. agents or distributors for imported covered products; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443 and '424 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that

Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the

proceeding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443 and '424 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT WinAccord U.S.A., Inc., 2526 Qume Drive, Suite 24, San Jose, California 95131, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of U.S. Patent No. 7,295,443 (“the ’443 patent”), claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”), or claims 1, 7, 11, 17, 19, and 21 of U.S. Patent No. 7,162,549 (“the ’549 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.

(C) “Respondent” shall mean WinAccord U.S.A., Inc., 2526 Qume Drive, Suite 24, San Jose, California 95131.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the ’443 patent, claims 25-26 and 28-29 of the ’424 patent, or claims 1, 7, 11, 17, 19, and 21 of the ’549 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443, '424, and '549 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have

truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered

products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443, '424, and '549 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, *70 Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

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

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Nextar, Inc., 1661 Fairplex Drive, La Verne, California 91750, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 14 of U.S. Patent No. 7,295,443 (“the ’443 patent”) or claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.

(C) “Respondent” shall mean Nextar, Inc., 1661 Fairplex Drive, La Verne, California 91750.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9 and 14 of the ’443 patent or claims 25-26 and 28-29 of the ’424 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the

Order. For the remaining term of the patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443 and '424 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to

the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

VI.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443 and '424 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton", written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Pandigital, Inc., 6375 Clark Avenue, Suite 100, Dublin, California 94568, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of U.S. Patent No. 7,295,443 (“the ’443 patent”), claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”), or claims 1, 7, 11, 17, 19, and 21 of U.S. Patent No. 7,162,549 (“the ’549 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens Creek Boulevard, Suite 100, Cupertino, California 95014.

(C) “Respondent” shall mean Pandigital, Inc., 6375 Clark Avenue, Suite 100, Dublin, California 94568.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the ’443 patent, claims 25-26 and 28-29 of the ’424 patent, or claims 1, 7, 11, 17, 19, and 21 of the ’549 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443, '424, and '549 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have

truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered

products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443, '424, and '549 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES AND
IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT WinAccord Ltd., 12F, No. 225, Sec. 5, Nan Jing E. Road, Song Shan District, Taipei, Taiwan 105, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of U.S. Patent No. 7,295,443 (“the ’443 patent”), claims 25-26 and 28-29 of U.S. Patent No. 7,522,424 (“the ’424 patent”), or claims 1, 7, 11, 17, 19, and 21 of U.S. Patent No. 7,162,549 (“the ’549 patent”) in violation of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337).

I.

Definitions

As used in this Order:

- (A) “Commission” shall mean the United States International Trade Commission.
- (B) “Complainant” shall mean Technology Properties Limited, LLC, 20883 Stevens

Creek Boulevard, Suite 100, Cupertino, California 95014.

(C) “Respondent” shall mean WinAccord Ltd., 12F, No. 225, Sec. 5, Nan Jing E. Road, Song Shan District, Taipei, Taiwan 105.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity or its majority owned or controlled subsidiaries, or their successors or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean digital photo frames, image display devices, and components thereof that infringe one or more of claims 9, 11-12, and 14 of the ’443 patent, claims 25-26 and 28-29 of the ’424 patent, or claims 1, 7, 11, 17, 19, and 21 of the ’549 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to the Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of, Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the patents, Respondent shall not:

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, offer for sale, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of the '443, '424, and '549 patents licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have

truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission: (a) the quantity in units and the value in dollars of covered products that Respondent has (i) imported and/or (ii) sold in the United States after importation during the reporting period, and (b) the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period. A Respondent filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-807”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures,

http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary (202-205-2000). A Respondent desiring to submit a document to the Commission in confidence must file the original and a public version of the original with the Office of the Secretary and serve a copy of the confidential version on Complainant’s counsel.¹

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be

¹ Complainant must file a letter with the Secretary identifying the attorney to receive the reports or bond information. The designated attorney must be on the protective order entered in the investigation.

referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. §1001.

VI.

Record Keeping and Inspection

(A) For purposes of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For purposes of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal office during office hours, and in the presence of counsel, or other representatives if Respondent so chooses, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered

products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in the preceding paragraph, a copy of this Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and (C) shall remain in effect until the date of expiration of the '443, '424, and '549 patents.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission Rules of Practice and Procedure (19 C.F.R. § 210.75), including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, as amended (19 U.S.C. § 1337(f)), and any other action as the Commission may deem appropriate. In determining whether a Respondent is in violation of this Order, the Commission may infer facts adverse to a Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76).

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 100 percent of the entered value for infringing digital photo frames, image display devices, and components thereof. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order. Upon acceptance of the bond by the Secretary, (a) the Secretary will serve an acceptance letter on all parties and (b) the Respondent must serve a copy of the bond and any accompanying

documentation on Complainant's counsel.²

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: March 12, 2013

² See n. 1.

PUBLIC VERSION

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

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES
AND IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-807

COMMISSION OPINION

I. INTRODUCTION

On January 3 and 9, 2012, the Commission found the following respondents in default pursuant to 19 U.S.C. § 1337(g)(1) and Commission rule 210.16: Nextar Inc. (“Nextar”) of La Verne, California; WinAccord Ltd. (“WinAccord Taiwan”) of Taipei, Taiwan and WinAccord U.S.A., Inc. (“WinAccord USA” – domestic affiliate of WinAccord Taiwan) of San Jose, California (collectively, “the WinAccord respondents”); and Aiptek International Inc. (“Aiptek”) of Hsinchu, Taiwan. Comm’n Notice (Jan. 3, 2012); Comm’n Notice (Jan. 9, 2012). On December 7, 2012, the Commission found Pandigital, Inc. (“Pandigital”) of Dublin, California in default and in violation of section 337 pursuant to Commission rule 210.17 for failure to participate in the investigation, including by failing to file a pre-hearing statement and brief. 77 *Fed. Reg.* 74220-21 (Dec. 13, 2012).¹ All other respondents have been terminated from the investigation based on consent order stipulations and settlement agreements. The investigation is now before the Commission to consider issues pertaining to remedy, the public interest, and bonding.

¹ Nextar, Aiptek, WinAccord Taiwan, WinAccord USA, and Pandigital are collectively referred to herein as “the defaulting respondents.”

PUBLIC VERSION

II. BACKGROUND

The Commission instituted this investigation on September 27, 2011, based on a complaint filed by Technology Properties Limited, LLC (“TPL”) of Cupertino, California on August 24, 2011. *76 Fed. Reg.* 59737-38. The complaint alleged a violation of section 337 of the Tariff Act of 1930, as amended, 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 digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 (“the ’623 patent”); 7,162,549 (“the ’549 patent”); 7,295,443 (“the ’443 patent”); and 7,522,424 (“the ’424 patent”). The complaint further alleged the existence of a domestic industry.

The Commission’s notice of investigation named twenty respondents, including the defaulting respondents. No Commission investigative attorney participated in the investigation. The ’623 patent was asserted against only Pandigital and was later terminated from the investigation by consent order stipulation. With the exception of the defaulting respondents, all other respondents have been terminated from the investigation based on consent order stipulations and settlement agreements.

On December 6 and 22, 2011, respectively, the presiding administrative law judge (“ALJ”) issued initial determinations (“IDs”) finding Nextar, the WinAccord respondents, and Aiptek in default under section 337(g)(1) and 19 C.F.R. § 210.16 because these respondents did not respond to the complaint and notice of investigation. Order No. 14 (Dec. 6, 2011), Order No. 17 (Dec. 22, 2011). The Commission determined not to review these IDs. Comm’n Notice (Jan. 3, 2012); Comm’n Notice (Jan. 11, 2012).

PUBLIC VERSION

On November 7, 2012, the ALJ issued an ID (Order No. 48) finding the last remaining respondent, Pandigital, in default and in violation of section 337 under 19 C.F.R. § 210.17 because it failed to file a pre-hearing statement and brief as required by the ALJ's Procedure Schedule. Order No. 48 (Nov. 7, 2012). On December 7, 2012, the Commission determined not to review the ID finding Pandigital in default and in violation of section 337, and requested public briefing on the appropriate remedy, the public interest, and bonding with respect to the defaulting respondents. The Commission also sought specific briefing from TPL regarding its remedy and bonding requests. *77 Fed. Reg.* 74220-21 (Dec. 13, 2012). On December 21, 2012, TPL filed responsive briefing, and submitted a proposed limited exclusion order ("LEO") and proposed cease and desist orders ("CDOs") directed against each of the defaulting respondents.² No other responses to the Commission notice were received.

III. DISCUSSION

A. Default under Section 337(g)(1) and Commission rule 210.16

The Commission is authorized to issue an LEO directed against the covered products of a defaulting respondent under section 337(g)(1) if:

- (A) a complaint is filed against a person under section 337;
- (B) the complaint and notice of investigation are served on the person;
- (C) the person fails to respond to the complaint and notice or otherwise fails to appear to answer the complaint and notice;
- (D) the person fails to show good cause why the person should not be found in default; and
- (E) the complainant seeks relief limited solely to that person.

² See Complainant Technology Properties Limited LLC's Written Submission on Remedy, Bond, and Public Interest ("TPL Br.") (Dec. 21, 2012).

PUBLIC VERSION

19 U.S.C. § 1337(g)(1). When these requirements are satisfied, the Commission must “presume that the facts alleged in the complaint are true and shall, upon request, issue an exclusion from entry order or a cease and desist order, or both, limited to the defaulter, unless, after considering the effect of such remedial orders upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and the United States consumers, the Commission finds that such orders should not be issued.” *Id.* Commission rule 210.16(a)(1) also provides that “[a] party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in § 210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.” 19 C.F.R. § 210.16(a)(1).

The Commission found that each of these statutory requirements were satisfied with respect to Nextar, Aiptek, and the WinAccord respondents. TPL filed its complaint on August 24, 2011. The Secretary to the Commission served all respondents with the complaint and notice of investigation by mail on September 22, 2011, in accordance with Commission rule 210.11. *See* Notice of Investigation, Certificate of Service (Sept. 22, 2011) (EDIS Document 459720). The FedEx and UPS shipping histories indicate that Nextar, Aiptek, and the WinAccord respondents received the complaint and notice of investigation on September 23, 2011 and/or September 26, 2011. *See* Order No. 14; TPL’s Motion for Default Judgment Against Aiptek (Nov. 7, 2011). Nonetheless, Nextar, Aiptek, and the WinAccord respondents failed to respond to the complaint and notice of investigation and did not otherwise appear. The ALJ subsequently issued Orders directing Nextar, Aiptek, and the WinAccord respondents to show cause as to why they should not be found in default. Order No. 13 (Nov. 18, 2011). Nextar, Aiptek, and the WinAccord respondents failed to respond to the ALJ’s show cause orders. Finally, as discussed

PUBLIC VERSION

further below, complainant seeks relief solely against Nextar, Aiptek, and the WinAccord respondents with respect to section 337(g)(1) and Commission rule 210.16. Accordingly, all conditions for relief against these defaulting respondents have been met in this investigation.

B. Default under 19 C.F.R. § 210.17 – Other Failures to Act

Rule 210.17 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.17, provides a basis for the Commission to find a party in default and in violation of section 337 for failures to act other than the statutory form of default. Specifically, under Commission rule 210.17, the ALJ or the Commission may draw adverse inferences and issue findings of fact, conclusions of law, determinations (including a violation of section 337), and orders that are adverse to the party who fails to take required actions in Commission investigations. 19 C.F.R. § 210.17. Such failures to act include, but are not limited to, the "failure to file a brief or other written submission requested by the ALJ or the Commission during an investigation or a related proceeding." 19 C.F.R. § 210.17(e). Upon a finding that a respondent has failed to take required actions under Rule 210.17, the Commission may find the party in default and in violation of section 337, and thereupon may issue appropriate remedies after consideration of the effect of such remedial orders upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and the United States consumers.

The Commission found Pandigital in default and in violation of section 337 pursuant to Commission rule 210.17. *77 Fed. Reg.* 74220-21 (Dec. 13, 2012). Pandigital filed a response to the complaint and notice of the investigation on October 21, 2011, and participated in the investigation until July 31, 2012, when counsel for Pandigital withdrew its appearance. Notice of Withdrawal of Shartsis Friese LLP as Counsel for Pandigital, Inc. (July 31, 2012). In his

PUBLIC VERSION

order finding Pandigital in default, the ALJ noted that Pandigital did not file a pre-hearing statement and brief on August 23, 2012, as required by the ALJ's Procedural Schedule. Order No. 48 at 2-4. The ALJ also noted that Pandigital did not respond to his Order to Show Cause (Order No. 47) as to why it should not be found in default and in violation of section 337. *Id.* In light of these failures to act, the ALJ made adverse inferences and determinations against Pandigital finding it in default and in violation of section 337. *Id.* The ALJ recommended that the remedies and bond requested by TPL in its pre-hearing brief, *i.e.*, an LEO, CDO, and 100 percent bond, be issued against Pandigital in accordance with sections 337(d) and (f). *Id.*; *see also* TPL Pre-Trial Brief at 269-74 (Aug. 23, 2012). The Commission determined not to review the ID finding Pandigital in default and in violation of section 337 pursuant to Commission rule 210.17. *77 Fed. Reg.* 74220-21 (Dec. 13, 2012).

C. The Commission's Determination of Appropriate Remedies

The Commission has determined that the requirements for relief under section 337(g)(1) have been met with respect to Aiptek, Nextar, and the WinAccord respondents, and that the requirements for relief under 19 C.F.R. § 210.17 have been met with respect to Pandigital, as discussed above. Accordingly, for these reasons and as further set forth below, the Commission has determined to: (1) issue an LEO directed against the covered products of the defaulting respondents; (2) issue CDOs directed against the defaulting respondents; (3) permit importation under bond during the period of Presidential review for the covered products of the defaulting respondents; and (4) set a bond in the amount of 100 percent of the entered value of the covered products of all defaulting respondents.

PUBLIC VERSION

1. Limited Exclusion Order

Having found the requirements of section 337(g)(1) and Commission rule 210.17 satisfied, the Commission presumes that the facts alleged in the complaint are true, including the factual allegations concerning infringement of the asserted patent claims by each of the defaulting respondents. As requested by TPL, and based on the allegations set forth in its complaint, the Commission has determined to issue a limited exclusion order covering each of the defaulting respondents' digital photo frames and image display devices and components thereof that infringe, as specified by TPL's infringement allegations contained in its complaint, one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent ("covered products"). See TPL Complaint ¶¶ 72-75, Exhs. 13, 76 at ¶ 4, 76-B (Aiptek); TPL Complaint ¶¶ 119-22, Exhs. 50, 52, 76 at ¶ 24, 76-L (Nextar); TPL Complaint ¶¶ 123-28, Exhs. 53, 55-57, 76 at ¶¶ 26 and 28, 76-M, 76-N (Pandigital); TPL Complaint ¶¶ 147-51, Exhs. 72, 74-75, 76 at ¶ 38, 76-S (the WinAccord respondents).

2. Cease and Desist Orders

In addition to the requested limited exclusion order, TPL also asked the Commission to issue CDOs directed against each of the defaulting respondents. TPL Br. at 3-4. As set forth below, the Commission has determined to issue cease and desist orders directed to Aiptek, Nextar, WinAccord USA, WinAccord Taiwan, and Pandigital, which prohibit, *inter alia*, the importation, sale, advertising, marketing, and distribution of covered products in the United States by the defaulting respondents.

The Commission generally issues a CDO directed against a domestic respondent when there is a "commercially significant" inventory of infringing, imported product in the United

PUBLIC VERSION

States. *See, e.g., Certain Hardware Logic Emulation Systems & Components Thereof*, Inv. No. 337-TA-383, USITC Pub. No. 3089, Comm'n Op. at 25 (Mar. 1998). In the case of defaulting domestic respondents, the Commission infers that the domestic defaulting respondent maintains commercially significant inventories in the United States. *See, e.g., Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof* ("Agricultural Tractors"), Inv. No. 337-TA-486, Comm'n Op. at 18 (Aug. 19, 2003) ("The Commission has inferred that a defaulting domestic respondent maintains commercially significant inventory in the United States."). Consistent with its practice, the Commission finds it appropriate to infer that domestic defaulting respondents Nextar, WinAccord USA, and Pandigital maintain commercially significant inventories in the United States. Moreover, TPL has presented evidence showing that these domestic defaulting respondents maintain commercially significant U.S. inventories, offer for sale, and/or sell to consumers within the United States infringing products, both in its complaint and its response to the Commission's request for submissions.³ *See* TPL Br. at 4, Exhs. I (CX-183C), L; TPL Complaint ¶¶ 123-24, Exhs. 53 at 2, 55 at 3, 76 at ¶¶ 26 and 28, 76-M, 76-N (Pandigital); TPL Complaint ¶¶ 119-20, Exhs. 50 at 2, 76 at ¶ 24, 76-L (Nextar); TPL Complaint ¶¶ 147-48, Exhs. 72 at 2, 76 at ¶ 38, 76-S (the WinAccord respondents). Therefore, CDOs directed against domestic defaulting respondents Pandigital, Nextar, and WinAccord USA are warranted and appropriate.

With respect to foreign defaulting respondents, the Commission has declined to draw adverse inferences concerning domestic inventories of infringing products. *See Agricultural*

³ For all proposed respondents, and specifically for the WinAccord respondents, TPL alleged in its complaint that "[o]n information and belief, either by itself or through its subsidiaries, or through third parties acting on its behalf, WinAccord [defined as the combination of WinAccord Taiwan and WinAccord USA] is engaged in the manufacture, importation, sale for importation, or sale after importation into the United States of infringing electronic devices." *See* TPL Complaint ¶¶ 28, 147.

PUBLIC VERSION

Tractors, Comm'n Op. at 18-20. In *Agricultural Tractors*, the complainant asserted that the Commission should extend its practice of drawing an adverse inference that a defaulting domestic respondent maintains commercially significant inventory in the United States to defaulting foreign respondents. *Id.* at 12-13. The Commission declined to do so because it found that the foreign respondent did not itself own any domestic inventories and instead relied on independent U.S. intermediaries for importing, distributing, and offering for sale the infringing articles in the United States. *Id.* at 18-20. Relying on this specific factual finding, the Commission determined not to issue a CDO against the foreign respondent. *Id.*

Notwithstanding *Agricultural Tractors*, where the complaint alleges facts showing that a defaulting foreign respondent either maintains domestic inventories of subject products or engages in extensive domestic activities with respect to the subject products, the Commission has issued CDOs against defaulting foreign respondents. For example, the Commission has previously issued CDOs directed against foreign defaulting respondents where complainant alleged internet sales and submitted evidence of sales to U.S. customers and Customs' detainment of shipments to U.S. customers. *See, e.g., Certain Toner Cartridges and Components Thereof ("Toner Cartridges")*, Inv. No. 337-TA-740, Complaint ¶¶ 9-14, 588, 591, 595, Exhs. 401, 401B-C, 406, 421 (Aug. 23, 2010), Comm'n Notice, Comm'n Op. at 7-8 (both Sept. 27, 2011); *Certain Birthing Simulators and Associated Systems ("Birthing Simulators")*, Inv. No. 337-TA-759, Complaint ¶¶ 3.5, 7.4, Exh. 14 (Dec. 30, 2010), Comm'n Notice (Aug. 29, 2011); *Certain Automotive Vehicles and Designs Therefor ("Automotive Vehicles")*, Inv. No. 337-TA-722, Complaint ¶¶ 21, 51, Exhs. 17-21 (May 17, 2010), Comm'n Notice (Mar. 10, 2011).

PUBLIC VERSION

Relevant to these authorities and distinguishable from *Agricultural Tractors*, TPL alleged facts in its complaint showing that foreign respondent Aiptek engages in significant domestic activities, such as importing and selling infringing articles in the United States via online sales. TPL Br. at 4; *see also* TPL Complaint ¶ 73, Exh. 13 at 2 (newegg.com screenshot showing offer for sale), Exh. 76 at ¶ 4 (Smith decl.), Exh. 76-B (newegg.com screenshots showing receipts for U.S. sales). TPL further argues that there is evidence that Aiptek has “commercially significant” inventories of the accused products in the United States by reason of its use of online retailers. TPL Br. at 4. Specifically, TPL contends that Aiptek is selling accused products in the United States through amazon.com, and that these sales establish sufficient domestic ties to warrant imposition of a CDO. *Id.* (citing Complaint Exhibit M – amazon.com screenshot offer for sale).

Similarly, with respect to foreign respondent WinAccord Taiwan, TPL argues there is evidence that WinAccord Taiwan, in conjunction with WinAccord USA, has “commercially significant” inventories of the accused products in the United States from importation of infringing articles and sales of these articles through online retailers. TPL Br. at 4; *see also* TPL Complaint ¶ 148, Exh. 72 at 2 (winaccordusa.com screenshot showing offer for sale), Exh. 76 at ¶ 38 (Smith decl.), Exh. 76-S (WinAccord receipt showing U.S. sales) (the WinAccord respondents).

Section 337(g)(1) expressly states that “the Commission *shall* presume the facts alleged in the complaint to be true and *shall*, upon request, issue an exclusion from entry or a cease and desist order, or both” unless such exclusion or order is found to be contrary to the public interest. *See* 19 U.S.C. § 1337(g)(1) (emphasis added). Therefore, the Commission must presume that the facts alleged in the TPL complaint, including TPL’s allegations that foreign defaulting respondents Aiptek and WinAccord Taiwan maintain commercially significant inventories in the

PUBLIC VERSION

United States and/or are engaging in violative activities in the United States, are true. Based on the factual allegations in the complaint cited by TPL, the Commission finds sufficient evidence that Aiptek and WinAccord Taiwan offer for sale, sell, and distribute in the United States digital photo frames, image display devices, and components thereof that infringe the asserted patents via online sales. The evidence in the complaint, cited above, includes screenshots showing offers for sale and receipts evidencing the sale of the infringing products in the United States. We find that this evidence demonstrates sufficient commercial activities in the United States to warrant the imposition of a CDO directed against Aiptek and WinAccord Taiwan. *See Toner Cartridges*, Complaint ¶¶ 9-14, 588, 591, 595, Exhs. 401, 401B-C, 406, 421 (Aug. 23, 2010), Comm'n Notice, Comm'n Op. at 7-8 (both Sept. 27, 2011); *Birthing Simulators*, Complaint ¶¶ 3.5, 7.4, Exh. 14 (Dec. 30, 2010), Comm'n Notice (August 29, 2011); *Automotive Vehicles*, Complaint ¶¶ 21, 51, Exhs. 17-21 (May 17, 2010), Comm'n Notice (Mar. 10, 2011). Accordingly, the Commission has determined that CDOs directed against foreign respondents Aiptek and WinAccord Taiwan are appropriate.

D. Public Interest

When issuing a default remedy under sections 337(d), (f), and (g), the Commission must weigh the remedy sought against the effect such a remedy would have on the following public interest factors: (1) the public health and welfare; (2) the competitive conditions in the U.S. economy; (3) the production of articles in the U.S. that are like or directly competitive with those subject to the investigation; and (4) U.S. consumers. *See* 19 U.S.C. §§ 1337(d), (f), and (g)(1).

TPL contends that issuance of the LEO and CDOs would not adversely impact the public interest factors. TPL Br. at 4-6. TPL asserts that: (1) the digital photo frame products at issue do not have uses or applications that relate to the public health and welfare; (2) TPL's and its

PUBLIC VERSION

licensees' products are widely available in the United States and TPL and its licensees are able to meet the demand for the subject products; and (3) the public interest favors the protection of U.S. intellectual property rights. *Id.*

The Commission agrees with TPL that issuance of the LEO and CDOs will not adversely impact any of the statutory public interest factors. Based on the record before the Commission, there is no indication that exclusion of the infringing products of the defaulting respondents will impact in any way the public health and welfare, competitive conditions in the U.S. economy, the production of articles in the U.S. that are like or directly competitive with the subject digital photo frames and image devices, or U.S. consumers of these products. Accordingly, the Commission has determined to issue an LEO and CDOs barring importation into the United States of the infringing digital photo frames and image display devices and components thereof of the defaulting respondents and finds that the statutory public interest factors do not preclude the issuance of these remedies.

E. Bond During the Presidential Review Period

Section 337(j)(3) provides for importation under bond during the period of Presidential review and states:

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c) of this section, be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), (f), (g), or (i) of this section, with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) of this section or subject to a cease and desist order under subsection (f) of this section shall, until such determination becomes final, be entitled to entry under bond prescribed by the Secretary in an amount determined by the Commission to be sufficient to protect the complainant from any injury. If the determination becomes final, the bond may be forfeited to the complainant. The Commission shall prescribe the

PUBLIC VERSION

terms and conditions under which bonds may be forfeited under this paragraph.

19 U.S.C. § 1337(j)(3). TPL argues that no bonding privilege should be afforded to the defaulting respondents under section 337(g)(1) during the period of Presidential review.⁴ TPL Br. at 6-8. Alternatively, TPL argues that in the event a bond is permissible, the Commission should impose a bond in the amount of 100% of entered value during the Presidential review period. *Id.*

1. Whether Respondents Found in Default Under Section 337(g) May Import Infringing Articles Under Bond

Complainant submits that section 337(j)(3) authorizes the Commission to permit importation of infringing products under bond during the period of Presidential review only when there are “articles directed to be excluded from entry under subsection (d) of this section or subject to a cease and desist order under subsection (f) of this section.” TPL Br. at 6-8 (citing 19 U.S.C. § 1337(j)(3)). Because section 337(g)(1) is absent from this provision, TPL argues that section 337(j)(3) does not authorize the Commission to permit importation of infringing products under bond for defaulting respondents under section 337(g)(1). *Id.*

TPL’s argument is inconsistent with the Commission’s practice of permitting importation under bond during the period of Presidential review by respondents found in default under section 337(g). *See Birthing Simulators*, Comm’n Notices (May 2 and August 29, 2011); *Certain Radio Control Hobby Transmitters and Receivers and Products (“Hobby Transmitters”)*, Inv. No. 337-TA-763, Comm’n Notices (June 8 and Sept. 30, 2011); *see also Certain Soft Drinks*

⁴ TPL acknowledges that Pandigital may import under bond since it was found in default and in violation under section 337(c) and 19 C.F.R. § 210.17, and relief and bonding were recommended by the presiding administrative law judge under section 337(d). *See Order No. 48* (Nov. 7, 2012).

PUBLIC VERSION

and Their Containers, 337-TA-321, Limited Exclusion Order (Dec. 27, 1991). The Commission finds no reason to depart from this practice.

The Commission's long-standing practice of allowing importation under bond during the period of Presidential review, even in default cases, is consistent with the legislative history and the purpose of section 337(j)(3). Importation under bond in default circumstances is consistent with the statutory purpose of providing the President the opportunity to review the Commission's determinations and remedial orders for 60 days before the infringing articles are actually excluded from entry into the United States. Denying importation under bond, as urged by TPL, would be an immediate *de facto* exclusion of infringing articles prior to the end of the period of Presidential review.

Interpreting section 337 such that the bonding provision does not apply to defaulting respondents, as TPL argues, would also defeat the legislative intent of other provisions in the statute, which indicate that the bond provision of section 337(j)(3) applies to Commission determinations rendered under section 337(g). Specifically, section 337(c) states, with respect to appellate review of Commission determinations:

Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), (f), and (g) of this section with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, *the amount and nature of bond*, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5.

19 U.S.C. § 1337(c) (emphasis added). Because this provision refers to determinations under subsection (g) with respect to the Commission's findings on "the amount and nature of bond," section 337(c) indicates that Congress intended that remedial orders issued pursuant to

PUBLIC VERSION

subsection (g) include authorization of importation under bond during the period of Presidential review.

Moreover, sections 337(d) and (f), specifically mentioned in section 337(j)(3), serve as the guide in interpreting section 337(g) because the terms “exclusions of articles from entry” and “cease and desist orders” used in this subsection are defined only in sections 337(d) and (f). Only sections 337(d) and (f) provide the enforcement mechanisms for these Commission orders. Therefore, Congress must have intended for the Commission to refer back to these subsections when construing section 337(g) and thus to use the enforcement mechanisms of sections 337(d) and (f) when executing section 337(g), and to apply the bonding provisions under section 337(j)(3).

Accordingly, the Commission has determined to permit importation under bond by Nextar, Aiptek, and the WinAccord respondents, which were found in default under section 337(g)(1). TPL does not contest that the bonding provision applies to Pandigital, and the Commission finds that Pandigital may import under bond infringing articles during the period of Presidential review.

2. Amount of the Bond

TPL seeks a 100 percent bond for importation of infringing products if the Commission permits importation under bond during the period of Presidential review with respect to defaulting respondents under section 337(g)(1).

With respect to Pandigital, TPL submits that the Commission has set a 100 percent bond during the period of Presidential review when, as here, there are a wide variety of products, pricing variations, and distribution methods. TPL Br. at 2, 7-8 (citing *Certain Digital Multimeters & Products with Multimeter Functionality* (“*Digital Multimeters*”), Inv. No. 337-TA-588, Comm’n Op. at 12-13 (June 3, 2008) (setting a 100 percent bond where each

PUBLIC VERSION

respondent set prices differently thereby preventing clear differentials between complainant's products and infringing products)); *see also* TPL Pre-Trial Br. at 273-74. Complainant contends that the small amount of financial information that has been produced by Pandigital in this case demonstrates that there is a wide variation in the price for the various accused products. TPL Br. at 7-8 (citing Exhibit K (JX-22C – listing quantity and dollar amount for various Pandigital products)). Accordingly, TPL submits that the Commission should set a bond of 100 percent of the entered value of Pandigital's accused products. *Id.*

With respect to Nextar, Aiptek, and the WinAccord respondents, TPL requests that the bond be set at 100 percent of the entered value of their imported infringing products on different grounds. TPL argues that for cases involving defaulting respondents, a 100 percent bond is typical and that this percentage is often assigned when reliable pricing information is unavailable, which is the case here since Nextar, Aiptek, and the WinAccord respondents did not participate in discovery. *Id.* (citing *Certain Oscillating Sprinklers, Sprinkler Components, and Nozzles* (“*Oscillating Sprinklers*”), Inv. No. 337-TA-448, Limited Exclusion Order at 4-6 (Mar. 4, 2002), *Certain Energy Drink Products*, Inv. No. 337-TA-678, Comm'n Op. at 9-10 (Sept. 8, 2010); *see also* *Hobby Transmitters*, Inv. No. 337-TA-763, Comm'n Notice (Sept. 30, 2011), *Birthing Simulators*, Inv. No. 337-TA-759, Comm'n Notice (Aug. 29, 2011), *Automotive Vehicles*, Inv. No. 337-TA-722, Comm'n Notice (Mar. 10, 2011); H. REP. 100-40, Pts. 1-6. pp. 161-162 (1987)). Accordingly, TPL submits that the Commission should set a bond of 100 percent of the entered value for the accused products of Nextar, Aiptek, and the WinAccord respondents.

Further, TPL asserts that Order Nos. 9, 12, 16, 18-20, 23, and 28, which pertain to settlements executed by TPL with respondents Coby Electronics Corporation; Aluratek, Inc.;

PUBLIC VERSION

Circus World Displays Ltd.; Curtis International, Ltd.; Royal Consumer Information Products, Inc.; ViewSonic Corporation; CEIVA Logic, Inc.; and Audiovox Corporation, have no relevance here as to an appropriate bond amount for any of the defaulting respondents because all of these Orders relate to the termination of respondents that either took a license from TPL or agreed to stop importing the infringing products into the United States. *Id.* Thus, TPL submits that in each instance bond was not at issue and therefore these orders have no applicability here. *Id.*

To establish the appropriate bond amount, the Commission typically calculates the difference in pricing between the complainant's products and the respondent's products. *See Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, USITC Pub. No. 2949, Comm'n Op. at 24 (Jan. 1996). The Commission finds that there is little or no evidence in the record of this investigation as to pricing of the defaulting respondents' products. No discovery was obtained from Aiptek, Nextar, and the WinAccord respondents who were found in default under section 337(g)(1). With respect to Pandigital, the evidence from what little discovery was produced by this respondent before it ceased to participate in the investigation indicates a wide variety of prices for different covered products. *See* TPL Br. at 7-8. The Commission has traditionally set a bond of 100 percent of the entered value of the products under these circumstances. *See Digital Multimeters*, Comm'n Op. at 12-13; *Energy Drink Products*, Comm'n Op. at 9-10.

The Commission has used a reasonable royalty rate for setting the bond amount in the case of participating respondents when such a reasonable royalty rate could be ascertained. *See Certain Integrated Circuit Telecommunication Chip and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, USITC Pub. No. 2670, Comm'n Op. at 41-42 (Aug.

PUBLIC VERSION

1993). However, TPL has shown here that the settlement agreements referred to in Order Nos. 9, 12, 16, 18-20, 23, and 28 set multiple royalty rates for licenses with each settling respondent, established payments for past infringing activities, and have other specific terms applicable to the circumstances of each particular settling respondent. *See* Order Nos. 9, 12, 16, 18-20, 23, and 28. For example, the settlement arrangement between TPL and settling respondent Coby Electronics Corporation referred to in Order No. 9 sets one royalty rate for sales of consumer products, *i.e.*, 1.8 percent, and an entirely different royalty rate for sales of commercial products, *i.e.*, 7.2 percent. *See* TPL Motion for Termination at Attached License Agreement, Sect. 4. (Oct. 11, 2011). The settlement agreement between TPL and CEIVA Logic, Inc. referred to in Order No. 23 mandated a licensing pre-payment of \$125,000 for past infringing activities which led to a 1.3 percent royalty rate for sales of consumer products. *See* TPL Motion for Termination at Attached License Agreement, Sect. 4 (Feb. 15, 2012). Due to these specific complexities, the royalty amounts reflected in the settling respondents' licensing agreements do not provide clear guidance towards setting a bond amount "sufficient to protect the complainant from any injury" by the defaulting respondents. *See* 19 U.S.C. § 1337(j)(3); 19 C.F.R. § 210.50(a)(3).

In sum, no reliable price information is available and any available pricing is widely variable. Similarly, it is difficult to establish a bond based on a reasonable royalty for the asserted patents. Accordingly, the Commission has determined to set a bond in the amount of 100 percent of the entered value of the defaulting respondents' infringing digital photo frames and image display devices and components thereof during the period of Presidential review.

IV. CONCLUSION

The Commission has considered the issues of remedy, the public interest, and bonding and has determined to issue an LEO and CDOs directed against the defaulting respondents and

PUBLIC VERSION

their products. The issued LEO excludes from entry for consumption into the United States: (1) digital photo frames, image display devices, and components thereof covered by one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, which are manufactured abroad by or on behalf of, or imported by or on behalf of Pandigital or the WinAccord respondents, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (2) digital photo frames, image display devices, and components thereof covered by one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, which are manufactured abroad by or on behalf of, or imported by or on behalf of Nextar or any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns; and (3) digital photo frames, image display devices, and components thereof covered by one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, which are manufactured abroad by or on behalf of, or imported by or on behalf of Aiptek or any of its affiliated companies, parents, subsidiaries, or other related business entities, or its successors or assigns.

The issued CDOs prohibit: (1) Pandigital and the WinAccord respondents from importing, selling for importation, marketing, advertising, distributing, offering for sale, selling, transferring (except for exportation), advertising, and soliciting United States agents or distributors for digital photo frames, image display devices, and components thereof that are covered by one or more of claims 9, 11-12, and 14 of the '443 patent, claims 25-26 and 28-29 of the '424 patent, or claims 1, 7, 11, 17, 19, and 21 of the '549 patent, and also applies to their principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and

PUBLIC VERSION

assigns; (2) Nextar from importing, selling for importation, marketing, advertising, distributing, offering for sale, selling, transferring (except for exportation), advertising, and soliciting United States agents or distributors for digital photo frames, image display devices, and components thereof that are covered by one or more of claims 9 and 14 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, and also applies to its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns; and (3) Aiptek from importing, selling for importation, marketing, advertising, distributing, offering for sale, selling, transferring (except for exportation), advertising, and soliciting United States agents or distributors for digital photo frames, image display devices, and components thereof that are covered by one or more of claims 9 and 11-12 of the '443 patent or claims 25-26 and 28-29 of the '424 patent, and also applies to its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns.

The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the defaulting respondents' infringing digital photo frames, image display devices, and components thereof during the period of Presidential review.

By order of the Commission.



Lisa R. Barton
Acting Secretary to the Commission

Issued: March 27, 2013

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **COMMISSION OPINION (PUBLIC)** was served upon the Office of Unfair Import Investigations and the following parties as indicated on **March 27, 2013**



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street SW, Room 112A
Washington, D.C. 20436

FOR COMPLAINANT TECHNOLOGY PROPERTIES LIMITED, LLC:

James C. Otteson, Esq.
AGILITY IP LAW, LLC
149 Commonwealth Drive, Suite 1033
Menlo Park, CA 94025

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

FOR RESPONDENT DIGITAL SPECTRUM SOLUTIONS, INC.:

Robert D. Fish
FISH & ASSOCIATES PC
2603 Main Street, Suite 1000
Irvine, CA 92614

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

RESPONDENT PANDIGITAL, INC.

Daphne Masin
Assignee of Pandigital, Inc.
**CREDIT MANAGEMENT ASSOCIATION
ADJUSTMENT BUREAU**
40 East Verdugo Ave.
Burbank, CA 91502

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

Jeremy E. Rosenthal
Credit Managers Association Handling Assignment for
the Benefit of Creditors of Pandigital, Inc.
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, CA 90013

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

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

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES
AND IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-807

**NOTICE OF A COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL
DETERMINATION EXTENDING THE TARGET DATE FOR COMPLETION OF THE
INVESTIGATION AND FINDING THE REMAINING RESPONDENT PANDIGITAL,
INC. IN DEFAULT AND IN VIOLATION OF SECTION 337; AND REQUEST FOR
SUBMISSIONS ON REMEDY, BONDING, AND THE PUBLIC INTEREST**

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. 48) of the presiding administrative law judge ("ALJ"): (1) extending the target date for completion of the above-captioned investigation by nine days to March 7, 2013; and (2) finding the remaining respondent Pandigital, Inc. ("Pandigital") of Dublin, California in default and in violation of section 337. The Commission also is requesting written submissions including submissions on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., 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, 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 September 27, 2011, based on a complaint filed by Technical Properties Limited, LLC ("TPL") of Cupertino, California. *76 Fed. Reg.* 59737-38. The complaint alleges a violation of section 337 of the Tariff Act of 1930, as amended, 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 digital photo frames and image display devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 ("the '623 patent"); 7,162,549; 7,295,443; and

7,522,424. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named twenty respondents including Nextar Inc. of La Verne, California; WinAccord Ltd. of Taipei, Taiwan; and WinAccord U.S.A., Inc. of San Jose, California (collectively, "the WinAccord respondents"); Aiptek International Inc. ("Aiptek") of Hsinchu, Taiwan; and Pandigital. All other respondents have been terminated from the investigation by consent order stipulation or settlement agreement. The '623 patent was terminated from the investigation with respect to Pandigital by consent order stipulation. The complaint and notice of investigation were served on all respondents including Aiptek and the WinAccord respondents on September 22, 2011. *See* Notice of Investigation, Certificate of Service (Sept. 22, 2011) (EDIS Document 459720). No Commission investigative attorney is participating in the investigation.

On December 6 and 22, 2011, respectively, the ALJ issued IDs finding the WinAccord respondents and Aiptek in default, pursuant to 19 C.F.R. §§ 210.13 and 210.16, because these respondents did not respond to the complaint and notice of investigation, or to Order Nos. 13 and/or 15 to show cause. On January 3 and 9, 2012, respectively, the Commission determined not to review the IDs finding the WinAccord respondents and Aiptek in default.

On March 8, 2012, complainant TPL filed a declaration requesting immediate relief against the defaulting respondent Aiptek under Commission rule 210.16(c)(1), 19 C.F.R. § 210.16(c)(1), which it later withdrew.

On October 9, 2012, the ALJ issued Order No. 47 to Pandigital show cause why it should not be found in default and in violation of section 337 pursuant to 19 C.F.R. § 210.17 because respondent did not file a pre-hearing statement and brief as required by the ALJ's Procedural Schedule. As of November 7, 2012, Pandigital had not responded to Order No. 47 and the ALJ issued the subject ID finding Pandigital in default and in violation of section 337. The ID also extended the target date of the investigation by nine days from February 26, 2013 to March 7, 2013. The ID also contained the ALJ's recommended determination on remedy. Specifically, the ALJ recommended issuance of a limited exclusion order, cease and desist order, and a bond in the amount of 100 percent of the covered products during the period of Presidential review with respect to Pandigital. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID. The Commission notes that in the subject ID, the ALJ retroactively extended the target date by nine days, to account for the delay in the issuance of his final ID finding Pandigital in default and in violation of section 337. The delay was caused by TPL's failure to properly serve its motion seeking default against Pandigital. Extension of the target date in this circumstance was not necessary because the Commission did not require additional time to complete this investigation. In any event, we note that an ID extending the target date must be issued in advance of the final ID, rather than retroactively.

Section 337(g)(1) (19 U.S.C. § 1337(g)(1)) and Commission Rule 210.16(c) (19 C.F.R. § 210.16(c)) authorize the Commission to order limited relief against respondents, such as Aiptek and the WinAccord respondents, found in default for failure to respond to the complaint and notice of investigation, unless after consideration of the public interest factors, it finds that such relief

should not issue. With respect to Pandigital, 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 the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. *See* 19 U.S.C. § 337(d)(1). 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).

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 U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). 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 if a remedy is ordered.

The Commission also requests additional briefing from TPL addressing the following issues:

- (1) Assuming TPL requests a cease and desist order ("CDO") against Aiptek, does the evidence support a finding that Aiptek maintains a commercially significant inventory of accused products in the United States or otherwise has significant domestic ties sufficient to warrant imposition of a CDO as to this foreign respondent? *See Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof*, Inv. No. 337-TA-486, Comm'n Op. at 17 (Aug. 19, 2003).
- (2) In its previous briefing of March 8 and April 23, 2012, TPL previously asserted that section 337(j)(3) does not permit importation under bond with respect to a defaulting respondent under section 337(g). Does TPL maintain that position?
- (3) What evidence does Complainant rely upon in support of a bond amount for Aiptek, Pandigital, and the WinAccord respondents? In your answer, please address the applicability of Order Nos. 9, 12, 16, 18-20, 23, and 28.

WRITTEN SUBMISSIONS: 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 recommended determination by the ALJ on remedy and bonding as well as issues concerning whether respondents found in default under section 337(g) may import under bond during the period of Presidential review.

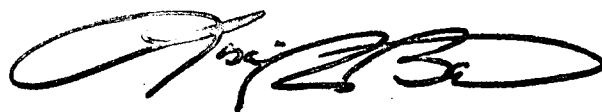
Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the dates that the asserted patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on December 21, 2012. Reply submissions must be filed no later than the close of business on December 28, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 C.F.R. § 210.4(f). Submissions should refer to the investigation number ("Inv. No. 337-TA-807") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

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 210.17, 210.42-46, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.17, 210.42-46, and 210.50).

By order of the Commission.

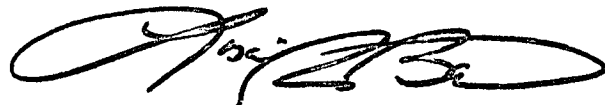


Lisa R. Barton
Acting Secretary to the Commission

Issued: December 7, 2012

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **NOTICE** was served upon the Office of Unfair Import Investigations and the following parties as indicated on **December 10, 2012**



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street SW, Room 112A
Washington, D.C. 20436

FOR COMPLAINANT TECHNOLOGY PROPERTIES LIMITED, LLC:

James C. Otteson, Esq.
AGILITY IP LAW, LLC
149 Commonwealth Drive, Suite 1033
Menlo Park, CA 94025

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

FOR RESPONDENT DIGITAL SPECTRUM SOLUTIONS, INC.:

Robert D. Fish
FISH & ASSOCIATES PC
2603 Main Street, Suite 1000
Irvine, CA 92614

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

RESPONDENT PANDIGITAL, INC.

Daphne Masin
Assignee of Pandigital, Inc.
**CREDIT MANAGEMENT ASSOCIATION
ADJUSTMENT BUREAU**
40 East Verdugo Ave.
Burbank, CA 91502

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

Jeremy E. Rosenthal
Credit Managers Association Handling Assignment for
the Benefit of Creditors of Pandigital, Inc.
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, CA 90013

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN DIGITAL PHOTO FRAMES
AND IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

**ORDER NO. 48: INITIAL DETERMINATION ON VIOLATION, EXTENDING THE
TARGET DATE, AND TERMINATING INVESTIGATION IN ITS
ENTIRETY AND RECOMMENDED DETERMINATION ON
REMEDY AND BOND**

(November 7, 2012)

On October 9, 2012, I issued Order No. 47, which was an Order to Show Cause why respondent Pandigital, Inc. ("Pandigital") should not be found in violation of Section 337 as a result of its failure to file a pre-hearing statement and brief, as required by the Procedural Schedule. I set a deadline of October 24, 2012 for Pandigital to respond to the Order to Show Cause. As of November 7, 2012, Pandigital has not responded.

I. Legal Standard

Commission Rule 210.17 states, *inter alia*:

Failures to act other than the defaults listed in §210.16 may provide a basis for the presiding administrative law judge or the Commission to draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930), and orders that are adverse to the party who fails to act. Such failures include, but are not limited to:

(e) Failure to file a brief or other written submission requested by the administrative law judge or the Commission during an investigation or a related proceeding;

The presiding administrative law judge or the Commission may take action under this rule sua sponte or in response to the motion of a party.

19 CFR § 210.17.

II. Analysis

First, I find that there is good cause to extend the Target Date to March 7, 2013 from February 26, 2013. The unique facts of this investigation warrant a short extension of the Target Date. Although Pandigital initially participated in the Investigation, it failed to file a pre-trial statement and brief on August 23, 2012, as required by the procedural schedule, thereby waiving its right to a hearing. (*See* Order No. 46 at 6 n. 6.) On September 11, 2012, complainant Technology Properties Limited LLC (“TPL”) filed a motion seeking a default judgment against Pandigital. (Motion Docket No. 807-054.) Pandigital had previously informed TPL that it had been dissolved in an assignment for the benefit of creditors, and any claims should be forwarded to the Credit Managers Association that handled the assignment for the benefit of creditors. (Order No. 47 at 1.) TPL did not, however, serve a copy of its motion seeking default judgment against Pandigital on the Credit Managers Association. (*Id.*)

As a result of TPL’s failure to serve the Credit Managers Association, I did not immediately issue an order on TPL’s motion. Rather, I issued an Order to Show Cause why Pandigital should not be found in violation of Section 337. The Order to Show Cause (Order No. 47) was served on both Pandigital and the Credit Managers Association and gave Pandigital until October 24, 2012 to respond to the Order to Show Cause. Allowing Pandigital this time to respond to the Order to Show Cause, along with the complications caused by the assignment for the benefit of creditors and TPL’s failure to serve its motion on Pandigital, justifies a short extension of the Target Date to March 7, 2013.

Second, pursuant to 19 CFR § 210.17(e), I find that Pandigital is in default in this matter and in violation of Section 337¹, because it failed to file a pre-trial statement and brief on August 23, 2012 as required by the Procedural Schedule². As I explained in Order No. 46, pursuant to Ground Rules 8.1-8.3, Pandigital's failure to file a pre-trial statement and brief resulted in Pandigital's waiver of its right to participate in a hearing.

Previously the Commission has waived the requirement of a Recommended Determination under Commission Rule 210.42(a)(ii) where the initial determination was based on 19 CFR § 210.17. *Certain Composite Wear Components and Welding Products*, Inv. No. 337-TA-644, Comm'n Notice (July 7, 2009) ("The Commission also determines to waive Commission Rule 210.42(a)(ii), which, unless the Commission orders otherwise, requires that the ALJ issue a recommended determination in conjunction with any initial determination concerning violation of section 337."). If the Commission determines, however, that a Recommended Determination is required, it is my recommendation that the remedies and bond requested in TPL's pre-trial brief be granted. Because Pandigital failed to file a pre-trial statement and brief in this matter and failed to file a response to the Order to Show Cause, the requested remedies and the requested 100% bond are proper. There is also no evidence that the public interest will be harmed by the requested remedy and bond. Similar relief was sought and granted by the Commission in *Certain Composite Wear Components and Welding Products* under similar facts. Inv. No. 337-TA-644, Comm'n Notice (November 24, 2009).

¹ It is not necessary for me to make specific, detailed findings regarding importation, infringement, and domestic industry in order to find a violation of Section 337 by Pandigital pursuant to 19 CFR § 210.17(e). See *Certain Composite Wear Components and Welding Products*, Inv. No. 337-TA-644, Comm'n Op. (Feb. 10, 2011).

² As set forth, *supra*, Pandigital also failed to respond to the Order to Show Cause by the deadline set therein. Pandigital was clearly on notice of the need to file a response, as the Order to Show Cause was served on Pandigital, Inc. and counsel for the Credit Managers Association handling the assignment for the benefit of the creditors of Pandigital, Inc. and was not returned as undelivered.

Because Pandigital is the only respondent remaining in the Investigation, this Initial Determination finding Pandigital in violation of Section 337 addresses all outstanding issues and acts to terminate the investigation in its entirety.

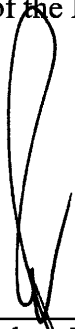
ORDER

It is my Initial Determination that:

- (1) The Target Date is extended from February 26, 2013 to March 7, 2013;
- (2) Pursuant to 19 CFR § 210.17(e), Pandigital is in default, and there is a violation of 19 U.S.C. § 1337(a)(1) by Pandigital;
- (3) The Investigation is terminated in its entirety.

This Initial Determination, along with supporting documentation, is hereby certified to the Commission. Pursuant to 19 CFR § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 CFR § 210.43(a), or the Commission, pursuant to 19 CFR § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

SO ORDERED.



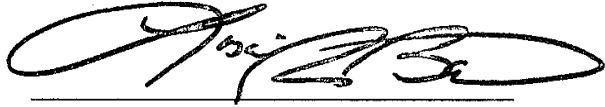
Robert K. Rogers, Jr.
Administrative Law Judge

**CERTAIN DIGITAL PHOTO FRAMES
AND IMAGE DISPLAY DEVICES AND
COMPONENTS THEREOF**

Inv. No. 337-TA-807

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** was served upon the following parties via first class mail delivery on November 7, 2012



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street SW, Room 112A
Washington, D.C. 20436

FOR COMPLAINANT TECHNOLOGY PROPERTIES LIMITED, LLC:

James C. Otteson, Esq.
AGILITY IP LAW, LLC
149 Commonwealth Drive, Suite 1033
Menlo Park, CA 94025

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

RESPONDENT:

Dean Finnegan
PANDIGITAL, INC.
6375 Clark Avenue
Suite 100
Dublin, CA 94568

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

Jeremy E. Rosenthal
**CREDIT MANAGERS ASSOCIATION
HANDLING ASSIGNMENT FOR THE
BENEFIT OF CREDITORS OF
PANDIGITAL, INC.
SIDLEY AUSTIN LLP**
555 West Fifth Street
Los Angeles, CA 90013

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

PUBLIC CERTIFICATE OF SERVICE PAGE 2

PUBLIC MAILING LIST

Heather Hall
LEXIS – NEXIS
9443 Springboro Pike
Miamisburg, OH 45342

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

Kenneth Clair
THOMAS WEST
1100 Thirteenth Street NW, Suite 200
Washington, DC 20005

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____