

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INK CARTRIDGES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-565

In the Matter of

**CERTAIN TONER CARTRIDGES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-740

**NOTICE OF A COMMISSION DECISION TO DENY PETITIONS FOR RESCISSION
OF SEIZURE AND FORFEITURE ORDERS**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny petitions filed by importer Environmental Office Solutions (“EOS”) of East Hartford, Connecticut for rescission of seizure and forfeiture orders (“SFOs”) in the above-captioned investigations.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <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 Inv. No. 337-TA-565 on March 23, 2006, based on a complaint filed on behalf of Epson Portland, Inc. of Hillsboro,

Oregon, Epson America, Inc. of Long Beach, California, and Seiko Epson Corporation of Nagano-Ken, Japan. 71 *Fed. Reg.* 14720 (Mar. 23, 2006). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), by reason of infringement of certain claims of U.S. Patent Nos. 5,615,957; 5,622,439; 5,158,377; 5,221,148; 5,156,472; 5,488,401; 6,502,917; 6,550,902; 6,955,422; 7,008,053; and 7,011,397. The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named twenty-four respondents. The Commission investigative attorney was also a party to the investigation. *Id.* Several respondents were terminated from the investigation on the basis of settlement agreements or consent orders or were found in default. On October 19, 2007, the Commission found a violation of section 337 and issued a general exclusion order (“GEO”) and a limited exclusion order. 72 *Fed. Reg.* 60692-93 (Oct. 25, 2007).

The Commission instituted Inv. No. 337-TA-740 on October 12, 2010, based on a complaint filed on behalf of Lexmark International, Inc. of Lexington, Kentucky. 75 *Fed. Reg.* 62564-65 (Oct. 12, 2010). The complaint alleged violations of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 5,337,032; 5,634,169; 5,758,233; 5,768,661; 5,802,432; 5,875,378; 6,009,291; 6,078,771; 6,397,015; 6,459,876; 6,816,692; 6,871,031; 7,139,510; 7,233,760; and 7,305,204. The complaint further alleged the existence of a domestic industry. The Commission’s notice of investigation named numerous respondents. The Commission investigative attorney was also a party to the investigation. *Id.* Several respondents were terminated from the investigation on the basis of settlement agreements or were found in default. On September 27, 2011, the Commission found a violation of section 337 and issued a GEO and cease and desist orders directed to the defaulting respondents. 76 *Fed. Reg.* 60871-72 (Sept. 30, 2011).

On August 27, 2015, the Commission issued SFOs directed to importer EOS in the above-identified investigations upon receiving exclusion notices from U.S. Customs and Border Protection for attempted importation of infringing ink/toner cartridges covered by the GEOs. On May 30, 2017, the U.S. Supreme Court issued its decision in *Impression Products, Inc. v. Lexmark International, Inc.*, 137 S.Ct. 1523 (2017), where the Court held that an authorized, non-U.S. sale of a product covered by a U.S. patent exhausted the patentee’s rights and therefore did not prohibit importation of the previously-sold product.

On July 12, 2019, EOS filed a petition in both of the above-identified investigations, requesting rescission of the SFOs based on the *Lexmark* decision.

The Commission has determined to deny the petitions because they fail to articulate any factual basis or legal authority for rescinding the SFOs. Although the petitions cite the *Lexmark* decision, they provide no allegation or explanation for understanding how the decision allegedly applies to the rescission requests. Therefore, the petitions fail to establish that the “conditions which led to the [SFOs] no longer exist.” See 19 U.S.C. § 1337(k)(1).

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in part 210 of the Commission’s Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

A handwritten signature in black ink, appearing to read "Lisa R. Barton". The signature is fluid and cursive, with the first name "Lisa" and the last name "Barton" clearly distinguishable.

Lisa R. Barton
Secretary to the Commission

Issued: October 8, 2019