

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)

CERTAIN INK CARTRIDGES AND)
COMPONENTS THEREOF)

) Investigation No. 337-TA-565
) Consolidated Enforcement Proceeding
) And Enforcement Proceeding II
)
_____)

Notice To The Parties

The Enforcement Initial Determination (ED) was filed on April 17, 2009. Attached are the title page, the conclusions of law and the order, which are not confidential and which form a portion of said determination. For receiving the ED, see Commission rules 210.6 and 210.7. Complainants, respondents and the staff were sent a copy of this notice on April 17, 2009.



Paul J. Luckern
Chief Administrative Law Judge

Issued: April 17, 2009

RECEIVED
OFC OF THE SECRETARY
US INTL TRADE COMM
2009 APR 17 PM 5:10

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)	
)	
CERTAIN INK CARTRIDGES AND)	Investigation No. 337-TA-565
COMPONENTS THEREOF)	Consolidated Enforcement Proceeding
)	And Enforcement Proceeding II
)	

Enforcement Initial Determination

This is the administrative law judge's Enforcement Initial Determination (ED) pursuant to the Commission Order of May 1, 2008. The administrative law judge, after a review of the record developed, finds inter alia that the enforcement respondents violated the orders issued at the conclusion of Investigation No. 337-TA-565 on October 19, 2007.

This is also the administrative law judge's recommendation that enforcement measures are appropriate for violation of the Commission's orders which measures are set forth in the Conclusions of Law of this ED.

CONCLUSIONS OF LAW

1. The Commission has in rem jurisdiction over the products at issue in this matter.
2. The Commission has in personam jurisdiction over each of the Enforcement Respondents in this matter.
3. The Commission has subject matter jurisdiction over this matter.
4. Respondents Ninestar China, Ninestar US, and Town Sky are affiliated and are jointly and severally liable for any penalty in this enforcement proceeding.
5. All of the products at issue sold or imported by the Ninestar Respondents infringe at least one of the following asserted claims of Complainants' Epson's patents: claim 81 of the '439 patent, claim 9 of the '917 patent, claim 1 of the '053 patent.
6. Respondent Ninestar US' compatible cartridges at issue are "covered products" under the Cease and Desist Order issued against it by the Commission on October 19, 2007 (Corrected on October 30, 2008).
7. Respondent Town Sky's compatible cartridges at issue are "covered products" under the Cease and Desist Order issued against it by the Commission on October 19, 2007 (Corrected on October 30, 2008).
8. Respondent Ninestar US' remanufactured cartridges at issue are "covered products" under the Cease and Desist Order issued against it by the Commission on October 19, 2007 (Corrected on October 30, 2008).
9. Respondent Town Sky's remanufactured cartridges at issue are "covered products" under the Cease and Desist Order issued against it by the Commission on October 19, 2007 (Corrected on October 30, 2008).

10. Respondent Ninestar US imported covered products on six separate days on or between October 25, 2007 and December 12, 2007 in violation of the Cease and Desist Order issued against it on October 19, 2007.
11. Respondent Town Sky imported covered products on nine separate days on or between October 23, 2007 and May 5, 2008 in violation of the Cease and Desist Order issued against it on October 19, 2007.
12. Respondent Ninestar US sold infringing ink cartridges on at least 109 days from October 23, 2007 through May 5, 2008.
13. Respondent Town Sky sold infringing ink cartridges on at least 78 days from October 23, 2007 through March 7, 2008.
14. The record supports imposition of a \$767,815.50 civil penalty against respondent Ninestar US for violation of the Cease and Desist Order by importation of covered product.
15. The record supports imposition of a \$10,956,693.54 civil penalty against respondent Ninestar US for violation of the Cease and Desist Order by sales of covered product.
16. The record supports imposition of a \$980,465.12 civil penalty against respondent Town Sky for violation of the Cease and Desist Order by importation of covered product.
17. The record supports imposition of a \$7,800,000 civil penalty against respondent Town Sky for violation of the Cease and Desist Order by sales of covered product.
18. Respondents Ninestar China, Ninestar US, and Town Sky are jointly and severally liable for violations of the Cease and Desist Orders in the amount of \$20,504,974.16.
19. The Ninestar Respondents failed to carry their burden to demonstrate that any of the

- products at issue are subject to the defense of permissible repair or patent exhaustion.
20. The Ninestar Respondents failed to carry their burden to demonstrate their affirmative defense of invalidity.
 21. The Ninestar Respondents failed to carry their burden to demonstrate their affirmative defense of lack of personal jurisdiction and non-compliance with the Hague Convention.
 22. The Ninestar Respondents failed to carry their burden to demonstrate their affirmative defense of inequitable enforcement.
 23. The enforcement of the Cease and Desist Orders against the Ninestar Respondents for their sale and importation of remanufactured cartridges does not violate due process.
 24. Respondents Mipo International and Mipo America are affiliated and are jointly and severally liable for any civil penalty in this Enforcement proceeding.
 25. The Mipo respondents sold the products at issue.
 26. The Mipo respondents have been found to be in default, but have had notice of the enforcement proceeding.
 27. All of the products at issue sold by the Mipo Respondents violate at least one of the following asserted claims of Complainants' Epson's patents: claim 81 of the '439 patent, claim 9 of the '917 patent, claim 1 of the '053 patent, and claim 21 of the '397 patent.
 28. Respondent Mipo-brand compatible and remanufactured cartridges at issue are "covered products" under the Cease and Desist Order issued to Mipo America on October 19, 2007.
 29. All of the products at issue against Respondent Mipo America are "covered products" under the Cease and Desist Order issued by the Commission on October 19, 2007

30. The Mipo Respondents violated the Cease and Desist Order on 97 separate days.
31. The record supports imposition of a \$9,700,000 civil penalty against the Mipo respondents for violation of the Cease and Desist Order issued against Mipo America on October 19, 2007.
32. The Mipo Respondents have failed to carry their burden on their affirmative defenses.
33. Respondents Ribbon Tree USA and Apex are affiliated and are jointly and severally liable for any civil penalty.
34. Respondents Ribbon Tree USA and Apex have been found to be in default, but have had notice of this enforcement proceeding.
35. Respondents Ribbon Tree USA and Apex imported and sold products at issue after February 12, 2007, the date of the Consent Order entered against them.
36. All of the products at issue sold by Respondents Ribbon Tree USA and Apex violate at least one of the following asserted claims of Epson's patents: claim 81 of the '439 patent, claim 9 of the '917 patent, claim 1 of the '053 patent, and claim 21 of the '439 patent.
37. Any compatible and remanufactured cartridges at issue sold by Respondents Ribbon Tree USA and Apex are "covered products" under the Consent Order entered on February 12, 2007.
38. All of the products at issue are covered products under the Consent Orders entered against Respondents Ribbon Tree USA and Apex on February 12, 2007.
39. Respondents Ribbon Tree USA and Apex collectively violated the February 12, 2007 Consent Order entered against them on seven separate days.
40. The record supports imposition of a \$700,000 civil penalty against Respondents Ribbon

Tree USA and Apex for violations of the Consent Order entered against them by the Commission on February 12, 2007.

ORDER

Based on the foregoing, and the record as a whole including what was found in the violation phase, it is the administrative law judge's Enforcement Initial Determination (ED) that the enforcement respondents violated the orders issued at the conclusion of Investigation No. 337-TA-565 on October 19, 2007. It is also the administrative law judge's recommendation that enforcement measures are appropriate for violation of the Commission's orders which measures are set forth in the Conclusions of Law of this ED.

The administrative law judge hereby CERTIFIES to the Commission his ED. The briefs of the parties filed with the Secretary are not certified, since they are already in the Commission's possession in accordance with Commission rules.

Further it is ORDERED that:

1. In accordance with Commission rule 210.39, all material heretofore marked in camera because of business, financial and marketing data found by the administrative law judge to be cognizable as confidential business information under Commission rule 201.6(a), is to be given in camera treatment continuing after the date this investigation is terminated.

2. Counsel for the parties shall have in the hands of the administrative law judge those portions of the ED which contain bracketed confidential business information to be deleted from any public version of said ED, no later than May 1, 2009. Any such bracketed version shall not be served via facsimile on the administrative law judge. If no such bracketed version is received from a party, it will mean that the party has no objection to removing the confidential

status, in its entirety, from said ED.

3. Pursuant to the Commission Order of May 1, 2008, petitions for review of the ED may be filed within twelve (12) days of service of the ED. Responses to any petitions for review may be filed within eight (8) days of service of any petitions for review. Notwithstanding Commission rule 210.75(b)(3), the ED shall become the Commission's final determination on violation 60 days after service of the ED, unless the Commission orders review of the ED or changes the deadline for determining whether to review it.



Paul J. Euckern
Paul J. Euckern
Chief Administrative Law Judge

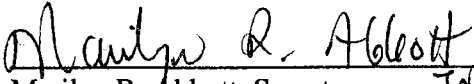
Issued: April 17, 2009

**CERTAIN INK CARTRIDGES AND
COMPONENTS THEREOF**

**Investigation No. 337-TA-565
Consolidated Enforcement Proceeding
And Enforcement Proceeding II**

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Notice To The Parties** was served by hand upon Commission Investigative Attorney, Kevin Baer, Esq. and upon the following parties as indicated, on April 20, 2009.


Marilyn R. Abbott, Secretary *JNA*
U.S. International Trade Commission
500 E Street, SW - Room 112
Washington, DC 20436

**For Complainants Epson Portland, Inc.; Epson
America, Inc.; Seiko Epson Corporation:**

Louis S. Mastriani, Esq.
Adduci, Mastriani & Schaumberg, LLP
1200 Seventeenth Street, NW
Washington, DC 20036

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

**For Respondents Ninestar Technology Company
Ltd., Ninestar Technology Co., Ltd. &
Town Sky, Incorporated:**

Edward F. O'Connor, Esq.
Eclipse Group LLP
1920 Main Street, Suite 150
Irvine, CA 92614

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

**CERTAIN INK CARTRIDGES AND
COMPONENTS THEREOF**

**Investigation No. 337-TA-565
Consolidated Enforcement Proceeding
And Enforcement Proceeding II**

PUBLIC MAILING LIST

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

() Via Hand Delivery
() ~~V~~ia Overnight Mail
() Via First Class Mail
() Other: _____

Kenneth Clair
Thomson West
1100 Thirteen Street, NW, Suite 200
Washington, DC 20005

() ~~V~~ia Hand Delivery
() ~~V~~ia Overnight Mail
() Via First Class Mail
() Other: _____

(PARTIES NEED NOT SERVE COPIES ON LEXIS OR WEST PUBLISHING)