

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN DOCUMENT CAMERAS AND  
SOFTWARE FOR USE THEREWITH

Inv. No. 337-TA-1045

**ORDER NO. 18: INITIAL DETERMINATION GRANTING MOTION TO  
TERMINATE INVESTIGATION AS TO RESPONDENT LUMENS  
INTEGRATION INC. AND TO LIMIT SERVICE OF  
CONFIDENTIAL AGREEMENT**

(November 6, 2017)

**I. INTRODUCTION**

On October 31, 2017, complainant Pathway Innovations and Technologies, Inc. (“Pathway”) and respondent Lumens Integration Inc. (“Lumens”) jointly moved to terminate the investigation as to Lumens based on settlement agreement. (Motion Docket No. 1045-017.) The motion represents that “there are no other agreements, written or oral, express or implied, between these parties concerning the subject matter of the Investigation.” (Mot. at 1.) The motion attached a public version of the settlement agreement as Public Exhibit A. On the same day, Lumens filed, separately, the confidential version of the settlement agreement. (EDIS Doc. No. 627452.) The motion represents that non-settling respondents AVer Information, Inc. and IPEVO, Inc. do not oppose the joint motion to terminate. (Mot. at 1.)

Contained within the joint motion to terminate is a joint motion to limit service of the confidential settlement agreement “to just the ALJ.”<sup>1</sup> (*Id.* at 1-2.) The motion argues “[g]ood cause exists for this request given the highly sensitive nature of the negotiated terms that are

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<sup>1</sup> It is assumed the Commission is intended to receive the confidential agreement as well.

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redacted in the public version, and in view of the fact that the Non-Settling Respondents are competitors of the Private Parties.” (*Id.* at 2.) The motion continues, “[m]oreover, there is no need for the Non-Settling Parties to view the confidential Settlement Agreement since it has not been cited or relied on by any party in this Investigation concerning any claim or defense. Public versions of the Agreement are being served on counsel for the non-settling Respondents.” (*Id.*) The motion reports that the non-settling respondents AVer Information, Inc. and IPEVO, Inc. do oppose this motion to limit service. (*Id.* at 1.) On November 1, 2017, I ordered a shortened response time for this opposition from the non-settling respondents, to be due by noon on November 3, 2017. On November 3, 2017, respondents AVer Information, Inc. and IPEVO, Inc. informed me that they received the confidential agreement and no longer oppose the request for limited service. (EDIS Doc. No. 628041.)

**II. STANDARDS OF LAW**

Under Commission Rule 210.21(a)(2),

Any party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement . . . .

19 C.F.R. § 210.21(a)(2). Commission Rule 210.21(b)(1) further specifies that the motion to terminate must include: (1) copies of the licensing or other settlement agreement; (2) any supplemental agreements; and (3) a statement that there are no other agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation. *See* 19 C.F.R. § 210.21(b)(1). In addition, the Rule requires that the motion must include a public version of any licensing or other settlement agreement containing confidential business information. *See id.* Commission Rule 210.21(a)(1) also provides that, “[o]n motion for good

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cause shown, the administrative law judge may limit the service of the agreements to the settling parties and the Commission investigative attorney.” *See id.*

Pursuant to Commission Rule 210.50(b)(2), I must also consider and make appropriate findings regarding the effect of the proposed settlement on the public interest. *See* 19 C.F.R. § 210.50(b)(2).

### **III. DISCUSSION**

Pathway and Lumens filed a public version of their motion to terminate with a public version of the underlying settlement agreement, and then Lumens separately, a confidential version of that settlement agreement (Exhibits A and A1, respectively, attached hereto). The parties explained that “there are no other agreements, written or oral, express or implied, between these parties concerning the subject matter of the Investigation.” (Mot. at 1.) Accordingly, I find that the requirements of Commission Rule 210.21(b)(1) have been met.

With regard to the public interest, I have reviewed the pleadings filed in connection with the motion to terminate and do not find any information indicating that termination of this investigation on the basis of the settlement agreement is contrary to the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. To the contrary, I find that termination of this investigation is in the public interest and will conserve public and private resources. *See, e.g., Certain Consumer Elecs., Including Mobile Phones and Tablets*, Inv. No. 337-TA-839, Order No. 35, 2013 WL 453756, \*2 (Feb. 4, 2013) (“[T]ermination of litigation under these circumstances as an alternative method of dispute resolution is generally in the public interest and will conserve public and private resources.”).

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With regard to the request to limit service of the confidential version of the settlement agreement, I find good cause has been shown and accordingly GRANT the request. Thus, service of the confidential version of this initial determination, which includes the complete settlement agreement as an attachment, shall be limited to the settling parties, the Commission, and Staff.

**IV. CONCLUSION**

For the reasons above, it is my Initial Determination to GRANT the Unopposed Motion to Terminate this Investigation as to respondent Lumens. (Motion Docket No. 1045-017.)

This Initial Determination, along with any supporting documentation, is hereby certified to the Commission. Pursuant to 19 C.F.R. § 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 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

**SO ORDERED.**



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Thomas B. Pender  
Administrative Law Judge

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# **EXHIBIT A**

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the "Agreement") is made as of October 26, 2017 (the "Effective Date"), between Pathway Innovations and Technologies, Inc., a California corporation ("Pathway") and Lumens Integrations Inc., a California corporation ("Lumens") (Pathway and Lumens together shall be referred to as the "Parties").

RECITALS

WHEREAS, on February 17, 2017, Pathway filed a Complaint and request for investigation in the United States International Trade Commission under the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the alleged unlawful importation into the United States, the sale for importation into the United States, the sale after importation in the United States, and/or the use within the United States after importation by Lumens of certain document cameras and software for use therewith, that infringe one or more claims of United State Patent No. 8,508,751 (the "'751 Patent" or the "Asserted Patent")(hereinafter "ITC Investigation No. 1045");

WHEREAS, on February 16, 2017, Pathway also filed an action against Lumens for the alleged infringement of the '751 Patent in the United States District Court for the Southern District of California, Case No. 3:17-cv-00316-BLM (the "District Court Action");

WHEREAS, the District Court granted Lumens' Motion to Stay the District Court Action on June 14, 2017, until the conclusion of ITC Investigation No. 1045;

WHEREAS, subject to and in accordance with the provisions of this Agreement and without any admission of liability with regard to the claims brought in the ITC Investigation No. 1045 or in the District Court Action, Pathway and Lumens wish to compromise and settle any and all claims, demands, and causes of action that any of them have, have alleged, or could have alleged, under the laws of any jurisdiction, by reason of, arising out of or relating to the ITC

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Investigation No. 1045 and/or the District Court Action which occurred prior to and including the Effective Date of this Agreement ("Settled Claims").

NOW, THEREFORE, IT IS AGREED by and between Pathway and Lumens that any and all Settled Claims, [REDACTED] and compliance with the other terms hereof, shall automatically, fully and forever, irrevocably and unconditionally be discharged, released, settled, acquitted and compromised and all claims made, claimed or arising in whole or in part any time prior to or as of the Effective Date shall be fully, finally, irrevocably, and forever dismissed and released (as set forth herein) subject to the following terms and conditions:

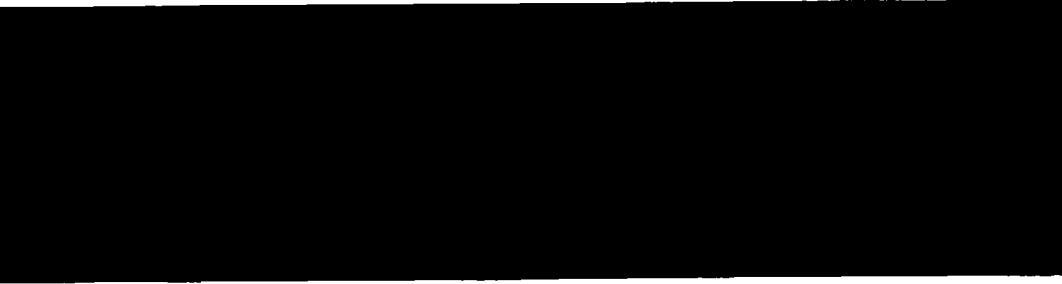
1. Promptly upon execution of the Agreement, Pathway will [REDACTED]

2. Lumens agrees to [REDACTED]

3. [REDACTED]

4. Within ten (10) business days after the execution of this Agreement by Pathway, Lumens will [REDACTED]

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5. Upon compliance with Paragraphs 1, 2 and 3 above, and by no later than November 1, 2017, or the next business day after [REDACTED] [REDACTED], whichever occurs first, Pathway shall file a motion for termination based on settlement pursuant to 19 CFR § 210.21(a)(2).

6. By no later than the next business day after [REDACTED] [REDACTED] pursuant to Paragraphs 1, 2, 3 and 4 above, Pathway shall file in the District Court Action a Request for Dismissal, which provides for the dismissal of all claims in the District Court Action with prejudice, each party to bear its own costs and attorneys' fees.

7. The sole purpose of this Agreement is to achieve peace between the Parties and reach an amicable global resolution of their current disputes. Nothing in this Agreement should be construed as an admission of liability by any Party regarding any of the Settled Claims.

8. The terms of this Agreement are confidential and shall not be disclosed to anyone except as provided herein. The terms of this Agreement may be disclosed: (a) as required by law or regulations; (b) as ordered by a court or a government agency; (c) confidentially, in any action involving a Party hereto, to enforce this Agreement or any aspect of it against another Party hereto, or to invoke any rights or benefits conferred by or under it in any action by a Party against another Party hereto; and (d) to the Parties' respective attorneys and auditors. Copies of this Agreement shall not be provided to any other party except as may be required by law or to enforce any right or obligation under this



Agreement. To the extent any Party believes that the terms of this Agreement may be required to be disclosed as a result of any order of any court of competent jurisdiction, or to the extent of that any third party seeks discovery of the terms of this Agreement by legal process in any court proceeding, the Party from whom disclosure is sought or ordered shall give the other Party at least five (5) business day' written notice prior to making any such disclosure.

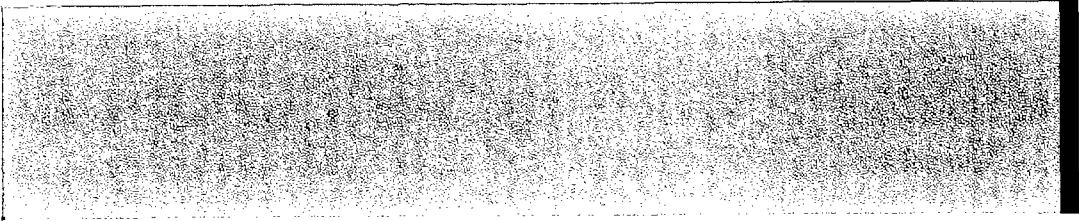
9. As part of the consideration received by Lumens in exchange for the [REDACTED], Pathway covenants not to sue or otherwise assert a claim or demand of any kind against Lumens, its parent company, affiliates or subsidiaries, and each of their officers, directors, employees, attorneys, shareholders, customers, predecessors and assigns based on the '751 Patent, or any continuations, continuations-in-part, divisional, or foreign counterparts thereof claiming the same priority date.

10. As further consideration for the release and covenant not to sue contained in this Agreement, Lumens agrees that it will not cooperate with or assist any third parties (including the Co-Respondents in ITC Investigation No. 1045) with challenging the validity of the '751 Patent through civil litigation or any administrative proceeding anywhere in the world, including before the United States Patent & Trademark Office, including any request for reexamination, petition for an inter partes, ex parte, post grant review, or derivation trial with the United States Patent & Trademark Office, or share any costs to do so once the Agreement is executed by Pathway.

11. No more than once every calendar year, upon commercially reasonable notice, and at Pathway's sole expense, Lumens will [REDACTED]

[REDACTED]

*TW*



12. The occurrence of all events specified in Paragraphs 1-11 above and compliance with the other terms of this Agreement shall constitute, without further action, the full and permanent release and discharge by Pathway of Lumens and its parent, subsidiaries, affiliated companies, and each of their officers, directors, employees, attorneys, shareholders, customers, predecessors, and assigns in connection with the Settled Claims.

13. It is understood by the Parties that any one of them may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows or believes to be true with respect to the matters released by this Agreement. Each Party nevertheless has entered into this Agreement with knowledge of such risk or possibility and agrees and accepts that this Agreement shall continue to be binding and in full force and effect notwithstanding any such newly discovered claims. The Parties hereby waive and shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of the United States or any state or territory of the United States or any foreign state, or any principal of common or civil law, that governs or limits a person's release of unknown claims. The Parties shall be deemed to relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

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In addition, the Parties hereby waive and shall be deemed to waive any and all provisions, rights, and benefits conferred by any law of the United States or any state or territory of the United States or any foreign state, or principle of common

or civil law, that is similar, comparable or equivalent to California Civil Code Section 1542.

14. If the '751 Patent is subsequently found invalid by any United States district court or the United States Patent & Trademark Office and Pathway decides not to pursue any appeal, or if no further appeal is possible, or if software-based digital zoom functionality is found not to infringe any valid claims of the '751 Patent by any United States district court and Pathway decides not to pursue any appeal or if no further appeal is possible, then Lumens may [REDACTED]

[REDACTED] For the sake of clarity, this paragraph is not triggered by any finding of the United States International Trade Commission in ITC Investigation No. 1045 of invalidity or non-infringement of the '751 Patent, as long as Pathway continues to seek relief in a United States district court action against the co-respondents in ITC Investigation No. 1045 ("Co-Respondents") or as long as Pathway continues to oppose any proceeding filed in the United States Patent and Trademark Office by the Co-Respondents in ITC Investigation No. 1045. If Pathway does not continue to seek such relief as described above or if Pathway unilaterally withdraws its request for relief in ITC Investigation No. 1045 without reaching a settlement with both Co-Respondents, Lumens may [REDACTED]

[REDACTED] under Paragraph 11 of this Agreement shall terminate automatically.

15. Notwithstanding anything in this Agreement to the contrary, this Agreement provides Lumens [REDACTED]

[REDACTED] and may be [REDACTED]

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requested by Lumens only on commercially reasonable notice and no more frequently than once every calendar year. If, [REDACTED] Pathway is found to be in breach of this Paragraph 15, then Pathway must immediately

16. This Agreement may not be modified or amended except by written agreement, signed by all Parties (an "Amendment").

17. Absent any Amendment, this Agreement constitutes an integrated agreement which contains the entire agreement of the Parties with respect to the subject matter to which it refers. Other than the Agreement, there are no other agreements, covenants, understandings, warranties or representations, express or implied, oral or written, with respect to the subject matter hereof which are not expressly set forth herein. All prior or contemporary conversations, negotiations, representations, covenants and warranties, express or implied, oral or written, relating to the matters provided for herein are merged into and superseded by this Agreement. Absent any Amendment, each Party represents to the other that it has not relied on any agreements, understandings or representations concerning the matters provided for herein in entering into this Agreement which are not expressly set forth herein.

18. This Agreement is intended to finally and forever terminate the disputes between the Parties as set forth herein. Each of the Parties agrees to execute such additional documents and do or perform such further acts or things as shall be reasonably necessary or appropriate to give full effect to all of the purposes and provisions of this Agreement. In addition, each Party agrees not to enter into any arrangements, formal or informal, with the purpose or effect to circumvent the intent of the terms and conditions of this Agreement.

19. Each Party represents that it has read and understands the provisions of this Agreement, has received advice with respect thereto from independent counsel of its own choice, has signed the Agreement freely and without duress, and has full authority to execute the same. For the purposes of resolving any disputes arising out of this Agreement, this Agreement shall be deemed to have been drafted by each of the Parties hereto.



20. Each Party represents that this Agreement has been duly executed and delivered by such party and constitutes a legal, valid, and binding obligation of such Party and that it is enforceable against such Party in accordance with its terms.

21. Each individual signing this Agreement on behalf of a corporation or other entity represents and warrants that such individual has full power and authority from such corporation or entity to enter into this Agreement and to bind such corporation or entity to the terms hereof.

22. Each corporation entering into this Agreement on behalf of itself and its parent, affiliates and subsidiaries represents and warrants that it has full power and authority to enter into this Agreement on its and their behalf and to bind its parent, affiliates and subsidiaries to the terms hereof.

23. Waiver of any one breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or other provision of this Agreement.

24. This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto, including, without limitation, their parents, subsidiaries and affiliates. Should Pathway assign, sell the ownership of, or exclusively license the rights of the '751 Patent or any continuations, continuations-in-part, divisional, or foreign counterparts thereof claiming the same priority date, to any third party, the terms of this Agreement are expressly binding on any such assignees, purchasers, or exclusive licensees. Pathway shall indemnify, defend and hold Lumens, its parent company, affiliates and subsidiaries, and each of their officers, directors, employees, attorneys, shareholders, customers, predecessors and assigns harmless from or against any claim or proceeding brought by direct or indirect assignees of the '751 Patent or any continuations, continuations-in-part, divisional or foreign counterparts thereof relating to infringement of the '751 Patent, or any continuations, continuations-in-part, divisional, or foreign counterparts thereof claiming the same priority date.

25. Each Party shall bear its own tax consequences, if any, as the result of the making or the receipt of the Settlement Payment.



26. All notices which may or must be given under or in connection with this Agreement shall be sent by email and by courier delivery (such courier delivery to be made by overnight delivery from the date of sending) to the email and mailing addresses listed below, or to such other address as any party may subsequently designate for itself, by written notice to the other party, in accordance herewith:

To Pathway: Pathway Innovations & Technologies, Inc.  
Attn: Ji Shen  
10211 Pacific Mesa Blvd, Ste 412  
San Diego, CA 92121

With a copy to: James Fazio, Esq.  
San Diego IP Law Group LLP  
12526 High Bluff Drive, Suite 300  
San Diego, CA 92130  
[jamesfazio@sandiegoiplaw.com](mailto:jamesfazio@sandiegoiplaw.com)

To Lumens: Jeffery Wen  
  
Lumens Integrations, Inc.  
  
4116 Clipper Court  
Fremont, CA 94538  
United States  
Phone : 1-(888)542-3235

With copy to: Ronald S. Lemieux  
Singularity LLP  
555 Twin Dolphin Drive, Suite 610  
Redwood Shores, CA 94065  
[rlemieux@ipsingularity.com](mailto:rlemieux@ipsingularity.com)

Any such notices shall be deemed given on the date they are sent.

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28. Any and all disputes, controversies, or claims arising out of or relating to this Agreement, including without limitation, claims based on contract, tort, or statute, shall be determined by binding arbitration administered by JAMS, Inc. before a single retired California judge or justice as the arbitrator, and pursuant to the then applicable rules of JAMS, Inc. The arbitrator will decide all issues regarding arbitrability and the existence, scope and enforceability of this mandatory, final and binding arbitration provision. The arbitration will take place in either San Francisco, San Jose or San Diego, California or such other site as all Parties may agree to in writing. The arbitrator in his or her sole discretion may or may not award attorneys' fees and costs to the prevailing party in the arbitration.

29. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, when taken together shall constitute one and the same instrument.

30. Electronic signatures or other imaged signatures shall be deemed to constitute an original signature.

IN WITNESS HEREOF, the Parties hereto have executed this Agreement on the date set forth below.

Pathway Innovations and Technologies, Inc.

Date: October \_\_, 2017

By: \_\_\_\_\_

Lumens Integrations, Inc.

Date: October 26 2017

By:  \_\_\_\_\_

28. Any and all disputes, controversies, or claims arising out of or relating to this Agreement, including without limitation, claims based on contract, tort, or statute, shall be determined by binding arbitration administered by JAMS, Inc. before a single retired California judge or justice as the arbitrator, and pursuant to the then applicable rules of JAMS, Inc. The arbitrator will decide all issues regarding arbitrability and the existence, scope and enforceability of this mandatory, final and binding arbitration provision. The arbitration will take place in either San Francisco, San Jose or San Diego, California or such other site as all Parties may agree to in writing. The arbitrator in his or her sole discretion may or may not award attorneys' fees and costs to the prevailing party in the arbitration.

29. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, when taken together shall constitute one and the same instrument.

30. Electronic signatures or other imaged signatures shall be deemed to constitute an original signature.

IN WITNESS HEREOF, the Parties hereto have executed this Agreement on the date set forth below.

Pathway Innovations and Technologies, Inc.

Date: October 25, 2017

By:  \_\_\_\_\_

Lumens Integrations, Inc.

Date: October \_\_\_\_, 2017

By: \_\_\_\_\_



**EXHIBIT A1**

**(OMITTED FROM PUBLIC  
VERSION)**

**CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 18** has been served by hand upon the following parties as indicated on NOV 06 2017.



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

<b>FOR COMPLAINANTS PATHWAY INNOVATIONS AND TECHNOLOGIES, INC.</b>	
Trevor Q. Coddington, Ph.D. <b>SAN DIEGO LAW GROUP LLP</b> 12526 High Bluff Drive, Suite 3000 San Diego, CA 92130	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<b>FOR RESPONDENT AVER INFORMATION, INC.</b>	
Eric C. Rusnak, Esq. <b>K &amp; L GATES LLP</b> 1601 K Street, NW Washington, DC 20006	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<b>FOR RESPONDENT IPEVO INC.</b>	
Harold H. Davis, Jr., Esq. <b>K &amp; L GATES LLP</b> Four Embarcadero Center, Suite 1200 San Francisco, CA 94111	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

**CERTAIN DOCUMENT CAMERAS AND SOFTWARE FOR USE THEREWITH**

**INV. NO. 337-TA-1045**

**FOR RESPONDENT LUMENS INTEGRATION, INC.**

Ronald Lemieux, Esq.  
**SINGULARITY LLP**  
555 Twin Dolphin Drive, Suite 610  
Redwood Shores, CA 94065

- Via Hand Delivery
- Express Delivery
- Via First Class Mail
- Other: \_\_\_\_\_