

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

**In the Matter of**

**CERTAIN TONER CARTRIDGES AND  
COMPONENTS THEREOF**

**Inv. No. 337-TA-918**

**Order No. 23**

Pursuant to 19 C.F.R. § 210.18, respondents International Laser Group, Inc.; Ninestar Image Tech Limited; Zhuhai Seine Technology Co., Ltd.; Ninestar Technology Company, Ltd.; Seine Tech (USA) Co., Ltd.; Seine Image Int'l Co., Ltd.; Ninestar Image Tech, Ltd.; Seine Image (USA) Co., Ltd.; and Nano Pacific Corporation filed a Motion for Summary Determination of Permissible Repair. Motion Docket No. 918-26. Complainant Canon<sup>1</sup> opposed the motion. The Commission Investigative Staff ("Staff") filed a response opposing the motion.

The Commission Rules provide that "[a]ny party may move with any necessary supporting affidavits for a summary determination in its favor upon all or part of the issues to be determined in the investigation." 19 C.F.R. § 210.18(a). Summary determination "shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law." 19 C.F.R. § 210.18(b).

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<sup>1</sup> "Canon" refers collectively to Canon Inc., Canon U.S.A., Inc., and Canon Virginia, Inc. ("CVI").

Movants “request that the Administrative Law Judge summarily determine that replacing worn out or depleted parts while reusing most original parts of a Canon or HP toner cartridge is protected as permissible repair of a patented article.” Mot. at 1. Movants argue: “Respondents generally repair empty Canon or HP cartridges by reusing most components, and replacing worn components such as photosensitive drums (also referred to as OPC or organic photoconductor drums). They then reseal the cartridges, refill them with toner, and sell them.” *Id.* at 1-2. Movants therefore “request summary determination that, with respect to the toner cartridges that are the subject of this motion, Respondents engage in permissible repair and thus do not infringe the Asserted Claims of the Asserted Patents.” *See id.* at 26.

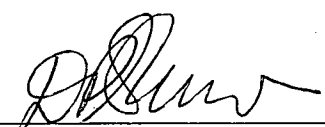
In opposition, Canon argues that the pending motion should be denied because there are “genuine issues of material fact that cannot be decided in Respondents’ favor on summary determination.” *See Opp’n* at 1. In particular, Canon identifies the following issues of material fact as precluding a finding of summary determination: (1) “whether the OEM cartridges and drum units that Respondents allegedly ‘repair’ were the subject of exhausting sales in the United States,” and (2) “whether Canon’s separately patented drum units, viewed as a whole, are spent at the time Respondents replace the original OEM photosensitive drum with a new drum.” *See id.*

The Staff argues that summary determination is not appropriate under the circumstances, inasmuch as “the question of whether or not the patented articles underwent a patent exhausting first sale is a disputed material fact that must be proved before Respondents can make a showing of permissible repair.” *See Staff Resp.* at 3; *see also* Mot. at 2 n.3 (“Respondents acknowledge that fact issues concerning exhaustion may preclude summary determination of

non-infringement, and therefore seek only a ruling that, once exhaustion is established, the repair doctrine applies and the subject products do not infringe.”).

Having considered the arguments of the parties, it is the determination of the administrative law judge that genuine issues of material fact exist as to whether or not the patented articles identified in the pending motion underwent an exhausting first sale, and that a finding of summary determination is not appropriate under the circumstances.

Accordingly, Motion No. 918-26 is denied.

  
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David P. Shaw  
Administrative Law Judge

Issued: February 5, 2015

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**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER NO. 23** has been served by hand upon the Commission Investigative Attorney, **James Wiley, Esq.**, and the following parties as indicated, on **FEB 06 2015**.



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

<b>FOR COMPLAINANTS CANON INC., CANON U.S.A., INC., AND CANON VIRGINIA, INC.:</b>	
Edmund J. Haughey, Esq. <b>FITZPATRICK, CELLA, HARPER &amp; SCINTO</b> 975 F Street NW Washington, DC 20004	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<b>FOR RESPONDENTS NINESTAR IMAGE TECH LIMITED, ZHUHAI SEINE TECHNOLOGY CO., LTD., NINESTAR TECHNOLOGY COMPANY, LTD., SEINE TECH (USA) CO., LTD., SEINE IMAGE INT'L CO., LTD., NINESTAR IMAGE TECH, LTD., SEINE IMAGE (USA) CO., LTD., NANO PACIFIC CORPORATION, LINKYO CORP., AND INK TECHNOLOGIES PRINTER SUPPLIES, LLC:</b>	
Gary M. Hnath, Esq. <b>MAYER BROWN LLP</b> 1999 K Street NW Washington, DC 20006	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<b>FOR RESPONDENTS JIANGXI YIBO E-TECH CO., LTD., ASTER GRAPHICS CO., LTD., ASTER GRAPHICS, INC., THE SUPPLIES GUYS, LLC, AND AMERICAN INTERNET HOLDINGS, LLC:</b>	
Barbara A. Murphy, Esq. <b>FOSTER, MURPHY, ALTMAN &amp; NICKEL, PC</b> 1899 L Street NW, Suite 1150 Washington, DC 20036	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____

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<b>FOR RESPONDENT INTERNATIONAL LASER GROUP, INC.:</b>	
Charles S. Barquist, Esq. <b>MORRISON &amp; FOERSTER LLP</b> 707 Wilshire Blvd., Suite 6000 Los Angeles, CA 90017-3543	<input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____
<b>FOR RESPONDENT KATUN CORPORATION:</b>	
Bryan J. Vogel, Esq. <b>ROBINS, KAPLAN, MILLER &amp; CIRESI L.L.P.</b> 601 Lexington Avenue 34th Floor New York, NY 10022	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Express Delivery <input checked="" type="checkbox"/> Via First Class Mail <input type="checkbox"/> Other: _____