

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

In the Matter of)

Certain Collaborative System Products)
and Components Thereof)

Investigation No. 337-TA-_____

**COMPLAINT OF EINSTRUCTION CORPORATION
UNDER SECTION 337
OF THE TARIFF ACT OF 1930, AS AMENDED**

<p><u>COMPLAINANT</u></p> <p>eInstruction Corporation 308 N. Carroll Boulevard Denton, Texas 76201 Telephone: 940-565-0004</p>	<p><u>RESPONDENT</u></p> <p>QOMO HiteVision, LLC 28265 Beck Road, Suite C-1 Wixom, Michigan 48393</p>
<p><u>COUNSEL FOR COMPLAINANT</u></p> <p>Michael H. Selter Jeffrey S. Melcher Mary Boney Denison Manelli Denison & Selter PLLC 2000 M Street, N.W., Suite 700 Washington, DC 20036 Telephone: 202-261-1000 Facsimile: 202-887-0336</p>	

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APPENDICES

- A. Certified Copy and three Uncertified Copies of the U.S. Patent No. 6,930,673 File History
- B. Four Copies of the References Cited in the Certified File History of U.S. Patent No. 6,930,673

I. INTRODUCTION

1. Complainant, eInstruction Corporation (“eInstruction”), requests that the United States International Trade Commission commence an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §1337 (“Section 337”).

2. The proposed Respondent is Qomo HiteVision, LLC located in Wixom, Michigan.

3. Respondent’s unfair acts under Section 337 include the unlawful importation into the United States, and the sale within the United States after importation, of certain products using collaborative system technology and components thereof (“Collaborative System Products”) that infringe United States Patent No. 6,930,673 B2 (the “673 Patent”).¹

4. As set forth in detail herein, Respondent’s products contributorily infringe claims 1-3, 6-10, 13-18 and 21-24 of the '673 Patent.

5. A domestic industry exists in the United States as required by 19 U.S.C. §§ 1337(a)(2) and (a)(3).

6. Complainant seeks as relief a general exclusion order or, alternatively, a limited exclusion order, barring Qomo’s infringing Collaborative System Products from entry into the United States. Complainants also seek, as relief, a cease and desist order prohibiting the importation, sale, offer for sale, advertising, packaging or the

¹ The “B2” means that there was a previously published pre-grant publication that was available March 2001

solicitation of any Qomo Collaborative System Products encompassed by the claims of the '673 Patent.

II. COMPLAINANT

7. Complainant eInstruction Corporation is a corporation organized under the laws of Texas, having its principal place of business at 308 N. Carroll Boulevard, Denton, Texas 76201. eInstruction also has offices in Columbia, Maryland; Scottsdale, Arizona; Cincinnati, Ohio; and Paris, France.

8. eInstruction is the assignee of the '673 Patent.

9. eInstruction Corporation was founded in 1980. eInstruction pioneered the use of student response systems in education with the creation of a small hand-held device called CPS (Classroom Performance System) and associated software. Today, CPS remains the leading student response system in education.

10. In 2006, eInstruction acquired FSCreations, the creators of ExamView® and Learning Series software and content. eInstruction partnered with educators and publishers to combine EXAMVIEW and CPS to provide an integrated platform so that instructors can seamlessly use publisher and proprietary question banks in lesson plans, quizzes and tests. The result is an integrated system for content and assessment with real-time feedback.

11. In 2008, in response to increasing requests by educators for integration with instruction tools such as wireless tablets and interactive white boards, eInstruction acquired Interwrite Learning, the pioneer in the interactive wireless tablet, known as INTERWRITE PAD or INTERWRITE SCHOOLPAD. Although INTERWRITE PAD is

still sold, the latest version of this product is known as the INTERWRITE MOBI. Working closely with the education community, eInstruction leveraged INTERWRITE WORKSPACE software to integrate EXAMVIEW, CPS and INTERWRITE WORKSPACE to create a unique learning platform. INTERWRITE WORKSPACE software now is sold as part of INTERWRITE MOBI, INTERWRITE PAD and CPS CHALKBOARD. Copies of the Getting Started Guides and other information about the INTERWRITE PAD and INTERWRITE MOBI products are attached as **Exhibits 1-2**. An INTERWRITE MOBI and an INTERWRITE PAD accompany this Complaint as **Physical Exhibits 10-11**.

12. Today, eInstruction offers educators a family of software, student response systems, interactive boards, wireless tablets and panels, that integrate with high-quality content, aligned to state standards. These solutions have been proven to increase student engagement while providing real-time feedback to educators to assess comprehension and customize lessons. eInstruction technology is available in 40 languages and is used in over 90 countries worldwide. The technology is used by millions of students, teachers and professors in 400,000 K-12 classrooms and more than 1,000 higher education institutions around the world.

13. eInstruction has expended considerable resources appropriately to protect its innovations and inventions in accordance with the intellectual property laws of the United States and other countries in which it conducts business. eInstruction is the sole owner of U.S. Patent No. 6,930,673, the Patent-in-Suit.

III. TECHNOLOGY AND PRODUCTS AT ISSUE

14. The technology at issue relates to a collaborative input system that is particularly useful in schools. The technology supports student-centered, collaborative learning where both the teacher and students can concurrently interact with and contribute to the same digital content. This technology creates a powerful shared learning environment for lessons and activities. In addition, teachers have the capability of viewing each student's graded answer seconds after a question has been posed, which allows teachers to provide differentiated instruction as the lesson unfolds.

15. The collaborative input system includes a host computer and an associated display. The host computer includes a processor that is configured for executing an application to provide an image on the display. There are also at least two electromagnetic digitizers separate from the host computer. The digitizer has an input surface defining a display space that is mapped to coincide with the display. The digitizer also has a pen structure that is operatively associated with the input surface such that the digitizer detects the proximity of the pen structure with respect to the input surface, as a result of a user's input. There is a wireless communication link between the host computer and the digitizer such that a user's input can be transmitted from the digitizer, be received by the host computer, and be represented graphically on the display together with the image in real time. This permits the user, associated with the digitizer, to provide input to the host computer displaying the image. Software is provided to prioritize and manage data from each of the digitizers.

IV. THE ASSERTED '673 PATENT

16. U.S. Patent No. 6,930,673 issued on November 9, 2001, with 24 claims, of which claims 1, 9, 16 and 24 are independent. A certified copy of the '673 Patent is attached as **Exhibit 3**.

17. elnstruction owns all right, title and interest in the '673 Patent. Records regarding the Assignment of the '673 Patent are attached hereto as **Exhibit 4**. A certified copy and three copies of the File History of the '673 Patent are included as **Appendix A**. Four copies of the references cited in the certified file history are provided in **Appendix B**.

18. As discussed below in Section VIII, Respondent is contributorily infringing claims 1-3, 6-10, 13-18 and 21-24 of the '673 Patent.

V. RESPONDENT

19. Upon information and belief, Qomo HiteVision, LLC ("Qomo") is an entity organized under the laws of Michigan and has it principal place of business at 28265 Beck Road, Suite C1, Wixom, Michigan.

20. Upon information and belief, Qomo imports, or has imported on its behalf, and/or sells in the United States its QIT30 Prodigy Interactive Wireless Tablets, which infringe the '673 Patent. A QIT30 Prodigy Interactive Wireless Tablet accompanies this Complaint as **Physical Exhibit 12**. The first two pages of **Exhibit 5** show that Qomo imported wireless tablets from Hong Kong on August 28, 2007. The next three pages of **Exhibit 5** show that Qomo imported its QIT30 Prodigy Interactive Wireless Tablets from

Hong Kong on March 17, 2009. **Exhibit 7** is a summary of products available under Base Contract Number 06-S7188 by South Carolina's Information Technology Management Office. Pages 1 and 7 of the Exhibit show that Qomo is vendor to the State. Page 11 of the Exhibit shows that the Prodigy QIT30 is one of Qomo's products that are available for purchase under this Base Contract.

21. **Exhibit 6** consists of manuals and other information about the QIT30 Prodigy Interactive RF Wireless Tablet.

VI. LICENSES

22. eInstruction has not provided licenses under the '673 Patent to any entity.

VII. FOREIGN COUNTERPARTS

23. There are no foreign counterpart patents. The pending foreign counterpart applications are European Patent Application No. 01993886.9 and Canadian Patent Application No. 2,425,746. These constitute all foreign counterpart patent publications and there are no others. There has been no foreign counterpart application that has been denied, abandoned or withdrawn.

VIII. INFRINGEMENT AND IMPORTATION

24. Qomo has committed unfair acts by way of contributory infringement of the asserted '673 Patent in violation of 19 U.S.C. § 1337.

25. As shown in **Exhibit 8**, the claims of the asserted '673 Patent read on Qomo's QIT30 Prodigy Interactive RF Wireless Tablet when used on a personal computer and display.

26. As shown by **Exhibit 5**, Qomo imports, or has imported on its behalf, collaborative input products, including the QIT30 Prodigy Interactive RF Wireless Tablet that contributorily infringe one or more claims of the asserted '673 Patent.

27. As shown by the summary of products available under Base Contract Number 06-S7188 by South Carolina's Information Technology Management Office and by Qomo's Internet web pages (**Exhibits 6 and 7**), Qomo sells its Prodigy Interactive RF Wireless Tablets in the United States.

28. On information and belief, Qomo sells its QIT30 Prodigy Interactive RF Wireless Tablet knowing that it is especially made or especially adapted for use in an infringement of the '673 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use. On information and belief, there are no non-infringing uses

IX. HARMONIZED TARIFF SCHEDULE

29. On information and belief, Qomo's accused product falls within at least the following classifications of the Harmonized Tariff Schedules of the United States: 8471.60.

X. DOMESTIC INDUSTRY

30. A domestic industry as required by section 337(a)(2) and defined by section 337(a)(3) exists in the United States relating to Collaborative System Products covered by the asserted '673 Patent. The product lines using the technology of the '673 Patent are elnstruction's INTERWRITE MOBI and INTERWRITE PAD, both of which use INTERWRITE WORKSPACE software (the Interactive Teaching Products).

A. Technical Prong

31. eInstruction's INTERWRITE MOBI and INTERWRITE PAD are covered by the '673 Patent when used on a personal computer and display. A claim chart applying the claims of the '673 Patent to eInstruction's INTERWRITE MOBI and INTERWRITE PAD is attached as **Exhibit 9**.

B. Economic Prong

32. eInstruction's INTERWRITE MOBI AND INTERWRITE PAD are designed, developed and engineered in eInstruction's Arizona facility for commercial sale and use in the United States and around the world in accordance with the claims of the '673 Patent. The hardware is manufactured and assembled in China and shipped to the Denton, Texas facility for North American sales. In Texas, software is added to the product and the product is shipped to all North American buyers.

33. eInstruction has made a significant investment in research and development, plant and equipment in the United States and has undertaken significant employment of labor and capital, in connection with its substantial investment in the exploitation of the asserted '673 Patent, including engineering, research and development, quality assurance, product design, customer technology support relating to the subject matter of the asserted '673 Patent, as required by section 337(a)(3)(C). Estimated research and development costs for INTERWRITE MOBI and INTERWRITE PAD in 2007 and 2008 are set forth in **Confidential Exhibit 13C**. The INTERWRITE MOBI and INTERWRITE PAD products are not saleable without the software developed in the United States.

34. elnstruction currently employs a significant number of people in the United States. Employees are divided by function according to U.S. office location. In its Arizona office, elnstruction conducts research and development, quality assurance and technical support. See **Confidential Exhibit 13C**. In addition to personnel expenses, elnstruction has invested in fixed assets at its Arizona facility. The value of those fixed assets is set forth in **Confidential Exhibit 13C**.

XI. RELATED LITIGATION

35. The 673 Patent or its foreign counterpart applications have not been the subject of any court or agency litigation. On information and belief, Qomo's importation and sale of its QIT30 Prodigy Interactive RF Wireless Tablet has not been the subject of any court or agency litigation.

XII. REQUESTED RELIEF

36. WHEREFORE, by reason of the foregoing, elnstruction requests that the United States International Trade Commission:

- (a) Institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, into the unlawful importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of Collaborative System Products that contributorily infringe one or more asserted claims of the United States Patent No. 6,930,673;
- (b) Determine that there has been a violation of Section 337;
- (c) Issue a permanent general exclusion order, pursuant to Section

337(d) of the Tariff Act of 1930, as amended, excluding from entry into and sale within the United States all Collaborative System Products that infringe one or more asserted claims of the United States Patent No. 6,930,673, or in the alternative, a permanent limited exclusion order, pursuant to Section 337(d) of the Tariff Act of 1930, as amended, excluding from entry into and sale within the United States all of Respondent's Collaborative System Products that infringe one or more asserted claims of the United States Patent No. 6,930,673;

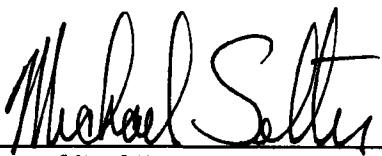
- (d) Issue a permanent cease and desist order pursuant to Section 337(f) of the Tariff Act of 1930, as amended, prohibiting Respondent or its affiliates, subsidiaries, successors, or assigns, from marketing, demonstrating, distributing, offering for sale, selling, or transferring, including the movement or shipment of inventory in the United States, any Collaborative System Products that infringe one or more asserted claims of United States Patent No. 6,930,673; and

- (e) Issue each other and further relief as the Commission deems just and proper based on the facts determined by the investigation and the authority of the Commission.

Dated: July 1, 2009

Respectfully submitted,

eInstruction Corporation

By: 
One of its Attorneys

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VERIFICATION OF COMPLAINT

I, Steve Kaye, declare, in accordance with 19 C.F.R. § 210.4 and § 210.12(a), under penalty of perjury that the following statements are true:

1. I am the President and CEO of eInstruction Corporation, and am duly authorized to sign this Complaint;

2. I have read the Complaint and exhibits thereto and am aware of their contents;

3. The Complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

4. To the best of my knowledge, information and belief founded upon reasonable inquiry, the claims and legal contentions of this Complaint are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

5. To the best of my knowledge, information and belief founded upon reasonable inquiry, the allegations and other factual contentions in the Complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

6. The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declare that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Executed on July 1, 2009



Steve Kaye