

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN COLLABORATIVE SYSTEM
PRODUCTS AND COMPONENTS
THEREOF**

Inv. No. 337-TA-682

RECEIVED
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US INTERNATIONAL TRADE COMMISSION
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**ORDER NO. 7: INITIAL DETERMINATION GRANTING JOINT MOTION TO
TERMINATE THE INVESTIGATION ON THE BASIS OF A
SETTLEMENT AGREEMENT**

(December 2, 2009)

On November 10, 2009, Complainant eInstruction Corporation (“Complainant”) filed a motion to terminate the Investigation in its entirety by reason of a confidential Settlement Agreement with Respondent QOMO HiteVision, LLC (“Respondent”). (Motion Docket No. 682-001.) Complainant submitted a non-confidential version of the Settlement Agreement pursuant to Commission Rules. Complainant states that other than the Settlement Agreement, there “are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation.” (Mot. at 1.) The motion does not disclose whether the Commission Investigative Staff (“Staff”) is in favor of termination.

On November 19, 2009, Complainant filed a supplement to its motion, indicating that “Staff will respond separately to eInstruction’s motion.” (Mot. Supp. at 1.) Complainant further attached an executed Term Sheet between the private parties, which Complainant notes has been superseded by the Settlement Agreement. (*Id.*)

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On November 19, 2009, Staff responded in support of Complainant's motion to terminate. According to Staff, the motion complies with the Commission requirements for termination, and the Settlement Agreement provides an acceptable basis upon which to terminate the Investigation. (Staff Resp. at 1, 3.) Staff further notes that "termination of this Investigation is not expected to have any adverse impact on the public interest." (*Id.* at 4.)

The Commission's Rules permit termination of the Investigation in whole or in part with respect to one or more respondents on the basis of a settlement. 19 C.F.R. § 210.21(b)(1). The settlement appears to resolve the dispute between the private parties. In satisfaction of 19 C.F.R. § 210.21(b)(1), Complainant has attached both public and confidential versions of the Settlement Agreement with Respondent, as well as the superseded Term Sheet, and has made a statement that there are no other agreements with Respondent.

In the case of a proposed termination by settlement agreement,

the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

19 C.F.R. § 210.50(b)(2). Complainant submits no argument with respect to the impact of the proposed termination on the public interest. However, Staff argues that termination will not adversely affect the public interest, and will conserve public and private resources. (Staff Resp. at 4.) Furthermore, termination of litigation under these circumstances as an alternative method of


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dispute resolution is generally in the public interest.

For good cause shown, it is the Initial Determination of the Administrative Law Judge that Complainant's motion to terminate the Investigation (Motion Docket No. 697-001) should be GRANTED.

This Initial Determination, along with the public copies of the Settlement Agreement and Term Sheet,¹ 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.


E. James Gildea
Administrative Law Judge

¹ The Commission's Rules require both confidential and public versions of settlement agreements. See 19 C.F.R. § 210.21(b)(1). Copies of the confidential versions or public versions of the Settlement Agreement and Term Sheet between Complainant and Respondent are attached to the respective confidential and public versions of this Initial Determination.

ATTACHMENT A

SETTLEMENT, LICENSE, AND RELEASE AGREEMENT

This Settlement, License, and Release Agreement (the "Agreement") is among QOMO HiteVision, LLC and its officers, directors, attorneys, parents, affiliates, subsidiaries, employees, predecessors, successors and any person claiming by, through and under it (collectively, "QOMO"), eInstruction Corporation and its officers, directors, attorneys, parents, affiliates, subsidiaries, employees, predecessors, successors and any person claiming by, through and under it (collectively, "eInstruction"), and Waltop International Corp. and its officers, directors, attorneys, parents, affiliates, subsidiaries, employees, predecessors, successors and any person claiming by, through and under it (collectively, "Waltop"). The date of this Agreement is deemed to be October 9, 2009 (the "Effective Date"), regardless of the date or dates on which the parties or their respective representatives execute this Agreement.

WHEREAS eInstruction is the owner by assignment of U.S. patent number 6,930,673 B2 issued on August 16, 2005, entitled "Collaborative Input System" (which, together with any divisions, continuations, continuations-in-part, reissues, substitutes and extensions shall be referred to as "the '673 patent");

WHEREAS QOMO is the OEM customer for Waltop's products in the United States and is importing and offering for sale in the United States an RF Wireless Tablet ("the QIT30");

WHEREAS eInstruction has alleged that the importing and offering for sale of the QIT30 has infringed the '673 patent;

WHEREAS QOMO and Waltop have denied that the importing and offering for sale of the QIT30 infringes the '673 patent;

WHEREAS a dispute relating to the '673 patent has arisen between eInstruction and QOMO relating to *In the Matter of Certain Collaborative System Products and Components Thereof*, No. 337-TA-682 before the International Trade Commission (the "Dispute");

WHEREAS eInstruction and QOMO/Waltop desire to effect among themselves a full, complete and final settlement and release of any and all actual or potential claims, counterclaims and other differences that do, could, or may hereafter exist between them based upon, arising from, or relating in any way to, the Dispute or to any future actions before the International Trade Commission and any patent infringement action in any jurisdiction related to the '673 patent.

NOW THEREFORE, eInstruction, QOMO and Waltop, in consideration of the mutual promises and undertakings contained in this Agreement and other good and valuable consideration, agree as follows:

1. Release.

In consideration of the promises set forth in this Agreement, the parties hereby give the following releases.

1.1 eInstruction hereby releases and forever discharges absolutely QOMO and its respective subsidiaries, affiliates, predecessors, successors, past, present, and future shareholders, members, directors, officers, employees, representatives, attorneys, agents and assigns, as well as its heirs, representatives, executors, legatees, administrators, or any other legal entity through which it conducts business from any and all claims, disputes, demands, liabilities, actions, obligations, debts, causes of action, damages, costs, expenses and attorneys' fees of any kind or nature, whether legal or equitable, in tort or in contract, actual or contingent, known or unknown, from the beginning of time to the Effective Date relating to direct or contributory infringement or inducement of infringement of the '673 patent and the Dispute. This Release shall not apply to any claim, counterclaim, demand or liability created or arising under or in connection with this Agreement, or any breach of or default under this Agreement.

1.2 eInstruction hereby releases and forever discharges absolutely Waltop and its respective subsidiaries, affiliates, predecessors, successors, past, present, and future shareholders, members, directors, officers, employees, representatives, attorneys, agents and assigns, as well as its heirs, representatives, executors, legatees, administrators, or any other legal entity through which it conducts business from any and all claims, disputes, demands, liabilities, actions, obligations, debts, causes of action, damages, costs, expenses and attorneys' fees of any kind or nature, whether legal or equitable, in tort or in contract, actual or contingent, known or unknown, from the beginning of time to the Effective Date relating to direct or contributory infringement or inducement of infringement of the '673 patent and the Dispute. Notwithstanding the foregoing, this release shall not apply to any claims based on the manufacture, offer for sale, sale, use, or importation of products other than products imported or sold by QOMO. This Release shall not apply to any claim, counterclaim, demand or liability created or arising under or in connection with this Agreement, or any breach of or default under this Agreement.

1.3 eInstruction hereby releases and absolutely forever discharges all individuals, corporations, partnerships and persons and entities of any nature whatsoever which are customers of QOMO (collectively, the "QOMO Customers") from all claims of direct or contributory infringement or inducement of infringement based upon the QOMO Customers' importing, purchasing, leasing, licensing, accessing, using or otherwise obtaining any good or product from QOMO, including all claims of direct or contributory infringement or inducement of infringement of the '673 patent and of the Dispute.

1.4 QOMO and Waltop hereby release and forever discharge absolutely eInstruction and its respective subsidiaries, affiliates, predecessors, successors, past, present, and future

shareholders, members, directors, officers, employees, representatives, attorneys, agents and assigns, as well as its heirs, representatives, executors, legatees, administrators, or any other legal entity through which it conducts business from any and all claims, disputes, demands, liabilities, actions, obligations, debts, causes of action, damages, costs, expenses and attorneys' fees of any kind or nature, whether legal or equitable, in tort or in contract, actual or contingent, known or unknown, from the beginning of time to the Effective Date relating to the '673 patent and the Dispute. This Release shall not apply to any claim, counterclaim, demand or liability created or arising under or in connection with this Agreement, or any breach of or default under this Agreement.

3. Covenant Not To Sue.

3.1 eInstruction hereby perpetually covenants not to bring any claims against QOMO for direct or contributory infringement or inducement of infringement of the '673 patent based on QOMO's importing, making, having made, using, offering for sale, selling, or leasing any Licensed Product.

3.2 eInstruction hereby perpetually covenants not to bring any claims against Waltop for direct or contributory infringement or inducement of infringement of the '673 patent based on Waltop's making, having made, using, offering for sale, selling, or leasing any Licensed Product that is exported to QOMO or sold in the United States by QOMO.

3.3 eInstruction hereby perpetually covenants not to bring any claims against QOMO Customers for direct or contributory infringement or inducement of infringement of the '673 patent based on QOMO Customers' importing, purchasing, leasing, licensing, accessing, using or otherwise obtaining any Licensed Product from QOMO.

9. Denial of Liability.

eInstruction and QOMO/Waltop understand and agree that this Agreement is not to be construed as an admission of liability, and that this Agreement is entered into to conclude and avoid litigation.

10. Ownership of the '673 Patent.

eInstruction hereby represents and warrants that it is the exclusive and sole owner of the '673 patent, and all inventions described therein.

11. Notification of the International Trade Commission.

Counsel for eInstruction will inform the appropriate officials at the International Trade Commission ("ITC") that the parties have entered into this Agreement and ask the ITC to

dismiss *In the Matter of Certain Collaborative System Products and Components Thereof*, No. 337-TA-682 before the ITC.

12. Confidentiality.

The terms of this Agreement shall remain confidential in perpetuity. eInstruction, QOMO, and Waltop agree not to disclose the terms of this Agreement to any third parties, other than to legal and accounting professionals who may be retained by eInstruction, QOMO, and/or Waltop in connection with tax preparation matters. No party makes any admissions as to infringement or any wrongdoing of any kind.

13. Entire Agreement.

This Agreement is binding and constitutes the entire agreement between the parties. It may only be modified by a writing signed by all parties. This Agreement supersedes and replaces any and all earlier oral or written agreements or understandings between the parties relating in any way to the Dispute. This Agreement replaces, in particular, a two-page, document labeled "Term Sheet" that was executed by the parties as the result of a meeting held in Washington, D.C. on October 8, 2009. The invalidity or nonenforceability of any provision of this Agreement shall not affect the other provisions of this Agreement.

14. Choice of Law.

Any disputes hereunder shall be governed by the laws of the District of Columbia, without regard to its conflicts of laws principles. The parties agree to bring any dispute arising out of this Agreement in the United States District Court for the District of Columbia, and to irrevocably consent to the jurisdiction of that Court, and further agree that such Court has the exclusive venue for the adjudication of any such dispute.

15. Counterparts.

This Agreement may be executed in identical counterparts. Each counterpart hereof shall be deemed to be an original instrument, but all counterparts hereof taken together shall constitute a single document. Facsimile signatures shall be deemed originals.

16. Authority of Signatories.

The representatives of eInstruction, QOMO, and Waltop who have executed this Agreement represent and warrant that they have full power and authority to execute and deliver this Agreement and to bind and perform their respective obligations hereunder. This Agreement is the valid and legally binding obligation of each of the parties hereto and is enforceable by and against the parties in accordance with its terms. The parties agree that the terms of this Agreement are accepted by them as a full and complete settlement, resolution, accord and satisfaction of any and all claims or demands arising out of or relating to the Dispute.

17. Assignment.

17.1 eInstruction, QOMO, and Waltop each represents and warrants to the other parties that it has not, prior to the Effective Date, sold, assigned or transferred any rights in the Dispute to any third party. eInstruction, QOMO, and Waltop agree to indemnify and hold one another harmless from and against any and all claims based on or arising out of any such assignment or transfer or purported assignment or transfer of any such claims, or any portion or interest therein.

17.2 No party shall assign or delegate this Agreement in whole or in part, or any of the licenses, rights, covenants, immunities, releases, or duties under this Agreement, by agreement, merger, reorganization, sale of all or substantially all of its assets, operation of law or otherwise, including in connection with the insolvency or bankruptcy of the party, without the prior written consent of the other parties. Notwithstanding the foregoing, eInstruction or QOMO may (i) assign its rights and delegate its duties to (a) an acquirer of all or substantially all of the equity or assets of its business to which this Agreement relates or (b) the surviving entity in any merger, consolidation, equity exchange, or reorganization of their business to which this Agreement relates.

18. Notices.

All notices, requests or other communications required or permitted hereunder shall be given in writing by hand delivery, postage prepaid registered or certified mail return receipt requested, or by recognized national overnight courier service, as follows:

If to eInstruction, to: eInstruction Corporation.
308 N. Carroll Blvd
Denton, Texas 76201
Attn: Chief Financial Officer

If to QOMO, to: QOMO HiteVision, LLC
28265 Beck Road, Suite C-1
Wixom, Michigan 48393
Attn: William Li

If to Waltop, to:

WALTOP International Corp.
6F, No. 19-1
Industry E Rd. IV
HsinChu 30077
Taiwan, R.O.C.
Attn: Eric Lee, Senior Director

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates below.

eInstruction Corporation

QOMO HiteVision, LLC

Name: _____

Name: _____

Title: _____

Title: _____

Date: October __, 2009

Date: October __, 2009

WALTOP International Corp.



Name: *Jacky Chen* *Jacky Chen*

Title: *President*

Date: October __, 2009

If to Waltop, to: WALTOP International Corp.
6F, No. 19-1
Industry E Rd. IV
HsinChu 30077
Taiwan, R.O.C.
Attn: Eric Lee, Senior Director

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates below.

eInstruction Corporation

QOMO HiteVision, LLC



Name: Tim ToRus

Name: _____

Title: CFO

Title: _____

Date: October 30, 2009

Date: October __, 2009

WALTOP International Corp.



Name: Jacky Chen 

Title: President

Date: October __, 2009

If to Waltop, to:


WALTOP International Corp.
6F, No. 19-1
Industry E Rd. IV
HsinChu 30077
Taiwan, R.O.C.
Attn: Eric Lee, Senior Director

IN WITNESS WHEREOF, the parties have signed this Agreement as of the dates below.


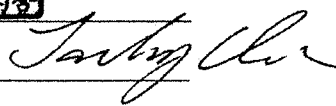
eInstruction Corporation

Name: _____
Title: _____
Date: October __, 2009

QOMO HiteVision, LLC


Name: Jennifer Zheng
Title: COO
Date: October 9, 2009

WALTOP International Corp.


Name: Jacky Chen 
Title: President
Date: October __, 2009

ATTACHMENT B

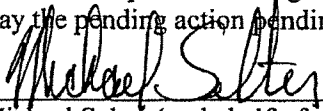
TERM SHEET

1. The Parties to the Settlement Agreement (the "Agreement") will be QOMO HiteVision, LLC ("QOMO"), eInstruction Corporation ("eInstruction") and Waltop Technologies, Inc. ("Waltop").

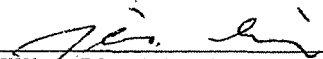
2. The purpose of the Agreement is to forever settle all disputes between the Parties (and their parent and subsidiary companies) relating to *In the Matter of Certain Collaborative System Products and Components Thereof*, No. 337-TA-682 and U.S. Patent No. 6,930,763 B2 (Aug. 16, 2005). This includes any future actions before the International Trade Commission, and any patent infringement action in any jurisdiction. The Parties will agree to appropriate mutual releases.

7. Counsel for the parties will inform the appropriate officials at the International Trade Commission that the parties have agreed on this term sheet for a settlement agreement and ask the ITC to stay the pending action pending finalization of a definitive agreement.

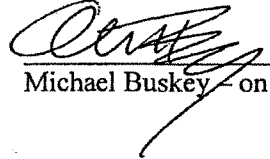
Agreed:



Michael Selter (on behalf of eInstruction)



William Li - QOMO



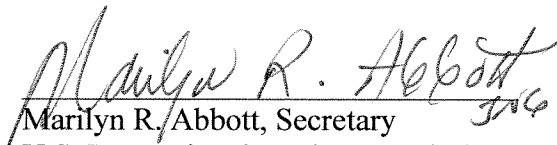
Michael Buskey - on behalf of Waltop

**IN THE MATTER OF CERTAIN
COLLABORATIVE SYSTEM PRODUCTS
AND COMPONENTS THEREOF**

337-TA-682

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **INITIAL DETERMINATION** has been served by hand upon, the Commission Investigative Attorney, **Aarti Shah, Esq.**, and the following parties as indicated on December 2, **2009**.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, D.C. 20436

FOR COMPLAINANTS EINSTRUCTION CORPORATION:

Michael H. Selter, Esq.
MANELLI DENISON & SELTER PLLC
2000 M Street NW, Suite 700
Washington, DC 20036
P: 202-261-1000

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

FOR RESPONDENTS QOMO HITEVISION, LLC:

Laurin M. Mills, Esq.
NIXON PEABODY LLP
401 9th Street NW, Suite 900
Washington, DC 20004
P: 202-585-8000

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

**IN THE MATTER OF CERTAIN
COLLABORATIVE SYSTEM PRODUCTS
AND COMPONENTS THEREOF**

337-TA-682

PUBLIC MAILING LIST

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

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

Kenneth Clair
THOMSON WEST
1100 Thirteen Street, NW, Suite 200
Washington, D.C. 20005

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