

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN PRINTING AND IMAGING
DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-690

**ORDER NO. 28: DENYING RESPONDENTS' MOTION FOR SUMMARY
DETERMINATION OF NON-INFRINGEMENT OF U.S. PATENT
NO. 6,212,343**

(April 28, 2010)

On March 17, 2010, respondents Oki Data Corporation and Oki Data Americas, Inc. (collectively "Oki Data") filed a motion for summary determination of non-infringement of claims 18-21 ("the asserted claims") of U.S. Patent No. 6,212,343 ("the '343 patent"). (Motion Docket No. 690-023.) On March 29, 2010, complainants Ricoh Company, Ltd., Ricoh Americas Corporation, and Ricoh Electronics, Inc. (collectively "Rico") filed a response opposing the motion. On March 29, 2010, the Commission Investigative Staff ("Staff") filed a response supporting the motion. On April 8, 2010, Oki Data filed a motion for leave to file a reply in support of its motion, which is hereby GRANTED. (Motion Docket No. 690-029.)

Oki Data states that all of the asserted claims of the '343 patent contain the limitation "a blade . . . that is configured such that a lower edge thereof contacts the roller part of the developing roller so as to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller." Oki Data argues that the parties do not seek construction of this claim language and that there is no factual dispute that the language clearly and unambiguously requires that the blade be configured to seal the specified

gap. Oki Data also argues that there is no factual dispute regarding the configuration of the accused Oki Data products, which Oki Data states do not have a blade “configured . . . to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller.” Therefore, Oki Data asserts that it is entitled to summary determination of no literal infringement of the asserted claims of the ‘343 patent.

In addition, Oki Data states that Ricoh provided no expert analysis as to this claim limitation regarding infringement under the doctrine of equivalents for the asserted claims of the ‘343 patent. Oki Data argues that Ricoh cannot meet its burden to prove infringement under the doctrine of equivalents for asserted claims that are not analyzed in Ricoh’s expert reports. Therefore, Oki Data also seeks a finding of no infringement under the doctrine of equivalents for these claims.

Ricoh opposes the motion. Ricoh states that Oki Data’s motion modifies the claim language of the asserted claims of the ‘343 patent and mischaracterizes Oki Data’s accused products, as well as Ricoh’s expert’s stated opinions. Ricoh states that, while the parties do not dispute the construction of the claim limitation at issue in its entirety, *i.e.*, “so as to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller,” they do dispute the meaning of the term “upper edge of the toner exit.”¹ Ricoh argues that, under any of the proposed constructions offered in this investigation for the term “upper edge of the toner exit,” the blade in Oki Data’s accused products is configured “so as to seal a gap between” an upper edge of the toner exit and the developing roller and thus satisfies the disputed claim language. Ricoh asserts that the fact that components other than the blade may be located between an “upper edge of the toner exit” and “the developing

¹ In addition, Ricoh states that Oki Data identified the term “lower edge of the blade” in the parties’ Joint Chart of Proposed Constructions of Disputed Claim Terms as requiring construction.

roller” does not prevent the existence of “a gap” or prevent the blade from sealing “a gap.”

Ricoh claims that Oki Data’s interpretation of the claim language reads out a preferred embodiment disclosed in the specification, because the specification depicts components other than the blade located between an “upper edge of the toner exit” and “the developing roller.”

Regarding Oki Data’s claim that Ricoh’s experts performed insufficient doctrine of equivalents analyses, Ricoh argues that there is clear evidence of literal infringement and therefore the arguments regarding the doctrine of equivalents need not be addressed. Ricoh also states that its expert analyzed “at least part” of the limitation “a blade . . . that is configured such that a lower edge thereof contacts the roller part of the developing roller so as to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller” under the doctrine of equivalents.

Staff supports the motion. Staff states that Oki Data’s accused products “fill” the “gap” using a combination of a blade holder, blade, and seals. Staff asserts that the evidence is clear that the blade itself in Oki Data’s accused products does not “fill” the “gap” as required by the asserted claims of the ‘343 patent and therefore does not literally satisfy the claim limitation “a blade . . . that is configured such that a lower edge thereof contacts the roller part of the developing roller so as to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller.” Staff also asserts that the purpose of filling the gap is to prevent spillage of toner without using seals. Therefore, according to Staff, the blade in Oki Data’s accused products also cannot infringe the asserted claims under the doctrine of equivalents.

In Oki Data’s reply brief, it states that its interpretation does not read out all preferred embodiments. Specifically, Oki Data states that the embodiments shown in Figures 8A and 8B

do not relate to claims 18-21. Instead, Oki Data asserts that Figure 9 corresponds to claims 18-21, and Figure 9 depicts the blade in direct contact with the cartridge wall casing at the point where Oki Data claims the toner exit is located.

I. Legal Standard

A. Summary Determination

Commission Rule 210.18 governs summary determination, and states, *inter alia*, that:

The determination sought by the moving party 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 CFR § 210.18(b).

The evidence “must be viewed in the light most favorable to the party opposing the motion...with doubt resolved in favor of the nonmovant.” *Crown Operations Int’l, Ltd. v. Solutia, Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002); *see also Xerox Corp. v. 3Com Corp.*, 267 F.3d 1361, 1364 (Fed. Cir. 2001) (“When ruling on a motion for summary judgment, all of the nonmovant’s evidence is to be credited, and all justifiable inferences are to be drawn in the nonmovant’s favor.”). “Issues of fact are genuine only if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party.” *Id.* at 1375 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The trier of fact should “assure itself that there is no reasonable version of the facts, on the summary judgment record, whereby the nonmovant could prevail, recognizing that the purpose of summary judgment is not to deprive a litigant of a fair hearing, but to avoid an unnecessary trial.” *EMI Group North America, Inc. v. Intel Corp.*, 157 F.3d 887, 891 (Fed. Cir. 1998). “Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary

judgment is not appropriate.” *Sandt Technology, Ltd. v. Resco Metal and Plastics Corp.*, 264 F.3d 1344, 1357 (Fed. Cir. 2001) (Dyk, C.J., concurring). “In other words, ‘[s]ummary judgment is authorized when it is quite clear what the truth is,’ [citations omitted], and the law requires judgment in favor of the movant based upon facts not in genuine dispute.” *Paragon Podiatry Laboratory, Inc. v. KLM Laboratories, Inc.*, 984 F.2d 1182, 1185 (Fed. Cir. 1993).

B. Infringement

“A determination of non-infringement, either literal or under the doctrine of equivalents, is a question of fact.” *Miken Composites, L.L.C. v. Wilson Sporting Goods Co.*, 515 F.3d 1331, 1336 (Fed. Cir. 2008). Literal infringement requires the patentee to prove that the accused device contains each and every limitation of the asserted claim(s). *Frank’s Casing Crew & Rental Tools, Inc. v. Weatherford Int’l, Inc.*, 389 F.3d 1370, 1378 (Fed. Cir. 2004).

Regarding the doctrine of equivalents, the Federal Circuit has said:

Infringement under the doctrine of equivalents may be found when the accused device contains an “insubstantial” change from the claimed invention. Whether equivalency exists may be determined based on the “insubstantial differences” test or based on the “triple identity” test, namely, whether the element of the accused device “performs substantially the same function in substantially the same way to obtain the same result.” The essential inquiry is whether “the accused product or process contain elements identical or equivalent to each claimed element of the patented invention[.]”

TIP Sys., LLC v. Phillips & Brooks/Gladwin, Inc., 529 F.3d 1364, 1376-77 (Fed. Cir. 2008)

(citations omitted). Proving infringement under the doctrine of equivalents requires

particularized testimony showing equivalence on a limitation-by-limitation basis. *Texas*

Instruments Inc. v. Cypress Semiconductor Corp., 90 F.3d 1558, 1567 (Fed. Cir. 1996). The

Federal Circuit has explained:

[W]hen the patent holder relies on the doctrine of equivalents, as opposed to literal infringement, the difficulties and complexities of the doctrine require that evidence be presented to the jury or other fact-finder through the particularized

testimony of a person of ordinary skill in the art, typically a qualified expert, who (on a limitation-by-limitation basis) describes the claim limitations and establishes that those skilled in the art would recognize the equivalents.

AquaTex Indus., Inc. v. Techniche Solutions, 479 F.3d 1320, 1329 (Fed. Cir. 2007).

II. Analysis

A. Literal Infringement

Asserted claims 18-21 of the '343 patent each contain the following limitation:

a blade . . . that is configured such that a lower edge thereof contacts the roller part of the developing roller so as to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller.

Oki Data states that no party seeks construction of this claim language and that there is no factual dispute that the language clearly and unambiguously requires that the blade be configured to seal the specified gap. Ricoh states that it agrees that, because construction of the full claim limitation was not disputed, the phrase “so as to seal a gap between an upper edge of the toner exit and an upper circumferential surface of the roller part of the developing roller” must be given its ordinary and customary meaning. (Ricoh Resp. at 3.) However, Ricoh contends that the parties dispute the meaning of the term “upper edge of the toner exit.”

Oki Data and Staff construe the term “upper edge of the toner exit” to mean “the top of the exit of the toner cartridge.” (See Ex. B to Oki Data Mot. at ¶38.) In addition, Oki Data and Staff assert that the claim language clearly and unambiguously requires that the blade alone be configured to seal the specified gap. (Oki Data Mot. at 1; Staff Resp. at 3-4.) As such, Oki Data and Staff argue that the accused Oki Data products do not have a blade “configured . . . to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller” because the Oki Data products seal the gap by a combination of the blade, a blade holder, and a seal. (Oki Data Mot. at 1; Staff Resp. at 4.) Oki Data further

argues that Ricoh's expert admitted that the blade in the accused Oki Data products does not seal the gap. (Oki Data Mot. at 2, 6 (citing Ex. B to Oki Data Mot. at ¶ 40 and Ex. 16).)

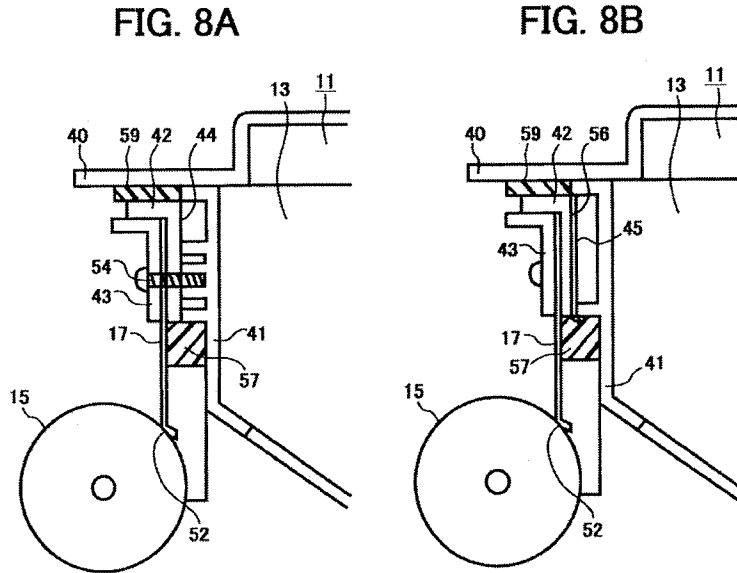
Ricoh asserts that the term "upper edge of the toner exit" should be given its ordinary meaning and, in the alternative, construes the term to mean "an upper region of the toner exit." (See Ex. B to Oki Data Mot. at ¶38.) Ricoh agrees with Oki Data's depiction of the configuration of Oki Data's accused products. (Ricoh Resp. at 3-4.) Ricoh argues, however, that other components located between an "upper edge of the toner exit" and "the developing roller," e.g., the blade holder and seal in Oki Data's accused products, do not prevent the existence of "a gap" or prevent the blade in the accused products from sealing "a gap." (*Id.* at 5.) Ricoh argues that the claims do not specify whether the blade alone seals a gap or whether the blade works in combination with other components. (*Id.* at 7-8.) Ricoh further argues that the blade need not be in immediate contact with an upper edge of the toner exit and that, without the blade, there would be a gap between an upper edge of the toner exit and the developing roller. (*Id.* at 4, 5.) Thus, according to Ricoh, under any of the proposed constructions offered for the term "upper edge of the toner exit," the blade in Oki Data's accused products is configured "so as to seal a gap between" an upper edge of the toner exit and the developing roller and literally satisfies the disputed claim language.

I find that claims 18-21 do not require that the blade, and only the blade, seals a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller, without the help of other components. The claims require that the blade "is configured such that a lower edge thereof contacts the roller part of the developing roller so as to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller." Thus, the claim language

requires that in order to seal a gap, the blade must contact the developing roller. The language does not specify that the blade alone seals a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller. Nor does the claim language require that the blade be in contact with the upper edge of the toner exit.

Other claims of the '343 patent require additional components, such as a blade holder, to be attached to the blade. (*See, e.g.*, '343 Patent at claims 1 & 3.) In contrast, claims 18-21 are silent regarding whether or not a blade holder or other such structure is necessary. Therefore, a product that includes a blade holder as described in the patent may infringe claims 18-21, but only if it meets the limitations of claims 18-21. *A.B. Dick Co. v. Burroughs Corp.*, 713 F.2d 700, 703 (Fed. Cir. 1983) ("It is fundamental that one cannot avoid infringement merely by adding elements if each element recited in the claims is found in the accused device.") Yet, the patent is clear that a blade holder, such as the one described in claims 1 and 3, is not a necessary element of claims 18-21.

Turning to the specification, Oki Data acknowledges that there are embodiments, for example the embodiment depicted in Figures 8A and 8B, where additional components beyond the blade seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller. Figures 8A and 8B depict the following:



Oki Data focuses on Figure 9, and states that Figure 9 depicts another embodiment that corresponds to claims 18-21. Oki Data argues that in Figure 9, the blade itself seals the gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller, without the help of other components. Oki Data includes a small portion of Figure 9 in its brief, but the full version of Figure 9 depicts the following:

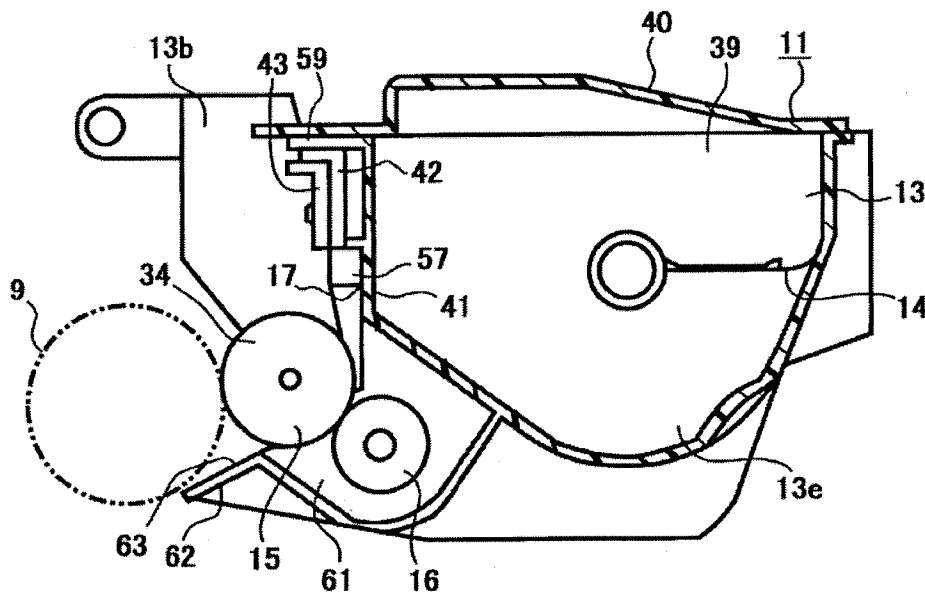


Figure 9 does not depict an embodiment where the blade, and only the blade, seals the

gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller. The discussion of Figure 9 in the specification does not contain any statement describing the configuration of the blade or how the configuration of the blade is any different than the previous embodiments. Instead, the specification describes the toner exit 61, the flat surface 62, and the exit seal 63, as shown *supra*.

When describing Figure 9, the specification states that “[t]he parts substantially the same as those illustrated in FIG. 1 through FIG. 8 are denoted by the same numerals or codes and the description thereof is omitted.” (See ‘343 Patent at 14:33-37.) Thus, the components in Figures 8 and 9 that share the same identifying number are substantially the same.

I find that Oki Data’s confusion regarding Figure 9 results from a misplaced identification line related to item 17, which is the blade. In Figure 9, it appears that the line identifying blade 17 is pointing to the perfectly vertical line to the right of developing roller 15. In reality, that line is part of supporting wall 13b, as seen more clearly in Figures 3, 8A, and 8B. I find that blade 17 in Figure 9 is actually the line to left of the perfectly vertical line, and that blade 17 contacts the roller 15. This is consistent with the identification of the blade as item 17 in Figure 8 *supra*.

In addition, Figure 9 includes items 42 and 43. These components are the blade holder and the supporting plate, respectively, and are described in the specification as holding and supporting the blade. (See ‘343 Patent at 11:53-65.) Figure 9 contains seal member 57, which “is sandwiched by the backside of a deformable part of the blade 17 (i.e., a part not sandwiched by the blade holder 42 and the supporting plate 43) and the outer wall 41 of the developing case 13.” (‘343 Patent at 13:11-14.)

The specification states:

As illustrated in FIGS. 8 and 9, the blade 17 is configured such that the part extending downward beyond the blade holder 42 bents toward the rear side of the developing case 13 by being pressed with the roller part 34 of the developing roller 15 and the bent piece 52 contacts the roller part 34. Therefore, as indicated by a one-dot chain line in FIG. 12, the contact position C of the roller part 34 and the blade 17 is located in a position slightly above the lower edge of the blade 17.

(‘343 Patent at 15:12-20.)

This passage first demonstrates that the configuration of the blade in Figure 8 and Figure 9 is the same. The passage next demonstrates that the part of the blade extending downward from the blade holder is bent due to the blade’s contact with the developing roller. This can clearly be seen in Figure 9.

Therefore, I do not concur with Oki Data that Figure 9 depicts an embodiment of the invention where the blade, and only the blade, seals the gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller.²

In reviewing the specification, I find no indication of an embodiment necessarily requiring that the blade, and only the blade, seals the gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller. Because Oki Data’s interpretation of claims 18-21 would exclude all of the preferred embodiments disclosed in the specification, and because Oki Data has not provided highly persuasive evidence to adopt such an interpretation, I decline to hold that claims 18-21 necessarily require that the blade alone seals the gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, (Fed. Cir. 1996) (stating that a claim construction that

² Oki Data cites to three other places in the Summary of the Invention that it claims discloses embodiments without a blade holder. (‘343 Patent at 6:16-20, 34-38, 53-57.) These passages merely repeat the claim language at issue here, and provide no other evidence of an embodiment where the blade alone provides the seal.

excludes the preferred embodiment “is rarely, if ever, correct and would require highly persuasive evidentiary support[.]”)

In light of my finding *supra* regarding the interpretation of claims 18-21, I find summary determination of no literal infringement is not proper. Oki Data’s non-infringement argument was based on its interpretation of the claim language requiring that the blade alone seals the gap, as Oki Data asserts that in the accused products, other components besides the blade seal the gap. Because I have declined to adopt Oki Data’s position regarding the disputed claim language, it necessarily follows that Oki Data has not demonstrated that it is entitled to summary determination of non-infringement.

B. Doctrine of Equivalents

With respect to the doctrine of equivalents, Oki Data argues that Ricoh’s expert Dr. Larry Stauffer failed to provide the necessary analysis to establish infringement under the doctrine of equivalents as to the claim limitation, “a blade . . . that is configured such that a lower edge thereof contacts the roller part of the developing roller so as to seal a gap between an upper edge of the toner exit and an upper outer circumferential surface of the roller part of the developing roller,” for asserted claims 18-21 of the ‘343 patent.

Ricoh asserts that there is clear evidence of literal infringement and therefore the arguments regarding the doctrine of equivalents need not be addressed. Ricoh also states that its expert analyzed “at least part” of the limitation at issue under the doctrine of equivalents.

Dr. Stauffer explained how, in his opinion, Oki Data’s accused products infringe claims 18-21 of the ‘343 patent in his expert report. (*See* Ex. B to Oki Data Motion at ¶¶ 28-44.) More specifically, Dr. Stauffer identified how the accused products meet the limitation “upper edge of the toner exit” in paragraphs 40-41 of his report. (*Id.* at ¶¶ 40-41.) In addition, Appendix 4 of his

report contains a claim construction chart that compares the asserted claims of the '343 patent to the accused Oki Data products. (*Id.* at App. 4, pp.40-54.)

I decline to grant summary determination of no infringement under the doctrine of equivalents based on alleged deficiencies in Dr. Stauffer's expert report. Ricoh may attempt to use evidence at trial beyond Dr. Stauffer's expert testimony to prove infringement of the '343 patent.³

In addressing the need for expert testimony, the Federal Circuit has explained that “[i]n many patent cases expert testimony will not be necessary because the technology will be ‘easily understandable without the need for expert explanatory testimony.’” *Centricut, LLC v. Esab Group, Inc.*, 390 F.3d 1361, 1369 (Fed. Cir. 2004) (citation omitted). The court further “noted that ‘typically’ expert testimony will be necessary in cases involving complex technology.” *Id.* at 1370 (citing *Schumer v. Lab. Computer Sys., Inc.*, 308 F.3d 1304, 1315 (Fed. Cir. 2002)). The court made clear that there is no “per se rule that expert testimony is required to prove infringement when the art is complex.” *Id.*⁴ Regarding the doctrine of equivalents, while the required particularized testimony is often presented by an expert, case law does not foreclose reliance on the testimony of a non-expert witness that is one of ordinary skill in the art. *AquaTex*, 479 F.3d at 1329 (noting that the particularized testimony needed to establish infringement under the doctrine of equivalents is “typically” provided by an expert witness).

In light of this case law, I cannot find in the context of summary determination that the alleged lack of expert testimony on an infringement issue necessarily means that Ricoh will be unable to meet its burden on infringement. Ricoh has raised a genuine issue of material facts in

³ Dr. Stauffer's trial testimony will be limited to the scope of his expert reports and deposition testimony. See Ground Rule 10.5.6.

⁴ To be clear, at this point I take no position regarding whether or not the technology relevant to the disputed claim limitations is properly classified as “complex” technology; or whether or not expert testimony will be necessary in this instance.

dispute, and summary determination is, therefore, inappropriate on this particular matter.


ORDER

Motion No. 690-023 is hereby DENIED.

Within seven (7) days of the date of this Order, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.




Robert K. Rogers, Jr.
Administrative Law Judge

**CERTAIN PRINTING AND IMAGING
DEVICES AND COMPONENTS THEREOF**

Inv. No. 337-TA-690

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon **Juan S. Cockburn, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on **JUN 24 2010**


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

**FOR COMPLAINANTS: RICOH COMPANY, LTD., RICOH AMERICAS
CORPORATION and RICOH ELECTRONICS, INC.:**

Sean C. Cunningham, Esq.
DLA PIPER LLP
401 B. Street
Suite 1700
San Diego, CA 92101

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

FOR RESPONDENTS OKI DATA CORPORATION & OKI DATA AMERICAS, INC.:

V. James Adduci, II, Esq.
ADDUCI, MASTRIANI & SCHAUMBERG, LLP
1200 Seventeenth Street NW
Fifth Floor
Washington, DC 20006

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

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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
THOMAS WEST
1100 Thirteen Street NW, Suite 200
Washington, D.C. 20005

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