

PUBLIC VERSION

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

In the Matter of

**CERTAIN INKJET INK SUPPLIES AND
COMPONENTS THEREOF**

Investigation No. 337-TA-691

COMMISSION OPINION ON REMEDY, THE PUBLIC INTEREST, AND BONDING

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In this investigation, the Commission has found a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 (“section 337”), by certain defaulting respondents with respect to inkjet ink supplies and components thereof that infringe claims 6 and 9 of U.S. Patent No. 6,089,687 (“the ‘687 patent”) and claims 1, 5, and 6 of U.S. Patent No. 6,264,301 (“the ‘301 patent”). The Commission has determined to issue a general exclusion order with respect to claims 6 and 9 of the ‘687 patent and claims 1, 5, and 6 of the ‘301 patent, and a cease and desist order against Mextec Group, Inc. d/b/a Mipo America Ltd. of Miami, Florida (“Mextec”) with respect to the same claims. The Commission has also determined that consideration of the public interest factors does not preclude issuance of these remedial orders and that the bond to permit importation of the subject articles during the Presidential review period should be set at 100 percent of entered value. This opinion sets forth the reasons for the Commission’s determinations.

I. BACKGROUND

The Commission instituted this investigation on October 29, 2009, based on a complaint filed by Hewlett-Packard Company of Palo Alto, California (“HP”). 74 *Fed. Reg.* 55856-7 (Oct. 29, 2009). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain inkjet ink supplies or components thereof that infringe one or more of claims 1-7 and 22-28 of United States Patent No. 6,959,985 (“the ‘985 patent”); claims 1-12, 14, 18-20, 22, and 26-35 of United States Patent No. 7,104,630 (“the ‘630 patent”); claims 6, 7, 9, and 10 of the ‘687 patent; and claims 1-3, 5, and 6 of the ‘301 patent. The complaint named the following entities as respondents: Zhuhai Gree Magneto-Electric Co. Ltd. of Guangdong, China (“Zhuhai”); InkPlusToner.com of Canoga Park, California (“InkPlusToner”); Mipo International Ltd. of

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Kowloon, Hong Kong (“Mipo International”); Mextec; Shanghai Angel Printer Supplies Co. Ltd. of Shanghai, China (“Shanghai Angel”); SmartOne Services LLC d/b/a InkForSale.net of Hayward, California (“SmartOne”); Shenzhen Print Media Co., Ltd. of Shenzhen, China (“Shenzhen Print Media”); Comptree Ink d/b/a Meritline, ABCInk, EZ Label, and CDR DVDR Media of City of Industry, California (“Comptree”); Zhuhai National Resources & Jingjie Imaging Products Co., Ltd. of Guangdong, China (“Zhuhai National”); Tatrix International of Guangdong, China (“Tatrix”); and Ourway Image Co., of Guangdong China (“Ourway”). *Id.*

Seven respondents, Mipo International, Mextec, Shanghai Angel, Shenzhen Print Media, Zhuhai National, Tatrix, and Ourway (collectively, “Defaulting Respondents”), failed to answer the Complaint and Notice of Investigation. The ALJ granted default determinations against the Defaulting Respondents (Order No. 9), and the Commission determined not to review that order. *See* Notice of Commission Determination Not to Review an Initial Determination Finding Seven Respondents in Default (February 17, 2010).

Three respondents, Comptree, InkPlusToner, and SmartOne, reached settlement agreements with HP and were terminated from the investigation (Order Nos. 11, 13, and 14), and the Commission determined not to review those orders. *See* Notice of Commission Determination Terminating the Investigation as to Respondent Comptree Ink d/b/a Meritline, ABCInk, EZ Label, and CDR DVDR Media on the Basis of a Settlement Agreement (March 19, 2010); Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation as to Respondent InkPlusToner.com on the Basis of a Settlement Agreement (March 31, 2010); Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation as to Respondent SmartOne Services LLC d/b/a InkForSale.net on the Basis of Settlement Agreement (June 7, 2010)). One Respondent, Zhuhai, entered into a

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consent order and was terminated from the investigation (Order No. 12), and the Commission determined not to review that order. *See* Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation as to a Respondent on the Basis of a Consent Order; Issuance of Consent Order (March 19, 2010)).

On June 1, 2010, HP moved to terminate the investigation with respect to the '985 patent and the '630 patent. The ALJ granted the motion on June 3, 2010 (Order No. 17), and the Commission determined not to review that order. *See* Notice Of Commission Determination Not To Review An Initial Determination Terminating The Investigation As To U.S. Patent Nos. 6,959,985 And 7,104,630 (June 29, 2010).

On June 17, 2010, HP filed an unopposed motion to terminate the investigation with respect to claims 7 and 10 of the '687 patent and claims 2 and 3 of the '301 patent. The ALJ granted HP's motion in the subject ID on August 30, 2010 (Order No. 18). Thus, the remaining claims and patents at issue in this investigation are claims 6 and 9 of the '687 patent and claims 1, 5, and 6 of the '301 patent.

On May 7, 2010, HP moved for summary determination that a domestic industry exists and that the Defaulting Respondents have violated section 337. *See* Complainant Hewlett Packard Company's Motion for Summary Determination that a Domestic Industry Exists and that There Have Been Violations of Section 337 of The Tariff Act of 1930 (Amended) by the Defaulting Respondents and Its Request for a General Exclusion Order and for a Cease and Desist Order. On June 2, 2010, the Commission investigative attorney ("IA") submitted a response in support of a finding that the defaulting respondents, Mipo International, Mextec, Shanghai Angel, Shenzhen Print Media, Zhuhai National, Tatrix, and Ourway have violated section 337 by infringing claims 6 and 9 of the '687 patent and claims 1, 5, and 6 of the '301

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patent, and that HP has established the existence of a domestic industry. *See* Commission Investigative Staff's Response to Complainant Hewlett-Packard Company's Motion for Summary Determination That A Domestic Industry Exists and That There Have Been Violations of 19 U.S.C. § 1337 by the Defaulting Respondents and Its Requests for General Exclusion and Cease and Desist Orders. The ALJ granted HP's motion and issued his final ID (Order No. 18) on August 30, 2010.

The final ID included the ALJ's recommended determination ("RD") on remedy and bonding. The ALJ recommended that in the event the Commission found a violation of section 337, the Commission should issue a general exclusion order and a cease and desist order directed to domestic respondent Mextec. The ALJ also recommended that the Commission set a bond of 100 percent for products imported during the period of Presidential review.

On October 7, 2010, the Commission issued notice of its determination not to review the final ID, and to solicit submissions on remedy, the public interest, and bonding. On October 28, 2010, HP and the IA filed submissions with respect thereto.

II. DISCUSSION

A. *Relevant Law of Remedy and the Public Interest*

The Commission is authorized to issue a limited exclusion order excluding the goods of the person(s) found in violation. If certain criteria are met, the Commission may issue a general exclusion order excluding all infringing goods regardless of the source. Because the Commission has already determined not to review the ALJ's finding of substantial, reliable, and

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probative evidence of violation, the question of remedy for a general exclusion order focuses on whether the requirements of section 337(d) are met.¹

The Commission's authority to issue a general exclusion order in this investigation is found in section 337(d)(2), which provides:

The authority of the Commission to issue an exclusion from entry of articles shall be limited to persons determined by the Commission to be violating this section unless the Commission determines that—

- (A) a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons; or
- (B) there is a pattern of violation of this section and it is difficult to identify the source of infringing products.

19 U.S.C. § 1337(d)(2). As emphasized by the Federal Circuit, a party must meet the “heightened requirements of Section 337(d)(2)(A) or (d)(2)(B)” before the ITC has authority to issue a general exclusion order against products of non-respondents. *Kyocera Wireless Corp. v. Int'l Trade Commission*, 545 F.3d 1340, 1538 (Fed. Cir. 2008).

The Commission may also issue a cease and desist order against any person violating section 337, *i.e.*, to order such persons to cease and desist from engaging in the unfair methods or acts involved. 19 U.S.C. §1337 (f)(1). The Commission has issued such orders on persons or corporations that have a “commercially significant” domestic inventory of subject articles that have already been imported, in order to prevent distribution of violating articles. *See, e.g., Certain Integrated Repeaters*, Inv. No. 337-TA-435, Comm'n Op. on Remedy, the Public Interest, and Bonding at 27 (Aug. 16, 2002).

¹ The Commission has previously determined that issuance of a general exclusion order at the conclusion of an investigation in which certain of the respondents appeared and certain defaulted is governed by section 337(d)(2). *Certain Purple Protective Gloves*, Inv. No. 337-TA-500, Comm'n Op. on Remedy, the Public Interest, and Bonding at 5 (Dec. 22, 2004).

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Finally, as with any remedial order, the statute requires that the Commission consider whether issuance of an order would have an adverse effect on public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. 19 U.S.C. §1337(d)(1), (f)(1). The public interest analysis does not concern whether there is a public interest in issuing a remedial order, but whether issuance of such an order will adversely affect the public interest. *Certain Agricultural Vehicles and Components Thereof*, Inv. No. 337-TA-487, Comm'n Op. at 17 (Dec. 2004).

B. Remedy

1. General Exclusion Order

a. The ALJ's Recommended Determination

The ALJ addressed the factors set forth in *Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90, Comm'n Op. at 18-19 (1981), and the language of the statutory text in section 337(d)(2)(B). ID/RD at 29-32.² The ALJ found appropriate grounds for issuing a general exclusion order. *Id.* For example, the ALJ observed that continuing investigations by HP have led to finding at least nine previously unidentified manufacturers of apparently infringing ink supplies, where some of the manufacturers appear to be the same respondents in the original complaint and who appear to have changed the product boxing and/or imported product. *Id.* at 30. The ALJ noted that continuing investigations have led to finding at least twenty previously unidentified manufacturers that produce, import, distribute and/or sell aftermarket infringing ink supplies, including some that appear to be original equipment

² The ALJ did not address the statutory requirements for issuance of a general exclusion order under section 337(d)(2)(A).

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manufacturers capable of producing hundreds of thousands of ink cartridges on a monthly basis. *Id.* at 30. The ALJ also noted that continued infringing activities have occurred even after previous enforcement efforts, including infringing activities by previous respondents in previous investigations. *Id.* at 31. In addition, the ALJ noted that complainants have filed multiple cases in federal district courts against various of the respondents in this investigation, investigated and sought discovery from numerous third parties, and sent cease-and-desist letters to and entered into negotiations with such third parties. *Id.* at 43.

The ALJ also found that business conditions support entry of a general exclusion order, including difficulty in identifying sources of infringing products. ID/RD at 31. First, the ALJ observed that there is a strong demand for HP02 inkjet cartridges, the cost of producing the cartridges is low, and there are extensive distribution networks which allow foreign manufacturers to widely distribute cartridges throughout the United States. *Id.* at 32. The ALJ observed that there are large online marketplaces which serve as a flexible way to sell ink cartridges. *Id.* For example, a search on Amazon.com yielded 50 cartridges advertised as “HP02 compatible,” including several shipped from foreign locations. Moreover, the ALJ noted the difficulty in identifying the sources of infringing products by packaging infringing ink cartridges in unmarked, generic packaging, including the use of contract manufacturing or private label services. *Id.* (citing Barkley Declaration, ¶¶ 33-34, Ex. Y).

Based on these findings, the ALJ recommended the entry of a general exclusion order directed to certain inkjet ink supplies and components thereof that infringe claims 6 and 9 of the ‘687 patent and claims 1, 5, and 6 of the ‘301 patent. *Id.*

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b. Submissions of the Parties

The remaining respondents in this investigation were found to be in default, and did not file any submissions regarding remedy, bonding, and the public interest. Complainant HP has requested a general exclusion order and the IA agrees that with the ALJ's recommendation that the Commission should issue a general exclusion order in this investigation. *See* Complainant Hewlett-Packard Company's Written Submission on the Issues of Remedy, the Public Interest, and Bonding ("HP Submission"); Office of Unfair Import Investigations' Brief on the Issues of Remedy, the Public Interest, and Bonding ("IA Submission"). Citing the relevant findings of the ALJ, HP and the IA both submit that there is a widespread pattern of unauthorized use of the technology covered by the patent claims at issue, that it is difficult to identify the source of the infringing products, and that a general exclusion order is necessary to prevent circumvention. HP Submission at 18-19; IA Submission at 1.

HP's Submission

HP argued that its efforts to identify specified or unknown sources of importation revealed at least twenty additional manufacturers, including three with large production capacities: [[

]]. HP

Submission at 7. HP argues that these particular manufacturers represent just a small portion of the total foreign manufacturers that contribute to the widespread pattern of unauthorized use. *Id.* HP notes the finding in a previous, related investigation that "there are as many as 200 ink cartridge manufacturers in China alone." *Id.* at 7 (citing *Certain Ink Cartridges and Components Thereof* ("Ink Cartridges"), Inv. No. 337-TA-565, ID at 359 (June 1, 2007)). HP points to industry publications that show well over 400 Chinese printing supplies companies which it

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believes are currently involved or likely involved in the manufacturing of infringing HP02 clones. *Id.* at 8 (citing Barkely Decl. ¶22, Exh. T). HP also discussed the business conditions that lend themselves to widespread unauthorized use and difficulty in identifying sources. *Id.* at 13. HP argues that this creates strong incentives for foreign manufacturers. *Id.* at 13-14. These include established demand and high profitability in the U.S. market and the availability of marketing and distribution networks in the United States, including Internet searches, industry publications, and attending trade shows. *Id.* at 14-15. HP points to sales on Amazon, eBay, and Craigslist, including fifty offers for sale of HP02 compatible ink cartridges on Amazon. *Id.* at 16 (citing Barkley Decl. ¶13, Exhs. W, X)

HP states that there is ongoing violation with respect to the '687 and '301 patents, which were asserted in an earlier ink cartridge investigation *Certain Inkjet Supplies and Components Thereof*, Inv. No. 337-TA-581 (2006). *Id.* at 12. HP contends that although it reached a settlement with [[]], numerous online retailers continued to sell infringing [[]] clones on the internet. *Id.* at 13 (citing Davis Decl. ¶117-18).

HP provided evidence of difficulty in identifying sources, including generic boxing that makes it difficult to establish the source with confidence, and the fact that certain cartridges arrived with no box at all. *Id.* at 17. HP believes that some of the unidentified products it has found may be manufactured by the respondents in default, but states that, in other cases, product specifics are so vague that it is not possible to effectively track back to the original manufacturers. *Id.* at 6. HP states that several respondents offer private label services which labels the product with the name of the customer and provides no indication of the manufacturer. *Id.* at 18 (citing Barkley Decl. ¶ 34). HP submits that certain internet retailers obtain ink

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cartridges from different foreign manufacturers and resell them in substantially the same packaging. *Id.*

HP observes that an individual can create multiple websites and corporate entities, and may shutdown and re-establish operations. *Id.* at 9. HP points to the testimony of [

]].

The IA's Submission

The IA's submission was largely cumulative of the ALJ's ID/RD. The IA pointed out that there are indications that the difficulty in identifying the source of infringing product is intentional and includes entities who changed the identity of their business and even information that the [[]], all in an apparent effort to continue to sell infringing products. IA Submission at 4 n.2 (citing Barkley Decl. ¶¶ 20-24; Mizzo Decl., Exhs. H, N, and P).

c. Analysis

Section 337 sets forth the statutory requirements for the grant of a general exclusion order in a default case. A party must meet the "heightened requirements of Section 337(d)(2)(A) or (d)(2)(B)" before the ITC has authority to issue a general exclusion order against products of non-respondents. *Kyocera Wireless Corp. v. Int'l Trade Commission*, 545 F.3d 1340, 1538 (Fed. Cir. 2008). In this case, a general exclusion order is warranted under 19 U.S.C. § 1337(d)(2)(B). The Commission may issue a general exclusion order under that provision if there is (i) a pattern

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of violation and (ii) difficulty in identifying the source of the products. 19 U.S.C. § 1337(d)(2)(B).

We agree with the ALJ, HP, and the IA that the factual requirements for the issuance of a general exclusion order under section 337(d)(2)(B) have been met. With respect to the “pattern of violation,” this is not the first section 337 investigation relating to ink cartridges, and in this investigation HP has identified a wide array of entities in addition to respondents that manufacture infringing ink cartridges and sell them on the Internet as being compatible with the HP02 model. *See* Barkley Decl. ¶¶ 31-32, Exhs. W, X. As noted by the ALJ, this includes twenty entities other than respondents that import infringing ink cartridges. ID/RD at 30; Barkley Declaration ¶¶21, Exhs. Q, R, S, T.

HP has also met its burden to establish that it is difficult to identify the source of infringing products. As noted by the ALJ, products are packaged in unmarked, generic packaging, including the use of private label services. ID/RD at 32; Barkley Declaration, ¶¶ 33-34, Ex. Y. HP and the IA also noted that the [[

]].

Based on the foregoing, we agree with the ALJ that the statutory requirements for a general exclusion order have been satisfied under Section 337(d)(2)(B). Because only section 337(d)(2)(A) or (d)(2)(B) has to be satisfied in order to satisfy section 337(d)(2) we do not believe it is necessary to analyze section 337(d)(2)(A).³ *See* 19 U.S.C. § 1337(d)(2); *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-643, Comm’n Op. at 25 (Oct. 2009). Thus,

³ There is also evidence of attempted and potential circumvention of an order, which could fulfill the requirement for a general exclusion order under section 337(d)(2)(A). For example, [[

]].

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issuance of a general exclusion order is appropriate, if it is not against the public interest. *See* Section II.C., *infra*.

2. Cease and Desist Order

a. The ALJ's Recommended Determination

The ALJ recommended a cease and desist order against Respondent Mextec. ID/RD at 33. The ALJ found that Mextec is located within the United States, has received imports, and, because it has defaulted, is presumed to maintain commercially significant inventories of infringing inkjet ink supplies. *Id.* (citing Order No. 9; Complaint ¶3.4; Mizzo Decl., Exh.F.)

b. Comments of HP and the IA

The IA submits that entry of a cease and desist order against Mextec is appropriate because Mextec has commercially significant inventories of subject articles. IA Submission at 5-6. HP did not comment on the issuance of a cease and desist order in its submission, but argued before the ALJ for a cease and desist order against Mextec. *See* ID/RD at 33. HP stated that it was appropriate to presume that Mextec maintains a commercially significant inventory because it defaulted. *Id.*

c. Analysis

The Commission infers from the complaint and Mextec's default with respect thereto that Mextec maintains a domestic inventory. *See* Complaint at 19-20; 26-29; Commission Rule 210.16, 19 C.F.R. § 210.16(c)(1) (allegations in complaint accepted as true where respondent defaults with respect thereto); *Certain Agricultural Tractors, Lawn Tractors, Riding Lawnmowers, and Components Thereof*, Inv. No. 337-TA-486, Comm'n Op., at 18 ("The Commission has inferred that a defaulting domestic respondent maintains commercially significant inventory in the United States."). In this connection, we agree with the ALJ and the

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IA that issuance of a cease and desist order is appropriate, if it is not against the public interest.

See Section II.C., *infra*.

C. Public Interest Considerations

The Commission may issue remedial orders if the requirements for the remedial orders are met – in this case, a general exclusion order and a cease and desist order – unless it finds that issuance of the orders would have an adverse effect on public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. 19 U.S.C. §1337(d)(1), (f)(1).

1. The ALJ's Recommended Determination

Public interest was beyond the scope of the ALJ's RD, as with most investigations. *See* Commission Rule 210.50, 19 C.F.R. § 210.50 (public interest is the unique province of the Commission unless the Commission asks the ALJ to take evidence on this topic). In this connection, the Commission solicited submissions from the public on remedy, the public interest, and bonding in the notice of its determination not to review the ALJ's finding of violation. 75 *Fed. Reg.* 63201 (Oct. 14, 2010). HP and the IA filed submissions with respect thereto.

2. Comments of HP and the IA

HP and the IA both contend that entry of a general exclusion order would not adversely affect the public interest. *See* HP Submission at 20; IA Submission at 6-7.

HP's Submission

HP states that there is no evidence of undue burden on public health and welfare, competitive conditions in the United States, or on U.S. consumers. HP Submission at 20. HP

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further argues that continued infringement would harm HP's intellectual property rights, and that the public interest favors protection of valid intellectual property rights. *Id.*

The IA's Submission

The IA states that he does not believe that there are any public interest concerns that would preclude issuance of a general exclusion order. IA Submission at 6. The IA adds that there is no indication that HP does not have sufficient capacity to supply the inkjet ink supplies at issue, which are replacement parts for the printers it makes and sells. *Id.* The IA further argues that the products to be excluded, inkjet ink supplies, do not have any major public health and welfare implications "at least under the record that has been created here." *Id.* (citing *Certain Compact Multipurpose Tools*, Inv. No. 337-TA-416, USITC Pub. No. 3239, Comm. Op. at 9 (Sept. 1999)).

3. Analysis

We agree with HP and the IA that a general exclusion order and a cease and desist order would not harm the public interest. There is no evidence that domestic demand for HP inkjet cartridges cannot be met by HP and its legitimate competitors, *i.e.*, manufacturers and retailers of inkjet cartridges who do not infringe the patent claims at issue. Thus, the record does not support a finding that issuance the remedial orders is precluded by consideration of the public interest factors set out in section 337(d)(1).

Accordingly, the Commission has determined to issue a general exclusion order and a cease and desist order directed to Mextec.

D. Bond During Period of Presidential Review

During the 60-day period of Presidential review, imported articles otherwise subject to a remedial order are entitled to conditional entry under bond, pursuant to section 337(j)(3). The

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amount of the bond is specified by the Commission and must be an amount “sufficient to protect the complainant from any injury.” 19 U.S.C. § 1337(j)(3); 19 C.F.R. § 210.50.

The Commission often considers the differential in sales price between the patented product made by the domestic industry and the lower price of the infringing imported product.

Certain Microsphere Adhesives, Processes for Making Same, and Products Containing Same, Including Self-Stick Repositionable Notes, Inv. No. 337-TA-336, Comm’n Op. at 24 (1995).

Where reliable price comparison is impossible, the Commission has set the bond at a reasonable royalty. *Certain Digital Televisions and Certain Products Containing Same and Methods of*

Using Same, Inv. No. 337-TA-617, Comm’n Op. at 18-19 (Apr. 23, 2009).⁴ Where there is

neither information on the price of the subject merchandise nor information which would allow one to determine a reasonable royalty, the Commission has set the bond at 100% of the entered

value of the imported infringing products. *Certain Energy Drink Products*, Inv. No. 337-TA-678, Comm’n Op. on Remedy, the Public Interest, and Bonding (Sept. 8, 2010).

1. The ALJ’s Recommended Determination

In the present investigation, the ALJ stated that reliable price information is not available because none of the defaulting respondents participated in discovery. ID/RD at 34. The ALJ concluded that a bond of 100 percent of entered value would be appropriate under these circumstances. *Id.*

⁴ This is especially appropriate where the technology is expensive, where the asserted patent claim is directed to a component of an expensive product, or where there is information on royalties from previous license agreements in the absence of information on price of the subject merchandise. *See id.*

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2. *HP and the IA's Submissions*

HP and the IA both agreed with the ALJ that reliable information on price is not available and that a bond of 100% of entered value is appropriate because none of the defaulting respondents participated in discovery. HP Submission at 20-21; IA Submission at 7.

3. *Analysis*

Where reliable price comparison is impossible, the Commission has set the bond at a reasonable royalty. *Certain Digital Televisions and Certain Products Containing Same and Methods of Using Same*, Inv. No. 337-TA-617, Comm'n Op. at 18-19 (Apr. 23, 2009). Where there is neither information on the price of the subject merchandise nor information which would allow one to determine a reasonable royalty, the Commission has set the bond at 100% of the entered value of the imported infringing products. *Certain Energy Drink Products*, Inv. No. 337-TA-678, Comm'n Op. on Remedy, the Public Interest, and Bonding (Sept. 8, 2010).

The ALJ stated that there is no reliable price information in the record, and HP and the IA concurred in this statement. HP did provide information on prices (in the exhibits to its submission on remedy, the public interest, and bonding) on Internet retail sales, *i.e.*, HP submitted offers for sale, *inter alia*, from internet websites as part of its request for a general exclusion order. However, there is marked variation in the price of units, and in the combinations in which units are sold. Mizzo Decl., Exhs. G, K, L, M; Barkley Decl., Exhs. C, G, M, N, O, W, X, Y. Because the units of sale differ, making comparison of units difficult, and because there is a great deal of variability in price, it is difficult to state a reliable price for the subject articles.

Because it is not possible to ascertain a reliable price of subject imports, we next examine whether there is information in the record which would allow the Commission to ascertain a

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reasonable royalty. The settlement agreements between HP and the respondents that have already been terminated each involved [[

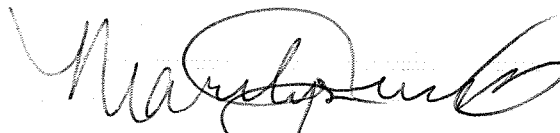
]]. Therefore, the settlement agreements do not establish a reasonable royalty. In the absence of reliable information on price or a reasonable royalty, especially through no fault of the complainant, the Commission has set the bond at 100% of entered value. *See, e.g., Certain Energy Drink Products*, Inv. No. 337-TA-678, Comm'n Op. on Remedy, the Public Interest, and Bonding (Sept. 8, 2010).

Accordingly, the Commission determines to set the bond at 100% percent of the entered value of the infringing inkjet ink supplies and components thereof to prevent any harm to HP during the period of Presidential review.

III. CONCLUSION

For the foregoing reasons, the Commission has determined to issue a general exclusion order and a cease and desist order directed to Mextec, that consideration of the public interest factors does not preclude issuance of these remedial orders, and that the bond to permit importation during the Presidential review period should be set at 100 percent of the entered value of the subject articles.

By order of the Commission.

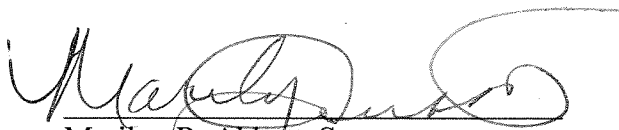


Marilyn R. Abbott
Secretary to the Commission

Issued: January 28, 2011

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **COMMISSION OPINION ON REMEDY, THE PUBLIC INTEREST, AND BONDING** has been served by hand upon the Commission Investigative Attorney, Benjamin Levi, Esq., and the following parties as indicated, on January 28, 2011.



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 Via Overnight Mail
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 Other: _____

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