UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

IN THE MATTER OF CERTAIN INK CARTRIDGES AND COMPONENTS THEREOF	Investigation No. 337-TA-565 Enforcement Proceeding

COMPLAINT FOR ENFORCEMENT PROCEEDINGS PURSUANT TO RULE 210.75

COMPLAINANTS:

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PROPOSED ENFORCEMENT RESPONDENTS:

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NINESTAR TECHNOLOGY COMPANY, LTD.
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I. INTRODUCTION

1. Complainants Epson Portland Inc., Epson America, Inc., and Seiko Epson Corporation (collectively "Epson" or "Complainants") request that the United States International Trade Commission ("Commission") commence formal enforcement proceedings pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. Section 1337 ("Section 337"), and 19 C.F.R. Section 210.75, to remedy the continuing unfair acts of respondents Ninestar Technology Co., Ltd. ("Ninestar China"), Ninestar Technology Company, Ltd. ("Ninestar U.S."), and Town Sky Inc. ("Town Sky") (collectively the "Ninestar Respondents"), in flagrant violation of the General Exclusion Order and Cease and Desist Orders issued by the Commission on October 19, 2007.

2. Epson filed a complaint with the Commission on February 17, 2006, setting forth, *inter alia*, other named respondents' and the Ninestar Respondents' violation of Section 337 by infringement of Epson's U.S. Patent Nos. 5,615,957 ("the '957 patent"), 5,622,439 ("the '439 patent"), 5,158,377 ("the 377 patent"), 5,221,148 ("the '148 patent"), 5,156,472 ("the '472 patent"), 5,488,401 ("the '401 patent"), 6,502,917 ("the '917 patent"), 6,550,902 ("the '902 patent"), and 6,955,422 ("the '422 patent"). Epson filed an amended complaint with the Commission on April 12, 2006, setting forth, *inter alia*, other named respondents' and Mipo's violation of Section 337 by infringement of the above listed Epson patents, as well as Epson's U.S. Patent Nos. 7,008,053 ("the '053 patent") and 7,011,397 ("the '397 patent). The Commission instituted Investigation No. 337-TA-565 on March 17, 2006..

3. On March 30, 2007, the presiding administrative law judge ("ALJ") issued an Initial Determination on Violation of Section 337 and a Recommended Determination on Remedy and Bond (collectively "ID"), finding violations by the Ninestar Respondents and other

named respondents based upon infringement of the asserted Epson patents. On June 29, 2007, the Commission determined to review a number of conclusions of the ID.

4. On October 19, 2007, the Commission issued its opinion affirming certain of the ALJ's conclusions, reversing certain other conclusions, adopting the ALJ's recommendations on remedy and bonding, and to provide relief in the form of a general exclusion order, a limited exclusion order, and cease and desist orders directed to certain domestic respondents.

5. On October 19, 2007, the Commission issued its Notice of Final Determination, Issuance of General Exclusion Order, Limited Exclusion Order and Cease and Desist Orders, setting forth the details of its determination on remedy, bonding and the public interest. The Commission served all parties, including the Ninestar Respondents, with copies of the General Exclusion Order, Limited Exclusion Order and Cease and Desist Orders. (*See* Exhibit 1, Notice of Final Determination; Issuance of General Exclusion Order, Limited Exclusion Order, and Cease and Desist Orders; Termination of Investigation (Oct. 19, 2007) ("Commission Determination".))

6. Notwithstanding the Ninestar Respondents' knowledge of the General Exclusion Order, and the Cease and Desist Orders directed to Ninestar U.S. and Town Sky, the Ninestar Respondents have continued to import, sell for importation, advertise, market, distribute, offer to sell and sell ink cartridges that infringe claim 7 of the '957 patent; claims 18, 81, 93, 149 and 164 of the '439 patent; claims 83 and 84 of the '377 patent; claims 19 and 20 of the '148 patent; claim 1 of the '401 patent; claims 1, 2, 3 and 9 of the '917 patent; claims 1, 31 and 34 of the '902 patent; claims 1, 10 and 14 of the '422 patent; and claim 1 of the '053 patent.

7. The Cease and Desist Orders state, among other things that Ninestar U.S. and Town Sky "shall not import or sell for importation into the United States covered products;"

shall not "market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;" shall not "advertise imported covered products;" and shall not "aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products." (*See* Exhibit 2, Ninestar U.S. Cease and Desist Order at 3; Exhibit 3, Town Sky Cease and Desist Order at 3.) Furthermore, the provisions of the Cease and Desist Orders apply not only to Ninestar U.S. and Town Sky, but also, to "any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent." (Exhibit 2, Ninestar U.S. Cease and Desist Order at 2-3; Exhibit 3, Town Sky Cease and Desist Order at 2-3.)

8. As set forth in detail below, the Ninestar Respondents, their distributors and other entities acting in concert with them, continue to import, sell for importation, advertise, market, distribute, offer to sell and sell infringing ink cartridges. In addition, the Ninestar Respondents' public statements demonstrate that they have consistently engaged in the importation, sale for importation, advertising, marketing, distribution, offering for sale and sale of ink cartridges that are covered by the General Exclusion Order, as well as the Cease and Desist Orders. It is apparent that the Ninestar Respondents, notwithstanding having been found to be in violation in the underlying investigation, and the relief issued by the Commission, refuse to curtail their ongoing unlawful activities with respect to the products covered by the Commission's remedial orders. Accordingly, in response to the Ninestar Respondents' continued violation of the General Exclusion Order and the Cease and Desist Orders, Epson respectfully seeks, pursuant to 19

C.F.R. Section 210.75, enforcement of these remedial orders, as well as the imposition of sanctions against the Ninestar Respondents, including, but not limited to, statutory penalties.

II. JURISDICTION

9. The Commission has jurisdiction over this matter and the proposed parties pursuant to Sections 333 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C. Sections 1333 and 1337.

III. THE COMMISSION'S ISSUANCE OF GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDER

10. The Commission instituted Investigation No. 337-TA-565 on March 17, 2006, pursuant to Epson's complaint alleging, *inter alia*, that the ink cartridges of other named respondents and the Ninestar Respondents infringe the above-referenced claims of the asserted Epson patents. (71 Fed. Reg. 14720 (Mar. 23, 2006).) An evidentiary hearing on the issue of violation was held on January 17-20 and 22-24, 2007.

11. On March 30, 2007, the ALJ issued an Initial Determination on violation of Section 337 and Recommended Determination on remedy and bond. The ALJ found that the asserted claims of the Epson patents were not invalid. (ID at 395, Conclusion of Law No. 143.) The ALJ found that all of the Ninestar Respondents' accused cartridges infringed one or more of claim 7 of the '957 patent, claims 18, 81, 93, 149 and 164 of the '439 patent, claims 83 and 84 of the '377 patent, claims 19 and 20 of the '148 patent, claim 1 of the '401 patent, claims 1, 2, 3, and 9 of the '917 patent, claims 1, 31 and 34 of the '902 patent, claims 1, 10 and 14 of the '422 patent, and claim 1 of the '053 patent. (ID at 387-394, Conclusion of Law Nos. 4, 5, 6, 18, 19, 20, 32, 33, 34, 46, 47, 48, 68, 69, 70, 82, 83, 84, 96, 97, 98, 110, 111, 112, 124, 125 and 126.) Based on these findings of direct infringement, the ALJ found a violation by the Ninestar Respondents of Section 337.

12. On June 29, 2007, the Commission decided to review the ID. On October 19, 2007, the Commission issued its opinion. The Commission determined that ink cartridges imported by a number of respondents, including the Ninestar Respondents, infringed claim 7 of the '957 patent, claims 18, 81, 93, 149 and 164 of the 439 patent, claims 83 and 84 of the '377 patent, claims 19 and 20 of the '148 patent, claim 1 of the '401 patent, claims 1, 2, 3 and 9 of the '917 patent, claims 1, 31 and 34 of the '902 patent, claims 1, 10 and 14 of the '422 patent, and claim 1 of the '053 patent. Concurrent with its opinion, the Commission issued a General Exclusion Order directed to any entity, including the Ninestar Respondents, and issued Cease and Desist Orders against Ninestar U.S. and Town Sky. The Commission determined that the domestic respondents, including Ninestar U.S. and Town Sky, maintained significant inventories of infringing products in the United States and are therefore properly subject to cease and desist orders (Commission Opinion at 61-62.)

13. The Commission's General Exclusion Order prohibits any entity, including the Ninestar Respondents, from importing and selling any ink cartridges that infringe claim 7 of the '957 patent; claims 18, 81, 93, 149, and 164 of the '439 patent; claims 83 and 84 of the '377 patent; claims 19 and 20 of the '148 patent; claim 1 of the '401 patent; claims 1, 2, 3, and 9 of the '917 patent; claims 1, 31 and 34 the '902 patent; claims 1, 10, and 14 of the '422 patent; claim 1 of the '053 patent; and claim 21 of the '397 patent.

14. The Cease and Desist Orders prohibit Ninestar U.S. and Town Sky from, *inter alia*:

> import[ing] or sell[ing] for importation into the United States covered products;
>
> market[ing], distribut[ing], offer[ing] for sale, sell[ing], or otherwise transfer[ing] (except for exportation), in the United States imported covered products;

advertis[ing] imported covered products;

solicit[ing] U.S. agents or distributors for imported covered products; or

aid[ing] or abet[ing] other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

(Exhibit 2, Ninestar U.S. Cease and Desist Order at 3; Exhibit 3, Town Sky Cease and Desist Order at 3.)

IV. PARTIES

A. The Epson Enforcement Complainants

15. Complainant Epson Portland Inc. is an Oregon corporation with its principal place of business at 3950 NW Aloclek Place, Hillsboro, Oregon 97124.

16. Complainant Epson America, Inc. is a California corporation with its principal place of business at 3840 Kilroy Airport Way, Long Beach, California 90806-2469.

17. Complainant Seiko Epson Corporation is a Japanese corporation with its principal place of business at 3-3-5 Owa, Suwa-shi, Nagano-ken 399-0785, Japan.

18. Epson is one of the world's leading manufacturers of ink cartridges, which cartridges are used exclusively with Epson brand printers. Epson designs, develops, and supplies its proprietary ink cartridges to global customers, including in the United States.

19. Epson's continued success depends upon its extensive and ongoing involvement in research and development of ink cartridges for its printers. Epson relies upon the U.S. patent laws and system as an important part of its intellectual property program to protect the valuable technology and inventions resulting from this research and development.

20. Epson continues to own the patents asserted in the underlying investigation and which are the subject of the Commission's remedial orders.

B. Proposed Enforcement Respondents
Ninestar China, Ninestar U.S. and Town Sky

21. Ninestar China is a Chinese company with its last known principal place of business at No. 63 Mingzhubei Road, Xiangzhou District, Zhuhai, Guangdong, China 519075. Ninestar China manufactures and sells for importation into the United States ink cartridges, including infringing Epson-compatible ink cartridges. (ID at 371, Finding of Fact Nos. 12, 14.)

22. Ninestar U.S is a California corporation with its last known principal place of business at 19895 Harrison Avenue, Walnut California 91789. Ninestar U.S. imports and sells after importation into the United States ink cartridges manufactured by Ninestar China, including infringing Epson-compatible ink cartridges. (ID at 371, Finding of Fact No. 16.)

23. Town Sky is a corporation organized under the laws of California with its last known principal place of business located at 5 South Linden Avenue, Suite 4, South San Francisco, California 94080. Town Sky imports and sells after importation into the United States ink cartridges manufactured by Ninestar China, including infringing Epson-compatible ink cartridges. (ID at 371-372, Finding of Fact Nos. 17-18.)

24. Ninestar China, Ninestar U.S. and Town Sky are affiliates of each other. Ninestar U.S. and Town Sky are United States distributors and resellers of ink cartridges manufactured by Ninestar China. Ninestar China is the owner and parent company of Ninestar U.S. and Town Sky. (ID at 372, Finding of Fact Nos. 19-21.)

V. PATENTS AT ISSUE

25. The eleven Epson patents at issue in the underlying investigation encompass a variety of inventions and features that are critical to the seamless interface and functioning with Epson printers. These patents extend to Epson ink cartridges used with all Epson printers, except for off-carriage printers (*e.g.*, large format printers).

VI. PRODUCTS AT ISSUE

26. The products at issue are the Ninestar Respondents' ink cartridges that are compatible with Epson printers and that have been found to infringe the asserted Epson patents as a result of the Ninestar Respondents having been found to be in violation of Section 337 pursuant to the proof of infringement at trial.

VII. VIOLATION OF THE COMMISSION'S GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS

A. The Ninestar Respondents' Continued Importation, Sale for Importation, Advertising, Marketing, Distribution, Offer for Sale and Sale of Infringing Ink Cartridges

27. After reviewing the ALJ's ID, the Commission in its final determination found that the Ninestar Respondents violated Section 337 through the importation, sale for importation, advertising, marketing, distribution, offering for sale and sale of their ink cartridges that infringe the asserted Epson patents. The Commission determined that the Ninestar Respondents infringed claim 7 of the '957 patent; claims 18, 81, 93, 149 and 164 of the '439 patent, claims 83 and 84 of the '377 patent, claims 19 and 20 of the '148 patent, claim 1 of the '401 patent, claims 1, 2, 3 and 9 of the '917 patent, claims 1, 31 and 34 of the '902 patent, claims 1, 10 and 14 of the '422 patent; and claim 1 of the '053 patent.

28. Despite the entry of the General Exclusion Order, and Cease and Desist Orders against Ninestar U.S. and Town Sky, the Ninestar Respondents, their distributors and other entities acting in concert with them, continue to import, sell for importation, advertise, market, distribute, offer to sell and sell its ink cartridges found to infringe the asserted Epson patents.

29. The Ninestar Respondents continue to advertise and sell the infringing products through their United States retailers. From November 19, 2007, through January 20, 2008, Complainant's investigator, Herbert Seitz, made numerous purchases from various online

retailers of G&G-brand Epson-compatible and remanufactured cartridges that are manufactured, imported, marketed, offered for sale and/or sold by the Ninestar Respondents. (Declaration of Herbert Seitz, dated February 7, 2008, ¶ 2-10 ("Seitz Decl.").) An examination of the purchased cartridges reveals that they infringe Epson's patents, in violation of the General Exclusion Order and the Cease and Desist Orders.

30. The cartridges at issue infringe Epson's patents in two ways. First, the majority of the purchased cartridges being advertised and sold by the Ninestar Respondents as "refilled" cartridges are, in fact, remanufactured cartridges first sold *outside* the United States. Accordingly, the importation and sale of these cartridges within the United States infringes Epson's patents and violates the General Exclusion Order and the Cease and Desist Orders.

31. Second, an examination of the purchased cartridges also reveals that the Ninestar Respondents continue to sell *new* infringing compatible cartridges by incorrectly labeling the cartridges as "refilled" cartridges. These cartridges blatantly infringe Epson's patents in violation of the General Exclusion Order and the Cease and Desist Orders.

B. The Ninestar Respondents' Public Statements Regarding its Continued Importation, Sale for Importation, Advertising, Marketing, Distribution, Offering for Sale and Sale of Infringing Ink Cartridges

32. In addition to the Ninestar Respondents' sales of infringing cartridges, the Ninestar Respondents' public statements demonstrate that they have consistently engaged in the importation, sale for importation, advertising, marketing, distribution, offering for sale and sale of ink cartridges that are covered by the General Exclusion Order, as well as the Cease and Desist Orders. On information and belief, the Ninestar Respondents continue to incorrectly promote and advertise their cartridges as not infringing Epson's patents to their United States retailers. Similarly, on information and belief, the Ninestar Respondents continue to claim that the sales of their infringing cartridges do not violate the General Exclusion Order and the Cease

and Desist Orders. The precise nature of the Ninestar Respondents' statements to their retailers and customers regarding the cartridges at issue is to be determined in discovery.

VIII. CONCLUSION

33. The Ninestar Respondents' continued importation, sale for importation, advertising, marketing, distribution, offering for sale and sale of infringing ink cartridges that were found to infringe the asserted Epson patents constitute an ongoing violation of Section 337, and flagrant violations of the General Exclusion Order, and the Cease and Desist Orders directed to Ninestar U.S. and Town Sky.

IX. PRAYER FOR RELIEF

WHEREFORE, by reason of the foregoing, Complainants request that the United States International Trade Commission:

a. Institute a formal enforcement proceeding, pursuant to 19 C.F.R. § 210.75, to confirm the violations of the General Exclusion Order and the Cease and Desist Orders described herein;

b. Promptly refer this matter to the Administrative Law Judge for issuance of an Initial and Final Determination on the issues of the enforcement violation and remedy requested;

c. Direct the Administrative Law Judge to (a) issue a supplemental protective order to protect the Ninestar Respondents' confidential business information; (b) permit a necessary and expedited period for fact discovery on the Ninestar Respondents' continued violations of the General Exclusion Order and/or Cease and Desist Orders; (c) hold a hearing; and (d) issue a Final Determination on Enforcement within four months of initiation of the enforcement proceeding; and

d. After the enforcement proceeding, in the event the Commission determines that there has been a violation of the Commission's General Exclusion Order and/or Cease and Desist Orders, issue the following remedies:

i. issue permanent cease and desist orders pursuant to 19 U.S.C. § 1337(f) and 19 C.F.R. § 210.75, prohibiting the Ninestar Respondents, and parties acting in concert with them, from engaging in illegal activities;

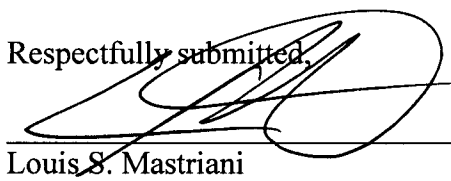
ii. modify the Commission's Cease and Desist Orders pursuant to 19 C.F.R. § 210.75(b)(4) in any manner that would assist in the prevention of the unfair practices that were originally the basis for issuing such orders or assist in the detection of violations of such orders;

iii. impose civil penalties pursuant to 19 U.S.C. § 1337(f) that are twice the value of the goods, or $100,000, whichever is greater, for each day the General Exclusion Order and/or Cease and Desist Orders are and have been violated, and if necessary, bring a civil action in an appropriate United States District Court pursuant to 19 C.F.R. § 210.75(c) and 19 U.S.C. § 1337(f) to recover such civil penalties; and

iv. impose such other remedies and sanctions as are appropriate and within the Commission's authority.

Dated: February 8, 2008

Respectfully submitted,



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SEC700308

VERIFICATION

I, Alf Andersen, am Assistant General counsel for Epson America Corporation and am duly authorized to execute this complaint on behalf of the Epson Complainants. I have read the complaint and am aware of its contents. To the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, I hereby certify as follows:

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

2. The claims and other legal contentions in the complaint are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

3. The allegations and other factual contentions in the complaint have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 7, 2008

Alf Andersen
Assistant General Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINT FOR ENFORCEMENT PROCEEDINGS PURSUANT TO RULE 210.75 (PUBLIC)** was served via electronic mail unless otherwise indicated, to the parties listed below, this 8th day of February 2008:

The Honorable Marilyn R. Abbott
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The Honorable Paul J. Luckern
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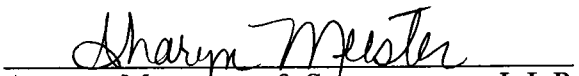

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PUBLIC VERSION

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

In the Matter of **CERTAIN INK CARTRIDGES AND COMPONENTS THEREOF**	**Inv. No. 337-TA-565**

COMMISSION OPINION

On March 30, 2007, the ALJ issued a final initial determination ("ID"), including his recommended determination on remedy and bonding, in the above-captioned investigation. He found each of the asserted claims was infringed by products of one or more respondents and that a domestic industry existed. ID 387-395. The ALJ recommended a general exclusion order. He also recommended issuance of cease and desist orders against domestic respondents Ninestar Technology Company, Ltd., Town Sky Inc., Dataproducts USA LLC, and MMC Consumables as well as defaulting respondents Glory South Software Manufacturing Inc., AcuJet USA, Inc., and Mipo America Ltd. ID 363. He recommended a bond in the amount of $13.60 per cartridge to permit importation during the Presidential review period. ID 368. On June 29, 2007, the Commission determined to review a number of conclusions of the final ID.

The Commission has now determined to reverse certain of the ALJ's conclusions, to affirm others, and to provide relief in the form of a general exclusion order, a limited exclusion order, and cease and desist orders directed to certain domestic respondents.

The general exclusion order bars entry for consumption into the United States of ink cartridges that infringe claim 7 of U.S. Patent No. 5,615,957 ("the '957 patent); claims 18, 81,

93, 149, and 164 of U.S. Patent No. 5,622,439 ("the '439 patent"); claims 83 and 84 of U.S. Patent No. 5,158,377 ("the '377 patent"); claims 19 and 20 of U.S. Patent No. 5,221,148 ("the '148 patent"); claim 1 of U.S. Patent No. 5,488,401 ("the '401 patent"); claims 1, 2, 3, and 9 of U.S. Patent No. 6,502,917 ("the '917 patent"); claims 1, 31, and 34 of U.S. Patent No. 6,550,902 ("the '902 patent"); claims 1, 10, and 14 of U.S. Patent No. 6,955,422 ("the '422 patent"); claim 1 of U.S. Patent No. 7,008,053 ("the '053 patent"); and claim 21 of U.S. Patent No. 7,011,397 ("the '397 patent"). The Commission also determined that a limited exclusion order should issue that prohibits the unlicensed entry of ink cartridges covered by one or more of claim 165 of the '439 patent, claims 29, 31, 34, and 38 of U.S. Patent No. 5,156,472 (the '472 patent), and claims 45, 53, and 54 of the '397 patent, and that are manufactured abroad by or on behalf of, or imported by or on behalf of, certain defaulting respondents. The Commission also determined that cease and desist orders should be issued to certain domestic respondents. Finally, the Commission determined that the public interest factors set forth in 19 U.S.C. § 1337(d), (f), and (g) do not preclude issuance of these remedial orders and that the amount of the bond for temporary importation during the Presidential review period should be $13.60 per cartridge.

I. BACKGROUND

A. Procedural History

The Commission instituted this investigation on March 23, 2006, based on a complaint filed by Epson Portland, Inc. of Oregon, Epson America, Inc. of California, and Seiko Epson Corporation of Japan (collectively, "Epson"). 71 *Fed. Reg.* 14720 (March 23, 2006).

The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 in

the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ink cartridges and components thereof by reason of infringement of claim 7 of the '957 patent; claims 18, 81, 93, 149, 164, and 165 of the '439 patent; claims 83 and 84 of the '377 patent; claims 19 and 20 of the '148 patent; claims 29, 31, 34, and 38 of the '472 patent; claim 1 of the '401 patent; claims 1-3 and 9 of the '917 patent; claims 1, 31, and 34 of the '902 patent; claims 1, 10, and 14 of the '422 patent; claim 1 the '053 patent; and claims 21, 45, 53, and 54 of the '397 patent. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 24 companies located in China, Germany, Hong Kong, Korea, and the United States. However, not all claims were asserted against all respondents.

Only four of the 24 respondents contested infringement before the ALJ: Ninestar Technology Co., Ltd. ("Ninestar Technology"), Ninestar Technology Company Ltd. ("Ninestar U.S."), Town Sky Inc., and Dataproducts USA, LLC (collectively, the "active respondents").[1] ID 6. Respondents Zhuhai Gree Magneto-Electric Co., Ltd. and MMC Consumables, Inc. ("the MMC respondents") participated at the hearing but did not contest infringement. ID 7 n.2. Prior to the ALJ's issuance of the final determination, eighteen respondents were terminated from the

[1] Ninestar Technology Co. Ltd., formerly known as Nine Star Image Co., Ltd., is a Chinese corporation with a principal place of business in Zhuhai, China. Ninestar Technology Company Ltd. is a New Jersey corporation with a principal place of business in Montclair, California. ID 371.

investigation on the basis of settlement agreements or consent orders or were found in default.[2] The ALJ adjudicated infringement by products belonging to the four active respondents, the MMC respondents, and the defaulting respondents.

On March 30, 2007, the ALJ issued his final ID, including his recommended determination on remedy and bonding. He found each of the asserted claims was infringed by products of one or more of the active respondents, the MMC respondents, and/or the defaulting respondents and that a domestic industry existed. ID 387-395.

Specifically, he found the following claims infringed by the active respondents, the MMC respondents and the defaulting respondents: claim 7 of the '957 patent; claims 18, 81, 93, 149, and 164 of the '439 patent; claims 83 and 84 of the '377 patent; claims 19 and 20 of the '148 patent; claim 1 of the '401 patent; claims 1, 2, 3, and 9 of the '917 patent; claims 1, 31, and 34 of the '902 patent; claims 1, 10, and 14 of the '422 patent; and claim 1 of the '053 patent. He found that the eight defaulting respondents also infringed claim 165 of the '439 patent and claims 29, 31, 34, and 38 of the '472 patent. He found claims 21, 45, 53, and 54 of the '397 patent infringed by five of the defaulting respondents: Mipo International Ltd.; Mipo America Ltd.; Tully Imaging Supplies, Ltd.; Ribbon Tree (Macao) Trading Co. Ltd.; and Wellink Trading Co.,

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[2] The following seven respondents were terminated based on settlement agreements and consent orders: Inkjetwarehouse.com Inc., Nectron International, Ltd., Ink Lab (H.K.) Co., Ltd., InkTec Co. Ltd., InkTec America Corporation, Gerald Chamales Corp. (fdba Rhinotek Computer Products Inc.) and Artech GmbH. Three respondents, namely Master Ink Co., Ltd., Apex Distributing Inc. and Ribbon Tree (USA) Inc., entered unilateral consent orders prior to the conclusion of the investigation. Eight respondents were found in default: Glory South Software Manufacturing, Inc.; AcuJet USA, Inc.; Butterfly Print Image Corp. Ltd.; Mipo International Ltd.; Mipo America Ltd.; Tully Imaging Supplies, Ltd.; Ribbon Tree (Macao) Trading Co. Ltd.; and Wellink Trading Co., Ltd. ID 8-9.

Ltd. The ALJ also found that none of the asserted patents were invalid and that they were enforceable.

The active respondents and the Commission investigative attorney ("IA") filed petitions for review.[3] The Commission determined to review the ALJ's conclusions with respect to: 1) claim construction of the terms "contacts" ('917 and '902 patents), "overhang" ('902 patent), and "ink supply tank" (sponge patents);[4] 2) infringement of claims employing those terms by those products for which review was sought, *viz.* infringement of claims 1, 2, 3, and 9 of the '917 patent, claims 1, 31, and 34 of the '902 patent, claim 7 of the '957 patent, claims 19 and 20 of the '148 patent, claims 83 and 84 of the '377 patent, and claim 164 of the '439 patent; and 3) invalidity for obviousness of claims 1, 2, 3, and 9 of the '917 patent, claim 1 of the '053 patent and claim 1 of the '422 patent.[5]

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[3] The active respondents sought review of the ALJ's finding of infringement of claims 1, 2, 3, and 9 of the '917 patent by representative cartridges RC-6 and RC-10. They sought review of the ALJ's infringement conclusions with respect to claims 1, 31, and 34 of the '902 patent by representative cartridges RC-2 and RC-6 to RC-10. Finally, they sought review of infringement of the sponge patent claims (claim 7 of the '957 patent, claims 19 and 20 of the '148 patent, claims 83 and 84 of the '377 patent, and claim 164 of the '439 patent) by representative cartridge RC-2.

[4] The "sponge patents" consist of the '148, '439, '377, '472, and '957 patents which claim the use of an ink absorbing member (sponge) in the ink tank.

[5] The active respondents did not challenge the majority of the ALJ's conclusions with respect to infringement. The ALJ found the eight representative Ninestar cartridges infringe claims 1 and 2 of the '917 patent. ID 266. He found that all six representative cartridges analyzed for infringement of claim 3 literally infringed that claim. ID 267. He found that all nine representative cartridges examined for infringement of claim 9 literally infringed that claim. ID 271.

With respect to the '902 patent, the ALJ found that RC-2 to RC-7 and RC-9 to RC-10 literally infringed claim 1 and that RC-8 infringed that claim under the doctrine of equivalents.

The Commission requested briefing on the issues under review and on remedy, the public interest, and bonding. The Commission specifically asked those filing submissions to address the extent to which the ALJ's findings pertaining to claim 165 of the '439 patent, claims 45, 53, and 54 of the '397 patent, and claims 29, 31, 34, and 38 of the '472 patent, establish a violation of section 337 based upon "substantial, reliable, and probative evidence" so as to support issuance of a general exclusion order with respect to these claims. Complainants, the active respondents, and the IA filed submissions addressing the issues on review, as well as remedy, bonding, and the public interest.

B. Parties Participating in the Investigation

Complainant Epson Portland Inc. is an Oregon corporation with its principal place of business in Hillsboro, Oregon. Complaint ¶ 3. Epson Portland has the exclusive right in the United States to manufacture ink cartridges covered by the asserted patents. *Id.* Complainant Epson America, Inc. is a California corporation with a principal place of business in Long Beach, California. Complaint ¶ 4. Epson America has the exclusive right in the United States to market and sell ink cartridges covered by the asserted patents. *Id.* Complainant Seiko Epson Corporation is a Japanese corporation with a principal place of business in Nagano-Ken, Japan.

ID 286. He found that RC-2 to RC-7 and RC-10 literally infringed claim 31 and that RC-8 infringed that claim under the doctrine of equivalents. ID 290-291. He found that RC-2 to RC-8 and RC-10 infringed claim 34. ID 291. The ALJ additionally found that the cartridges of the MMC respondents and Dataproducts infringed these same claims. ID 292-293.

As for the asserted claims of the sponge patents, the ALJ found that RC-1 and RC-2 literally infringed all of the asserted claims (claim 7 of the '957 patent (ID 180-181); claims 18, 81, 93, 149 and 164 of the '439 patent (ID 186, 190, 192, 196, 199-200); claims 83 and 84 of the '377 patent (ID 205-206); and claims 19 and 20 of the '148 patent (ID 210-212)). The ALJ found that the cartridges of the MMC respondents and Dataproducts infringed these same claims. *Id.*

Complaint ¶ 5. Seiko Epson is the owner of the asserted patents. *Id.*

Respondent Ninestar Technology is a Chinese corporation which designs and manufactures ink cartridges which are marketed in the United States. Active Respondents' Memorandum on Issues Under Review and Remedy (Resp. Brief) at 7. Respondent Ninestar U.S. is an American corporation headquartered in the Los Angeles area. Respondent Ninestar U.S. was established to sell products manufactured by Ninestar Technology in the United States. Respondent Town Sky is a subsidiary of Ninestar Technology and sells Ninestar Technology's products in the United States. Resp. Brief. at 10-11. Respondent Dataproducts USA LLC is an American limited liability company formed in 2005. Resp. Brief at 11. Dataproducts is unrelated to the Ninestar respondents and imports and manufactures ink cartridges. ID 338. MMC Consumables Inc. ("MMC") is a California corporation that imports and sells ink cartridges manufactured by Zhuhai Gree Magneto-Electric Co. Ltd ("Zhuhai Gree"), including ink cartridges for use with Epson printers. FF 26-27. Zhuhai Gree, a Chinese company, manufactures and sells for importation into the United States ink cartridges for use with Epson printers. FF 25.

C. Products at Issue

The products at issue are aftermarket replacement ink jet cartridges manufactured and/or sold by respondents for use in Epson's ink jet printers. Respondents' products are marketed and sold in retail stores and through the Internet. ID 332. The cartridges are about the size of the palm of the hand.

D. Patents at Issue

The asserted patents consist of six families: (1) the Suzuki "sponge" family, which consists of the '957, '439, '377, '148, and '472 patents; (2) the Mochizuki "packing/sealing member" patent (the '401 patent); (3) the "contacts" or "chip" patents, which consist of the '917 and '902 patents; (4) the Miyazawa "lever-and-chip" patent (the '422 patent); (5) the Hashii "retaining member" patent (the '053 patent); and (6) the Miyazawa "valve" patent (the '397 patent).

II. DISCUSSION OF ISSUES UNDER REVIEW

A. Claim Construction

1. Construction of the term "Contacts" ('917 and '902 Patents)

The term "contacts" is used in asserted claims 1 and 9 of the '917 patent and asserted claims 1, 31, and 34 of the '902 patent. The ALJ found that the term should be construed in the same manner for each of the claims. ID 83. The ALJ characterized the issue as whether "contacts" should be limited to the discrete electrodes identified as numeral 60 in figure 7(a) of the '917 patent as urged by the active respondents. ID 83. Rather than finding that contacts are those particular structures, he concluded that contacts are formed when the cartridge is inserted into the printer assembly. "[S]aid contacts are the portions of conductive material on the printer cartridge that touch the portions of conductive material on the printer when said cartridge is mounted." ID 85. *See also* ID 87, 89, 91-92, 94-95. In this connection, he found that the specification at various points describes what he appears to have regarded as the "forming" of the contacts by the printer cartridge and printer. ID 86-95.

The ALJ further stated that the intrinsic evidence does not support the notion of electrically and physically discrete "contacts," as argued for by the active respondents, and concluded that contacts should not be limited to the structure identified as 60. ID 96-98. He also rejected the IA's contention that the printer should not be relied upon to help define the physical structure of the contacts because he found that the specification describes contacts in the context of a cartridge mounted on a printer assembly. ID at 98-99. Thus, the ALJ defined contacts as only those portions of conductive material that actually are in contact with the printer.

a. Parties' Arguments

The active respondents assert that the ALJ's construction of "contacts" is erroneous. Resp. Brief at 34-51; Active Respondents' Reply Memorandum on Issues Under Review and Remedy (Resp. Reply) at 3-9. They provide essentially two reasons for their argument. First, the ALJ's construction is directly contrary to the intrinsic and extrinsic record. Second, the ALJ's construction, which defines contacts by the mating of the cartridge and printer, renders the term indefinite.

As to the first reason, they assert that the ALJ's construction is contrary to the ordinary meaning of the disputed term and the shared specification of the '917 and '902 patents, which consistently identifies the contacts of the cartridge as being the rectangular conductive pad-like areas (sometimes also referred to as "electrodes") arranged in two rows as shown in the figures of the patent. Resp. Brief at 35-36. As to the second ground, they assert that the ALJ's claim construction renders the term "contacts" indefinite because it cannot be determined if a cartridge infringes without installing the cartridge in the printer. Resp. Brief at 46. They argue that a

particular cartridge could be infringing when installed in some printers and non-infringing when installed in others. Resp. Reply at 5.

Epson argues that the ALJ's construction is consistent with the plain meaning of the term "contacts," stating, *inter alia*, that the ALJ correctly found that the plain language of the asserted claims themselves shows that "contacts" are "for connecting," or "for allowing electrical communication" between the semiconductor storage device and the ink jet printing apparatus. Epson's Submission on Issues Under Review and Remedy (Epson Brief) at 17-21. Epson also asserts that the ALJ's construction is supported by the specifications of the '917 and '902 patents, which make it clear, according to Epson, that the contacts are the portion of conductive material on the cartridge that come into contact with the corresponding conductive material on the printer.

Epson argues that the specification does not consider all of the conductive material on the cartridge to be the "contacts," but rather, it considers the extra "non-contact" material to be a "conductive pattern" and that respondents' expert Perry agreed that not all of the conductive material on the circuit board, such as references 86 and 87, are contacts. Epson Brief at 27-28.

The IA argues that the ALJ correctly construed the term "contacts" to mean "the portions of conductive material on the printer cartridge that touch the portions of conductive material on the printer when said cartridge is mounted." He finds this construction generally consistent with the construction he urged below. IA Brief on the Issues under Review and Remedy (IA Brief) at 13-16. The IA contends that the active respondents seek to limit the construction of contacts to specific examples in the specification, but that such an interpretation is contrary to law. IA Brief at 14.

b. Analysis

We agree with the ALJ's conclusion that the "contacts" are for electrical communication between the cartridge and the printer, but the specification and claims do not indicate that contacts on the printer cartridge are created by the mating of the cartridge and printer as the ALJ concluded.

The ALJ found support for his construction in the claims and specification but we disagree with his conclusion. He noted that claim 1 of the '917 patent indicates that "the contacts are *formed* in a plurality of rows. . . ." '917 Patent at 11:44 (emphasis added). The ALJ pointed to the language of the specification indicating that the "[c]ontacts 60 in plural rows in a direction in which the cartridge is inserted, in two rows in this embodiment, are formed in a position respectively opposite to the contact forming members 29 and 29' of the above contact mechanism 24." ID at 86 (quoting '917 patent at 5:26-30). *See also* 917 Patent at 10:47-51. While we agree with the ALJ that the language states the contacts are "formed," the specification does not indicate that contacts must be "formed" by the mating of the cartridge and printer, as the ALJ concluded. Indeed, based on the entirety of the specification, we conclude otherwise.

First, at various points, the specification equates electrodes and contacts. The use of both terms to refer to the same structures indicates that contacts need not be defined by the mating of the cartridge with the printer. The specification equates contacts 60, 85-1 and 85-2 with "electrodes" at various points, suggesting that contacts are discrete portions of conductive material. '917 Patent at 5:51 (electrodes 60); '917 Patent at 5:59 (electrodes 60); '917 Patent at 5:46 (electrodes 60); '917 Patent at 9:1 ("electrodes to be the contacts 85-1, 85-2"); '917 Patent

at 5:60 ("electrode 60-1"); '917 Patent at 5:64 ("electrode 60-1"). Further, the specification at various points describes the touching of discrete contacts located on the printer (contacts 80-1 to 80-6) and contacts located on the cartridge (85-1 to 85-6). The specification states, for example, that "[w]hen the cartridge 40 further is further lowered, the contacts 80-4 to 80-6 near the other side of the circuit board 83 come into contact with the contacts 85-4 to 85-6 and all contacts become conduction [sic]." '917 Patent at 9:33-36. The figures also indicate that contacts exist on the ink cartridge without regard to whether the printer cartridge has been installed in the printer. *See* '917 Patent at Figs. 7 and 18. In addition, the specification notes that a semiconductor storage means behind the circuit board is attached to contacts 60 in one of the embodiments. '917 Patent at 5:35 ("semiconductor storage means attached to these contacts 60"). This indicates the term "contacts" encompasses specific structures on the circuit board.

Moreover, because the references to contacts being "formed" are ambiguous, the conclusion that the pairing of the cartridge and printer form the contacts is not supported by the specification. For example, the specification refers to contacts 60 being formed on the surface of the circuit board when the circuit board is mounted on the cartridge– not when the cartridge is installed in the printer: "Contacts 60 in plural rows in a direction in which the cartridge is inserted, in two rows in this embodiment, are formed in a position respectively opposite to the contact forming members 29 and 29' of the above contact mechanism 24 on the side of the surface when the circuit board is attached to the ink cartridge of the circuit board 31 as shown in FIG. 7(a)." '917 Patent at 5:27-33. Similarly, none of the other references in the specification to contacts being formed clearly indicates that the contacts are only formed when the cartridge is

installed. Some of the references in the specification, as noted above, indicate the contacts are discrete structures on the cartridge regardless of whether it is installed in the printer. Thus, while the claims similarly refer to the contacts being formed, the claim language is ambiguous, simply referring to the "contacts being formed in a plurality of rows lying in a plane." '917 Patent at claim 1.[6]

We agree with the ALJ that not all the conductive material constitutes the contacts and that term need not be limited to the specific contacts described in the specification, but we do not find that the mating of the cartridge and printer creates the "contacts." The contacts exist on the cartridge before it is inserted into the printer. We therefore define "contacts" as the discrete portions of the conductive material on the cartridge, but not including all conductive material such as the "leads,"[7] that are capable of forming an electrical connection. Such a definition is consistent with the use of the term in the specification to describe the electrical material on the

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[6] The inventors also used the term "formed" to simply indicate where structures are located. *See* '917 Patent 7:59-60 ("other electrodes 60-1, 61-1 are *formed*"); '917 Patent 8:54 ("[t]hrough holes 83a and 83b for a positioning are *formed* on the circuit board"); '917 Patent claim 17 ("an ink supply port *formed* on said first wall"); '917 Patent 3:66-4:2 ("[w]indows 22 and 23 each upper part of which is open are respectively *formed* on the vertical wall . . . continuous grooves 22c and 23c are respectively *formed* on vertical walls"); '917 Patent 4:10 ("slits 26 and 26' different in depth are *formed*"); ("overhang portion 46 of the black ink cartridge 40 is continuously *formed* from one end to the other end, the overhang portion 56 of the color ink cartridge 50 are individually *formed* so that they are located on both sides." '917 Patent 4:57-60); '917 Patent 4:64-65 ("[c]oncave portions 48 and 58 are respectively *formed* on the vertical walls 45 and 55") (emphasis added). Hence, the inventors' use of the term "formed" in the claims is no more than the inventor's indication that the contacts are located at a certain spot, as with the overhang, port, slits, etc.

[7] Leads are portions of conductive material that lead to the contacts. See '917 Patent Fig. 20(a).

printer and cartridge and the function of the electrical material in creating a circuit.

2. Location and Definition of the "First Overhang" ('902 Patent)

The phrase "first overhang" appears in independent claims 1 and 31 and dependent claim 34 of the '902 patent. Claim 1 requires "*a first overhang* disposed between the first upper corner and the second upper corner," while claim 31 calls for "*a first overhang member* extending beyond a plane of the wall of said housing where said contacts are disposed, the first overhang member being located between the first upper corner and the second upper corner."[8] '902 Patent (emphasis added). The ALJ interpreted "overhang" based upon the use of the term in the specification and in the prosecution history. He concluded that an "overhang" is "a protruding structure which is not limited to a perpendicular orientation and which includes each of the elements 46, 56, 45c, 45d, 55c and 55d and helps protect circuit board 31." ID 108. With respect to the phrase "disposed between the first upper corner and the second upper corner," the ALJ concluded that "(1) the upper corners in issue are on the face or plane of the second wall; and (2) the term 'between' should be construed such that an overhang should be located in the upper part of the second wall." ID 112-13 (emphasis in original). The second wall is a wall on the side of the tank housing on which the circuit board with contacts is located. See '902 Patent at Fig. 6(a); '902 Patent at 4:37:54.

a. Parties' Arguments

The active respondents argue that the ID's interpretation of an overhang disposed

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[8] The ALJ found that the parties were in agreement that "overhang" and "overhang member" had the same meaning. ID 103.

between the first upper corner and the second upper corner is contrary to the intrinsic and extrinsic record. Resp. Brief at 52-56. They state that the ALJ erroneously construed "overhang" without considering its context and failed to limit it to structures such as 46 and 56 of the '902 patent. They argue his interpretation ignored an overhang's primary function, namely that the structure must be capable of assisting with the insertion and removal of the ink cartridge by interaction with a lever on the printer apparatus. Resp. Brief at 57-58.

The active respondents also maintain that the interpretation set forth in the ID vitiates the requirement that the overhang be between the upper corners of the second wall, and allows for the overhang to be located anywhere on the undefined "upper part" of the second wall. Resp. Brief at 58-61.

Epson argues the interpretation given by the ALJ is supported by the claims, the specifications, and the prosecution histories, and that the active respondents' contentions are without merit. Epson Brief at 48-63. It contends the specification of the '902 patent provides numerous examples of overhangs. It observes that as to Figures 3 and 4, the specification refers to overhangs 46 and 56: "[L]evers 11 and 12 respectively extend from the vicinity of the shafts 9 and 10 so that projections 14 and 15 respectively fitted to overhangs 46 and 56 described later at the upper end of the ink cartridges 40 and 50. . . ." Epson Brief at 51 (citing '902 patent at 3:36-44). However, Epson also notes that as to Figure 6, the specification also refers to "overhangs 45c, 45d, 55c, and 55d which are elastically in contact with the side of the circuit board 31 such as a rib and a pawl are respectively formed near the ink supply ports 44 and 45 . . . ." '902 Patent (5:61-6:5). Epson contends that there is no support for limiting the term "overhang" to either a

"perpendicular orientation" or to "overhangs 46 and 56," as respondents urge. Epson Brief at 52-53. Epson maintains that protection of the semiconductor chip as well as facilitating the mating of the cartridge and printer are both potential functions of the overhang, but the active respondents erroneously seek to require mating to be a function in all cases.

The IA agrees with Epson that "overhang" was correctly construed by the ALJ. IA Brief at 16-17. He argues there is no basis for limiting the term to items 46 and 56 illustrated in the specification and drawings.

b. Analysis

We see no basis for essentially limiting the definition of "overhang" to structures 46 and 56, as the active respondents urge. As noted above, structures 45c, 45d, 55c and 55d (which the active respondents contend should not be treated as overhangs) are explicitly referred to as overhangs in the specification of the '902 patent. '902 Patent 5:66. The active respondents suggest that, under the doctrine of claim differentiation, because dependent claims 15 and 17 separately claim "ribs," structures 45c, 45d, 55c and 55d cannot be considered overhangs. However, in the specification, the rib structures are described as overhangs, ribs and nibs. '902 Patent 5:66-6:1; '902 Patent 6:11; '902 Patent 6:20. Indeed, as noted, the specification specifically indicates that a rib is one type of overhang. '902 Patent 5:67-6:1 ("overhangs 45c,45d, 55c and 55d which are elastically in contact with the side of the circuit board 31 *such as a rib* and a pawl are respectively formed") (emphasis added).

The active respondents rely on prosecution history for their argument that "overhang" should be limited to the structures labeled 46 and 56 in the '902 patent. However, the cited

prosecution history suggests that the applicants provided structure 46 as an example of an overhang, and they did not limit the term "overhang" to one particular structure. *See* Resp. Brief at 54-55 (quoting CX-25 at EPS 0147292). We believe, therefore, that the ALJ correctly found that the term is not limited to only one structure.

We also believe the ALJ correctly rejected respondents' contention that, to be an overhang, the structure must aid in the insertion and removal of the ink cartridge. ID 109-110. Structures 45c, 45d, 55c and 55d are described as "overhangs," yet do not perform this function. However, the ALJ's requirement that the overhang protect the circuit board is, in our view, an unnecessary and unjustifiable functional limitation not mentioned in the claims. *Ecolab v. Envirochem*, 264 F.3d 1358, 1367 (Fed. Cir. 2001) ("Where the function is not recited in the claim itself by the patentee, we do not import such a limitation."). Moreover, both protection of the circuit board and aiding in the insertion of the cartridge into the printer are described as functions of at least some overhangs, so it is evident that an overhang may perform more than one function. *See* '902 Patent at 6:26-39. We therefore modify the ALJ's claim construction so that the definition of the overhang does not require that it helps to protect the circuit board or perform any other particular function.

With respect to the location of the first overhang recited in claims 1 and 31, we find that the ALJ correctly construed the claim phrase "between the first upper corner and the second upper corner" as meaning the "upper part" of the wall. ID 113. The specification indicates that overhangs 46 and 56 are exemplary of overhangs located between the two upper corners as these are the only overhangs described in the specification located near the top of the wall. *See* '902

Patent. Claims 1 and 31 of the '902 patent indicate that the first overhang must be "disposed" or "located" between the two upper corners on the second wall. '902 Patent at 11:27:41 and 13:24:40. The specification of the '902 Patent refers to the overhang protecting the circuit board as being located on the "upper part" of the wall. '902 Patent at 6:26. It also refers to "overhangs 46 and 56 described later at the *upper end* of the ink cartridges 40 and 50." '902 Patent at 3:38:39 (emphasis added).

Also, as the ALJ noted, in overcoming a rejection at the PTO during prosecution of the '917 patent, the '902 patent's parent, the applicants indicated that overhangs 46 and 56 were located between the corners. "For example, Figs. 4 and 6 depict both overhang portion 46, which is located between the corners (upper front) of the cartridge 40, and overhang portion 56, each of which is located between the corners (upper front) of the cartridge 50." *See* ID at 112-113 (citing CX-25 at EPS 0147292). This also suggests that "between the corners" is synonymous with a location on the "upper front" of the wall and "between" the two corners should not be limited to only those points located on a line between the two corners. Further, as the ALJ correctly points out, claim 1 of the '902 patent, which includes the phrase at issue, also refers to a "line connecting the first and second upper corner." This more specific language suggests that "between" the two corners has a broader, less restrictive, meaning. *See* ID 110; '902 Patent at 11:39:40. For these reasons, we agree with the ALJ's conclusion that the claim term "between the first upper corner and second upper corner" means the upper part of the wall. ID 113.

To summarize, we conclude that an overhang is not limited to structures such as 46 and 56 of the '902 patent, as respondents contend. Structures such as 45c, 45d, 55c, and 55d have

been specifically identified in the specification of the '902 patent as overhangs, and indeed, we consider any protruding structure, not necessarily oriented perpendicular to the second wall, to be an overhang. As we have explained, claims 1, 31, and 34 additionally require that a "first overhang" be located or disposed between the two upper corners of the second wall, which we interpret as meaning that the must overhang be located on the upper part of the wall. Thus, we have determined that the claimed phrases "a first overhang disposed between the first upper corner and the second upper corner" (claim 1) and "the first overhang member being located between the first upper corner and the second upper corner" (claim 31) mean a protruding structure, not necessarily oriented perpendicular to the second wall, that is located on the upper part of that second wall.

3. "ink supply tank" (Sponge Patents)

The ALJ interpreted the claim phrase "ink supply tank" or "ink tank" used in the sponge patents (the '957, '439, '377, '148 and '472 patents)[9] to be a structure that holds ink for supply to a printer. ID 70. In arriving at his conclusion, the primary issue the ALJ addressed was whether the ink supply tank must contain the entire supply of ink to be dispensed to the printer. ID 68. The ALJ found that the specifications of the sponge patents do not require that an ink tank contain the entire volume of ink that will be dispensed to the printer head. ID 70. He pointed to the fact that one of the preferred embodiments in the specification allows for a "double construction" where the ink tank is comprised of two smaller ink tanks, one holding black ink,

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[9] The terms are used in claim 7 of the '957 patent, claims 18, 81, 93, 149, 164 and 165 of the '439 patent, claims 83 and 84 of the '377 patent, claims 19 and 20 of the '148 patent, and claims 29, 31, 34 and 38 of the '472 patent.

and one holding color ink. Respondents had argued that during prosecution of one of the sponge patents, the applicants asserted that the ink tank consisted of the entire structure even though there was a partition in the container. ID 68. The ALJ rejected this argument, finding that the cited prosecution history was not for any of the asserted claims and contained an additional "unitary piece" limitation. ID 71.

a. Parties' Arguments

The active respondents argue that the ALJ erred in construing "ink supply tank." They assert that properly interpreted, the claims require that the ink absorbing member substantially fill the tank that holds the volume of ink to be supplied by the tank to the printer. They contend the claims of the sponge patents indicate that the ink tank must contain all, or almost all, of the ink to be supplied to the printer rather than merely a portion of the ink. Resp. Brief at 66-83. They maintain that each ink tank should be defined as containing the full volume of ink for a single color. Hence, when there are multiple colors, there must be multiple ink tanks, containing the full volume of ink for each color. *Id.* at 74-75. They assert that the ALJ's construction is contrary to the arguments made during prosecution by the applicants. *Id.* at 79-83.

They contend that in order to overcome an obviousness rejection over a French patent to Barta (French Patent No. 2,229,320) during the prosecution of one of the related applications in the Suzuki patent family, Epson construed "ink supply tank" as a tank holding the whole volume of ink delivered by that tank. 79-83; Resp. Reply at 27-29.

Epson maintains the ALJ properly construed the term "ink supply tank." Epson Brief at 74-93. Specifically, Epson argues the ALJ correctly construed the term "ink supply tank" to

mean a "structure that holds ink for supply to a printer" and that the specification and plain language of the claims do not require that the "ink supply tank" contain the entire volume of ink that will be dispensed to the printer head. Epson argues that the ALJ correctly found that the claim phrase "substantially filled" is not part of the definition of "ink supply tank" and is not supported by the claim language, specification, or prosecution history. Epson Brief at 85-89. To the extent that the claims state a requirement that the ink absorbing member "substantially fill" the ink tank or the interior space of the ink tank, Epson asserts that this is a distinct element from the "ink supply tank" limitation and not a requirement that the ink supply tank contain the entire volume of ink. *Id.*

Epson argues that the prosecution history of the '658 patent (the parent of the '957 patent) is consistent with the ALJ's construction of "ink supply tank." Epson Brief at 87-88. Epson also argues the prior art Barta reference was raised against two dependent claims with limitations directed to a "unitary ink absorbing member," and none of the asserted claims contain that limitation. Epson Brief at 89. Epson argues the patentees distinguished the Barta reference from the dependent claims because Barta discloses a tank that is filled by two ink absorbing members, rather than one. Thus, Epson argues that there was no clear disavowal of claim scope which would be required for respondents' argument to prevail. Epson Brief at 89.

The IA agrees with Epson that the ALJ correctly construed the term "ink supply tank" and maintains the ALJ properly declined to add limitations not required by the claims, specification or prosecution history. IA Brief at 18-19; IA Reply at 3.

b. Analysis

The ALJ construed the term "ink supply tank" based upon the claim language and the specification's discussion of the structure and concluded that it is (simply) a structure for holding ink for supply to a printer. ID 66-71. The ALJ's claim construction can encompass the individual sections of a tank as he concluded that the ink supply tank does not have to hold all of the ink to be supplied to the printer head. ID 70. In this connection, the ALJ observed that the specifications of the Suzuki sponge patents indicate that an ink supply tank or (ink tank as it is termed in the specifications) can be of double construction.

> FIG. 1 is an exploded perspective view of a printer head, and FIG. 2 is a vertical cross-sectional view of the printer head constructed in accordance with the invention. An ink tank, shown generally as 2, is detachably mounted by a holder 70 on top of a printer head body 1. The ink tank 2 is of a double construction composed of a first ink tank 2b for holding black ink and a second ink tank 2a which is divided into three sections for color inks. The inks are impregnated in ink-impregnated members 60 of a porous material which are enclosed in the ink tank 2.

'957 Patent at 3:49-57. In part based upon this portion of the specification, the ALJ concluded that an ink tank need not contain all of the ink for supply to the printer, noting that tank 2 contains tanks 2a and 2b, and therefore, neither tank contains all of the ink to be dispensed to the printer head. Ink tank 2b holds black ink, while ink tank 2a is subdivided into units called "sections," which hold color ink. Additionally, claims 10 and 11 of the '957 patent claim ink tanks divided into multiple supply "sections."

However, we find that the specification indicates that an ink tank should be more narrowly defined than simply a structure holding ink for supply to the printer. ID 70. The

portion of the specification quoted above refers to the ink tanks 2a and 2b being of double construction. Figure 1 of the '957 patent depicts ink tanks as containers having walls. When an ink tank is divided, the portions of the ink tank are described as "sections" in the claims and specification. *See* '957 Patent, claims 7, 10, 11, 16 and 17; '957 Patent at 3:55:56. This suggests that an ink tank has its own walls that form the tank's boundaries; it is a self-contained structure. On the other hand, the sections of an ink tank share a wall and are not self-contained structures. We therefore define an ink tank as a self-contained structure for holding ink that has its own walls that form the tank's boundaries. The sections of an ink tank share a wall and are not self-contained structures.

The prosecution history identified by the active respondents is consistent with this definition. The prosecution history indicates that a container with a partition that permits ink to freely move between the two portions of the container constitutes one ink tank, not two. Epson clearly indicated that the ink supply tank included both sections of the tank divided by a perforated partition in order to distinguish the prior art Barta reference. The claims Epson was prosecuting were directed to a single ink absorbing member in a tank. Epson argued as follows:

> The Examiner continues stating that regarding claims 31 and 32, *the Barta reference teaches an ink tank* which is substantially filled with absorbing material which holds substantially all the ink that the tank can hold. However, in Barta, two separate ink absorbing members fill the tank, not one ink absorbing member or one member in two sections. *Barta's two members are separated by a partition. No one member held all of the ink in the tank.*

Amendment dated September 21, 1994, p. 12, (EPS 0202105) (emphasis added). Epson confirmed that the Barta reference showed a single, partitioned tank in a supplemental

amendment filed two months later:

> That the ink absorbing member is formed of a unitary piece of absorbing material which substantially fills the ink supply tank distinguishes over the French patent to Barta inasmuch as *Barta teaches an ink tank 1 divided into two compartments* 6 and 7 by wall 5 and has separate ink absorbing members in each of the two compartments.

CX-501, Supplemental Amendment, dated December 19, 1994, p. 14, (EPS 0202125) (emphasis added). Hence, the applicant indicated that a partitioned tank constitutes a single ink tank rather than two ink tanks.

The ALJ determined that this prosecution history was not pertinent because it was not for the asserted claims. ID 71. However, the cited prosecution history related to statements made during the prosecution of the parent application of the '957 patent and is relevant since it relates to the same claim term involved here. *Advanced Cardiovascular Sys., Inc. v. Medtronic, Inc.*, 265 F.3d 1294, 1305 (Fed. Cir. 2001) ("The prosecution history of a related patent can be relevant if, for example, it addresses a limitation in common with the patent in suit.").

The ALJ also observed that the prosecution history concerned claims that contained a "unitary piece" limitation and dismissed the prosecution history on that basis as well. ID 71. Application claim 31 of the '658 patent, for instance, read: "The dot matrix printer of claim 30, wherein the unitary piece of ink absorbing material substantially fills the ink-supply tank." The ALJ's point apparently was that the applicant was simply distinguishing the Barta reference based upon the fact that the tank in Barta had two ink absorbing members rather than one.

We find, however, that the "unitary piece" limitation distinction in and of itself does not distinguish the Barta reference. In order to overcome the Barta reference, the applicants argued

that Barta's entire dual chamber tank was the ink tank. It is only by viewing the entire dual chamber tank as a single tank that the Barta reference is overcome as only then does no single ink absorbing member substantially fill the tank.[10] We conclude, therefore, that the applicants clearly indicated that a partitioned ink tank (at least where the partition is perforated as in Barta) constitutes a single ink tank rather than two ink tanks. This is consistent with the specification which indicates that sections of an ink tank are not themselves ink tanks.

We conclude therefore that an ink tank is a self-contained structure for holding ink that has its own walls forming the tank's boundaries. The sections of an ink tank that share a wall are not self-contained structures, and therefore do not meet the definition of an ink tank.

B. Infringement

We determined to review the ALJ's conclusions with respect to satisfaction of the limitations requiring "contacts" or "rows of contacts" and infringement of claims 1, 2, 3, and 9 of the '917 patent, and claims 1, 31, and 34 of the '902 patent by RC-6 and RC-10. We also reviewed infringement of claims 1, 31, and 34 of the '902 patent and the ALJ's conclusion that the "overhang" limitations are satisfied by RC-2 and RC-6 to RC-10. Finally, we reviewed whether RC-2 has an ink tank substantially filled with an ink absorbing member and therefore infringes claim 7 of the '957 patent, claims 19 and 20 of the '148 patent, claims 83 and 84 of the '377 patent and claim 164 of the '439 patent.

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[10] Similarly, application claim 32 which read "[t]he dot matrix printer of claim 30, wherein the unitary piece of ink absorbing material carries substantially all of the ink that said ink-supply tank was designed to hold" would read upon each individual chamber of the tank. *See* ID 71.

On review, we have determined to reverse the ALJ's conclusions with respect to infringement of claims 1, 31, and 34 of the '902 patent by RC-7 and RC-9 and infringement of claim 7 of the '957 patent, claims 19 and 20 of the '148 patent, claims 83 and 84 of the '377 patent and claim 164 of the '439 patent by RC-2. We affirm the ALJ's other conclusions with respect to infringement, including infringement of claims 1, 2, 3, and 9 of the '917 patent by representative cartridges RC-6 and RC-10 and infringement of claims 1, 31, and 34 of the '902 patent by representative cartridges RC-2, RC-6, RC-8, and RC-10.

1. Infringement of Claims 1, 2, 3, and 9 of the '917 Patent and Claims 1, 31, and 34 of the '902 Patent ("Contacts" Limitations)

Claim 1 of the '917 patent requires, *inter alia*, "a plurality of contacts for connecting the semiconductor storage device to the ink jet printing apparatus, the contacts being formed in a plurality of rows lying essentially in a plane parallel to the centerline of the ink supply port, each said row being centered relative to the centerline of said ink supply port." Claims 2 and 3 depend from claim 1 and independent claim 9 contains a "plurality of rows of contacts" limitation similar to that of claim 1 of the '917 patent. Claim 1 of the '902 patent requires two rows of contacts. Claims 31 and 34 of the '902 patent require contacts but not in rows. The Commission determined to review the ALJ's conclusion that RC-6 and RC-10 (Ninestar respondents) satisfy these claims requiring "contacts" and "rows of contacts."

a. Parties' Arguments

The active respondents' challenge the ALJ's infringement finding with respect to the claims requiring rows of "contacts." They argue that Epson failed to meet its burden of proof

that the contact patterns on RC-6 and RC-10 infringes claims 1, 2, 3, and 9 of the '917 patent or claim 1 of the '902 patent. Resp. Brief at 48-52. They point to their own expert's testimony that the patterns of contacts on the two representative cartridges were in a single row in an elongated serpentine pattern of contacts. Resp. Brief at 48-49. Moreover, they claim that this evidence is unrebutted because they maintain that Epson's expert Murch acknowledged that he could not determine where the contacts are by examining the cartridges alone. Resp. Brief at 48-49. Accordingly, they maintain the two representative cartridges do not infringe and the ALJ's findings are clearly erroneous. They also argue that Epson failed to show infringement under the doctrine of equivalents, and that the ID properly made no alternative findings under the doctrine of equivalents. *Id.* at 49-51.

Epson argues that the ALJ correctly found that respondents' two representative cartridges infringe claims 1, 2, 3, and 9 of the '917 patent and claim 1 of the '902 patent. Epson Brief at 31-47. Epson contends that respondents have merely added additional material to the "contacts" and that RC-6 and RC-10 infringe the asserted claims. Epson Brief at 41-44. Epson further argues that the cartridges also would infringe under the doctrine of equivalents, though the ALJ made no findings in this regard, essentially arguing that the additional material added by respondents is insubstantial. *Id.* at 46-47.

The IA likewise supports the ALJ's infringement findings and argues that the excess electrical material on RC-6 and RC-10 does not alter the fact that the contacts on the cartridges are in two rows and satisfy the claims. IA Brief. at 15-16. He asserts that excess material that serves no purpose does not alter this fact. *Id.*

b. Analysis

As discussed earlier, we define the term "contacts" without reference to the mating of the cartridge and printer, *i.e.*, as the discrete portions of the conductive material on the cartridge, but not including all conductive material such as the "leads," that are capable of forming an electrical connection.

With this claim construction, we find that the "contacts" limitations in claims 31 and 34 of the '902 patent are clearly satisfied by RC-6 and RC-10 because those two claims only require contacts rather than rows of contacts. Furthermore, we agree with the ALJ's conclusions with respect to infringement of claim 1 of the '902 patent and claims 1, 2, 3, and 9 of the '917 patent because we conclude the two representative cartridges have two rows of "contacts."

First, despite the additional portions of conductive material on RC-6 and RC-10, creating the serpentine patterns, a pattern of two rows can still be discerned, especially with respect to RC-6. On both cartridges, the patterns of conductive material have areas where the material is wider and the areas of widened material are arranged in rows. *See* RC-6 (CPX-25); RC-10 (CPX-52).

In any event, the additional material is an insubstantial change from the claimed invention. While the ALJ never reached infringement under the doctrine of equivalents because he found literal infringement, we find alternatively infringement by RC-6 and RC-10 under the doctrine of equivalents. "The doctrine of equivalents allows the patentee to claim those insubstantial alterations that were not captured in drafting the original patent claim but which could be created through trivial changes." *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki*

Co., 535 U.S. 722, 733 (2002). Equivalence includes consideration of whether the "function, way, or result" of an accused substitute structure is substantially different from that described by the claimed limitation. *See Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267 (Fed. Cir. 1999) (quoting *Warner-Jenkinson*, 520 U.S. at 39-40). In other words, "[i]nfringement under the doctrine of equivalents occurs when a claimed limitation and the accused product perform substantially the same function in substantially the same way to obtain substantially the same result." *V-Formation, Inc. v. Benetton Group SpA*, 401 F.3d 1307, 1313 (Fed. Cir. 2005).

The evidence shows that the additional conductive material serves no purpose. This type of insubstantial alteration is precisely what the doctrine of equivalents is designed to capture. The doctrine seeks to prevent "a fraud on a patent" by discouraging "the unscrupulous copyist [from] making unimportant and insubstantial changes and substitutions in the patent which, though adding nothing, would be enough to take the copied matter outside the claim, and hence outside the reach of law." *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 607-608 (1950) (quoted in *Festo Corp.*, 535 U.S. at 732-733). As the ALJ found, the additional portions of conductive material on RC-6 and RC-10 do not serve any function and only certain portions of the conductive material on RC-6 and RC-10 were designed to contact the conductive material on the printer. The remaining material is excess conductive material that serves no purpose. *See* ID at 265 (finding that the excess conductive material on the accused cartridges is irrelevant). The active respondents do not deny *** and that the additional portions have no function. ***; Resp. Reply at 15-16. The record suggests, in fact, that the new serpentine pattern does not make contact with the printer's contacts as reliably as the prior design. Tr. at 2404

(Wu).

The '917 patent teaches that by arranging the contacts in rows, the movement of the contacts may be minimized when the cartridge rocks and rotates around the needle as the carriage traverses across the printer. If the movement is not minimized, then as the cartridge moves back and forth with the carriage, the resulting displacement between the contacts and the contact-forming mechanisms in the carriage will cause a loss of electrical continuity or a short between adjacent contacts. *See* '917 Patent 3:21-29, 4:46:56:CFF VIII 15-19 (undisputed). The record shows that the pattern of contacts on RC-6 and RC-10 is designed to function in the same fashion as the rows of contacts described in the '917 and '902 patents. Both serve to establish contact between the circuit board and the printer in the same manner. Tr. at 822-823 (Murch).

The active respondents asserts that the serpentine pattern of the accused cartridges is not an insubstantial change because it does not serve the "spacing function" of the plurality of rows limitation. Resp. Brief at 49. However, we do not find support in the intrinsic record for their contention that the rows of contacts serve a spacing function.

Thus, we conclude that RC-6 and RC-10 literally infringe, and, alternatively, infringe under the doctrine of equivalents, claims 1, 2, 3, and 9 of the '917 patent and claim 1 of the '902 patent.

2. Infringement of Claims 1, 31, and 34 of the '902 Patent ("Overhang" Limitation)

The active respondents have also challenged the ALJ's conclusion that the so-called "overhang" limitation is satisfied by RC-2 and RC-6 to RC-10, and the Commission determined

to review the ALJ's conclusions in this regard. The limitation at issue, the fifth limitation in claim 1 of the '902 patent, requires a "first overhang disposed between the first upper corner and the second upper corner." The limitation found in claim 31 and claim 34, which depends from 31, is similar: "a first overhang member extending beyond a plane of the wall of said housing where said contacts are disposed, the first overhang member being located between the first upper corner and the second upper corner."

Nine representative Ninestar cartridges were in issue for claim 1: RC-2, RC-3, RC-4, RC-5, RC-6, RC-7, RC-8, RC-9, and RC-10. ID 273. The ALJ found all nine infringe claim 1. Specifically, he found that RC-2, RC-3, RC-4, RC-5, RC-6, RC-7, RC-9, and RC-10 literally infringe claim 1, and that RC-8 infringes claim 1 under the doctrine of equivalents.[11] ID 286.

In this connection, the ALJ relied upon Epson's expert's testimony that the accused cartridges had the required protrusions. The ALJ also indicated that his personal inspection of the cartridges confirmed the presence of the structure in the representative cartridges. ID 279-280. The ALJ additionally determined that RC-8 satisfied the limitation under the doctrine of equivalents. ID 281-286.

Eight representative Ninestar cartridges were in issue for claim 31: RC-2, RC-3, RC-4, RC-5, RC-6, RC-7, RC-8, and RC-10. ID 286. The ALJ found that RC-2, RC-5, RC-6, RC-7, and RC-10 literally infringe claim 31 and RC-8 infringed that claim under the doctrine of

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[11] It was not disputed at the hearing that RC-3 and RC-4 literally meet the overhang limitation of claim 1. With respect to the other representative cartridges, the ALJ found that these met the claim either literally (RC-2, RC-5, RC-6, RC-7, RC-9, and RC-10) or equivalently (RC-8). ID 279-281, 281-286.

equivalents. ID 290-291. Since the parties stipulated that any cartridge found to infringe independent claim 31 also infringes claim 34 which depends from claim 31, the ALJ found claim 34 infringed by RC-2, RC-3, RC-4, RC-5, RC-6, RC-7, RC-8, and RC-10 as well. ID 291-293.

a. Parties' Arguments

The active respondents argue that the ALJ erroneously concluded that certain Ninestar products have an overhang between the upper corners of the second wall. Resp. Brief. at 61-65. They specifically refer to RC-2, RC-6, RC-7, RC-8, RC-9, and RC-10. *Id.* at 61. Relying on their expert's testimony, they contend that the structures identified as "overhangs" by complainants in the accused representative cartridges do not qualify as overhangs, are not located between the upper corners, do not aid in the insertion and removal of the cartridge into the printer, or are actually the lid of the cartridge. *Id.* at 61-64.

Epson argues that the ALJ correctly found infringement of claims 1, 33, and 34 of the '902 patent. Epson Brief at 64-73. Specifically, Epson argues that RC-2 and RC-6, RC-7, RC-8, RC-9, and RC-10 all have overhangs in the required location, the upper part of the wall. *Id.* at 66-71. Epson states that respondents' contentions are unavailing, being nothing more than claim construction arguments in the guise of infringement arguments.[12] Epson also argues that RC-2 and RC-6 to RC-10 infringe under the doctrine of equivalents. Epson Brief at 71-72; Epson Reply a 52-53.

Epson maintains that aiding in the mating of the cartridge and printer is not a function of

[12] Epson states that RC-2 has two overhangs, yet respondents challenge only one. Epson Brief at 70 n.17.

the claims, as the respondents assert. Epson Reply at 50. Epson describes the active respondents' argument that the so-called "overhangs" are actually lids as incorrect and irrelevant. Epson Reply at 51-52. The IA characterizes respondents' non-infringement arguments as essentially arguing that the accused products do not look like the drawings in the patent. IA Brief at 17-18.

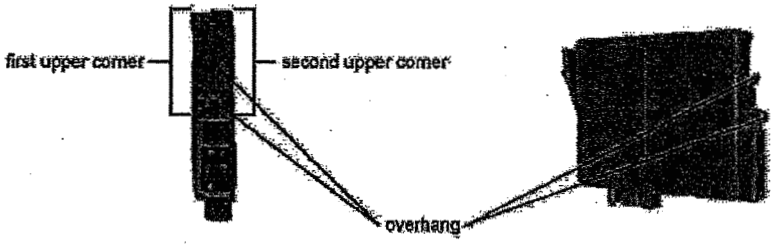
b. Analysis

As we discussed earlier, we have modified the construction of the claim term "overhang" and do not require it to perform any particular function. The representative cartridges are merely required to have a protrusion, and the "between" language requires the protrusion to be on the upper part of the wall. Based upon our own revised construction, we conclude that RC-7 and RC-9 do not satisfy the "overhang" limitations of claims 1, 31, and 34 of the '902 patent, but that the other representative cartridges for which review was sought, RC-2, RC-6, RC-8, and RC-10 do satisfy the limitation. We discuss each representative cartridge in turn.

The ALJ found that RC-2 has a protrusion on the upper part of the second wall. ID 279. RC-2 has a protrusion located one-quarter of the way down the wall and another protrusion approximately halfway down the wall. *See* Epson Brief at 67. We believe the protrusion on RC-2 located one-quarter of the way down the wall is properly considered an overhang within the meaning of claims 1 and 31 and is located on the *upper* part of the wall. The other protrusion relied on by Epson is not located on the upper part of the wall, and thus, even if it were

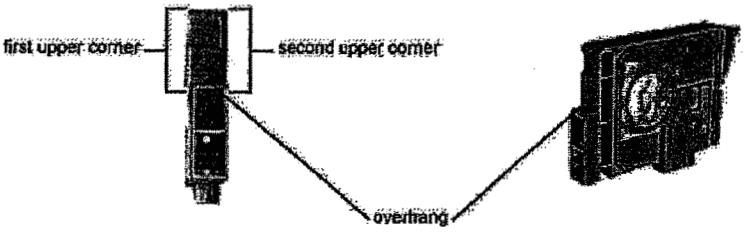
considered an overhang, it does not meet the "between" limitation.[13]

Representative Cartridge 2
(CPX-289)



The ALJ similarly found there to be a protrusion on the upper part of the wall on RC-9. ID 279-280. However, the protrusion alleged to be an overhang on RC-9 is midway down the wall of the cartridge and thus is not located on the *upper* part of the wall as required by claims 1 and 31. *See* RC-9 (CPX-193).

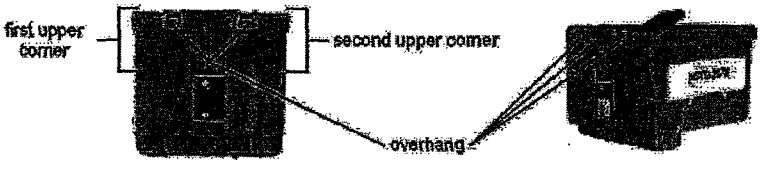
Representative Cartridge 9
(CPX-193)



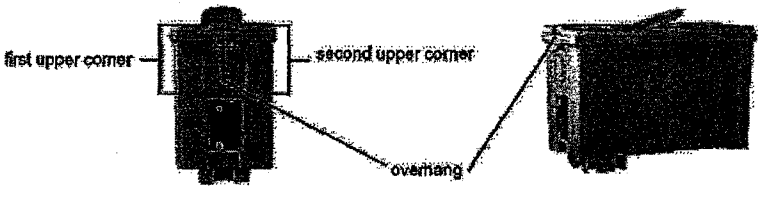
[13] The images of the representative cartridges are from Epson's Brief and are for purposes of illustration.

With respect to cartridges RC-6 and RC-10, there is an overhang located on the upper part of the wall. *See* RC-6 (CPX-25); RC-10 (CPX-52). Respondents argue in their brief the alleged overhang is a portion of the lid or the flange at the top of the cartridge. However, in RC-6, all these elements satisfy the overhang limitation of claims 1 and 31, *i.e.*, they are protrusions, and they are located on the upper part of the wall. In RC-10, the lip surrounding the upper part of container is properly regarded as an overhang and is located, at least in part, on the upper part of the wall.

Representative Cartridge 6 (CPX-25)



Representative Cartridge 10 (CPX-52)

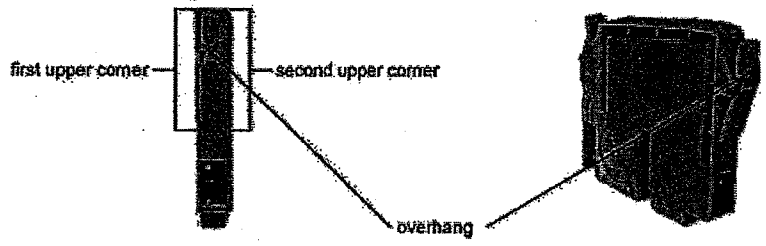


RC-7 and RC-8 both have large protrusions extending from the bottom of the wall towards the upper part of the wall. *See* RC-7 (CPX-81); RC-8 (CPX-103). The question is whether these structures qualify as being "located" near the upper part of the wall and thus meet

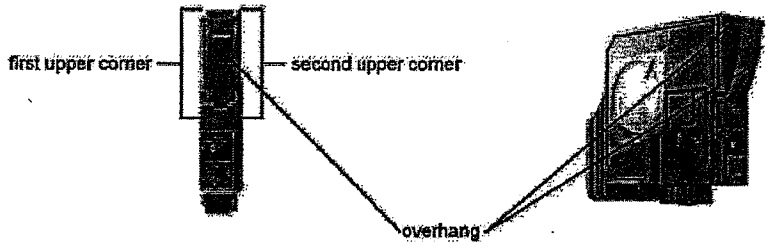
the limitation at issue. Since the protrusions extend from an area which is not located near the upper part of the wall, even if these were overhangs, they do not meet the location limitation.

With respect to RC-8, but not RC-7, Epson identified an additional protrusion. Based upon the second protrusion, we find that a conclusion of literal infringement is appropriate for RC-8 as this second protrusion constitutes an overhang and extends from the upper part of the wall. *See* RC-8 (CPX-103).

Representative Cartridge 7 (CPX-81)



Representative Cartridge 8 (CPX-103)



For the foregoing reasons, we reverse the ALJ's conclusions concerning infringement by

RC-7 and RC-9 of claims 1, 31, and 34 of the '902 patent. We also modify the ALJ's conclusions with respect to RC-8 to find literal infringement rather than infringement under the doctrine of equivalents. Finally, we adopt the ALJ's other conclusions with respect to infringement of claims 1, 31, and 34 of the '902 patent.

3. Infringement of the Claims of the Sponge Patents

The ALJ interpreted "ink supply tank" as "a structure that holds ink for supply to a printer" and found infringement of claim 7 of the '957 patent, claims 19 and 20 of the '148 patent, claims 83 and 84 of the '377 patent and claim 164 of the '439 patent. ID 174. The ALJ further found that the limitation requiring the ink absorbing member to substantially fill the ink tank was satisfied by RC-2 for all the claims. ID 173-175, 198, 203, 205, 208, 211.

a. Parties' Arguments

The active respondents' challenge to the ALJ's conclusions is ultimately based upon their claim construction argument that RC-2 has a single tank divided into two sections rather than two separate tanks, and thus, the ink absorbing member does not substantially fill the entire tank, only one-half of it. Resp. Brief at 67-79. They also argue that RC-2 does not infringe under the doctrine of equivalents based upon the correct claim construction of "ink supply tank." Resp. Brief at 87-89.

Epson asserts that the ALJ properly found that RC-2 literally infringes the asserted claims of the sponge patents. Epson Brief 94-98. It argues the ink supply tank limitation was correctly construed by the ALJ and that respondents' denial of infringement is based upon an effort to impose requirements such as elimination of "bubbles and sloshing" or that the ink tank hold *all*

of the ink (the latter being a new argument) that are not elements of any of the sponge patents' claims. *Id.* It also contends that RC-2 infringes under the doctrine of equivalents, though the ALJ made no findings in this regard. Epson Brief at 98-102. The IA supports the ALJ's infringement findings and maintains that respondents incorrectly argue that infringement is negated by adding an additional tank without an ink absorbing member. IA Brief at 18-19.

b. Analysis

As discussed earlier, we define an ink tank as a self-contained structure with its own walls that form the tank's boundaries. The sections of an ink tank share walls and are not self-contained structures, and therefore, the definition does not include the sections of a partitioned ink tank. RC-2 contains a single tank having a perforated partition dividing the tank into two sections and an ink absorbing member in one of the two chambers created by the perforated partition. As discussed earlier, Epson argued during prosecution that an ink tank having a perforated partition was a single tank rather than two ink tanks. As the absorbing member only fills half the tank, we conclude that RC-2 does not have an ink absorbing member that substantially fills the ink tank, as required by claim 7 of the '957 patent, claims 19 and 20 of the '148 patent, claims 83 and 84 of the '377 patent and claim 164 of the '439 patent.

With respect to Epson's doctrine of equivalents argument, the parties dispute the record concerning the function of the ink absorbing member substantially filling the ink tank. Epson Brief at 98-102; Resp. Reply at 34-35. The active respondents argue that the ink absorbing sponge substantially fills the tank in order to eliminate sloshing and air bubbles. Resp. Reply at 34. Epson, on the other hand, maintains the purpose is to contain and stabilize the ink in order to

make it available to the ink supply port. Epson Brief at 100. The ALJ made no findings in this regard. However, Federal Circuit case law holds that the doctrine of equivalents cannot be applied to read a limitation out of a claim and to conclude that an ink absorbing member filling half of the ink tank is equivalent to one substantially filling the ink tank would effectively read the limitation out of the claims. *See Moore U.S.A. v. Standard Register Co.*, 229 F.3d 1091, 1106 (Fed. Cir. 2000), *cert. denied*, 532 U.S. 1008 (2001) ("If a minority could be equivalent to a majority, this [majority] limitation would hardly be necessary."); *Asyst Technologies, Inc. v. Emtrak, Inc.*, 402 F.3d 1188, 1195 (Fed. Cir. 2005) ("To hold that 'unmounted' is equivalent to 'mounted' would effectively read the 'mounted on' limitation out of the patent.")). Moreover, Epson would inappropriately be asserting claim coverage which was relinquished during prosecution, as discussed above. The doctrine of prosecution history estoppel acts as a legal limitation on the doctrine of equivalents. *Southwall Techs., Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1579 (Fed. Cir. 1995). ("[P]rosecution history estoppel limits the range of equivalents available to a patentee by preventing recapture of subject matter surrendered during prosecution of the patent."). For these reasons, we conclude that RC-2 does not infringe literally or under the doctrine of equivalents and reverse the ALJ's conclusion that RC-2 infringes claim 7 of the '957 patent, claims 19 and 20 of the '148 patent, claims 83 and 84 of the '377 patent, and claim 164 of the '439 patent.

C. Obviousness

A claim is invalid due to obviousness if the differences between the claimed invention and the prior art "are such that the subject matter as a whole would have been obvious at the time

the invention was made to a person having ordinary skill in the art." 35 U.S.C. § 103(a). Obviousness is a legal determination based on underlying findings of fact. *See Dippin' Dots v. Mosey*, 476 F.3d 1337, 1343 (Fed. Cir. 2007). The underlying factual inquiries include (1) the scope and content of the prior art, (2) the level of ordinary skill in the art, (3) the differences between the claimed invention and the prior art, and (4) the so-called secondary considerations of nonobviousness such as commercial success, long-felt but unsolved needs, failure of others, etc. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

Issued patents are presumed valid, putting the burden on the party challenging validity of a patent to show invalidity by clear and convincing evidence. 35 U.S.C. § 282; *Helifix Ltd. v. Blok-Lok Ltd.*, 208 F.3d 1339, 1346 (Fed. Cir. 2000).

On April 30, 2007, the Supreme Court in *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727 ("*KSR*"), while reaffirming that the *Graham* factors still control the analysis of an obviousness inquiry, reexamined how the obviousness inquiry should be conducted and rejected what it referred to as the overly rigid application of the so-called "teaching, suggestion, motivation" test.[14] The Commission determined to review the ALJ's conclusions concerning obviousness to consider the impact of the *KSR* decision on the ALJ's conclusions and whether additional fact-finding is necessary.

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[14] Prior to *KSR*, the Federal Circuit indicated consideration of two factors was required to determine if the invention was obvious: "(1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device, or carry out the claimed process;" and "(2) whether the prior art would also have revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success." *Noelle v. Lederman*, 355 F.3d 1343, 1351-52 (Fed. Cir. 2004).

Before the ALJ, the active respondents contended that certain claims of the '917 patent, the '422 patent and the '053 patent were invalid for obviousness based upon prior art. Specifically, they contended that claims 1, 2, 3, and 9 of the '917 patent were invalid for obviousness based upon a combination of U.S. Patent 5,610,635 (the '635 patent) and the '401 patent. ID 142-143. They argued that claim 1 of the '422 patent was invalid for obviousness in light of the '635 patent and European Patent No. 0 822 084 A2 (the '084 patent). ID 143. They also contended that each feature of claim 1 of the '053 patent is found in the disclosure of the '422 patent, except that the '053 patent requires that the cartridge have an ink supply port which is closer to the wall opposite the wall containing the electrodes of the chip, while in the '422 patent the ink supply port is closer to the wall which contains the electrodes of the chip. ID 143. They claim it would have been obvious to reposition the ink supply port in the manner described in the '053 patent. Epson and the IA opposed the active respondents' contentions below.

The ALJ found that claims 1, 2, 3, and 9 of the '917 patent were not invalid for obviousness. He found that there were "deficiencies" in the '635 patent "and a lack of any suggestion in the prior art for combining the '635 patent with the '401 patent . . ." ID 151.

The ALJ also found that claim 1 of the '422 patent was not invalid for obviousness in light of the '635 patent and the '084 patent, which were both disclosed to the patent examiner. ID 154. He found that the '422 patent is directed to an ink cartridge with a retaining member having a moveable engagement portion that is located above the memory device and that locks the cartridge into place when it is installed in the printer. ID 152. Claim 1 of the '422 patent also refers to a cartridge with a semiconductor chip. ID 152. He found that the '084 patent

teaches away from the use of electrical means to determine the amount of ink in the cartridge because the '084 patent discloses an optical means to perform that function. ID 154. He therefore found that the active respondents had not demonstrated by clear and convincing evidence that claim 1 of the '422 patent was invalid for obviousness. ID 154.

With respect to the '053 patent, the ALJ found that the '053 patent disclosed a different location for the ink supply port than the '422 patent. ID 156. According to the ALJ, the '422 patent teaches that the ink supply port is on the same side of the cartridge as the projecting portion, while the '053 patent requires just the opposite. ID 156. The '053 patent places the electrodes away from the ink supply port in order to avoid contamination of the electrodes by the ink. ID 157. The ALJ found that the '422 patent teaches away from such placement as it teaches placement of the electrodes near the port even though it was recognized that contamination was a potential problem. ID 157. For these reasons, the ALJ found that claim 1 of the '053 patent was not invalid for obviousness. ID 157.

1. Parties' Arguments

While only devoting a footnote to obviousness in their petition for review, Resp. Pet. at 4 n.3, after the Supreme Court issued *KSR*, the active respondents filed an additional submission arguing that the ALJ's analysis of obviousness was legally insufficient in light of *KSR*. Active Respondents' Letter of May 1, 2007. They now argue that the Supreme Court rejected the use of the teaching, suggestion or motivation test and created a more flexible standard for obviousness. Resp. Brief at 90. They contend that printer cartridge technology is simple, predictable, well-known and crowded with prior art. They suggest, therefore, that combinations of old elements are

likely to be obvious. *Id.* at 92-93.

The active respondents also argue that the current record contains sufficient evidence to determine that the ALJ's conclusions are inconsistent with *KSR*. *Id.* at 94. However, they state that they would add certain additional prior art references to the record if the Commission determined to reopen the record. *Id.*

The active respondents maintain that the ALJ erred in relying upon a lack of suggestion in the prior art for combining the '635 patent and '401 patent for his conclusion that claims 1, 2, and 3 of the '917 patent are non-obvious. Resp. Brief at 96-110. They assert that their expert testified that all the elements of the asserted claims of the '917 patent are disclosed by the '635 patent and '401 patent. They argue that claims 1, 2 and 3 therefore are nothing more than a combination of old elements disclosed in the '635 patent and '401 patent and that the elements perform in a predictable fashion in the '917 patent. *Id.* at 105-109. They state that this argument also applies to claim 9, as the additional limitation of claim 9 is the lower row of contacts being longer than the other rows. They argue this is an insignificant change well within the ordinary creativity of a person with ordinary skill. Resp. Brief at 109. They also point to additional disclosures not of record: U.S. Patent 6,102,517, U.S. Patent No. 5,706,040, and U.S. Patent No. 5,119,115. *Id.* at 110-120.

With respect to the '053 patent, they contend that the only element it teaches not found in the prior art is the location of the ink supply port, but they argue that this addition does not yield any unpredictable or non-obvious results. *Id.* at 120-123. According to the active respondents, moving the electrodes away from the ink supply port yielded the predicable result of aiding in the

prevention of contamination of the electrodes by ink. *Id.* at 121.

As for the '422 patent, the active respondents assert that claim 1 is obvious in view of three prior art references: U.S. Patent 5,610,635, European Patent No. 0 822 084 A2, and U.S. Patent No. 6,155,678 ("the '678 Patent"). Resp. Brief at 125-126. They contend that the '084 patent teaches each of the limitations of Claim 1 of the '422 patent, except for the inclusion of a memory device with electrode, and they maintain it was obvious to include the memory device of the '635 patent on either the front or rear surface wall of the '084 patent ink cartridge to form the claimed combination. Resp. Brief at 126. Respondents also argues that claim 1 (and claims 10 and 14) are obvious in view of U.S. Patent No. 6,155,678 (the "Lexmark patent"), a reference not raised before the ALJ. Resp. Brief at 125.

Epson maintains that the ALJ's obviousness conclusions are consistent with *KSR* and no additional fact-finding or evidence is necessary. Epson Brief at 102-124. It argues that *KSR* did not reject the teaching, suggestion, or motivation test, but only criticized the Federal Circuit's application of the test. Epson contends that the ALJ relied upon the lack of all the elements in the asserted claims in the prior art as the basis for his non-obvious conclusions, so the question of obviousness is different from the situation in *KSR* in which the patent was simply a combination of elements found in the prior art. Epson Brief at 104. Further, except for one "immaterial" reference, all of the cited references were before the PTO during prosecution. Epson also notes that the respondents do not address the secondary considerations, which favor nonobviousness.

With respect to the obviousness of the asserted claims of the '917 patent, Epson states that the '635 patent was before the examiner and that respondents abandoned the '401 patent reference

after the hearing. Epson also argues that the '635 patent does not disclose many limitations of the '917 patent, such as an ink supply port or contacts in rows. *Id.* at 107-108. It points out that Judge Luckern noted these deficiencies in the prior art. *Id.* at 108 (citing ID 151). It also points to deficiencies in the '401 reference.

Epson argues that the prior art references to which the respondents cite fail to disclose "numerous" limitations of the '422 patent, such as an ink supply port connected to the ink supply needle as required by claim 1. *Id.* at 110. Epson contends that because the asserted references do not disclose each of the claim limitations and, in fact, teach away from the invention and each other, the combination of the '635 and the '084 references cannot invalidate claim 1 of the '422 patent. Epson Brief at 111. It argues additionally that claims 10 and 14 are not part of the Commission's review, and that the '678 patent does not disclose the additional limitations of these claims, which are not simply obvious design choices. Epson Reply at 103-106.

Epson contends that the active respondents incorrectly assert that the '422 patent on its own invalidates claim 1of the '053 patent. Epson Brief at 111-114. Epson notes that the prior art teaches away from the invention of the '053 patent. Epson Reply at 107-108 (citing ID 154, 157). It points out that the application for the '422 patent was considered by the patent examiner and the '053 issued nevertheless. *Id.* It maintains that the '053 patent has critical limitations not disclosed by the '422 patent: an ink supply port having [an exit opening and] a centerline and communicating with the chamber; contacts being formed in a plurality of rows lying essentially in a plane parallel to the centerline of the ink supply port; and each said row being centered relative to the centerline of the said ink supply port. Epson Reply at 108.

Epson also notes that all of the prior art was considered by the PTO and the patents issued over the prior art, which was not the case in *KSR*. *Id.* at 122. It contends that the active respondents ignore secondary considerations of non-obviousness, such as commercial success and that these other indicia also support the ALJ's conclusions of non-obviousness. *Id.* at 123.

Epson contends the record in this investigation has already established that the asserted claims cannot be characterized as "simply arrange[ing] old elements with each performing the same it had been known to perform." *KSR*, 127 S.Ct. at 1740. Rather, the asserted claims disclose new elements that the ALJ found to not be taught by the prior art raised by respondents. Epson Brief at 118. Epson argues that the respondents had the opportunity to raise all of the new prior art references they now seek to rely upon and there is no need for additional fact-finding under *KSR* since *KSR* does not so fundamentally change the obviousness inquiry that additional fact-finding is necessary. Epson Reply at 74-80.

The IA contends that the *KSR* decision has not altered the legal landscape but rather confirmed that the factors cited in *Graham v. John Deere Co.* control the analysis. IA's Reply at 4. He argues that the Supreme Court did hold that a rigid, inflexible application of the "teaching, suggestion, motivation" test is error, but not that all obviousness inquiries that reference the teaching, suggestion, motivation test are inappropriate. IA Brief at 21 (quoting *KSR, slip op. at 15:* "There is no necessary inconsistency between the idea underlying the TSM test and the *Graham* analysis."). He maintains that the Federal Circuit has, in fact, long recognized that the suggestion to modify the prior art or combine the prior art could come from the common knowledge of a person of ordinary skill in the art. IA Reply at 5 (quoting *Motorola, Inc. v.*

Interdigital Tech., 121 F.3d 1461, 1472 (Fed. Cir. 1997) ("The suggestion to combine may come from the prior art, as filtered through the knowledge of one skilled in the art.")).

He criticizes respondents' arguments as failing to discuss how the ALJ erred; he asserts that respondents simply reargue their obviousness case. He also maintains that respondents had a full opportunity to present an invalidity case during the hearing and in their post-hearing briefs and that there is no reason to reopen the record to allow respondents a second opportunity to present a different case for invalidity. *Id.*

2. Analysis

At the outset, we note that we do not find it necessary to remand the question of obviousness to the ALJ or reverse any of the ALJ's conclusions with respect to the asserted claims of the '917, '422 or '053 patents. The active respondents have not adequately explained why additional fact-finding is necessary or why the new references they cite could not have been presented to the ALJ to support the obviousness arguments they made before the ALJ. In fact, the relevancy of the newly cited references does not appear to have any particular dependency on *KSR* since the references would have been relevant to the question of obviousness before the *KSR* decision.

While the ALJ did refer to a lack of "suggestion" for combining prior art in his analysis of obviousness for claims 1, 2, 3 and 9 of the '917 patent, he also found that not all the features of the asserted claims of the '917 and '422 patents were disclosed in the prior art. ID 151, 153. Thus, the prior art could not simply be combined to yield the inventions of the two patents and it cannot be argued that the claimed inventions would have resulted simply from the combination

of old elements to yield a predictable result, which appears to have been a primary concern of the *KSR* decision. *KSR*, 127 S.Ct. at 1740 ("The principles underlying these cases are instructive when the question is whether a patent claiming the combination of elements of prior art is obvious."). We find that the ALJ's conclusions with respect to the non-obviousness of the asserted claims of the '917 and '422 patents are well-reasoned and well-supported in the record and that the active respondents have not demonstrated the obviousness of the patents by clear and convincing evidence.

As to claim 1 of the '053 patent, the ID discusses a combination of prior art elements and one additional element relied on by respondents, the repositioning of the ink port to avoid contamination of the circuit board. ID 156-157. The ALJ found that the '422 patent teaches away from the repositioning of the ink port and the specification of the '422 patent suggests the ink port should be near the circuit board. ID 157. Based upon the '422 patent's teaching that the ink port is near the circuit board, we do not find that the repositioning of the ink port would have been obvious to one skilled in the art. *See* '422 Patent 3:66:67. Moreover, the application for the '422 patent was disclosed to the examiner and found not to be a bar to patentability. ID 156 citing (CFF VIII.73). Accordingly, we find that the active respondents have not demonstrated the obviousness of claim 1 of the '053 patent by clear and convincing evidence.

III. Remedy, Public Interest and Bonding

The ALJ based his recommendation of a general exclusion order on section 337(d)(2) and *Certain Airless Spray Pumps*, 337-TA-90 USITC Pub. 1199 (Nov. 1981), as well as section 337(g)(2), noting that the Commission has stated that the criteria of section 337(d)(2) "do not

differ significantly" from the factors in *Certain Spray Pumps, i.e.*, the establishment of both (1) a widespread pattern of unauthorized use of its patented invention and (2) certain business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles." ID 333. The ALJ recommended the issuance of a general exclusion order should the Commission determine that there is a violation of section 337. ID 334. He also recommended that the Commission issue cease and desist orders against domestic respondents Ninestar U.S., Town Sky, Dataproducts and MMC as well as defaulting respondents Glory South, AcuJet and Mipo America. ID 363. Following established practice, he did not address the public interest. Finally, he recommended a bond in the amount of $13.60 per cartridge to permit importation during the Presidential review period. ID 368.

A. Remedy

In support of a general exclusion order, the ALJ found that there is a widespread pattern of unauthorized use of Epson's patented inventions. He identified eleven respondents that have manufactured and/or sold for importation into the U.S. infringing ink cartridges for use with Epson printers: Ninestar Technology, Zhuhai Gree, Butterfly, Mipo, Ink Lab, InkTec, Artech, Master Ink, Tully, Ribbon Tree Macao and Wellink. ID 336. He also found that at least fourteen respondents had imported and/or sold after importation infringing Epson-compatible cartridges: Ninestar U.S., Town Sky, Dataproducts, MMC, Glory South, Mipo America, AcuJet, Ribbon Tree USA, Apex, InkTec America, Inkjetwarehouse, Nectron, Gerald Chamales and Rhinotek. He also noted the wide scope of respondents' unauthorized use of Epson's patented inventions,

noting that in 2005, respondents collectively sold in excess of *** Epson-compatible ink cartridges for over *** in revenue. ID 336. The ALJ described in detail the activities of the manufacturers and importers of infringing ink cartridges and concluded that respondents and many non-respondent companies had engaged in widespread unauthorized uses of Epson's patented ink cartridges, resulting in millions of dollars in revenue for each of the past several years. ID 336-350. The ALJ included in his analysis respondents who had been terminated on the basis of consent orders (ID 336-346) and defaulting respondents (ID 347-349).

The ALJ further found that there are certain business conditions that would justify a general exclusion order. ID 350-360. He described the active respondents' use of multiple respondent and non-respondent companies to export the accused products and import them into the United States. ID 351-352. He also found that the active respondents had used straw men intermediary companies to export to the United States and that other companies could evade a limited exclusion order by shipping unmarked, generic or private label products that bear no markings that identify their origin. ID 352, 354. He concluded, therefore, that persons other than the active respondents have the ability to take advantage of business conditions that would allow them to evade a limited exclusion order. ID 355. He also found that demand remains strong for ink cartridges, potential manufacturers have easy access to existing distribution networks, the cost of the necessary manufacturing equipment is low and foreign labor is inexpensive, there are numerous ink cartridge manufacturers in China, and manufacturers face few barriers to retooling their existing facilities to manufacture Epson's patented cartridges. ID 356-359.

He concluded that complainants have established a widespread pattern of unauthorized

use of complainants' patented inventions and business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles. ID 360.

Complainants also sought cease and desist orders directed to three domestic respondents found in default (Glory South, AcuJet and Mipo American), as well as certain other domestic respondents, who participated in the investigation: Ninestar U.S., Dataproducts, and the MMC respondents. The ALJ recommended that such orders issue. ID 360-363.

1. Arguments of the Parties

a. General Exclusion Order

Complainants and the IA both agree with the ALJ's recommendation of a general exclusion order based on the ALJ's findings of a "widespread pattern" of unauthorized use of the patented invention and the existence of "business conditions" which warrant the issuance of a general exclusion order. *See* Epson Brief at 125-167; IA Brief at 24.

The general exclusion order, however, according to the IA, should not cover claims 29, 31, 34, and 38 of the '472 patent, claim 165 of the '439 Patent, and claims 45, 53, and 54 of the '397 patent, because Epson did not prove a violation with respect to those patent claims by substantial, reliable, and probative evidence. IA Brief at 25. Claims 29, 31, 34, and 38 of the '472 patent and claim 165 of the '439 patent were asserted only against the eight defaulting respondents and several settling respondents. Claims 45, 53, and 54 of the '397 patent were asserted against five of the defaulting respondents, as well as a settling respondent and a respondent who had been terminated from the investigation on the basis of a consent order. For

the '472 patent and claim 165 of the '439 patent, the IA maintains that Epson did not put on evidence of actual infringement of these claims, but instead relied on adverse inferences against defaulting Respondents. IA Brief at 26. For claims 45, 53, and 54 of the '397 patent, the IA asserts that the evidence offered at the hearing was inadequate to prove infringement, and hence no violation should be found with respect to these claims. IA Brief at 26. The IA contends that a limited exclusion order is appropriate with respect to the defaulting respondents as to these claims. *Id.* at 27.

The IA rejects Epson's argument that settlement agreements and consent orders issued during the investigation with respect to non-defaulting respondents can serve as substantial, reliable and probative evidence of a violation of the '439 patent or '472 patent, stating that the argument has not been properly raised and is without merit. IA Reply at 7. He argues that public policy counsels against using "admissions" from settlement agreements as evidence of a violation – especially here where they would be used to obtain a general exclusion order enforceable against entities other than the parties making such a "conclusory statement." *Id.* at 7 (citing *Certain Plastic Molding Machines*, Inv. No. 337-TA-462, Commission Op. at 20-21 (April 2, 2003)). He notes that the Commission stated in *Certain Plastic Molding Machines* that a complainant should not be allowed to "contract for a general exclusion order." (*Id.* at 8 citing *Plastic Molding Machines* at 21). He also points to the Advisory Committee's Notes to the Federal Rules of Evidence, which suggests that settlements are not entitled to weight with respect to the merits of the claims because offers to settle may have many motivations and may simply indicate a desire for "peace". *Id.* at 7. He argues that consent orders should be treated like

settlement agreements and found not to constitute "substantial, reliable, and probative evidence" of a violation.

With respect to claim 165 of the '439 patent and the asserted claims of the '472 patent, Epson argues that it submitted evidence of a widespread pattern of unauthorized use of these inventions. It maintains that adverse inferences and admissions are particularly appropriate with respect to these claims, the "Low Pressure Fill Claims," because the defaulting and settling respondents failed to respond to Epson's discovery. Epson argues that demonstrating infringement of these claims without any discovery was extremely burdensome, and hence, the admissions and adverse inferences should be given more weight. Epson Reply at 120. Epson also contends that because it was precluded from obtaining any information relating to the pressure at which the defaulting respondents' cartridges were filled with ink, the burden of infringement of claim 38 of the '472 patent, a method claim, should be shifted to the accused respondents pursuant to 35 U.S.C. § 295. Epson Brief at 176. Epson acknowledges that the ALJ may have partially relied on the adverse inferences he drew against the eight defaulting respondents, but it claims such inferences were entirely proper. Epson Reply at 119.

Epson argues that it did, in fact, prove infringement of claims 45, 53, and 54 of the '397 patent. It contends the ALJ appropriately relied upon Murch's testimony, the physical exhibits in evidence, and the admissions of respondents that certain specific ink cartridges infringe claims 45, 53 and 54 of the '397 patent. Epson Reply at 119.

The active respondents do not dispute the ALJ's findings with regard to a widespread pattern of unauthorized use. *See* Resp. Brief at 135-37. They do, however, agree with the IA that

there was an insufficient showing of infringement with respect to claim 165 of the '439 patent, claims 29, 31, 34, and 38 of the '472 patent, and claims 45, 53, and 54 of the '397 patent. They contend there was no probative evidence of infringement introduced with respect to these claims. *Id.* at 136. Therefore, they argue that no general exclusion order should issue for those claims. *Id.*

b. Cease and Desist Orders

Epson and the IA agree with the ALJ's recommendation that cease and desist orders be issued to certain domestic respondents (Ninestar U.S., Town Sky, MMC, Dataproducts, Glory South, Mipo America and AcuJet). Epson Brief at 179-181; IA Brief at 28-29. The active respondents do not dispute the appropriateness of the cease and desist orders.

2. Analysis

a. General Exclusion Order

The criteria for issuing a general exclusion order are found in section 337(d)(2), which provides:

> The authority of the Commission to order 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.

The Commission has noted that the criteria of section 337(d)(2) "do not differ significantly" from

the factors in *Certain Airless Paint Spray Pumps and Components thereof*, Inv. 337-TA-90, USITC Pub. 1199 (November 1981). *See Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same*, Inv. No. 337-TA-372, USITC Pub. No. 2964 (May 1996), Comm'n. Opn. 5.

In *Spray Pumps*, the Commission held that a complainant seeking a general exclusion order must show both (1) a widespread pattern of unauthorized use of its patented invention and (2) certain business conditions from which one might reasonably infer that foreign manufacturers other than the respondents to the investigation may attempt to enter the U.S. market with infringing articles. *Spray Pumps*, Comm'n. Opn. at 18. The Commission stated that among the evidence which might be presented to prove a "widespread pattern of unauthorized use of the patented invention" would be: (1) a Commission determination of unauthorized importation into the United States of infringing articles by numerous foreign manufacturers; or (2) the pendency of foreign infringement suits based upon foreign patents which correspond to the domestic patent in issue; (3) other evidence which demonstrates a history of unauthorized use of the patented invention. *Spray Pumps*, Comm'n. Opn. 18-19.

Among the evidence which might be presented to prove the "business conditions" referred to would be: (1) an established demand for the patented product in the U.S. market and conditions of the world market; (2) the availability of marketing and distribution networks in the United States for potential foreign manufacturers; (3) the cost to foreign entrepreneurs of building a facility capable of producing the patented article; (4) the number of foreign manufacturers whose facilities could be retooled to produce the patented articles; or (5) the cost

to foreign manufacturers of retooling their facility to produce the patented articles. *Spray Pumps*, Comm'n. Opn. 19. Notwithstanding *Spray Pumps*, it is the statute which ultimately governs.

The ALJ detailed the large number of foreign manufacturers and domestic importers of ink cartridges that are covered by the asserted claims of the asserted patents and the large market in the United States for the accused products. Epson's own sales in fiscal year 2006 of ink cartridges covered by the asserted patents were over ***. ID 355. Respondents' sales total over *** a year. *Id.* The parties have not raised any issues with respect to his analysis, and we cannot discern any error in the ALJ's conclusions that there has been a widespread pattern of unauthorized use of the patented inventions or that business conditions in the United States are conducive to further unauthorized importations absent a general exclusion order. ID 360. For the same reasons, the record also supports a finding that the criteria of section 337(d)(2) are met. Hence, we recommend issuance of a general exclusion order.

However, as discussed below, we do not find that the general exclusion order should cover the asserted claims of the '472 patent, claim 165 of the '439 patent, or claims 45, 53, and 54 of the '397 patent. For these claims we conclude that issuance of a limited exclusion order directed against defaulting respondents is appropriate.

b. Patents and Claims to be Excepted from the General Exclusion Order

As raised by the IA, the issue of proof of infringement by "substantial, reliable, and probative evidence" by the defaulting and settling respondents relates to claims 45, 53, and 54 of the '397 patent, the '472 patent, and claim 165 of the '439 patent. IA Brief at 24-28.

The '397 patent was asserted against five defaulting respondents (Mipo, Mipo America, Tully, Wellink, Ribbon Tree Macao) as well as three respondents (Inkjetwarehouse, Apex and Ribbon Tree USA) terminated from the investigation on the basis of a settlement agreement or consent orders. ID 165. It was not asserted against the active respondents or the MMC respondents. ID 165. Claims 29, 31, 34 and 38 of the '472 patent and claim 165 of the '439 patent were asserted against only the eight defaulting respondents and several settling respondents. ID 9.

With respect to the '472 and '439 patents, the ALJ found "that the allegations of infringement of claims 29, 31, 34 and 38 of the '472 patent and claim 165 of the '439 patent are deemed admitted against the defaulting respondents." ID 212. With respect to the '472 and '439 patents, no actual evidence of infringement was introduced by Epson and the ALJ performed no analysis of infringement. The ALJ only found infringement by taking adverse inferences against certain defaulting respondents. *See* ID 212. With respect to the '397 patent, the ALJ found that the defaulting respondents had been shown to infringe asserted claims 21, 45, 53, and 54, in addition to infringement being deemed admitted. ID 170 -171.

The deemed admitted findings against the defaulting respondents are the consequence of adverse inferences drawn against the defaulting respondents. In the remedy portion of the ID, the "deemed admitted" findings are used to support the recommendation of a general exclusion order pursuant to Commission Rule 210.17. *See* ID 348-349.

The ALJ relied upon *Certain Rare-Earth Magnets*, Inv. No. 337-TA-413, Commission Opinion, USITC Pub. 3307 (May 2000), as support for making factual findings with respect to

defaulting respondents in his analysis of "widespread unauthorized use." ID at 348-49. However, *Magnets* does not hold that the presumed infringement of defaulting parties constitutes substantial, reliable, and probative evidence of a violation. In *Magnets,* the ALJ found infringement based on record evidence with respect to active respondents as well as defaulting respondents. *Id.* at 3. The defaulting respondents in *Magnets* were also relied upon by the ALJ when he analyzed the "widespread unauthorized use" of the patented invention.

i. Substantial, Reliable, and Probative Evidence of Violation

A general exclusion order can be issued in a default situation only when a violation is established by "substantial, reliable, and probative evidence." 19 U.S.C. § 1337(g)(2).

Here the ALJ took adverse inferences against the defaulting respondents to find that complainants had demonstrated infringement. In explaining his reasoning, the ALJ stated:

> Commission rule 210.17 does allow the administrative law judge to draw adverse inferences and to issue findings of fact therefrom. In this investigation, defaulting respondents Tully, Wellink and Ribbon Tree filed a "Notice Of Election To Default" which the administrative law judge treated as Motion No. 565-34 (see Order No. 16 which issued on August 23, 2006). Complainants in response argued that the administrative law judge should make certain adverse inferences. Said respondents did not respond to Order No. 16. Thus, the administrative law judge draws [an] adverse inference and makes findings of fact therefrom that they have admitted to infringement of the asserted claims . . . ."

ID 348. The statutory provision for default in 19 U.S.C. § 1337(g), implemented by Commission Rule 210.16, indicates that failure to respond to the complaint and notice of investigation is grounds for a finding of default unless good cause is shown for the failure to respond. Commission Rule 210.17, which concerns adverse inferences, is by its terms unavailable with respect to acts constituting default. Specifically, Rule 210.17 concerns

"[f]ailures to act other than the statutory forms of default listed in Rule 210.16." The actions described above constituted acts of default. We conclude that the ALJ erred in relying upon the acts constituting default as the basis for taking adverse inferences under rule 210.17. In sum, the default findings provide a basis for presuming infringement with respect to the defaulting respondents under rule 210.16 and for issuing a limited exclusion order against them. These findings, on their own, do not constitute "substantial, reliable, and probative evidence" of a violation that would support issuance of a general exclusion order.

With respect to the consent orders and settlement agreements that Epson argues constitute "substantial, reliable, and probative evidence" of infringement, we agree with the IA that settlements are not sufficient with respect to these claims. In *Plastic Molding Machines*, the Commission declined to issue a general exclusion order after all the respondents had settled with complainants. *Certain Plastic Molding Machines*, Inv. No. 337-TA-462, Commission Op. at 20-21 (April 2, 2003)). The policy concerns raised in *Certain Plastic Molding Machines* are present here as a complainant should not be able to contract with settling respondents for a general exclusion order. *See Certain Plastic Molding Machines* at 21. The fact that respondents, for whatever reason, decided to settle with Epson should not in itself provide substantial, reliable, and probative evidence of violation.

As to the consent orders issued by the Commission with respect to non-defaulting parties during the course of the investigation, these were used by the ALJ to show a "widespread pattern of unauthorized use," as in *Magnets*. This does not mean that they constitute "substantial,

reliable, and probative" evidence of a violation under section 337(g)(2).[15]

ii. Proof of Infringement of Claims 45, 53, and 54 of the '397 Patent

With respect to claims 45, 53, and 54 of the '397 patent, the ALJ relied upon Epson's allegedly undisputed findings of fact to find infringement of these claims by RC-11. ID 170-171 (citing CFF VI.Z.4-5, CFF VI.Z.5; CFF VI.AA.1-15; CFF VI.BB.1-5). The IA, however, did in fact dispute the allegations of infringement claims 45, 53, and 54. *See* Posthearing Reply Brief of the Commission Investigative Staff at 4-5. Moreover, unlike the testimony concerning claim 21 of '397 patent which analyzed infringement on an element by element basis, the underlying testimony supporting infringement of these three other claims is conclusory. For instance, the support for Epson's proposed finding of fact concerning claim 45 (CFF VI.Z.4) is testimony by Murch indicating that the representative cartridge infringes claim 45. *See* Tr. at 1166 (offering general opinion that representative cartridge infringes claims 45, 53, and 54 but not discussing limitations of claims).[16] Thus we do not agree that a violation of claims 45, 53, and 54 has been shown by substantial, reliable, and probative evidence.

For the foregoing reasons, we conclude that only a limited exclusion order should issue with respect to claims 45, 53, and 54 of the '397 patent, the asserted claims of the '472 patent and claim 165 of the '439 patent. The limited exclusion order should be directed at defaulting

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[15] Epson's brief argument that the burden shifting provision of 35 U.S.C. § 295 would meet that requirement is conclusory and unsupported. *See* Epson Brief at 176.

[16] With resepct to claims 53 and 54, the ALJ similarly relied upon findings of fact that are based solely on conclusory testimony concerning the ultimate question of infringement. *See* ID 171 (citing CFF VI.AA.1-15; CFF VI.BB.1-5).

respondents Glory South Software Mfg., Butterfly Image Corp., Mipo International, Mipo America Ltd., AcuJet USA, Tully Imaging Supplies, Ltd., Wellink Trading Co., Ltd., and Ribbon Tree (Macao) Trading Co., Ltd. with respect to the asserted claims of the '472 patent and claim 165 of the '439 patent. With respect to claims 45, 53, and 54 of the '397 patent, the limited exclusion order should be limited to the five defaulting respondents against which those claims were asserted. The general exclusion order covers the other asserted claims for which infringement was found and for which the requirements of section 337(d)(2) were met.

c. Cease and Desist Orders for Defaulting Domestic Respondents

Section 337(f) permits the Commission to issue, in lieu of or in addition to an exclusion order, an order directing persons found to have violated section 337 "to cease and desist from engaging in the unfair methods or acts involved." 19 U.S.C. § 1337(f). Cease and desist orders are warranted with respect to domestic respondents that maintain commercially significant U.S. inventories of the infringing product. *See, e.g., Certain Crystalline Cefadroxil Monohydrate*, Inv. No. 337-TA-293, USITC Pub. 2391 at 37- 42 (June 1991). Domestic respondents who have defaulted are presumed to maintain significant inventories of infringing products in the United States and are likewise subject to cease and desist orders. *Certain Video Game Systems*, Inv. No. 337-TA-473, Comm'n Op. at 2 (December 2,2002); *Certain Agricultural Tractors*, Inv. No. 337-TA-380, USITC Pub. 3026 at 32, n.124 (March 1997).

Complainants sought cease and desist orders directed to three domestic respondents found in default (Glory South, AcuJet and Mipo American), as well as certain other domestic respondents who participated in the investigation: Town Sky, Ninestar U.S., Dataproducts, and

the MMC Respondents. The record shows that all of these respondents had commercially significant quantities of Epson-compatible ink cartridges. ID 360-363. The active respondents have not disputed that these respondents have commercially significant inventories and we see no basis for declining to follow the Commission practice of directing cease and desist orders to defaulting domestic respondents and those respondents holding commercially significant inventories. The cease and desist orders to domestic respondents Ninestar U.S., Town Sky, MMC, and Dataproducts encompass only those claims asserted against them that they were found to infringe.[17] Likewise, the cease and desist orders against defaulting respondents, Glory South Manufacturing, Mipo American Ltd., and AcuJet U.S.A. cover the claims asserted against them.

B. The Public Interest

Under sections 337(d) (exclusion orders) and 337(f) (cease and desist orders), the Commission, in determining whether to impose a remedy, must weigh the remedy sought against the effect such remedy would have on the following public interest factors: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those subject to the investigation, and (4) U.S. consumers. 19 U.S.C. §§ 1337(d) and (f).

By rule, the ALJ's RD on remedy and bonding does not address the issue of the public

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[17] Epson asserted claim 7 of the '957 patent; claims 18, 81, 93, 149, and 164 of the '439 patent; claims 83 and 84 of the '377 patent; claims 19 and 20 of the '148 patent; claim 1 of the '401 patent; claims 1, 2, 3 and 9 of the '917 patent; claims 1, 31 and 34 of the '902 patent; claims 1, 10 and 14 of the '422 patent; claim 1 of the '053 patent; and claim 21 of the '397 patent against these respondents.

interest. Commission rule 210.50(b)(1). Epson and the IA argue that issuance of a general exclusion order and cease and desist orders is not precluded by consideration of the public interest factors. Epson Brief at 181-182; IA Brief at 29-30. The active respondents do not argue otherwise.

Ink cartridges are not the sort of product that have been found by the Commission in the past to raise public interest concerns, and we are not aware of any public interest considerations that militate against the general exclusion order, limited exclusion order, or cease and desist orders directed to certain domestic respondents. We therefore determine that consideration of the public interest factors does not preclude issuance of these remedial orders.

C. Bonding

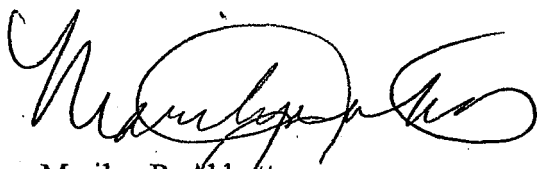
Pursuant to section 337(j)(3), the bond during the 60-day period of Presidential review is to be set "in an amount determined by the Commission to be sufficient to protect the complainant from any injury." 19 U.S.C. § 1337(j)(3).

The ALJ found that evidence regarding pricing suggested a large price differential between Epson's products and the accused products. ID 368. Because of the difference between complainants' average sales price of *** and the respondents' average sale price of ***, the ALJ recommended a bond of $13.60 per cartridge. ID 368. The ALJ did not base his recommendation on a reasonable royalty rate because Epson does not license its patents.

Epson and the IA support the ALJ's recommended bond of $13.60 per cartridge. Epson Brief at 183-185; IA Brief at 30-31. Respondents do not address the issue. We do not see any error in the ALJ's calculation and the amount he has recommended. *See* ID 366-368.

Consequently, we adopt the ALJ's recommendation of a bond of $13.60 per cartridge during the Presidential review period.

By order of the Commission.



Marilyn R. Abbott
Secretary to the Commission

Issued: November 7, 2007

CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **COMMISSION OPINION** has been served by hand upon the Commission Investigative Attorney, Kevin Baer, Esq., and the following parties as indicated, on November 7, 2007.

Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

ON BEHALF OF COMPLAINANTS EPSON PORTLAND, INC., EPSON AMERICA, INC., AND SEIKO EPSON CORPORATION:

Louis S. Mastriani, Esq.
ADDUCI, MASTRIANI & SCHAUMBERG LLP
1200 Seventeenth Street, NW
Washington, DC 20036

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

ON BEHALF OF RESPONDENTS NINESTAR TECHNOLOGY CO., LTD., TOWN SKY INC., AND NINESTAR TECHNOLOGY COMPANY, LTD. AND DATA PRODUCTS USA LLC.:

Joel E. Lutzker, Esq.
Leonard S. Sorgi, Esq.
David H. Kagan, Esq.
SCHULTE ROTH & ZABEL, LLP
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New York, NY 10022

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(X) Via Overnight Mail
( ) Via First Class Mail
( ) Other: _____

ON BEHALF OF RESPONDENTS MMC CONSUMMABLES INC., AND ZHUHAI GREE MAGNETO-ELECTRIC CO., LTD.:

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Ronald M. St. Marie, Esq.
Lisa A. Karczewski, Esq.
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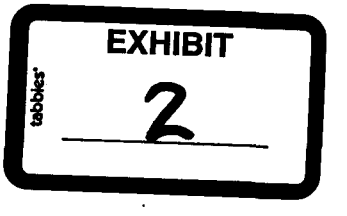
UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	
CERTAIN INK CARTRIDGES AND COMPONENT PARTS THEREOF	Inv. No. 337-TA-565

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Nine Star Technology Company Ltd., 4620 Mission Boulevard, Montclair, California 91763, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, ink cartridges that are covered by one or more of claim 7 of U.S. Patent No. 5,615,957 ("the '957 patent); claims 18, 81, 93, 149, and 164 of U.S. Patent No. 5,622,439 ("the '439 patent"); claims 83 and 84 of U.S. Patent No. 5,158,377 ("the '377 patent"); claims 19 and 20 of U.S. Patent No. 5,221,148 ("the '148 patent"); claim 1 of U.S. Patent No. 5,488,401 ("the '401 patent"); claims 1, 2, 3 and 9 of U.S. Patent No. 6,502,917 ("the '917 patent"); claims 1, 31 and 34 of U.S. Patent No. 6,550,902 ("the '902 patent"); claims 1, 10 and 14 of U.S. Patent No. 6,955,422 ("the '422 patent"); claim 1 of U.S. Patent No. 7,008,053 ("the '053 patent"); and claim 21 of U.S. Patent No. 7,011,397 ("the '397 patent"), in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.



I.

Definitions

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainants" shall mean Epson Portland Inc., of Hillsboro, Oregon, Epson America, Inc. of Long Beach, California, and Seiko Epson Corporation of Japan.

(C) "Respondent" means Nine Star Technology Company Ltd., 4620 Mission Boulevard, Montclair, California 91763.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term "covered products" shall mean ink cartridges that are covered by one or more of claim 7 of the '957 patent; claims 18, 81, 93, 149, and 164 of the '439 patent; claims 83 and 84 of the '377 patent; claims 19 and 20 of the '148 patent; claim 1 of the '401 patent; claims 1, 2, 3 and 9 of the '917 patent; claims 1, 31 and 34 of the '902 patent; claims 1, 10 and 14 of the '422 patent; claim 1 of the '053 patent; and claim 21 of the '397 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its

principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the respective patents, Respondent shall not:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products;

(D) solicit U.S. agents or distributors for imported covered products; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. 5,615,957, 5,622,439, 5,158,377, 5,221,148, 5,488,401, 6,502,917, 6,550,902, 6,955,422, 7,008,053, and 7,011,397 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2008. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered products that Respondent have imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so choose, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. 5,615,957, 5,622,439, 5,158,377, 5,221,148, 5,488,401, 6,502,917, 6,550,902, 6,955,422, 7,008,053, and 7,011,397, whichever is later.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as

delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of $13.60 per unit of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroy them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

OCT 19 2007

Issued:_____

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	
CERTAIN INK CARTRIDGES AND COMPONENT PARTS THEREOF	Inv. No. 337-TA-565

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Town Sky Inc., 5 South Linden Avenue, Suite 4, South San Francisco, California, 94080, cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, ink cartridges that are covered by one or more of claim 7 of U.S. Patent No. 5,615,957 ("the '957 patent); claims 18, 81, 93, 149, and 164 of U.S. Patent No. 5,622,439 ("the '439 patent"); claims 83 and 84 of U.S. Patent No. 5,158,377 ("the '377 patent"); claims 19 and 20 of U.S. Patent No. 5,221,148 ("the '148 patent"); claim 1 of U.S. Patent No. 5,488,401 ("the '401 patent"); claims 1, 2, 3 and 9 of U.S. Patent No. 6,502,917 ("the '917 patent"); claims 1, 31 and 34 of U.S. Patent No. 6,550,902 ("the '902 patent"); claims 1, 10 and 14 of U.S. Patent No. 6,955,422 ("the '422 patent"); claim 1 of U.S. Patent No. 7,008,053 ("the '053 patent"); and claim 21 of U.S. Patent No. 7,011,397 ("the '397 patent"), in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) "Complainants" shall mean Epson Portland Inc., of Hillsboro, Oregon, Epson America, Inc. of Long Beach, California, and Seiko Epson Corporation of Japan.

(C) "Respondent" means Town Sky Inc., 5 South Linden Avenue, Suite 4, South San Francisco, California, 94080.

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) "United States" shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms "import" and "importation" refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term "covered products" shall mean ink cartridges that are covered by one or more of claim 7 of the '957 patent; claims 18, 81, 93, 149, and 164 of the '439 patent; claims 83 and 84 of the '377 patent; claims 19 and 20 of the '148 patent; claim 1 of the '401 patent; claims 1, 2, 3 and 9 of the '917 patent; claims 1, 31 and 34 of the '902 patent; claims 1, 10 and 14 of the '422 patent; claim 1 of the '053 patent; and claim 21 of the '397 patent.

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its

principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the respective patents, Respondent shall not:

(A) import or sell for importation into the United States covered products;

(B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products;

(D) solicit U.S. agents or distributors for imported covered products; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. 5,615,957, 5,622,439, 5,158,377, 5,221,148, 5,488,401, 6,502,917, 6,550,902, 6,955,422, 7,008,053, and 7,011,397 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2008. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered products that Respondent have imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the U.S. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B). For the purpose of determining or securing compliance with this Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so choose, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

VII.

Service of Cease and Desist Order

Respondent is ordered and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of its respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. 5,615,957, 5,622,439, 5,158,377, 5,221,148, 5,488,401, 6,502,917, 6,550,902, 6,955,422, 7,008,053, and 7,011,397, whichever is later.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of 1930, 19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the United States Trade Representative as

delegated by the President, 70 *Fed Reg* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of $13.60 per unit of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not disapprove within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroy them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

OCT 19 2007
Issued:_____

DECLARATION OF HERBERT SEITZ

I, HERBERT SEITZ, declare as follows:

1. I am a an investigator retained by Epson America, Inc. I make this declaration of personal, firsthand knowledge and, if called and sworn as a witness, I could and would testify competently as follows.

2. On November 19, 2007, under my direction, Ron Hanson purchased online from *www.Abcink.com*, the following G&G-brand cartridges: NP-N-0547 R, NP-N-0548 MB, NE-T0544 Y, NE-T0549 BL, NE-T0541 PBK, NP-N-0542 C, NP-N-0543 M, NP-N-0540 GL. These cartridges were shipped to 9582 Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the purchase invoice is attached as Exhibit 1.

3. On November 20, 2007, under my direction, Ron Hanson purchased online from *www.CDROVDRMedia.com*, the following G&G-brand cartridges: NP-N-0483 M, NE-T0485 LC, NE-T0549 BL, NE-T0472 C, NE-T0594 Y. These cartridges were shipped to 9582 Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the purchase invoice is attached as Exhibit 2.

4. On November 20, 2007, under my direction, Ron Hanson purchased online from *www.inkjets5.com*, the following G&G-brand cartridge: NE-T0442 C. This cartridge was shipped to 9582 Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the purchase invoice is attached as Exhibit 3.

5. On November 21, 2007, under my direction, Ron Hanson purchased online from *www.00inkjets.com*, the following G&G-brand cartridges: NE-T0444 Y, NE-RT602 C, NE-T0443 M, NE-T0603 M. These cartridges were shipped to 9582 Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the purchase invoice is attached as Exhibit 4.

6. On December 5, 2007, under my direction, Ron Hanson purchased online from *www.Atlanticinkjet.com*, the following G&G-brand cartridges: NE-T0541 PBK, NE-T0485 LC, NE-T0549 BL, NE- T0544 Y, NE-T0603 M. These cartridges were shipped to 9582

Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the purchase invoice is attached as Exhibit 5.

7. On December 28, 2007, under my direction, Ron Hanson purchased online from *www.inkjetcartridge.com*, the following G&G-brand cartridge: NE-T0441 BK. This cartridge was shipped to 9582 Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the purchase invoice is attached as Exhibit 6.

8. On January 3, 2008, under my direction, Ron Hanson purchased online from *www.InkSmile.com*, the following G&G-brand cartridges: NE-RT442 C, NE-RT443 M. These cartridges were shipped to 9582 Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the purchase invoice is attached as Exhibit 7.

9. On January 8, 2008, under my direction, Ron Hanson purchased online from *www.meritline.com*, the following G&G-brand cartridges: NP-N-0443 M, NP-N-0441 BK, NP-N-0442 C, NE-T0431 BK, NP-N-0444 Y. These cartridges were shipped to 9582 Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the purchase invoice is attached as Exhibit 8.

10. On January 20, 2008, I purchased online from *www.inkjetsuperstore.com*, the following G&G-brand cartridges: NP-N-0548 MB, NP-N-0544 Y, NE-T0431 BK, NP-N-0444 Y. These cartridges were shipped to 9582 Hamilton Ave. #134 Huntington Beach, CA 92646. A copy of the order confirmation is attached as Exhibit 9.

Executed on February 7, 2008, at Miami, Florida.

HERBERT SEITZ

Order # 248913 (1-of-1) for ABCink.com

Date: Mon Nov 19 15 18 47 PST 2007

Order # A248913

Order# A248913

* Shipment Scan *

Ship To:
KC Wells
9582 Hamilton Ave #134
Huntington Beach CA 92646
US United States
714-567-4758

Bill To:
KC Wells
9582 Hamilton Ave #134
Huntington Beach CA 92646
US United States
714-567-4758

Amount: $41.92
Paid: Yes
Ship Via: FEDEX
FEDEXEXPRESSSAVER

E-Mail: kcwells2002@yahoo.com
Date: 19-Nov-2007
Payment: American Express

Item	In Shipment	Code	Qty.	Unit Price
Half Price! 8-Pack Remanufactured Inkjet Cartridge Combo for Epson Stylus Photo R800/R1800 Printers(T054): One of Each T054020 ~ T054920, $3.24 Each [1/123-143 + 1/123-14	Yes	123-173-001	1	$51.95

Subtotal:	$51.95
Discount:	-$25.98
Shipping:	$13.81
Tax:	$2.14
Total:	$41.92

RMA Form

If for any reason you want to return this order, please send this package back within 30 days of your receiving it. Your RMA # is **11192007A248913**.

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1. Please **write** the RMA number on the outside of the package. Mail this form back with your returned item(s). (The process may be delayed without the RMA number.)
2. Choose from the following return reasons (you may choose more than one reason):
   - ☐ Defective Product(s).
   - ☐ Received Wrong Item(s).
   - ☐ Order Error. 15% restocking fee will be applied.
3. Choose from the following options for your returns:
   - ☐ Refund.
   - ☐ Replacement.
   - ☐ Store Credit.
4. Make a copy of this invoice for your records.

Q11

13

Problem Description (please be as descriptive as possible):

For more return information, please log on to http://www.abcink.com/newreturn.html.

EXHIBIT 1

tabbies

11/19/2007 3:36:50 PM

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- NEC** Toner
- Kyocera** Toner
- Okidata** Ink/Toner
- Panasonic** Ink/Toner
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- Samsung** Toner
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- Toshiba** Toner
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 Half Price! 8-Pack Remanufactured Inkjet Cartridge Combo for Epson Stylus Photo R800/R1800 Printers (T054): One of Each T054020 ~ T054920, $3.24 Each [1/123-143 + 1/123-144 + 1/123-145 + 1/123-146 + 1/123-147 + 1/123-148 + 1/123-149 + 1/123-150] [Remove]	51.95	1	51.95

Update Qty.

Subtotal for Abcink.com: 51.95

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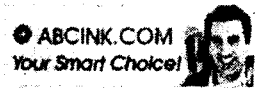

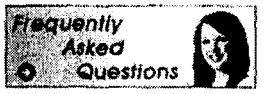

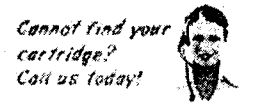

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KC Wells
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714-567-4758

Shipping Method:
Fedex Express Saver (3 business days)

Bill To Edit

KC Wells
9582 Hamilton Ave #134
Huntington Beach CA 92646
714-567-4758

Credit Card Type: American Express
Account Number: xxxxxxxxxxx2016
Exp Date: 11/2008

Email address: kcwells2002@yahoo.com

Cancel

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	Item Name	SubTotal
1	Half Price! 8-Pack Remanufactured Inkjet Cartridge Combo for Epson Stylus Photo R800/R1800 Printers(T054): One of Each T054020 ~ T054920, $3.24 Each [1/123-143 + 1/123-144 + 1/123-145 + 1/123-146 + 1/123-147 + 1/123-148 + 1/123-149 + 1/123-150]	51.95
	Subtotal:	51.95
	Coupon offer (50% savings):	-25.98
	Subtotal:	25.97
	Shipping:	13.81
	Tax:	2.14
	Total:	**41.92**

Check Out: Confirmation

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Tracking:

Order Date: 11/19/07
Order Number: abc-ink-248913
Shipping Method: Fedex Express Saver (3 business days)

Ship To

KC Wells
9582 Hamilton Ave #134
Huntington Beach CA 92646
714-567-4758

Bill To

KC Wells
9582 Hamilton Ave #134
Huntington Beach CA 92646
714-567-4758

kcwells2002@yahoo.com

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	Item Name	SubTotal
1	Half Price! 8-Pack Remanufactured Inkjet Cartridge Combo for Epson Stylus Photo R800/R1800 Printers(T054): One of Each T054020 ~ T054920, $3.24 Each [1/123-143 + 1/123-144 + 1/123-145 + 1/123-146 + 1/123-147 + 1/123-148 + 1/123-149 + 1/123-150]	51.95
	Subtotal:	51.95
	Coupon offer (50% savings):	-25.98
	Subtotal:	25.97
	Shipping:	13.81
	Tax:	2.14
	Total:	**41.92**

CdrdvdrMedia
18961 E. Arenth Ave.
City of Industry, CA 91748

Order # C223797

* Shipment Scan *

Ship To:	KC Wells 9582 Hamilton Ave#134 Huntington Beach, CA, 92646 US United States 714-567-4758	BillTo:	KC Wells 9582 Hamilton Ave#134 Huntington Beach, CA, 92646 US United States 714-567-4758
Amount:	$31.64	E-Mail:	kcwells2002@yahoo.com
Paid:	Yes	Date:	11/20/2007 3:19:40 PM
Ship Via:	FEDEX GROUNDHOMEDELIVERY	Payment:	American Express

Item	In Shipment	Code	Qty	UnitPrice
Remanufactured Light Cyan Inkjet Cartridge for Photo Stylus R200/R220/R300/R320/R340/RX500/RX620 Printers - replaces Epson T048520 (T0485)	Yes	**123-155-001**	**1**	$4.95
Remanufactured Magenta Inkjet Cartridge for Photo Stylus R200/R220/R300/R320/R340/RX500/RX620 Printers - replaces Epson T048320 (T0483)	Yes	**123-153-001**	**1**	$4.95
Remanufactured T047220 Cyan Inkjet Cartridge for Stylus C63 / C83 Printers - replaces Epson T047220	Yes	**123-127-001**	**1**	$3.95
Remanufactured Yellow InkJet Cartridge for the Epson Stylus Photo R2400 InkJet Printers - Replaces Epson T059420	Yes	**123-219-001**	**1**	$3.95
Remanufactured Blue Inkjet Cartridge for Stylus Photo R800 - Replaces Epson T054920	Yes	**123-150-001**	**1**	$4.95

Subtotal:	$22.75
Discount:	-$0.00
Shipping:	$7.01
Tax:	$1.88
Total:	$31.64

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If for any reason you want to return this order, please send this package back within 30 days of your receiving it. Your RMA # is **11202007C223797**.

Return Instructions:
1. Please write the RMA number on the outside of the package. Mail this form back with your refund item(s). (The Process may be delayed without the RMA number.)
2. Choose from the following return reasons (you may choose more than one reason):
   - ☐ Defective Product(s)
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3. Choose from the following options for your returns:
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   - ☐ Replacement
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EXHIBIT
2

CDR DVDR

Your Position:> Home > My Shopping Cart

Shoping Cart

Your Shopping Cart Items:

Item	Unit	Qty	Total	
Remanufactured Light Cyan Inkjet Cartridge for Photo Stylus R200/R220/R300/R320/R340/RX500/RX620 Printers - replaces Epson T048520 (T0485)	$4.95	1	$4.95	Remove
Remanufactured Magenta Inkjet Cartridge for Photo Stylus R200/R220/R300/R320/R340/RX500/RX620 Printers - replaces Epson T048320 (T0483)	$4.95	1	$4.95	Remove
Remanufactured T047220 Cyan Inkjet Cartridge for Stylus C63 / C83 Printers - replaces Epson T047220	$3.95	1	$3.95	Remove
Remanufactured Yellow InkJet Cartridge for the Epson Stylus Photo R2400 InkJet Printers - Replaces Epson T059420	$3.95	1	$3.95	Remove
Remanufactured Blue Inkjet Cartridge for Stylus Photo R800 - Replaces Epson T054920	$4.95	1	$4.95	Remove
			Subtotal	**$22.75**
			Discount	**$0.00**
			Total	**$22.75**

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Enter Zip Code: 92646 GO

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Ground 2 (Government and Business address)	$6.64
Ground	$7.01
Fedex Express Saver (3 business days)	$13.66
Fedex 2Day	$14.39
Fedex Overnight	$26.78

Customers who purchased the products in your cart also purchased...

Remanufactured Light Magenta Inkjet Cartridge for Photo Stylus R200/R220/R300/R320/R340/RX500/RX620 Printers - replaces Epson T048620 (T0486)

Remanufactured Black Inkjet Cartridge for Stylus Photo R200, R220, R300, R320, R340, RX500, RX620 Printers - Repaces Epson T048120 (T0481)

Remanufactured Yellow Inkjet Cartridge for Photo Stylus R200/R220/R300/R320/R340/RX500/RX620 Printers - replaces Epson T048420 (T0484)

Media
- DVD R
- HD DVD R
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- Blu-ray Disc
- OTHER MEDIA
- MEDIA ACCESSORIES

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Memory
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- Memory Stick
- USB FLASH DRIVE
- Card Reader

Photo Paper & Labels
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- CD/DVD LABELS
- Address Labels
- Label Kits / Software
- Labels Compare to Avery

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- INKJET CARTRIDGES
- Laser Toner Cartridges
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- DVD Burner
- CD/DVD Duplicator
- Enclosure
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- Ethernet Hub Router

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- Laptop Bag
- Laptop Backpack
- Briefcase
- Sport BackPack
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- Camcorder Battery
- Battery for Cellular Phone

Electronic Accessories

Your Position: Register > Address > Shipping > Order Summary > Credit Card Info > Order Complete

Shipping Address

Fields marked with * are required

Shipping Address		Credit Card Billing Address	☑ Same as Shipping Address
Address Book	Please Select / Add New Below	Address Book	Please Select / Add New Below
First Name	KC *	First Name	KC *
Last Name	Wells *	Last Name	Wells *
Email Address	kcwells2002@yahoo.com	Email Address	kcwells2002@yahoo.com *
Company	K&R Supplies	Company	K&R Supplies
Address 1	9582 Hamilton Ave#134 *	Address 1	9582 Hamilton Ave#134 *
Address 2		Address 2	
City	Huntington Beach *	City	Huntington Beach *
State	California *	State	California *
Country	United States	Country	United States
Zip	92646 *	Zip	92646 *
Phone	714-567-4758 *	Phone	714-567-4758 *
Fax		Fax	

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- Mesh Racks
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- Laptop Battery, Notebook Battery
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- Camcorder Battery
- Battery for Cellular Phone

Electronic Accessories

Ship From:
Inkjet 5, Inc.
6785 Creston Rd.
Paso Robles, CA 93446
877.465.5385

Thank You For Your Order.	
Order Number: 1006051	Order Date: 11-20-2007
Shipping Address	**Billing Information**
KC Wells K&R Supplies 9582 Hamilton Ave #134 Huntington Beach CA 92646	KC Wells K&R Supplies 9582 Hamilton Ave #134 Huntington Beach CA 92646 714-567-4758 kcwells2002@yahoo.com

Products	PN	Availability	Quantity	Unit Price	Total Price
T044220 - Cyan (Reman.)	IJDT044220CYNC	In Stock	1	$6.35	$6.35
T044320 - Magenta (Reman.)	IJDT044320MAGC	In Stock	1	$6.35	$6.35
T044420 - Yellow (Reman.)	IJDT044420YLWC	In Stock	1	$6.35	$6.35
T048520 - Light Cyan (Reman.)	IJDT048520LCYNC	In Stock	1	$6.59	$6.59
T048620 - Light Magenta (Reman).	IJDT048620LMAGC	In Stock	1	$6.59	$6.59
				Subtotal:	$32.23
				Discount:	- $3.22
				Standard Shipping:	$3.95
				Tax:	$2.39
				Grand Total:	$35.35

Payment Method: credit card - american express
Credit Card: 3715XXXXXXXX016 6805
Expiration: 08/11
Payment ID: 1628902216
Address Verification: Matched
Zipcode Verification: Matched

Order Comments:

Ref: PR_P80

EXHIBIT
3
tabbies

Your order was successfully submitted. Please, print this page for your reference. Thank you for y business.

Thank You For Your Order.

Order Number: 1006051

Order Date: 11-20-2007

Billing Information

KC Wells
K&R Supplies
9582 Hamilton Ave #134
Huntington Beach CA 92646

Payment Method: credit card
Credit Card: XXXXXXXXXXXX016
Expiration: 06/11

Shipping Address

KC Wells
K&R Supplies
9582 Hamilton Ave #134
Huntington Beach CA 92646

Products	PN	Availability	Quantity	Unit Price	Total P
T044220 - Cyan (Reman.)	IJDT044220CYNC	In Stock	1	$6.35	
T044320 - Magenta (Reman.)	IJDT044320MAGC	In Stock	1	$6.35	
T044420 - Yellow (Reman.)	IJDT044420YLWC	In Stock	1	$6.35	
T048520 - Light Cyan (Reman.)	IJDT048520LCYNC	In Stock	1	$6.59	
T048620 - Light Magenta (Reman).	IJDT048620LMAGC	In Stock	1	$6.59	
				Subtotal:	
				Discount:	
				Standard Shipping:	
				Tax:	
				Grand Total:	

Continue Shopping

25 E. Easy St.
Simi Valley, CA 93065
www.00inkjets.com
(866)688-6346

00inkjets.com

Order No: 2437315
Items: 6

Order Date: 2007-11-21 13:37:42
21167-2437315-1024107-18

Qty	Product	SKU	Price	Total
1	T044320Rm	EB01-2921-REM	$7.95	$7.95
1	T044420Rm	EB01-2922-REM	$7.95	$7.95
1	T048220Rm	EB01-2924-REM	$8.25	$8.25
1	T060320Rm	EB01-2931-REM	$8.25	$8.25
1	T060420Rm	EB01-2932-REM	$8.25	$8.25
1	FREE Lifetime Flashlight	EB01-1860	$0.00	$0.00

Quantity of Products in order: 6

CC Number: ****2-29
CC Expires: 0811
Authorization: 226535

Merchandise Total:	$40.65
Discounts:	$0.00
Shipping/Handling:	$15.90
Sales Tax:	$2.95
Order Total:	$59.50

EXHIBIT
4

00inkjets.com
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1 cart

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CHECKOUT

Product	Qty	Price
Epson® - replaces T060420 Yellow Ink Cartridge Remanufactured Your Price: $8.25 each	1	$8.25
Epson® - replaces T048220 Cyan Ink Cartridge Remanufactured Your Price: $8.25 each	1	$8.25
Epson® - replaces T044320 Magenta Ink Cartridge Remanufactured Your Price: $7.95 each	1	$7.95
Epson® - replaces T060320 Magenta Ink Cartridge Remanufactured Your Price: $8.25 each	1	$8.25
Epson® - replaces T044420 Yellow Ink Cartridge Remanufactured Your Price: $7.95 each	1	$7.95

Add $14.35 more to your order and get FREE SHIPPING!

FREE Flashlight
* A $9.95 S/H charge applies. Remove 1 FREE*

Add $14.35 or more to get your free gift bundle with FREE SHIPPING! Details Below

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COUPON CODE

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Shipping & Handling:

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Exclusive Special Offer

Get An Extra $10 OFF Your Ink Order
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YES I WANT IT

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FREE *Add to Cart*

Add the Fantastic Four Activity Studio Software & Sepom 4x6 Glossy Photo Paper to your order for FREE!
Plus shipping & processing of $9.95.

FREE *Add to Cart*

Add the Shrek Print & Create Software & Sepom 4x6 Glossy Photo Paper to your order for FREE!
Plus shipping & processing of $9.95.

FREE *Add to Cart*

Add the World Series of Poker Texas Hold'em Handheld Poker Player to your order for only $9.95 and play poker anywhere!
Plus shipping & processing of $5.95.

$9.95 *Add to Cart*

Get Sepom 4x6 Matte Photo Paper & My Scrapbook 2 Scrapbooking Software with ANY ink order!
Pay only shipping & processing of $9.95.

FREE *Add to Cart*

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Store Rating: As of: 11/18/07
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00inkjets
Printer Ink, Toner, & More!

GeoTrust Secure Site

SHOP WITH CONFIDENCE
90 day money back guarantee

3 receipt

Our products are guaranteed to give 100% satisfaction in every way. Return anything purchased from us if it proves otherwise. We will replace it or refund your purchase price. We do not want you to have anything from us that is not completely satisfactory. There are only two little restrictions.

Have any Questions?
Simply call or e-mail us to get a return authorization number and we'll make it right.

00inkjets.com
30699 Russell Ranch Road
Suite 250
Westlake Village, CA 91361

For customer service call:
(866)688-6346
M-F 6am - 6pm PT

Please check out our **Return Policy.**

Thank You for your order!

An email confirming your order details will be sent to kcwells2002@yahoo.com

Order # 2437315 [redacted]

Payment / Billing Information:

KC Wells
9582 Hamilton Ave #134
Huntington Beach, CA 92646

Shipping Information:

KC Wells
9582 Hamilton Ave #134
Huntington Beach, CA 92646

You Ordered:

Quantity	Product	Price
1	T044320Rm	$7.95
1	T044420Rm	$7.95
1	T048220Rm	$8.25
1	T060320Rm	$8.25
1	T060420Rm	$8.25
1	FREE Lifetime Flashlight	FREE

Subtotal: $40.65

Discount: $0.00

Shipping: $15.90

Sales Tax: $2.95

Order Total: $59.50

RE-INK-ING INC. / Atlantic Inkjet

P.O. Box 374
Madawaska, ME
04756-0374 USA

640 Principale St.
St-Jacques, N.B.
E7B 1Y4 CANADA

Invoice

Date	Page
Dec 06, 2007	1
Invoice Number	
I000234840	

TOLL FREE: 1-866-512-7162 www.atlanticinkjet.com
Business No.: 858526676

Sold To:

KC Wells
9582 Hamilton Ave #134
Huntington Beach, CA 92646
USA

Ship To:

KC Wells
9582 Hamilton Ave #134
Huntington Beach, CA 92646
USA

Order No.	Ship Date	Customer No.	Pick Loc.	PO Number	Ship Via	Terms
285113	Dec 6, 2007	7145674758	F-9			CASH

Qty. Ord.	Qty. Shp.	Qty. B/O	Item Number	Description	Unit Price	UOM	Ext. Price
1	1	0	ZZGENCART	T048520 Remanufactured ink cartridge replacement	5.49	each	5.49
1	1	0	ZZGENCART	T054120 Remanufactured ink cartridge replacement	5.49	each	5.49
1	1	0	ZZGENCART	T054420 Remanufactured ink cartridge replacement	5.49	each	5.49
1	1	0	ZZGENCART	T054920 Remanufactured ink cartridge replacement	5.49	each	5.49
1	1	0	ZZGENCART	T060320 Remanufactured ink cartridge replacement	5.49	each	5.49
1	1	0	ZZSHIP	Shipping Cost	4.99	each	4.99

Comments:

No exchange or refund after 90 days. All returns require an RMA Number.
RMA form available online - See guarantee section on Website
Atlantic Inkjet is a division of RE-INK-ING Inc.
Thank you for your Business!

Subtotal	32.44
Total sales tax	0.00
Total amount	32.44
Less payment	32.44
Less pmt. disc	0.00
Amount due	0.00

EXHIBIT
5
tabbies

RE-INK ING*INC
640 PRINCIPAL STREET
ST JACQUES NB

CARD **********2016
CARD TYPE AMEX
DATE 2007/12/06
TIME 0879 09:16:50
RECEIPT NUMBER
M30665858-001-464-028-0

PURCHASE $30.44 USD
TOTAL-CAD
$32.76
paid

APPROVED

AUTH# 72 00-025
THANK YOU

CARDHOLDER COPY

IMPORTANT, PLEASE READ THIS!

Your Credit Card receipt is in CANADIAN $$.

Your Credit Card statement
will be converted back to U.S. DOLLARS.

Your invoice is in U.S. DOLLARS.

Todays US Dollar to Canadian Dollar exchange rate is

1.01

AtlanticInkjet
For All Your Inkjet Cartridge Needs!

Your Source for ink cartridges, inkjet cartridges, ink cartridge refills and laser toner cartridges...

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Canadian Site - Enter Her

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- Choose By Cartridge
- Choose By Printer
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- Brother
- Canon
- Compaq
- Epson
- for Dell Printers
- Hewlett-Packard
- Lexmark
- Pitney Bowes

Choose Category

- Choose By Cartridge
- Choose By Printer
- Laser Toner Cartridges
- Combo-Pac Deals
- Compatible Cartridges
- Recycled Cartridges
- Original Cartridges
- Classic Refill Kits
- Bulk Ink
- Paper Products
- Refill Accessories
- Volume Pricing

Bookmark Site

Order Summary

Free Shipping for Online Orders over $45 US or $50 Canadian

Canadian Customer Click Here

Description	Qty	$/Item (US)	Cost (US)
T048520 Remanufactured ink cartridge replacement Size 1 Color Lite Cyan	1	$5.49	$5.49
T054120 Remanufactured ink cartridge replacement Size 1 Color Photo Black	1	$5.49	$5.49
T054420 Remanufactured ink cartridge replacement Size 1 Color Yellow	1	$5.49	$5.49
T054920 Remanufactured ink cartridge replacement Size 1 Color Blue	1	$5.49	$5.49
T060320 Remanufactured ink cartridge replacement Size 1 Color Magenta	1	$5.49	$5.49
SubTotal			$27.45
Shipping Price			$4.99
Total			$32.44

Billing Information	
First Name or Business Name:	
Last Name or Attention to:	
Street Address:	
PO BOX	
APT or Suite #:	
City:	
State:	
ZIP Code:	
Telephone:	
E-mail:	
Additional Information: (Up to 250 Characters)	
SHIP TO MY BILLING ADDRESS ☐	
Shipping Information	
First Name or Business Name:	
Last Name or Attention to:	
Street Address:	
PO BOX	
APT or Suite #:	
City:	
State:	
ZIP Code:	
Telephone:	
Payment Information	
Secure Payment	
Mode of Payment:	Credit Card

New Atlantic Inkjet now offers **FREE SHIPPING** for all orders placed online totalling $45 US, or $50 CAI Simply make your online purchase and our shopping cart automatically credits yc at checkout.

How To Order

Order all inkjet cartridges and printer ink refill supplies online, or via Phone / Fax / Mail Order / Purchase Order Call **Toll Free # 1-866-512-7162** or 506-739-563 to place an order.

More Info ▶▶

Guarantee

We sell only the highest quality inkjet refills, ink cartridges & printer products available today. All products we sell are backed with a **100% Guarantee!**

More Info ▶▶

Shipping

Shipping rates on inkjet cartridges & supplies as low as US $4.99 (US Postal Service - Priority Mail) CAN $7.99 (Canada Post).

More Info ▶▶

Corporate Sales

Volume discount sales of inkjet cartridges to large corporations and offices.

More Info ▶▶

Educational Sales

Educational institutions can qualify for large volume usage discount on inkjet cartridges.

More Info ▶▶

Credit Card Type:	Visa
Card Holder Name:	
Card Number:	
Expiry Date:	(MONTH/YEAR)

Back Submit Order

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Your Source for ink cartridges, inkjet cartridges, ink cartridge refills and laser toner cartridges...

United States of Americ
Canadian Site - Enter He

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- Canon
- Compaq
- Epson
- for Dell Printers
- Hewlett-Packard
- Lexmark
- Pitney Bowes

Choose Category

- Choose By Cartridge
- Choose By Printer
- Laser Toner Cartridges
- Combo-Pac Deals
- Compatible Cartridges
- Recycled Cartridges
- Original Cartridges
- Classic Refill Kits
- Bulk Ink
- Paper Products
- Refill Accessories
- Volume Pricing

Bookmark Site

Order Sent

An email confirmation will follow shortly. Below are the order details.

Description	Quantity	$/Item (US)	Cost (US)
T048520 Remanufactured ink cartridge replacement Size 1	1	$5.49	$5.49
T054120 Remanufactured ink cartridge replacement Size 1	1	$5.49	$5.49
T054420 Remanufactured ink cartridge replacement Size 1	1	$5.49	$5.49
T054920 Remanufactured ink cartridge replacement Size 1	1	$5.49	$5.49
T060320 Remanufactured ink cartridge replacement Size 1	1	$5.49	$5.49
SubTotal			$27.45
Shipping Price			$4.99
Total			$32.44

Billing Information	
Customer Order Number:	285113
First Name or Business Name:	KC
Last Name or Attention to:	Wells
Street Address:	9582 Hamilton Ave #134
PO BOX	
APT or Suite #:	
City:	Huntington Beach
State:	CA
ZIP Code:	92646
Telephone:	7145674758
E-mail:	kcwells2002@yahoo.com
Additional Information:	
Payment Information:	Credit Card

Shipping Information	
First Name or Business Name:	
Last Name or Attention to:	
Street Address:	
PO BOX	
APT or Suite #:	
City:	
State:	Shipped to Billing Address
ZIP Code:	
Telephone:	

New Atlantic Inkjet now offers **FREE SHIPPING** for all orders placed online totalling $45 US, or $50 CA Simply make your online purchase and our shopping cart automatically credits y at checkout.

How To Order

Order all inkjet cartridges and printer ink refill supplie online, or via Phone / Fax / Mail Order / Purchase Orde Call **Toll Free # 1-866-512-7162** or 506-739-563 to place an order.

More Info ▸▸

Guarantee

We sell only the highest quality inkjet refills, ink cartridges & printer product available today. All product we sell are backed with a **100% Guarantee!**

More Info ▸▸

Shipping

Shipping rates on inkjet cartridges & supplies as low as US $4.99 (US Postal Service - Priority Mail) CAN $7.99 (Canada Post).

More Info ▸▸

Corporate Sales

Volume discount sales of inkjet cartridges to large corporations and offices.

More Info ▸▸

Educational Sales

Educational institutions can qualify for large volume usage discount on inkjet cartridges.

More Info ▸▸

#357362 **Order inkjetcartridge-357362 for INKJETCARTRIDGE.COM - INKJET PRINTER CARTRIDGES & FAX RIBBON INK REFILLS**

Date Fri Dec 28 12:45:56 PST 2007

Ship to
KC Wells
K&R Supplies
9582 Hamilton Ave # 134
Huntington Beach CA 92646
US United States
714-567-4758

Bill to Same

E-Mail KCWells2002@Yahoo.com (emailed)

Via Ground (DHL)

Payment American Express

Item	Code	Qty	Unit Price
Remanufactured Epson T044120 (T0441) Standard Capacity Black Inkjet Cartridges (C64 / C66 / C84 / C86 / CX4600 / CX6400 & CX6600) http://store.yahoo.com/inkjetcartridge/t044120.html	NE-T0441Bk	1	6.95
Remanufactured Epson T044220 (T0442) Cyan Inkjet Cartridges (Stylus C64 / C66 / C84 / C86 / CX4600 / CX6400 / CX6600) http://store.yahoo.com/inkjetcartridge/t044220.html	NE-T0442C	1	6.95
Remanufactured Epson T044320 (T0443) Magenta Inkjet Cartridges (Stylus C64 / C66 / C84 / C86 / CX4600 / CX6400 / CX6600) http://store.yahoo.com/inkjetcartridge/t044320.html	NE-T0443M	1	6.95
Remanufactured Epson T044420 (T0444) Yellow Inkjet Cartridges (Stylus C64 / C66 / C84 / C86 / CX4600 / CX6400 / CX6600) http://store.yahoo.com/inkjetcartridge/t044420.html	NE-T0444Y	1	6.95
Remanufactured Epson T059120 (T0591) Photo Black Inkjet Cartridges (Stylus Photo R2400) http://store.yahoo.com/inkjetcartridge/t059120.html	PE-0591	1	6.95

Subtotal	34.75
Shipping	6.80
Tax	2.69
Total	44.24

EXHIBIT
tabbies
6

www.InkSmile.com
15042 Parkway Loop Unit C
Tustin, CA 92780
(866) 465-5605

Customer Receipt

Invoice #	22486
Referral #	79740
Ordered Date	1/3/2008

Billing Address

KC Wells
K&R Supplies
Tel:(714) 567-4758
Email:kcwells2002@yahoo.com

9582 Hamilton Ave
134
Huntington Beach, CA 92646

Shipping Address

KC Wells
9582 Hamilton Ave
134
Huntington Beach, CA 92646

Item(s) purchased

Product Name	Model	Price	Quantity	Subtotal
Epson* Compatible Refurbished T043120 High Capacity Black Ink Cartridge	T043120	$6.95	1	$6.95
Epson* Compatible Refurbished T044420 Yellow Ink Cartridge	T044420	$5.95	1	$5.95
Epson* Compatible Refurbished T044320 Magenta Ink Cartridge	T044320	$5.95	1	$5.95
Epson* Compatible Refurbished T044220 Cyan Ink Cartridge	T044220	$5.95	1	$5.95
Epson* Compatible Refurbished T044120 Black Ink Cartridge	T044120	$5.95	1	$5.95

Sub Total	$30.75
Discount	$0.00
Tax	$2.38
Shipping	$3.99
Store Credit	$0.00
Total	$37.12

You can earn 5% store credit of all purchases made by your friends and acquaintances that you refer to InkSmile.com. Remember to mention your referral # which is located on the upper right corner of this form.

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7

www.InkSmile.com

15042 Parkway Loop Unit C
Tustin, CA 92780
(866) 465-5605

Customer Receipt

Invoice #	22486
Referral #	79740
Ordered Date	1/3/2008

This is not an invoice!

Billing Address

KC Wells
K&R Supplies
Tel:(714) 567-4758
Email:kcwells2002@yahoo.com

9582 Hamilton Ave
134
Huntington Beach, CA 92646

Shipping Address

KC Wells
9582 Hamilton Ave
134
Huntington Beach, CA 92646

Item(s) purchased

Product Name	Model	Price	Quantity	Subtotal
Epson* Compatible Refurbished T043120 High Capacity Black Ink Cartridge	T043120	$6.95	1	$6.95
Epson* Compatible Refurbished T044420 Yellow Ink Cartridge	T044420	$5.95	1	$5.95
Epson* Compatible Refurbished T044320 Magenta Ink Cartridge	T044320	$5.95	1	$5.95
Epson* Compatible Refurbished T044220 Cyan Ink Cartridge	T044220	$5.95	1	$5.95
Epson* Compatible Refurbished T044120 Black Ink Cartridge	T044120	$5.95	1	$5.95

Sub Total	$30.75
Discount	$0.00
Tax	$2.38
Shipping	$3.99
Store Credit	$0.00
Total	$37.12
Balance	$0.00

You can earn 5% store credit of all purchases made by your friends and acquaintances that you refer to InkSmile.com. Remember to mention your referral # which is located on the upper right corner of this form.

Thank you for shopping at www.InkSmile.com!

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Free Shipping ALL ORDERS.

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	Product Name	Price	Qty.	SubTotal
	Epson* Compatible Refurbished T044120 Black Ink Cartridge	$5.95	1	$5.95
	Epson* Compatible Refurbished T044220 Cyan Ink Cartridge	$5.95	1	$5.95
	Epson* Compatible Refurbished T044320 Magenta Ink Cartridge	$5.95	1	$5.95
	Epson* Compatible Refurbished T044420 Yellow Ink Cartridge	$5.95	1	$5.95
	Epson* Compatible Refurbished T043120 High Capacity Black Ink Cartridge	$6.95	1	$6.95

Subtotal	**$30.75**
Coupon Discount	**$0.00**
Tax	**$2.38**
Shipping	**$3.99**
Store Credit	**$0.00**
Total	**$37.12**

Billing Address (Edit)

KC Wells
K&R Supplies
Tel: (714) 567-4758
Email: kcwells2002@yahoo.com

9582 Hamilton Ave
134
Huntington Beach, CA 92646

Shipping Address (Edit)

KC Wells
9582 Hamilton Ave
134
Huntington Beach, CA 92646

Payment by Credit Card

Card Type * Visa

Card Number *

Expiration * 1 - January 2007

Card Verification # * What is CVV2?

Payment processing may take several seconds, please click the submit button only once.

SUBMIT ORDER

ign up to receive monthly newsletters & special discount coupons! Email address SIGN UP

Order # **M1814934 (1-of-1) for Meritline** 1/9/2008 8:30:20 AM

Meritline
18961 E. Arenth Ave.
City of Industry, CA 91748

Order # M1814934

* Shipment Scan *

Ship To:	KC Wells K&R Supplies 9582 Hamilton Ave # 134 Huntington Beach, CA, 92646 US United States 7145674758	BillTo:	KC Wells K&R Supplies 9582 Hamilton Ave # 134 Huntington Beach, CA, 92646 US United States 7145674758
Amount:	$34.94	E-Mail:	kcwells2002@yahoo.com
Paid:	Yes	Date:	1/8/2008 12:21:47 PM
Ship Via:	FEDEX FEDEXGROUND	Payment:	American Express

Item	In Shipment	Code	Qty	UnitPrice
Remanufactured T044120 Black Ink Jet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044120	Yes	**123-122-001**	1	$5.16
Remanufactured T044220 Cyan Ink Jet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044220	Yes	**123-123-001**	1	$5.16
Remanufactured T044320 Magenta InkJet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044320	Yes	**123-124-001**	1	$5.16
Remanufactured T044420 Yellow InkJet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044420	Yes	**123-125-001**	1	$5.16
Remanufactured T043120 Black Inkjet Cartridge for Epson Stylus C84 / CX6400 Printers - replaces Epson T043120	Yes	**123-142-001**	1	$5.16

Subtotal:	$25.80
Discount:	-$0.00
Shipping:	$7.01
Tax:	$2.13
Total:	$34.94

PK3

RMA Form

If for any reason you want to return this order, please send this package back within 30 days of your receiving it. Your RMA # is **01082008M1814934**.

Return Instructions:
1. Please write the RMA number on the outside of the package. Mail this form back with your refund item(s). (The Process may be delayed without the RMA number.)
2. Choose from the following return reasons (you may choose more than one reason):

☐ Defective Product(s)

EXHIBIT
tabbies
8

Shipping Order Review Confirmation

Shopping Cart

Item	Unit Price	Qty.	In Stock	Cos
 **Remanufactured T043120 Black Inkjet Cartridge for Epson Stylus C84 / CX6400 Printers - replaces Epson T043120**	$5.16	1	Yes	$5.1
 **Remanufactured T044120 Black Ink Jet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044120**	$5.16	1	Yes	$5.1
 **Remanufactured T044220 Cyan Ink Jet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044220**	$5.16	1	Yes	$5.1
 **Remanufactured T044320 Magenta InkJet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044320**	$5.16	1	Yes	$5.16
 **Remanufactured T044420 Yellow InkJet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044420**	$5.16	1	Yes	$5.16
Subtotal:				$25.8
Shipping:				$7.01
Tax:				$2.13
Total:				$34.9

Review Your Shipping & Payment Information

Ship To Edit

- KC Wells
- K&R Supplies
- 9582 Hamilton Ave # 134
- Huntington Beach, CA 92646
- 7145674758

Shipping Method: Ground 2 (Government and Business address)

Bill To Edit

- KC Wells
- K&R Supplies
- 9582 Hamilton Ave # 134
- Huntington Beach, CA 92646
- 7145674758

- **Credit Card Type:** American Express
- **Account Number:** xxxxxxxxxxx2016
- **Expiration Date:** 8/2011

kcwells2002@yahoo.com

- Cancel
- Send Order

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This transaction is being handled and processed with industry-leading VeriSign/RSA Secure 1024 Bits SSL encryption.

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Thank you for your order. Please print this page for your records.

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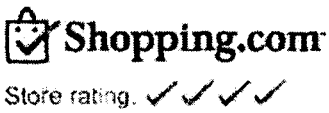
Please N
1. Meritlin gle Checkout.
2. We car heckout. If you wish to make a gi sure to add an alternate shipping a e' above your default address.



If you have any questions about your order, please Contact Us

Shopping Cart

Item	Unit Price	Qty.	In Stock	Cost
Remanufactured T043120 Black Inkjet Cartridge for Epson Stylus C84 / CX6400 Printers - replaces Epson T043120	$5.16	1	Yes	$5.16
Remanufactured T044120 Black Ink Jet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044120	$5.16	1	Yes	$5.16
Remanufactured T044220 Cyan Ink Jet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044220	$5.16	1	Yes	$5.16

Remanufactured T044320 Magenta InkJet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044320	$5.16	1 Yes	$5.16
Remanufactured T044420 Yellow InkJet Cartridge for Stylus C64/C84/C86/CX4600 Printers - replaces Epson T044420	$5.16	1 Yes	$5.16
Subtotal:			$25.8
Shipping:			$7.01
Tax:			$2.13
Total:			$34.9

Order Confirmation

Confirmation

Order Date: 01/08/2008
Order Number: meritline-1814934

Ship To

- KC Wells
- K&R Supplies
- 9582 Hamilton Ave # 134
- Huntington Beach, CA 92646
- 7145674758

Shipping Method: Ground 2 (Government and Business address)

Bill To

- KC Wells
- K&R Supplies
- 9582 Hamilton Ave # 134
- Huntington Beach, CA 92646
- 7145674758

cwells2002@yahoo.com

- Keep Shopping

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TESTED DAILY 20-JAN

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Search by Printer Model or Cartridge Model Number

Advanced Search

Cant find your cartridge?

Choose your Printer Brand

Secure Checkout

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- Shipping Method
- Payment Information
- Review and Submit Order

You are now on a secure page. Shopping online with us is 100% safe and secure.

Top Selling Cartridges

- HP q2612a Toner
- Brother tn350 Toner
- Brother tn570 Toner
- HP c6656a Toner
- Samsung ml1710 Toner

Thank you for your order at InkjetSuperstore.com.

Your Confirmation Number is 930-400983

Item	Brief Description	Qty	Rate	Amount
T054920-60	Epson Stylus Photo R800 Blue Remanufactured Inkjet Cartridge (T054920)	1	$4.25	$4.25
T054820-60	Epson Stylus Photo R800 Matte Black Remanufactured Inkjet Cartridge (T054820)	1	$4.25	$4.25
T054020-60	Epson Stylus Photo R800 Gloss Optimizer Remanufactured Inkjet Cartridge (T054020)	1	$4.25	$4.25
T044420-60	Epson C64/C84/CX6400 Yellow Remanufactured Inkjet Cartridge (T044420)	1	$3.95	$3.95
T054120-60	Epson Stylus Photo R800 Photo Black Remanufactured Inkjet Cartridge (T054120)	1	$4.25	$4.25
T054320-60	Epson Stylus Photo R800 Magenta Remanufactured Inkjet Cartridge (T054320)	1	$4.25	$4.25
T054420-60	Epson Stylus Photo R800 Yellow Remanufactured Inkjet Cartridge (T054420)	1	$4.25	$4.25
T054720-60	Epson Stylus Photo R800 Red Remanufactured Inkjet Cartridge (T054720)	1	$4.25	$4.25
T044320-60	Epson C64/C84/CX6400 Magenta Remanufactured Inkjet Cartridge (T044320)	1	$3.95	$3.95
T044220-60	Epson C64/C84/CX6400 Cyan Remanufactured Inkjet Cartridge (T044220)	1	$3.95	$3.95
T044120-60	Epson C64/C84/CX6400 Black Remanufactured Inkjet Cartridge (T044120)	1	$3.95	$3.95
T054220-60	Epson Stylus Photo R800 Cyan Remanufactured Inkjet Cartridge (T054220)	1	$4.25	$4.25
			Subtotal	$49.80
			Shipping & Handling	$16.41
			Tax	$3.86
			Total	**$70.07**

Continue Shopping

EXHIBIT 9 tabbies