

**PUBLIC VERSION**

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

**Before the Honorable Clark S. Cheney  
Administrative Law Judge**

**In the Matter of**

**CERTAIN TONER SUPPLY CONTAINERS  
AND COMPONENTS THEREOF (II)**

Investigation No. 337-TA-1260

**MEMORANDUM IN SUPPORT OF CANON'S MOTION FOR  
SUMMARY DETERMINATION OF VIOLATIONS  
AND RECOMMENDED DETERMINATION ON REMEDY AND BONDING  
(MOTION DOCKET NO. 1260-010)**

**PUBLIC VERSION**

**TABLE OF CONTENTS**

I. Introduction ..... 1

II. Background..... 2

    A. Procedural History ..... 2

    B. The Parties..... 5

        1. Complainants..... 5

            a. Canon Inc..... 5

            b. Canon U.S.A., Inc. .... 5

            c. Canon Virginia, Inc. .... 5

        2. Respondents..... 6

            a. The Wiztoner Respondents ..... 6

            b. Reseller Respondents..... 6

    C. Technology Overview..... 7

    D. The Asserted Patents..... 8

    E. The Products at Issue ..... 14

        1. Accused Toner Supply Containers..... 15

        2. Canon’s Domestic Industry Products..... 18

III. Jurisdiction ..... 20

IV. Legal Standards..... 21

    A. Summary Determination ..... 21

    B. Importation in Violation of Section 337 ..... 21

    C. Infringement..... 22

    D. Existence of a Domestic Industry..... 22

        1. Technical Prong..... 22

        2. Economic Prong ..... 23

    E. General Exclusion Order..... 23

V. Sale and Importation in Violation of Section 337..... 24

    A. The Uncontested Allegations in the Complaint and Adverse Inferences to Be Drawn from Certain Failures to Act Establish Sale and Importation in Violation of Section 337 by the Defaulting Respondents ..... 24

    B. The Undisputed Evidence Establishes Sale and Importation in Violation of Section 337..... 27

**PUBLIC VERSION**

|      |  |    |
|------|--|----|
| 1.   | Imported Accused Toner Supply Containers Purchased from Reseller Respondents.....  | 28 |
| 2.   | Additional Evidence of Manufacture, Sale for Importation, Importation, and/or Sale of Infringing Accused Toner Supply Containers by Certain Respondents..... | 31 |
| a.   | Additional Evidence of Do It Wiser’s Sale After Importation of Accused Toner Supply Containers.....  | 31 |
| b.   | Zhuhai Henryun’s Importation and/or Sale After Importation of Accused Toner Supply Containers.....   | 33 |
| c.   | The Wiztoner Respondents’ Sale for Importation, Importation, and/or Sale After Importation of Accused Toner Supply Containers.....                           | 35 |
| VI.  | Infringement of the Asserted Patents.....  | 38 |
| A.   | Claim Construction.....  | 38 |
| B.   | The Accused Toner Supply Containers Infringe the Asserted Claims of the Asserted Patents.....  | 45 |
| VII. | Domestic Industry.....   | 49 |
| A.   | Technical Prong.....   | 50 |
| B.   | Economic Prong.....  | 54 |
| 1.   | CVI Allocates Significant Percentages of Its Total Investments to Products Protected by the Asserted Patents.....  | 55 |
| a.   | Production-Based Allocation .....  | 55 |
| b.   | Area-Based Allocation.....   | 56 |
| 2.   | Canon’s Investment in Plant and Equipment.....   | 56 |
| a.   | CVI’s Facilities .....   | 56 |
| i.   | Descriptions and Sizes.....  | 56 |
| ii.  | Assessed Values.....   | 57 |
| iii. | Costs.....   | 57 |
| b.   | CVI’s Equipment.....   | 58 |
| i.   | Descriptions.....  | 58 |
| ii.  | Assessed Values.....   | 58 |
| iii. | Costs.....   | 58 |
| c.   | CVI’s Land .....   | 58 |
| i.   | Descriptions and Sizes.....  | 58 |
| ii.  | Costs.....   | 59 |

**PUBLIC VERSION**

- 3. Canon’s Employment of Labor and Capital ..... 59
  - a. CVI’s Labor Pool—Headcounts and Activities..... 59
    - i. Overview..... 59
    - ii. Manufacturing..... 59
    - iii. Engineering..... 60
    - iv. Warehousing..... 62
  - b. CVI’s Labor Pool—Costs..... 62
- 4. Canon’s Domestic Industry Investments and Activities Are Significant..... 63
- VIII. Validity of the Asserted Patents..... 66
- IX. Remedy and Bonding ..... 66
  - A. General Exclusion Order..... 67
    - 1. Manufacturers and Sellers of Aftermarket Toner Cartridges and Photosensitive Drum Units May Easily Circumvent Limited Exclusion Orders ..... 67
      - a. Masking of Identities and Product Source..... 68
      - b. Facilitating Circumvention Through Use of the Internet ..... 77
      - c. Use of Unmarked, Generic, and/or Reseller-Branded Packaging..... 92
      - d. Replication of Operations ..... 97
      - e. Even After One Source Is Excluded, Resellers of Aftermarket Toner Cartridges Could Easily Find Another Source ..... 98
    - 2. Widespread Pattern of Importation and Sale, and Difficulty of Identifying the Sources, of Infringing Toner Supply Containers..... 100
      - a. There Is a Widespread Pattern of Importation and Sale..... 100
      - b. The Sources of Aftermarket Toner Supply Containers Are Often Difficult to Identify ..... 103
    - 3. The Commission Previously Issued GEOs Under Similar Circumstances ..... 106
  - B. Cease and Desist Orders..... 110
    - 1. Domestic Defaulting Respondents..... 110
    - 2. CDOs Against the Wiztoner Respondents..... 111

**PUBLIC VERSION**

3. CDOs Against Respondents Yatengshang, ChengDuXiang,  
and Erlandianzishang..... 112

C. Bonding..... 113

X. Conclusion..... 114

PUBLIC VERSION

TABLE OF AUTHORITIES

|   | Page(s) |
|---|---------|
| <b>Cases</b>  |         |
| <i>Alloc, Inc. v. Int’l Trade Comm’n</i> ,<br>342 F.3d 1361 (Fed. Cir. 2003).....   | 23      |
| <i>Amgen, Inc. v. U.S. Int’l Trade Comm’n</i> ,<br>902 F.2d 1532 (Fed. Cir. 1990).....  | 20      |
| <i>Anderson v. Liberty Lobby, Inc.</i> ,<br>477 U.S. 242 (1986).....  | 21      |
| <i>Bai v. L &amp; L Wings, Inc.</i> ,<br>160 F.3d 1350 (Fed. Cir. 1998).....  | 22      |
| <i>Biovail Corp. Int’l v. Andrx Pharm., Inc.</i> ,<br>239 F.3d 1297 (Fed. Cir. 2001).....   | 22      |
| <i>Crocs, Inc. v. Int’l Trade Comm’n</i> ,<br>598 F.3d 1294 (Fed. Cir. 2010).....   | 22      |
| <i>Crown Operations Int’l, Ltd. v. Solutia Inc.</i> ,<br>289 F.3d 1367 (Fed. Cir. 2002).....  | 21      |
| <i>Elkay Mfg. Co. v. EBCO Mfg. Co.</i> ,<br>192 F.3d 973 (Fed. Cir. 1999).....  | 22      |
| <i>Lannom Mfg. Co. v. Int’l Trade Comm’n</i> ,<br>799 F.2d 1572 (Fed. Cir. 1986).....   | 66      |
| <i>Lelo v. Int’l Trade Comm’n</i> ,<br>786 F.3d 879 (Fed. Cir. 2015).....   | 65      |
| <i>Markman v. Westview Instruments, Inc.</i> ,<br>52 F.3d 967 (Fed. Cir. 1995) (en banc), <i>aff’d</i> , 517 U.S. 370 (1996).....       | 22      |
| <i>Microsoft Corp. v. i4i Ltd. P’ship</i> ,<br>564 U.S. 91 (2011).....  | 66      |
| <i>Sealed Air Corp. v. U.S. Int’l. Trade Comm’n</i> ,<br>645 F.2d 976 (C.C.P.A. 1981).....  | 20      |
| <b>Section 337 Investigations</b>   |         |
| <i>Certain Airless Paint Spray Pumps &amp; Components Thereof</i> ,<br>Inv. No. 337-TA-90, Comm’n Op., USITC Pub. 1199 (Nov. 1981)..... | 23      |

**PUBLIC VERSION**

*Certain Cable Connectors & Components Thereof & Prods. Containing Same,*  
Inv. No. 337-TA-650, Comm'n Op. (Apr. 14, 2010)..... 24

*Certain Cigarettes & Packaging Thereof,*  
Inv. No. 337-TA-643, Comm'n Op. (Oct. 1, 2009).....23, 113

*Certain Elec. Candle Products & Components Thereof,*  
Inv. No. 337-TA-1195, Comm'n Op. (Sept. 13, 2021)..... 65

*Certain Elec. Paper Towel Dispensing Devices & Components Thereof,*  
Inv. No. 337-TA-718, Order No. 36 (Initial Determination and  
Recommended Determination) (July 12, 2011) ..... 24

*Certain Ground Fault Circuit Interrupters & Prods. Containing Same,*  
Inv. No. 337-TA-615, Comm'n Op. (Mar. 26, 2009)..... 23

*Certain Hair Irons & Packaging Thereof,*  
Inv. No. 337-TA-637, Order No. 14 (Initial Determination and  
Recommended Determination) (Mar. 10, 2009) ..... 108

*Certain Hand Dryers & Housing for Hand Dryers,*  
Inv. No. 337-TA-1015, Comm'n Op. (Oct. 30, 2017).....110, 112

*Certain Integrated Circuit Chipsets & Prods. Containing Same,*  
Inv. No. 337-TA-428, Order No. 10 (May 4, 2000)..... 23

*Certain Laminated Floor Panels,*  
Inv. No. 337-TA-545, Order No. 17 (Mar. 2, 2006)..... 55

*Certain Lighting Control Devices, Including Dimmer Switches & Parts Thereof*  
*(IV),* Inv. No. 337-TA-776, Order No. 18 (Initial Determination and  
Recommended Determination) (June 7, 2012).....24, 30, 37

*Certain Magnetic Data Storage & Tapes & Cartridges Containing the Same,*  
Inv. No. 337-TA-1076, Initial Determination and Recommended  
Determination (Oct. 25, 2018)..... 65

*Certain Microsphere Adhesives, Processes for Making Same, & Prods.*  
*Containing Same, Including Self-Stick Repositionable Notes,*  
Inv. No. 337-TA-366, Comm'n Op., USITC Pub. 2949 (Jan. 1996)..... 113

*Certain Movable Barrier Operator Sys. & Components Thereof,*  
Inv. No. 337-TA-1118, Comm'n Op. (Jan. 12, 2021) ..... 65

*Certain Network Controllers & Prods. Containing Same,*  
Inv. No. 337-TA-531, Order No. 13 (July 6, 2005)..... 22

**PUBLIC VERSION**

*Certain Pocket Lighters,*  
Inv. No. 337-TA-1142, Initial Determination and Recommended  
Determination (Feb. 12, 2020)..... 21

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-1106, Order No. 31 (Oct. 26, 2018)..... 55

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-740, Comm’n Op. (Oct. 5, 2011)..... 106, 108, 109, 113

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-740, Order No. 26 (Initial Determination and  
Recommended Determination) (June 1, 2011)..... 69, 106, 107, 108, 109

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-829, Comm’n Op. (July 29, 2013)..... 106, 107, 112

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-829, Order No. 24 (Feb. 26, 2013)..... 55

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-829, Order No. 25 (Initial Determination and  
Recommended Determination) (Feb. 28, 2013)..... 68, 69, 92, 100, 106, 107

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-918, Comm’n Op. (Oct. 1, 2015)..... 23, 86, 106, 107, 113

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-918, Order No. 22 (Jan. 16, 2015)..... 55

*Certain Toner Cartridges & Components Thereof,*  
Inv. No. 337-TA-918, Order No. 34 (Initial Determination and  
Recommended Determination) (May 12, 2015)..... 69, 83, 86, 106, 107

*Certain Toner Cartridges, Components Thereof, & Sys. Containing Same,*  
Inv. No. 337-TA-1174, Comm’n Op. (Dec. 17, 2020)..... 106, 109

*Certain Toner Cartridges, Components Thereof, & Sys. Containing Same,*  
Inv. No. 337-TA-1174, Order No. 40 (Initial Determination and  
Recommended Determination) (July 23, 2020)..... 68, 76, 86, 100, 106, 109

*Certain Trolley Wheel Assemblies,*  
Inv. No. 337-TA-161, Comm’n Op., USITC Pub. No. 1605 (Nov. 1984)..... 21

**Statutes and Regulations**

19 C.F.R. § 201.16 ..... 4

**PUBLIC VERSION**

19 C.F.R. § 210.13(a)..... 4

19 C.F.R. § 210.16(b)..... 38

19 C.F.R. § 210.16(b)(4).....24, 66

19 C.F.R. § 210.16(c)..... 24

19 C.F.R. § 210.17 .....38, 66

19 C.F.R. § 210.18 ..... 1

19 C.F.R. § 210.18(a)..... 21

19 C.F.R. § 210.18(b)..... 21

19 C.F.R. § 210.42(a)(1)(ii) ..... 113

19 C.F.R. § 210.50(a)(3)..... 113

19 U.S.C. § 1337..... 2

19 U.S.C. § 1337(a)(1)..... 20

19 U.S.C. § 1337(a)(1)(B)..... 21

19 U.S.C. § 1337(a)(2).....20, 22, 49

19 U.S.C. § 1337(a)(3)..... 23

19 U.S.C. § 1337(a)(3)(A) .....54, 56

19 U.S.C. § 1337(a)(3)(B).....54, 59

19 U.S.C. § 1337(d)..... 66

19 U.S.C. § 1337(d)(2)(A).....23, 67

19 U.S.C. § 1337(d)(2)(B) .....23, 67

19 U.S.C. § 1337(f)..... 66

19 U.S.C. § 1337(j)(3)..... 113

35 U.S.C. § 282..... 66

## PUBLIC VERSION

### I. INTRODUCTION

Pursuant to Commission Rule 210.18, Ground Rule 5.3, and Order No. 14, Complainants Canon Inc., Canon U.S.A., Inc., and Canon Virginia, Inc. (collectively, “Canon”) move for summary determination of violations of Section 337 by the following 10 respondents (collectively, the “Defaulting Respondents”) and a recommended determination on remedy and bonding:

- Sichuan XingDian Technology Co., Ltd. (“Sichuan XingDian”)
- Sichuan Wiztoner Technology Co., Ltd. (“Sichuan Wiztoner”)
- Anhuiyatengshangmaoyouxiangongsi (“Yatengshang”)
- ChengDuXiangChangNanShiYouSheBeiYouXianGongSi (“ChengDuXiang”)
- Digital Marketing Corporation d/b/a Digital Buyer Marketing Company (“Digital Buyer”)
- Do It Wiser, Inc. d/b/a Image Toner (“Do It Wiser”)
- Hefeierlandianzishangwuyouxiangongsi (“Erlandianzishang”)
- MITOCOLOR INC. (“TopInk”)
- Xianshi yanliangqu canqiubaihuodianshanghang (“CJ-us”)
- Zhuhai Henyun Image Co., Ltd. (“Zhuhai Henyun”)

Through this motion and the accompanying statement of material facts, declarations, and exhibits, Canon establishes by substantial, reliable, and probative evidence that the Defaulting Respondents have violated Section 337 and that the Commission should issue a general exclusion order (“GEO”), issue cease and desist orders (“CDOs”) directed to certain of the Defaulting Respondents, and set the bond during the Presidential review period at 100% of the entered value of the infringing toner supply containers and components thereof.

**PUBLIC VERSION**

**II. BACKGROUND**

Canon requested this investigation to remedy widespread violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based on numerous respondents’ unauthorized importation, sale for importation, and/or sale after importation of certain toner supply containers (“Accused Toner Supply Containers”) that infringe the following claims (“Asserted Claims”) of the following patents (“Asserted Patents”):

| <b>U.S. Patent No.</b> | <b>Short Name</b> | <b>Asserted Claims</b>        |
|------------------------|-------------------|-------------------------------|
| 8,565,649              | ’649 patent       | 1, 6, 7, 12, 25, 26           |
| 9,354,551              | ’551 patent       | 1, 4, 5                       |
| 9,753,402              | ’402 patent       | 1, 15, 16, 17, 18, 32, 36, 37 |

Canon’s original complaint named 26 respondents. *See infra* Section II.A. The Commission instituted two investigations (337-TA-1259 and 337-TA-1260) based on Canon’s complaint, with the notice of institution for this investigation naming 11 respondents. *See id.* Since then, the investigation has been terminated as to one of them, and an initial determination has issued finding all 10 remaining respondents in default. *See id.* Based on the allegations in Canon’s complaint, which must be accepted as true as to the Defaulting Respondents, as well as the substantial additional evidence set forth herein, there is no dispute that each of the Defaulting Respondents has violated Section 337. Moreover, the evidence strongly favors issuing a GEO here because, as described below, such relief is necessary to prevent circumvention of an exclusion order limited to products of the Defaulting Respondents, and further because there is a pattern of violation of Section 337 and it is difficult to identify the source of infringing products.

**A. Procedural History**

Canon filed its original complaint in this investigation on March 8, 2021, which Canon supplemented pre-institution on March 26, 2021 and March 31, 2021. SUMF II.1, II.2. On

## PUBLIC VERSION

March 12, 2021, the Commission issued a public solicitation of comments on any public interest issues raised by the complaint. SUMF II.3. No comments were submitted.

The Commission issued a notice of investigation on April 7, 2021, and the investigation was instituted upon publication of the notice in the Federal Register on April 13, 2021. SUMF II.4. The notice of investigation named the following 11 respondents: Sichuan XingDian; Sichuan Wiztoner; Yatengshang; ChengDuXiang; Digital Buyer; Do It Wiser; Erlandianzishang; Shenzhenshi Keluodeng Kejiyouxiangognsi (“KenoGen”); TopInk; CJ-us; and Zhuhai Henryun. SUMF II.5. The ALJ set a June 13, 2022 target date for completion of this investigation. SUMF II.6.

Shortly after institution of the investigation, and in accordance with the Commission’s temporary changes in filing and service procedures due to COVID-19, Canon attempted to serve the complaint, notice of investigation, and related documents via express delivery on all of the respondents named in the notice of investigation. SUMF II.7. On April 21, 2021, Canon filed a letter to the Secretary attaching proofs of service of those documents. *Id.* As described in the letter, Canon successfully served via express delivery all of the respondents except for Yatengshang, ChengDuXiang, Erlandianzishang, KenoGen, CJ-us, and TopInk. SUMF II.8. On April 23, 2021, Canon filed a motion for leave to effect personal service of the complaint and notice of investigation (a) on Yatengshang, ChengDuXiang, Erlandianzishang, KenoGen, and CJ-us via their Amazon seller pages, and (b) on TopInk via the California Secretary of State. SUMF II.9. The ALJ granted the motion on May 25, 2021, following which Canon served those respondents via the means specified in the motion and the ALJ’s order. SUMF II.10, II.11. On April 27, 2021, Canon filed a motion to amend the complaint and notice of investigation to correct the identification of Do It Wiser. SUMF II.12. On May 17, 2021, the ALJ issued an

## PUBLIC VERSION

initial determination granting Canon's motion, which the Commission determined not to review. SUMF II.13. On June 4, 2021, Canon filed its amended complaint and served it on Do It Wiser via express delivery. SUMF II.14. None of these respondents filed or served a response to the complaint (or otherwise appeared in the investigation) by the deadlines for responding prescribed by 19 C.F.R. §§ 210.13(a) and 201.16. SUMF II.15.

On July 15, 2021, Canon filed a motion to terminate the investigation as to KenoGen based on withdrawal of the complaint. SUMF II.16. On August 13, 2021, the ALJ issued an ID granting the motion, which the Commission determined not to review. SUMF II.17.

Also, on July 15, 2021, Canon filed a motion for an order to show cause as to why all 10 of the Defaulting Respondents should not be found in default. SUMF II.18. On August 13, 2021, the ALJ issued an order to show cause, ordering these respondents to respond no later than August 31, 2021. SUMF II.19. On September 1, 2021, Canon and the Staff jointly moved to extend the deadline for Yatengshang, ChengDuXiang, Erlandianzishang, TopInk, and CJ-us to show cause. SUMF II.20. On September 10, 2021, the ALJ granted the motion and extended the show cause deadline for those respondents to September 24, 2021. SUMF II.21. None of the Defaulting Respondents timely responded to the order to show cause. On September 29, 2021, the ALJ issued an initial determination finding all 10 of the Defaulting Respondents in default. SUMF II.22.

As of the filing of this motion, each of the respondents named in the original and amended complaints and the notice of investigation has been terminated or found in default.<sup>1</sup> Thus, there are no active, participating respondents remaining in this investigation.

---

<sup>1</sup> As of the filing of this motion, the Commission has not determined whether to review the ALJ's initial determination finding the Defaulting Respondents in default.

## PUBLIC VERSION

### **B. The Parties**

#### **1. Complainants**

##### **a. Canon Inc.**

Canon Inc. (“CINC”) is a corporation organized and existing under the laws of Japan, with a principal place of business located at 30-2, Shimomaruko 3-chome, Ohta-ku, Tokyo 146-8501, Japan. SUMF II.23. CINC and its subsidiaries are engaged in, *inter alia*, the design, manufacture, and sale of toner supply containers, including toner supply containers that utilize the technology of the Asserted Patents. SUMF II.24.

##### **b. Canon U.S.A., Inc.**

Canon U.S.A., Inc. (“CUSA”) is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at One Canon Park, Melville, New York 11747. SUMF II.25. CUSA is responsible for selling Canon’s toner supply containers in the United States, including all of the toner supply containers being sold in the United States that utilize the technology of the Asserted Patents. SUMF II.26. CUSA was established in New York in 1965 and is wholly owned by CINC. SUMF II.27.

##### **c. Canon Virginia, Inc.**

Canon Virginia, Inc. (“CVI”) is a corporation organized and existing under the laws of the Commonwealth of Virginia, with a principal place of business located at 12000 Canon Boulevard, Newport News, Virginia 23606. SUMF II.28. CVI manufactures toner supply containers that utilize the technology of the Asserted Patents and are sold by CUSA for distribution throughout the United States. SUMF II.29, II.30. CVI is a consolidated subsidiary of CINC. SUMF II.31.

## PUBLIC VERSION

### 2. Respondents

The respondents here include at least one manufacturer as well as several distributors and resellers of aftermarket toner supply containers, including the Accused Toner Supply Containers. SUMF II.32.

#### a. The Wiztoner Respondents

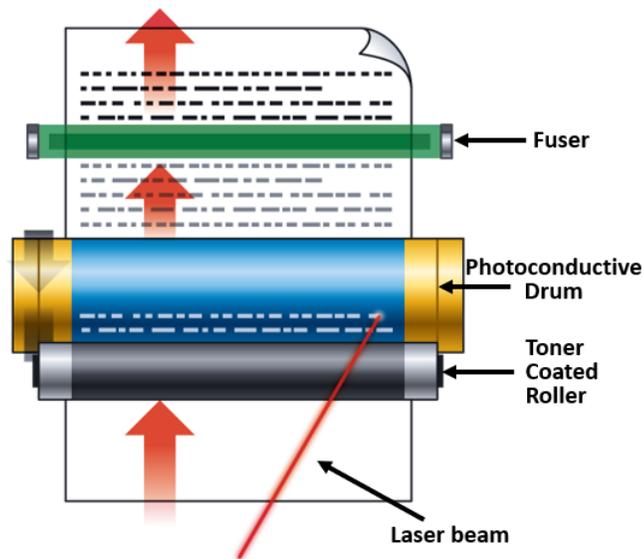
Sichuan XingDian and Sichuan Wiztoner (collectively, “Wiztoner Respondents”) are related Chinese companies, under common ownership and control, and part of a common enterprise. SUMF II.33. Sichuan Wiztoner is a subsidiary of Sichuan XingDian. SUMF II.34. The Wiztoner Respondents manufacture toner supply containers, including Accused Toner Supply Containers, at a factory in Chengdu, China owned by Sichuan Wiztoner. SUMF II.35. The Wiztoner Respondents then sell those toner supply containers for importation into the United States, import them into the United States, and sell them in the United States after importation. SUMF II.36, II.37. For example, Sichuan XingDian imports and sells in the United States toner supply containers at least through its “StarTech Office Supplies” storefront on *Amazon.com*. SUMF II.38. As discussed more fully below in Section V.B.2.c, Sichuan XingDian sold to Canon’s investigator via its “StarTech Office Supplies” storefront Accused Toner Supply Containers bearing an “LCL” trademark for which Sichuan Wiztoner owns a U.S. trademark registration. *See infra* Section V.B.2.c; *see also* SUMF II.38.

#### b. Reseller Respondents

The originally-named respondents in this investigation also include the following distributors and resellers of aftermarket toner supply containers, including the Accused Toner Supply Containers: Yatengshang, ChengDuXiang, Digital Buyer, Do It Wiser, Erlandianzishang, KenoGen, TopInk, CJ-us, and Zhuhai Henyun (collectively, “Reseller Respondents”).

### C. Technology Overview

This investigation relates to toner supply containers for use in electrophotographic image formation apparatuses (“IFAs”), such as copy machines. By way of general background, IFAs form images on a medium such as paper utilizing a fine, powder-like substance called toner (also known as developer). SUMF II.39. At a basic level, the printing process begins by applying an electric charge across the entire surface of a photoconductor such as a photoconductive drum. SUMF II.40. Next, portions of the surface of the photoconductor are selectively discharged by a laser, thus creating a latent image on the surface of the photoconductor. SUMF II.41. Toner particles are then coated onto the surface of a roller, called a developer roller. SUMF 42. This toner coated roller is in close contact with the photoconductor and the toner is transferred by electrostatic forces onto the photoconductor’s latent image, thus creating a developed image on the photoconductor. *Id.* The developed image is then transferred by other electrostatic forces from the photoconductor onto a sheet of paper. SUMF II.43. To complete the process, the toner is fused to the paper with heat and pressure to create a permanent image. SUMF II.44.



## PUBLIC VERSION

Many modern copying machines are designed to use toner supply containers that are replaceable by the end user, such that when the toner in the supply container is depleted it can be replaced with a new one. SUMF II.45.

### **D. The Asserted Patents**

The Asserted Patents belong to the same patent family, claiming priority to Japanese Application No. 2009-082081, filed March 30, 2009.<sup>2</sup> SUMF II.46. Each Asserted Patent is titled “Developer Supply Container and Developer Supplying System” and names as inventors Katsuya Murakami, Toshiaki Nagashima, Fumio Tazawa, Ayatomo Okino, and Yusuke Yamada. SUMF II.47. The Asserted Patents all disclose the same subject matter (*i.e.*, their specifications and drawings are the same), but claim different aspects of the inventions disclosed therein. SUMF II.48. CINC<sup>3</sup> owns by assignment the entire right, title, and interest in and to each of the Asserted Patents. SUMF II.50. The ’551 and ’402 patents will expire on March 30, 2030, and the ’649 patent will expire on June 28, 2030.

The Asserted Patents’ specification describes and illustrates several different preferred embodiments. SUMF II.51. For example, Figures 6(a), 6(b), 7(b), and 7(c), shown below, depict a developer supply container 1 that includes a developer accommodating portion 2 (container body), a drive inputting portion (which in the embodiment shown here is a gear portion 2a), a pump portion 2b, a flange portion 3, a shutter 4, and a drive converting mechanism (such as a cam mechanism including a cam projection 2d and cam groove 3b). SUMF II.52. As depicted in Figure 7(b), the developer supply container 1 also includes a cylindrical portion 2k, a

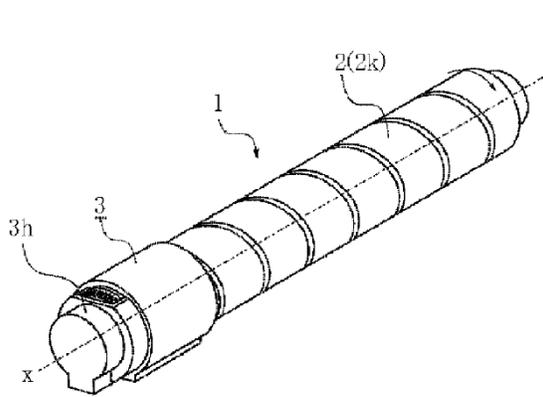
---

<sup>2</sup> Copies of each of the Asserted Patents are attached as Exhibits 11-13 to Canon’s complaint. *See* Exhibits 11-13 to Canon’s Complaint (EDIS Doc. ID 739880).

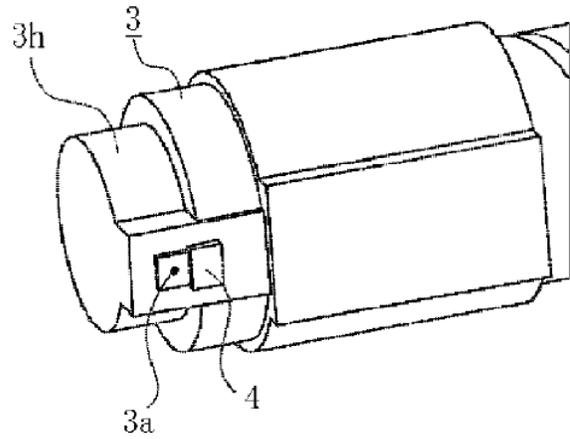
<sup>3</sup> “Canon Inc.” is the English translation of “Canon Kabushiki Kaisha,” which appears on the face of the Asserted Patents and in the assignment records. SUMF II.49.

PUBLIC VERSION

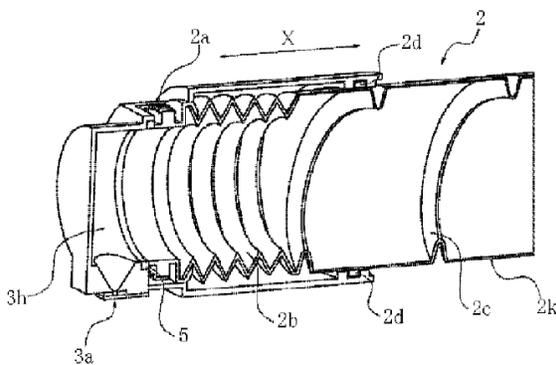
feeding portion 2c (which is projected from and extended helically from an inner surface of the cylindrical portion 2k), a discharge opening 3a, and a discharging portion 3h. SUMF II.53.



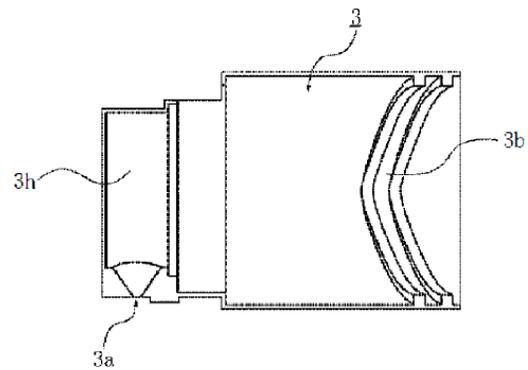
'649 patent, Fig. 6(a)



'649 patent, Fig. 6(b)



'649 patent, Fig. 7(b)



'649 patent, Fig. 7(c)

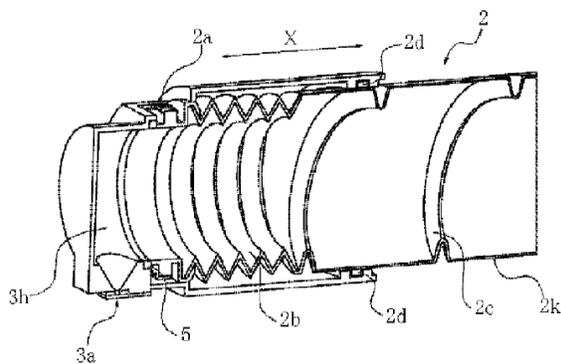
The drive inputting portion of the developer supply container 1 may be a gear 2a, as described in multiple embodiments of the Asserted Patents. SUMF II.54. The gear 2a engages with and receives a rotational force from a corresponding driving gear in the developer replenishing apparatus. SUMF II.55. The force received by gear 2a is used to rotate the developer accommodating portion 2 relative to the developer discharging portion 3h. SUMF II.56.

**PUBLIC VERSION**

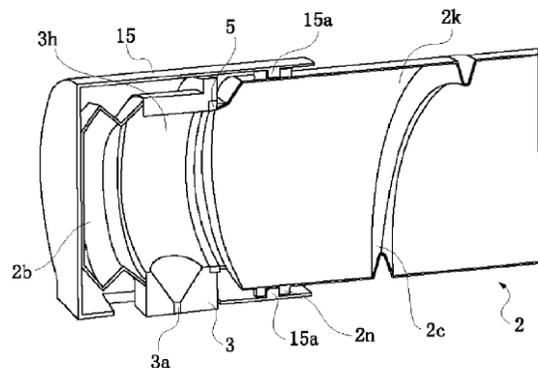
As the developer accommodating portion 2 rotates relative to the developer discharging portion 3h, the feeding portion 2c feeds toner from the developer accommodating chamber 2 towards the developer discharging portion 3h. SUMF II.57. The relative rotation of the developer accommodating portion 2 with respect to the discharging portion 3h also causes the pump portion 2b to expand and compress, as discussed in more detail below. SUMF II.58.

The developer supply container 1 also includes a shutter 4 that opens and closes the discharge opening 3a. SUMF II.59. The shutter 4 moves relative to the developer supply container 1 in a direction of the rotational axis during the mounting and dismounting of the developer supply container 1 in the mounting portion of the IFA. SUMF II.60. When the developer supply container 1 is mounted into the IFA, the shutter 4 opens and exposes the discharge opening 3a. SUMF II.61. When the developer supply container 1 is dismounted from the IFA, the shutter closes, thus covering the discharge opening 3a. SUMF II.62.

The Asserted Patents describe multiple embodiments of the pump portion and the cam mechanism, including those depicted in Figures 7(b) and 30(a) below. SUMF II.63. The pump portion of these two embodiments is a bellows-type pump that changes volume (expands and compresses) with the reciprocation of a cam mechanism. *Id.*



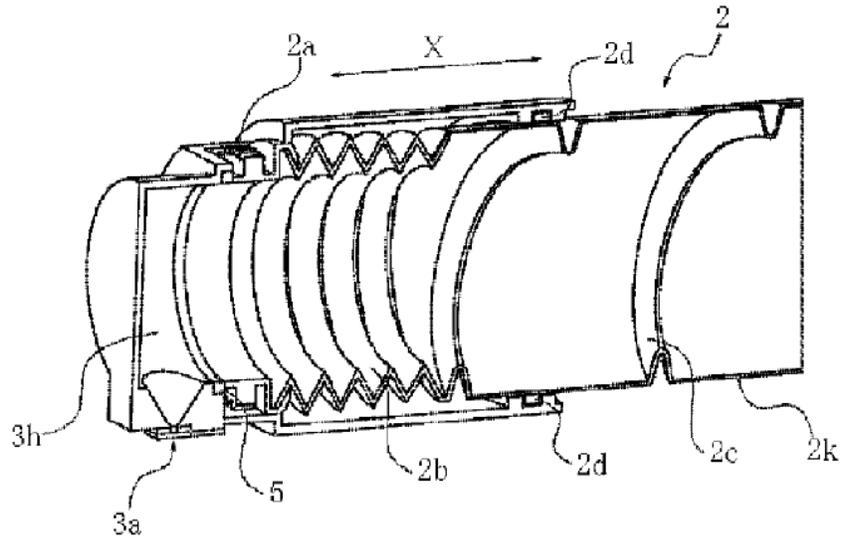
**'649 patent, Fig. 7(b)**



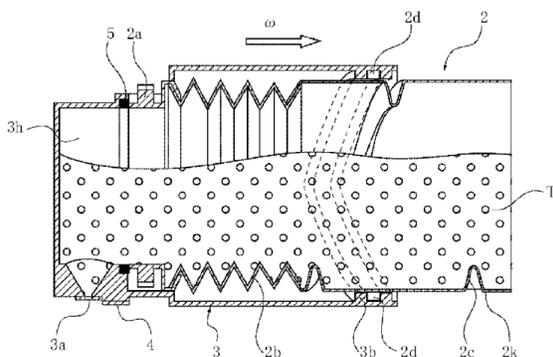
**'649 patent, Fig. 30(a)**

PUBLIC VERSION

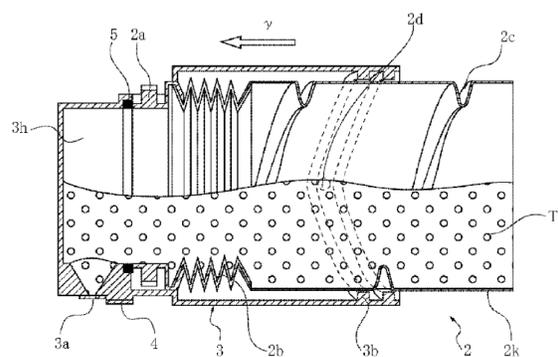
The pump portion 2b of Figure 7(b) is fixed to the cylindrical portion 2k so that the cylindrical portion 2k and pump portion 2b rotate together. SUMF II.64. In this embodiment, the outer surface of the cylindrical portion 2k is provided with two diametrically opposite cam projections 2d. *Id.* A cam groove 3b is formed in an inner surface of the flange portion 3. *Id.* The cam projections 2d engage the cam groove 3b to convert rotational force of the cylindrical portion 2k to a translational force in the direction of the rotational axis to reciprocate the pump between an expanded position (shown in Fig. 11(a), below) and a compressed position (shown in Fig. 11(b), below). *Id.*



'649 patent, Fig. 7(b)



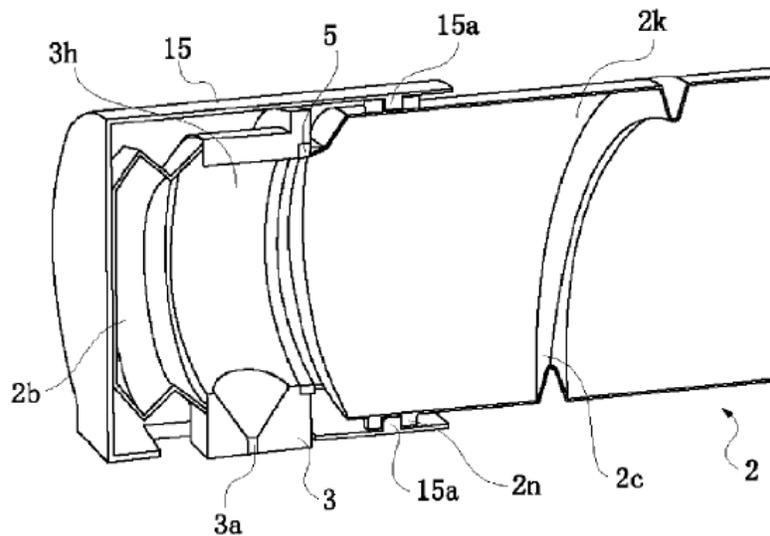
'649 patent, Fig. 11(a)



'649 patent, Fig. 11(b)

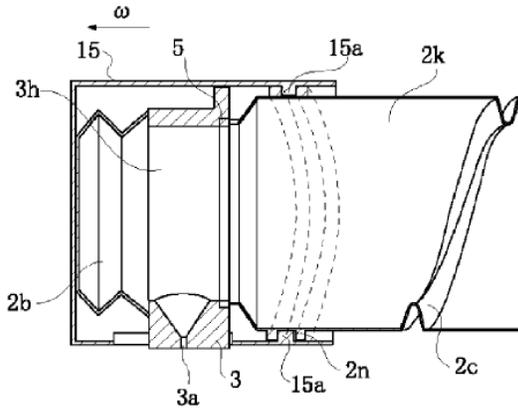
**PUBLIC VERSION**

The pump portion 2b of Figure 30(a), on the other hand, is provided at a leading end of the developer supply container 1 and is non-rotatable with flange portion 3. SUMF II.65. In other words, the cylindrical portion 2k is rotatable relative to the flange portion 3 and the pump portion 2b. *Id.* In this embodiment, a cam flange portion 15 is fixed to the pump portion and converts the rotational force of the cylindrical portion 2k to a translational force in the direction of the rotational axis for expanding and compressing the pump. *Id.* The cam flange 15 is provided with two cam projections 15a at diametrically opposite positions. *Id.* A cam groove 2n is provided on the outer surface of cylindrical portion 2k. *Id.* The cam projections 15a engage with the cam groove 2n to convert rotational force of the cylindrical portion 2k to a translational force in the direction of the rotational axis to reciprocate the pump between an expanded position (shown in Fig. 30(b), below) and a compressed position (shown in Fig. 30(c), below). *Id.*

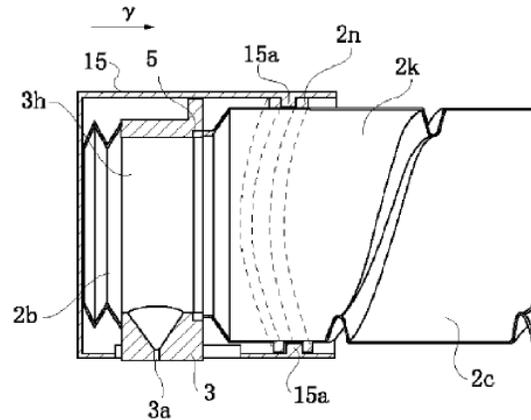


**'649 patent, Fig. 30(a)**

PUBLIC VERSION



'649 patent, Fig. 30(b)



'649 patent, Fig. 30(c)

As shown in Figures 11(a) and 30(c), a suction operation through the discharge opening 3a is effected by the pump portion 2b being expanded in a direction towards the leading side of the developer supply container 1 (in this case, the left side as shown in the figures), and thus increasing the volume of the developer supply container 1. SUMF II.66, II.67. As the volume of the developer supply container 1 increases, the internal pressure decreases. SUMF II.68, II.69. Consequently, the internal pressure of the developer supply container 1 is lower than the ambient pressure (external air pressure), and this pressure difference causes air outside of the developer supply container 1 to enter the developer supply container 1 through the discharge opening 3a. SUMF II.69. As shown in Figures 11(b) and 30(c), a discharging operation through the discharge opening 3a is effected by the pump portion 2b being compressed in a direction towards the cylindrical portion 2k of the developer supply container 1 (in this case, the right side as shown in the figures), and thus decreasing the volume of the developer supply container 1. SUMF II.70-II.72. As the volume of the developer supply container decreases, the internal pressure increases. SUMF II.73. Consequently, the internal pressure of the developer supply container 1 is higher than the ambient pressure (external air pressure), and this pressure

## PUBLIC VERSION

difference causes the developer to be expelled out of the developer supply container 1 through the discharge opening 3a into the developer replenishing apparatus 201. SUMF II.73, II.74.

The claimed inventions of the Asserted Patents have numerous advantages. SUMF II.75. First, the structure of the developer supply container implementing the reciprocation-type pump as claimed in the Asserted Patents allows for the developer supply container 1 to utilize a relatively small discharge opening 3a that prevents contamination by the toner in the mounting portion of the IFA, and significantly reduces the probability that the operator will contact the toner during mounting and dismounting operations. SUMF II.76. Second, the developer supply container of the claimed inventions uses a single drive inputting portion (such as a gear) for both rotating the feeding portion to feed toner to the discharging chamber and for automatically operating the pump portion. SUMF II.77. Traditional methods required either using a larger discharge opening and no pump at all, manually operating the bellows-type pump portion of the toner supply container, or requiring separate driving sources (and drive inputting portions) for rotating the developer supply container and for operating the pump. SUMF II.78. The singular drive inputting portion of the claimed inventions results in a stable and predictable supply of toner into the IFA using a singular driving source and drive inputting portion. SUMF II.79. These features permit the toner supply container to continuously and consistently replenish toner as it is consumed by the copier. SUMF II.80.

### **E. The Products at Issue**

The products at issue in this investigation are toner supply containers for use in Canon IFAs, including certain Canon imageRUNNER<sup>®</sup>, imageRUNNER<sup>®</sup> ADVANCE, and imageRUNNER<sup>®</sup> ADVANCE DX copy machines. SUMF II.81.

**PUBLIC VERSION**

**1. Accused Toner Supply Containers**

The Defaulting Respondents manufacture abroad, sell for importation into the United States, import into the United States, and/or sell within the United States after importation the Accused Toner Supply Containers, which are intended as substitutes or replacements for OEM toner supply containers manufactured by Canon and sold under the Canon brand name. SUMF II.82. As discussed more fully below, all of the Accused Toner Supply Containers incorporate and utilize Canon’s patented technology, and infringe each of the following Asserted Claims of the Asserted Patents:

| <b>Patent</b> | <b>Asserted Claims</b>        |
|---------------|-------------------------------|
| '649 patent   | 1, 6, 7, 12, 25, 26           |
| '551 patent   | 1, 4, 5                       |
| '402 patent   | 1, 15, 16, 17, 18, 32, 36, 37 |

Canon’s technical expert, Dr. Richard Lux, holds a Ph.D. in Mechanical and Aerospace Sciences and has been involved in the research and development of imaging products, such as IFAs and toner consumable products, for over 40 years, including almost 30 years of experience researching and developing such products at Xerox. SUMF II.83. Dr. Lux carefully examined all of the Accused Toner Supply Containers referenced below and concluded that they each infringe the Asserted Claims of the Asserted Patents, as described in Section VI. SUMF II.84.

Dr. Lux observed that, while there are some differences among the various Accused Toner Supply Containers listed below, such as in the color of toner they contain or their size (to accommodate different amounts of toner), they all have the same relevant structures required by the Asserted Claims and any variations among them are minor and had no impact on his infringement analysis. SUMF II.85. Dr. Lux concluded that the Do It Wiser 08-08.9-ITCANON3325K1 (Bates No. CAN P008 K 1-3) (the “Representative Accused Toner Supply

**PUBLIC VERSION**

Container”) is substantially the same in all relevant respects as the other Accused Toner Supply Containers listed in the table below, and thus selected it as representative of each of those Accused Toner Supply Containers for purposes of demonstrating infringement of the Asserted Claims of the Asserted Patents. SUMF II.86. Photographs of the relevant structural features of the Representative Accused Toner Supply Container are included below in Section VI.B and in Appendices 1-3 to the accompanying declaration of Dr. Lux. *See infra* Section VI.B; Lux Decl., Appendices 1-3. Exhibit 2 to Dr. Lux’s declaration includes photographs of each of the other Accused Toner Supply Containers. *See* Lux Decl., Ex. 2.

| <b>Reseller Respondent</b> | <b>Model</b>          | <b>Manufacturer</b>          | <b>Bates No.</b> | <b>Lux Ex. 2 Page</b> |
|----------------------------|-----------------------|------------------------------|------------------|-----------------------|
| Do It Wiser                | 08-08.9-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P008 K 1-3   | N/A                   |
| Do It Wiser                | 08-08.9-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P008 C 1-3   | 1                     |
| Do It Wiser                | 08-08.9-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P008 M 1-4   | 2                     |
| Do It Wiser                | 08-08.9-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P008 Y 1-3   | 3                     |
| Yatengshang                | 08-07.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P001 K 1-3   | 4                     |
| Yatengshang                | 08-07.0-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P001 C 1-3   | 5                     |
| Yatengshang                | 08-07.0-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P001 M 1-3   | 6                     |
| Yatengshang                | 08-07.0-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P001 Y 1-3   | 7                     |
| Yatengshang                | 08-09.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P002 K 1-4   | 8                     |
| ChengDuXiang               | 08-07.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P003 K 1-3   | 9                     |
| ChengDuXiang               | 08-07.0-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P003 C 1-3   | 10                    |

**PUBLIC VERSION**

| <b>Reseller Respondent</b> | <b>Model</b>          | <b>Manufacturer</b>          | <b>Bates No.</b> | <b>Lux Ex. 2 Page</b> |
|----------------------------|-----------------------|------------------------------|------------------|-----------------------|
| ChengDuXiang               | 08-07.0-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P003 M 1-3   | 11                    |
| ChengDuXiang               | 08-07.0-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P003 Y 1-3   | 12                    |
| ChengDuXiang               | 08-09.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P004 K 1-3   | 13                    |
| Erlandianzishang           | 08-07.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P010 K 1-3   | 14                    |
| Erlandianzishang           | 08-07.0-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P010 C 1-3   | 15                    |
| Erlandianzishang           | 08-07.0-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P010 M 1-3   | 16                    |
| Erlandianzishang           | 08-07.0-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P010 Y 1-3   | 17                    |
| Erlandianzishang           | 08-09.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P052 K 1-4   | 18                    |
| KenoGen <sup>4</sup>       | 08-07.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P016 K 1-3   | 19                    |
| KenoGen                    | 08-07.0-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P016 C 1-3   | 20                    |
| KenoGen                    | 08-07.0-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P016 M 1-3   | 21                    |
| KenoGen                    | 08-07.0-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P016 Y 1-3   | 22                    |
| KenoGen                    | 08-09.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P053 K 1-4   | 23                    |
| TopInk                     | 08-08.9-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P020 K 1-4   | 24                    |
| TopInk                     | 08-08.9-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P020 C 1-4   | 25                    |

---

<sup>4</sup> While KenoGen has been terminated from the investigation, and thus Canon is not seeking a determination of violations as to KenoGen, Canon is submitting evidence of infringement by products sold for importation, imported, and/or sold after importation by KenoGen for other purposes, such as to prove violations by others who manufactured, imported, or sold those products or for purposes of establishing the need for a GEO.

**PUBLIC VERSION**

| <b>Reseller Respondent</b> | <b>Model</b>          | <b>Manufacturer</b>          | <b>Bates No.</b> | <b>Lux Ex. 2 Page</b> |
|----------------------------|-----------------------|------------------------------|------------------|-----------------------|
| TopInk                     | 08-08.9-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P020 M 1-4   | 26                    |
| TopInk                     | 08-08.9-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P020 Y 1-4   | 27                    |
| Digital Buyer              | CCGPR53K              | Unknown                      | CAN P007 K 1-3   | 28                    |
| Digital Buyer              | CCGPR53M              | Unknown                      | CAN P007 M 1-3   | 29                    |
| CJ-us                      | GPR58K                | Unknown                      | CAN P021 K 1-3   | 30                    |
| CJ-us                      | GPR58C                | Unknown                      | CAN P021 C 1-3   | 31                    |
| CJ-us                      | GPR58M                | Unknown                      | CAN P021 M 1-3   | 32                    |
| CJ-us                      | GPR58Y                | Unknown                      | CAN P021 Y 1-3   | 33                    |
| Sichuan XingDian           | LCL-GPR-53            | Wiztoner                     | CAN P022 Y 1-3   | 34                    |

**2. Canon's Domestic Industry Products**

Canon each year manufactures and sells in the United States hundreds of thousands of toner supply containers that utilize the claimed inventions of the Asserted Patents. During various time periods from 2018 through the present, CVI has manufactured the following 26 toner supply container models that are covered by each Asserted Claim of each Asserted Patent:

| <b>Model</b> | <b>Bates Nos.</b> | <b>Lux Ex. 3 Page</b> |
|--------------|-------------------|-----------------------|
| GPR-51 K     | CAN P024 K 1      | 1                     |
| GPR-51 C     | CAN P024 C 1      | 2                     |
| GPR-51 M     | CAN P024 M 1      | 3                     |
| GPR-51 Y     | CAN P024 Y 1      | 4                     |
| GPR-52 K     | CAN P025 K 1      | 5                     |
| GPR-52 C     | CAN P025 C 1      | 6                     |
| GPR-52 M     | CAN P025 M 1      | 7                     |
| GPR-52 Y     | CAN P025 Y 1      | 8                     |
| GPR-53 K     | CAN P026 K 1-3    | N/A                   |
| GPR-53 C     | CAN P026 C 1      | 9                     |
| GPR-53 M     | CAN P026 M 1      | 10                    |

**PUBLIC VERSION**

| <b>Model</b> | <b>Bates Nos.</b> | <b>Lux Ex. 3 Page</b> |
|--------------|-------------------|-----------------------|
| GPR-53 Y     | CAN P026 Y 1      | 11                    |
| GPR-53L C    | CAN P027 C 1      | 12                    |
| GPR-53L M    | CAN P027 M 1      | 13                    |
| GPR-53L Y    | CAN P027 Y 1      | 14                    |
| GPR-55 K     | CAN P028 K 1      | 15                    |
| GPR-55 C     | CAN P028 C 1      | 16                    |
| GPR-55 M     | CAN P028 M 1      | 17                    |
| GPR-55 Y     | CAN P028 Y 1      | 18                    |
| GPR-55L C    | CAN P029 C 1      | 19                    |
| GPR-55L M    | CAN P029 M 1      | 20                    |
| GPR-55L Y    | CAN P029 Y 1      | 21                    |
| GPR-58 K     | CAN P030 K 1      | 22                    |
| GPR-58 C     | CAN P030 C 1      | 23                    |
| GPR-58 M     | CAN P030 M 1      | 24                    |
| GPR-58 Y     | CAN P030 Y 1      | 25                    |

SUMF II.87-II.90.

The above 26 CVI manufactured toner supply containers will be referred to collectively herein as “Covered CVI Toner Supply Containers.”

Dr. Lux observed that, while there are some differences among the various Covered CVI Toner Supply Containers listed above, such as in the color of toner they contain or their size (to accommodate different amounts of toner), they all have the same relevant structures required by the Asserted Claims and any variations among them are minor and had no impact on his infringement analysis. SUMF II.91. Dr. Lux concluded that the Canon GPR-53 K (CAN P026 K 1-3) (the “Representative Covered CVI Toner Supply Container”) is substantially the same in all relevant respects as the other Covered CVI Toner Supply Containers listed in the table above, and thus selected it as representative of each of those Covered CVI Toner Supply

## PUBLIC VERSION

Containers for purposes of his domestic industry technical prong analysis. SUMF II.92.

Photographs of the relevant structural features of the Representative Covered CVI Toner Supply Container are included below in Section VII.A and in Appendices 4-6 to Dr. Lux's declaration. *See infra* Section VI.B; Lux Decl., Appendices 4-6. Exhibit 3 to Dr. Lux's declaration includes photographs of each of the other Covered CVI Toner Supply Containers listed in the table above. *See* Lux Decl., Ex. 3.

### III. JURISDICTION

Section 337 of the Tariff Act prohibits the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation by the owner, importer, or consignee of articles that infringe a valid and enforceable patent, if an industry in the United States relating to the articles protected by the patent exists or is in the process of being established. 19 U.S.C. §§ 1337(a)(1)-(2). Canon's complaint states a cause of action under Section 337, and thus the Commission has jurisdiction over the subject matter of this investigation. *See Amgen, Inc. v. U.S. Int'l Trade Comm'n*, 902 F.2d 1532, 1536 (Fed. Cir. 1990).

Section 337 proceedings are *in rem*, making *in personam* jurisdiction unnecessary. *See Sealed Air Corp. v. U.S. Int'l. Trade Comm'n*, 645 F.2d 976, 985-86 (C.C.P.A. 1981). As explained more fully in Section V, the Accused Toner Supply Containers have been imported into the United States, granting the Commission *in rem* jurisdiction over them. *See id.* Though not required, the Commission has personal jurisdiction over the Defaulting Respondents because they all have been given notice of this investigation at least through service of the complaint and notice of investigation. In addition, the Commission has personal jurisdiction over the Defaulting Respondents because of their intentional and systematic contacts with the United

## PUBLIC VERSION

States. *See, e.g., Certain Pocket Lighters*, Inv. No. 337-TA-1142, Initial Determination and Recommended Determination at 12-13 (Feb. 12, 2020).

As noted above, Complainant CINC owns by assignment the entire right, title, and interest in and to the Asserted Patents. SUMF III.1. Each of the Asserted Patents is currently in force. No party has contested Canon's standing to assert the Asserted Patents.

### IV. LEGAL STANDARDS

#### A. Summary Determination

Under Commission Rule 210.18(a), a party may move for a summary determination of any or all issues in an investigation. 19 C.F.R. § 210.18(a). Such determinations “shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary determination as a matter of law.” 19 C.F.R. § 210.18(b). “Issues of fact are genuine only ‘if the evidence is such that a reasonable [fact finder] could return a verdict for the nonmoving party.’” *Crown Operations Int’l, Ltd. v. Solutia Inc.*, 289 F.3d 1367, 1375 (Fed. Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

#### B. Importation in Violation of Section 337

Section 337 prohibits “[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that (i) infringe a valid and enforceable United States patent . . .” 19 U.S.C. § 1337(a)(1)(B). A single importation of an accused product is sufficient to satisfy the importation requirement of Section 337. *Certain Trolley Wheel Assemblies*, Inv. No. 337-TA-161, Comm’n Op. at 7-8, USITC Pub. No. 1605 (Nov. 1984) (deeming the importation requirement satisfied by the importation of a single product of no commercial value).

## PUBLIC VERSION

### C. Infringement

The determination of infringement requires a two-step analysis: First, each of the patent claims at issue is construed as a matter of law to determine its meaning and scope. Second, each of the properly construed claims is compared to the accused device. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996).

Literal infringement of a valid utility patent requires that the device or process at issue contain every limitation of at least one properly construed patent claim. *Biovail Corp. Int'l v. Andrx Pharm., Inc.*, 239 F.3d 1297, 1302 (Fed. Cir. 2001). “If even one limitation is missing or not met as claimed, there is no literal infringement.” *Elkay Mfg. Co. v. EBCO Mfg. Co.*, 192 F.3d 973, 980 (Fed. Cir. 1999). The determination of literal infringement is a question of fact, *Bai v. L & L Wings, Inc.*, 160 F.3d 1350, 1353 (Fed. Cir. 1998), and the threshold level of proof required to establish literal infringement is a preponderance of the evidence, *Biovail*, 239 F.3d at 1302.

### D. Existence of a Domestic Industry

In patent-based proceedings under Section 337, a complainant bears the burden of establishing that an industry “relating to the articles protected by the patent ... exists or is in the process of being established” in the United States. 19 U.S.C. § 1337(a)(2); *see also Certain Network Controllers & Prods. Containing Same*, Inv. No. 337-TA-531, Order No. 13 at 3-4 (July 6, 2005). Under Commission precedent, this requirement of Section 337 is known as the “domestic industry requirement” and consists of a “technical prong” and an “economic prong.”

#### 1. Technical Prong

The technical prong requires that the complainant practice the patents-in-suit in the United States. *Crocs, Inc. v. Int'l Trade Comm'n*, 598 F.3d 1294, 1306-07 (Fed. Cir. 2010). The test for determining whether the technical prong is met through the practice of the patent “is

## PUBLIC VERSION

essentially same as that for infringement, i.e., a comparison of domestic products to the asserted claims.” *Alloc, Inc. v. Int’l Trade Comm’n*, 342 F.3d 1361, 1375 (Fed. Cir. 2003).

### **2. Economic Prong**

The economic prong requires that the complainant have, with respect to the products protected by its patent: (a) significant investment in plant and equipment; (b) significant employment of labor or capital; or (c) substantial investment in exploitation of the patent, including engineering, research and development, or licensing activities. 19 U.S.C. § 1337(a)(3). Satisfaction of any of these criteria suffices to meet the economic prong of the domestic industry requirement. *See, e.g., Certain Integrated Circuit Chipsets & Prods. Containing Same*, Inv. No. 337-TA-428, Order No. 10 at 3 (May 4, 2000).

### **E. General Exclusion Order**

A GEO is warranted when “a general exclusion from entry of articles is necessary to prevent circumvention of an exclusion order limited to products of named persons,” 19 U.S.C. § 1337(d)(2)(A), or “there is a pattern of violation of this section and it is difficult to identify the source of infringing products,” 19 U.S.C. § 1337(d)(2)(B). A GEO is warranted if either of these statutory criteria is met. *See Certain Cigarettes & Packaging Thereof*, Inv. No. 337-TA-643, Comm’n Op. at 25 (Oct. 1, 2009). While the factors set forth in *Certain Airless Paint Spray Pumps and Components Thereof*, Inv. No. 337-TA-90, Comm’n Op. at 18-19, USITC Pub. 1199 (Nov. 1981) once guided the GEO analysis, the Commission “now focus[es] principally on the statutory language itself.” *Certain Ground Fault Circuit Interrupters & Prods. Containing Same*, Inv. No. 337-TA-615, Comm’n Op. at 25 (Mar. 26, 2009). Moreover, “[i]n determining whether a GEO is warranted, the Commission looks not only to the activities of active respondents, but also to those of respondents that have been terminated from an investigation as well as non-respondents.” *Certain Toner Cartridges & Components Thereof*, Inv. No. 337-TA-

## PUBLIC VERSION

918, Comm'n Op. at 9 (Oct. 1, 2015); *see also Certain Elec. Paper Towel Dispensing Devices & Components Thereof*, Inv. No. 337-TA-718, Order No. 36 (Initial Determination and Recommended Determination) at 7-8 & nn.9-10 (July 12, 2011); *Certain Cable Connectors & Components Thereof & Prods. Containing Same*, Inv. No. 337-TA-650, Comm'n Op. at 59 (Apr. 14, 2010).

### V. SALE AND IMPORTATION IN VIOLATION OF SECTION 337

Each of the Defaulting Respondents has imported into the United States, sold for importation, and/or sold within the United States after importation Accused Toner Supply Containers that infringe the Asserted Claims of the Asserted Patents.

Sections V.A and V.B below describe how the Defaulting Respondents have imported into the United States, sold for importation, and/or sold within the United States after importation at least the Accused Toner Supply Containers listed above in Section II.E.1. Section VI.B below describes how each of these Accused Toner Supply Containers infringes the Asserted Claims of the Asserted Patents.

#### A. The Uncontested Allegations in the Complaint and Adverse Inferences to Be Drawn from Certain Failures to Act Establish Sale and Importation in Violation of Section 337 by the Defaulting Respondents

Because each of the Defaulting Respondents has been found in default, they have waived their right to contest the allegations in Canon's complaint, and the facts alleged in the complaint, including allegations regarding their importation, sale for importation, and/or sale after importation of infringing Accused Toner Supply Containers, are presumed to be true. 19 C.F.R. § 210.16(b)(4) and (c); *see also Certain Lighting Control Devices, Including Dimmer Switches & Parts Thereof (IV)*, Inv. No. 337-TA-776, Order No. 18 (Initial Determination and Recommended Determination) at 25 (June 7, 2012). Salient, uncontested allegations regarding

**PUBLIC VERSION**

the Defaulting Respondents’ importation, sale for importation, and/or sale after importation of infringing Accused Toner Supply Containers include the following:

| <b>Respondent</b>    | <b>Importation Allegations</b>   | <b>Infringement Allegations</b>  |
|----------------------|--|--|
| Wiztoner Respondents | 337-TA-1260 Complaint at ¶¶ 21-26, 128-130, 200-214 (alleging, <i>inter alia</i> , that the Wiztoner Respondents make Accused Toner Supply Containers in China and import them into the United States, sell them for importation into the United States, and/or sell them within the United States after importation, including the model LCL-GPR-53 Accused Toner Supply Containers).   | 337-TA-1260 Complaint at ¶¶ 128-130, Complaint Exs. 63-65 (demonstrating the Wiztoner Respondents’s Accused Toner Supply Containers’ infringement of the Asserted Claims).         |
| Yatengshang          | 337-TA-1260 Complaint at ¶¶ 27, 131-135, 215, 216, 228 (alleging, <i>inter alia</i> , that Yatengshang sells within the United States after importation Accused Toner Supply Containers manufactured in China by one or more unknown manufacturing sources, including the model 08-07.0-ITCANON3325K1, 08-07.0-ITCANON3325C1, 08-07.0-ITCANON3325M1, 08-07.0-ITCANON3325Y1, and 08-09.0-ITCANON3325K1 Accused Toner Supply Containers).            | 337-TA-1260 Complaint at ¶¶ 113, 114, 131-135, Complaint Exs. 76-78 (demonstrating Yatengshang’s Accused Toner Supply Containers’ infringement of the Asserted Claims).            |
| ChengDuXiang         | 337-TA-1260 Complaint at ¶¶ 28, 131-133, 136, 137, 215, 217, 229 (alleging, <i>inter alia</i> , that ChengDuXiang sells within the United States after importation Accused Toner Supply Containers manufactured in China by one or more unknown manufacturing sources, including the model 08-07.0-ITCANON3325K1, 08-07.0-ITCANON3325C1, 08-07.0-ITCANON3325M1, 08-07.0-ITCANON3325Y1, and 08-09.0-ITCANON3325K1 Accused Toner Supply Containers). | 337-TA-1260 Complaint at ¶¶ 113, 114, 131-133, 136, 137, Complaint Exs. 76-78 (demonstrating ChengDuXiang’s Accused Toner Supply Containers’ infringement of the Asserted Claims). |

**PUBLIC VERSION**

| <b>Respondent</b> | <b>Importation Allegations</b>  | <b>Infringement Allegations</b>  |
|-------------------|---|--|
| Digital Buyer     | 337-TA-1260 Complaint at ¶¶ 30, 106, 115, 116, 138, 139 (alleging, <i>inter alia</i> , that Digital Buyer sells within the United States after importation Accused Toner Supply Containers manufactured in China by one or more unknown manufacturing sources, including the model CCGPR53K and CCGPR53M Accused Toner Supply Containers).  | 337-TA-1260 Complaint at ¶¶ 115, 116, 138, 139, Complaint Exs. 89-91 (demonstrating Digital Buyer’s Accused Toner Supply Containers’ infringement of the Asserted Claims).             |
| Do It Wiser       | 337-TA-1260 Complaint at ¶¶ 31, 113, 114, 131-133, 226-232 (alleging, <i>inter alia</i> , that Do It Wiser sells within the United States after importation Accused Toner Supply Containers manufactured in China by one or more unknown manufacturing sources, including the model 08-08.9-ITCANON3325K1, 08-08.9-ITCANON3325C1, 08-08.9-ITCANON3325M1, 08-08.9-ITCANON3325Y1, 08-07.0-ITCANON3325K1, 08-07.0-ITCANON3325C1, 08-07.0-ITCANON3325M1, 08-07.0-ITCANON3325Y1, and 08-09.0-ITCANON3325K1 Accused Toner Supply Containers). | 337-TA-1260 Complaint at ¶¶ 113, 114, 131-133, Complaint Exs. 76-78 (demonstrating Do It Wiser’s Accused Toner Supply Containers’ infringement of the Asserted Claims).                |
| Erlandianzishang  | 337-TA-1260 Complaint at ¶¶ 33, 113, 114, 131-133, 142, 143, 219, 230 (alleging, <i>inter alia</i> , that Erlandianzishang sells within the United States after importation Accused Toner Supply Containers manufactured in China by one or more unknown manufacturing sources, including the model 08-07.0-ITCANON3325K1, 08-07.0-ITCANON3325C1, 08-07.0-ITCANON3325M1, 08-07.0-ITCANON3325Y1, and 08-09.0-ITCANON3325K1 Accused Toner Supply Containers).   | 337-TA-1260 Complaint at ¶¶ 113, 114, 131-133, 142, 143, Complaint Exs. 76-78 (demonstrating Erlandianzishang’s Accused Toner Supply Containers’ infringement of the Asserted Claims). |

**PUBLIC VERSION**

| Respondent     | Importation Allegations   | Infringement Allegations   |
|----------------|---|--|
| TopInk         | 337-TA-1260 Complaint at ¶¶ 41, 113, 114, 131-133, 159, 160, 222 (alleging, <i>inter alia</i> , that TopInk sells within the United States after importation Accused Toner Supply Containers manufactured in China by one or more unknown manufacturing sources, including the model 08-08.9-ITCANON3325K1, 08-08.9-ITCANON3325C1, 08-08.9-ITCANON3325M1, and 08-08.9-ITCANON3325Y1 Accused Toner Supply Containers). | 337-TA-1260 Complaint at ¶¶ 113, 114, 131-133, 159, 160, Complaint Exs. 76-78 (demonstrating TopInk’s Accused Toner Supply Containers’ infringement of the Asserted Claims). |
| CJ-us          | 337-TA-1260 Complaint at ¶¶ 42, 119-121, 163-166, 223-225 (alleging, <i>inter alia</i> , that CJ-us sells within the United States after importation Accused Toner Supply Containers manufactured in China by one or more unknown manufacturing sources, including the model GPR58K, GPR58C, GPR58M, and GPR58Y Accused Toner Supply Containers).   | 337-TA-1260 Complaint at ¶¶ 119-121, 163-166, Complaint Exs. 112-114 (demonstrating CJ-us’s Accused Toner Supply Containers’ infringement of the Asserted Claims).           |
| Zhuhai Henryun | 337-TA-1260 Complaint at ¶¶ 43, 119-121, 165, 166, 224, 225 (alleging, <i>inter alia</i> , that Zhuhai Henryun sells within the United States after importation Accused Toner Supply Containers manufactured in China by one or more unknown manufacturing sources, including the model GPR58K, GPR58C, GPR58M, and GPR58Y Accused Toner Supply Containers).  | 337-TA-1260 Complaint at ¶¶ 119-121, 165, 166, Complaint Exs. 112-114 (demonstrating Zhuhai Henryun’s Accused Toner Supply Containers’ infringement of the Asserted Claims). |

These uncontested allegations alone establish that each of the Defaulting Respondents has imported into the United States, sold for importation into the United States, and/or sold within the United States after importation infringing Accused Toner Supply Containers.

**B. The Undisputed Evidence Establishes Sale and Importation in Violation of Section 337**

In addition to the uncontested allegations in the complaint and adverse inferences, the undisputed evidence as set forth below further demonstrates the importation, sale for

**PUBLIC VERSION**

importation, and/or sale after importation of Accused Toner Supply Containers by the Defaulting Respondents.

**1. Imported Accused Toner Supply Containers Purchased from Reseller Respondents**

Canon’s investigator, Michael Falsone, purchased imported Accused Toner Supply Containers, directly or indirectly, from each of the Reseller Respondents. In particular, Canon’s investigator purchased the following Accused Toner Supply Containers from the following Reseller Respondents in the United States on the following dates (as established by the statements of undisputed material fact cited in the table below):

| <b>Reseller Respondent</b> | <b>Model</b>          | <b>Manufacturer</b>          | <b>Bates No.</b> | <b>Purchase Date</b> | <b>SUMF No.</b> |
|----------------------------|-----------------------|------------------------------|------------------|----------------------|-----------------|
| Yatengshang                | 08-07.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P001 K 1-3   | 12/13/2020           | V.1             |
| Yatengshang                | 08-07.0-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P001 C 1-3   | 12/13/2020           | <i>Id.</i>      |
| Yatengshang                | 08-07.0-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P001 M 1-3   | 12/13/2020           | <i>Id.</i>      |
| Yatengshang                | 08-07.0-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P001 Y 1-3   | 12/13/2020           | <i>Id.</i>      |
| Yatengshang                | 08-09.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P002 K 1-4   | 12/13/2020           | <i>Id.</i>      |
| ChengDuXiang               | 08-07.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P003 K 1-3   | 12/13/2020           | V.2             |
| ChengDuXiang               | 08-07.0-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P003 C 1-3   | 12/13/2020           | <i>Id.</i>      |
| ChengDuXiang               | 08-07.0-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P003 M 1-3   | 12/13/2020           | <i>Id.</i>      |
| ChengDuXiang               | 08-07.0-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P003 Y 1-3   | 12/13/2020           | <i>Id.</i>      |
| ChengDuXiang               | 08-09.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P004 K 1-3   | 12/13/2020           | <i>Id.</i>      |
| Digital Buyer              | CCGPR53K              | Unknown                      | CAN P007 K 1-3   | 12/21/2020           | V.3             |
| Digital Buyer              | CCGPR53M              | Unknown                      | CAN P007 M 1-3   | 12/21/2020           | <i>Id.</i>      |

**PUBLIC VERSION**

| <b>Reseller Respondent</b> | <b>Model</b>          | <b>Manufacturer</b>          | <b>Bates No.</b> | <b>Purchase Date</b> | <b>SUMF No.</b> |
|----------------------------|-----------------------|------------------------------|------------------|----------------------|-----------------|
| Do It Wiser                | 08-08.9-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P008 K 1-3   | 2/13/2020            | V.4             |
| Do It Wiser                | 08-08.9-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P008 C 1-3   | 2/13/2020            | <i>Id.</i>      |
| Do It Wiser                | 08-08.9-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P008 M 1-4   | 2/13/2020            | <i>Id.</i>      |
| Do It Wiser                | 08-08.9-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P008 Y 1-3   | 2/13/2020            | <i>Id.</i>      |
| Erlandianzishang           | 08-07.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P010 K 1-3   | 12/5/2020            | V.5             |
| Erlandianzishang           | 08-07.0-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P010 C 1-3   | 12/5/2020            | <i>Id.</i>      |
| Erlandianzishang           | 08-07.0-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P010 M 1-3   | 12/5/2020            | <i>Id.</i>      |
| Erlandianzishang           | 08-07.0-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P010 Y 1-3   | 12/5/2020            | <i>Id.</i>      |
| Erlandianzishang           | 08-09.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P052 K 1-4   | 12/5/2020            | <i>Id.</i>      |
| KenoGen                    | 08-07.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P016 K 1-3   | 12/13/2020           | V.6             |
| KenoGen                    | 08-07.0-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P016 C 1-3   | 12/13/2020           | <i>Id.</i>      |
| KenoGen                    | 08-07.0-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P016 M 1-3   | 12/13/2020           | <i>Id.</i>      |
| KenoGen                    | 08-07.0-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P016 Y 1-3   | 12/13/2020           | <i>Id.</i>      |
| KenoGen                    | 08-09.0-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P053 K 1-4   | 12/13/2020           | <i>Id.</i>      |
| TopInk                     | 08-08.9-ITCANON3325K1 | Mito Color Imaging Co., Ltd. | CAN P020 K 1-4   | 2/13/2020            | V.7             |
| TopInk                     | 08-08.9-ITCANON3325C1 | Mito Color Imaging Co., Ltd. | CAN P020 C 1-4   | 2/13/2020            | <i>Id.</i>      |
| TopInk                     | 08-08.9-ITCANON3325M1 | Mito Color Imaging Co., Ltd. | CAN P020 M 1-4   | 2/13/2020            | <i>Id.</i>      |
| TopInk                     | 08-08.9-ITCANON3325Y1 | Mito Color Imaging Co., Ltd. | CAN P020 Y 1-4   | 2/13/2020            | <i>Id.</i>      |
| CJ-us                      | GPR58K                | Unknown                      | CAN P021 K 1-3   | 12/13/2020           | V.8             |
| CJ-us                      | GPR58C                | Unknown                      | CAN P021 C 1-3   | 12/13/2020           | <i>Id.</i>      |

**PUBLIC VERSION**

| <b>Reseller Respondent</b> | <b>Model</b> | <b>Manufacturer</b> | <b>Bates No.</b> | <b>Purchase Date</b> | <b>SUMF No.</b> |
|----------------------------|--------------|---------------------|------------------|----------------------|-----------------|
| CJ-us                      | GPR58M       | Unknown             | CAN P021 M 1-3   | 12/13/2020           | <i>Id.</i>      |
| CJ-us                      | GPR58Y       | Unknown             | CAN P021 Y 1-3   | 12/13/2020           | <i>Id.</i>      |
| Sichuan XingDian           | LCL-GPR-53   | Wiztoner            | CAN P022 Y 1-3   | 12/5/2020            | V.9             |

Prior to being sold to Canon’s investigator, all of the above-listed Accused Toner Supply Containers originated from China. For example, all of the above-listed Accused Toner Supply Containers, other than those received from CJ-us, arrived in packaging stating that they were “Made in China,” establishing that they were imported into the United States and then sold within the United States after importation, including by the Reseller Respondents identified above. SUMF V.10-V.17, V.19; *see also Certain Lighting Control Devices*, Order No. 18 at 10-11 (finding a “Made in China” marking on a product to be sufficient evidence of importation). The above-listed Accused Toner Supply Containers from CJ-us arrived in packaging with a label indicating that the shipment originated in Hong Kong and was sent from a Chinese shipper. SUMF V.18, V.19. Additional evidence of importation of certain of these Accused Toner Supply Containers, and the identities of their manufacturers if known to Canon as reflected in the table above, is set forth below in Sections V.B.2.a (Do It Wiser and Mito Color Imaging Co., Ltd.); V.B.2.b (Zhuhai Henryun); and V.B.2.c (Wiztoner Respondents).

The above-listed Accused Toner Supply Containers all infringe the Asserted Patents. As discussed above in Section II.E.1, the Representative Accused Toner Supply Container is representative of each of the above-listed Accused Toner Supply Containers for purposes of establishing infringement, and as established in Section VI.B below, the Representative Accused Toner Supply Container infringes each of the Asserted Claims of each of the Asserted Patents.

Because all of the Defaulting Respondents listed above have defaulted, Canon has not been able to obtain discovery from many of them regarding the periods during which they have

## PUBLIC VERSION

imported into the United States and/or sold within the United States Accused Toner Supply Containers. Nevertheless, as reflected by the dates in the table above, and as established by the statements of undisputed material fact cited therein, each of the above-listed Accused Toner Supply Containers was sold within the United States well after September 5, 2017, when the last of the Asserted Patents issued. SUMF V.1-V.9, V.20. In addition, Canon obtained affidavits from Digital Buyer and Do It Wiser admitting to having procured their respective Accused Toner Supply Containers since January 1, 2020, further evidencing their importation and/or sale after importation of Accused Toner Supply Containers after issuance of all of the Asserted Patents. SUMF V.21, V.22.

Based on the foregoing, there can be no dispute that each of the Reseller Respondents listed in the table above has imported into the United States and/or sold within the United States after importation infringing Accused Toner Supply Containers, including those listed above, in violation of Section 337.

### **2. Additional Evidence of Manufacture, Sale for Importation, Importation, and/or Sale of Infringing Accused Toner Supply Containers by Certain Respondents**

#### **a. Additional Evidence of Do It Wiser's Sale After Importation of Accused Toner Supply Containers**

In addition to the Accused Toner Supply Containers purchased directly from Do It Wiser, as shown in the table above in Section V.B.1, Do It Wiser also was a distributor of the Accused Toner Supply Containers purchased from Yatengshang, ChengDuXiang, Erlandianzishang, TopInk, and KenoGen.

Do It Wiser uses “Do It Wiser” branded packaging to identify itself as the source, but not necessarily the manufacturer, of a given toner supply container contained in such packaging. SUMF V.23. An example of such “Do It Wiser” branded packaging is shown in the below

## PUBLIC VERSION

image of the packaging for a set of 08-08.9-ITCANON3325K1, 08-08.9-ITCANON3325C1, 08-08.9-ITCANON3325M1, and 08-08.9-ITCANON3325Y1 Accused Toner Supply Containers obtained directly from Do It Wiser. SUMF V.24.



All of the Accused Toner Supply Containers obtained by Canon's investigator from Yatengshang, ChengDuXiang, Erlandianzishang, TopInk, and KenoGen arrived in this same Do It Wiser branded packaging, indicating Do It Wiser as a source of those imported infringing products. SUMF V.25.

Canon obtained an affidavit from Alejandro Velez, the President of Do It Wiser, stating that since January 1, 2020, Do It Wiser has procured 08-08.9-ITCANON3325K1, 08-08.9-ITCANON3325C1, 08-08.9-ITCANON3325M1, 08-08.9-ITCANON3325Y1, 08-07.0-ITCANON3325K1, 08-07.0-ITCANON3325C1, 08-07.0-ITCANON3325M1, and 08-07.0-ITCANON3325Y1 Accused Toner Supply Containers from Mito Color Imaging Co., Ltd., which is located at 15ed Jifeng Road, Jinding Industrial Zone, Tangjia Wan Town, Zhuhai City, China. SUMF V.26. This further confirms that Do It Wiser is a source of these Accused Toner Supply Containers and that these products were imported prior to their sale within the United States by Do It Wiser, Yatengshang, ChengDuXiang, Erlandianzishang, TopInk, and KenoGen.

**PUBLIC VERSION**

**b. Zhuhai Hennyun's Importation and/or Sale After Importation of Accused Toner Supply Containers**

Respondent Zhuhai Hennyun also was involved in the importation and/or sale of the GPR58K (CAN P021 K 1-3), GPR58C (CAN P021 C 1-3), GPR58M (CAN P021 M 1-3), and GPR58Y (CAN P021 Y 1-3) Accused Toner Supply Containers identified as having come from CJ-us in the table above in Section V.B.1.

As explained above in Section V.B.1, prior to being sold by CJ-us to Canon's investigator, these products came from China. For example, the CJ-us GPR58K, GPR58C, GPR58M, and GPR58Y Accused Toner Supply Containers arrived in a box with a label stating the shipment originated in Hong Kong and was sent by a Chinese shipper. SUMF V.18.

These products were then sold for importation into the United States, imported into the United States, and/or sold within the United States after importation by Zhuhai Hennyun. For example, these GPR58K, GPR58C, GPR58M, and GPR58Y Accused Toner Supply Containers arrived with shipping documentation identifying Zhuhai Hennyun as a source of those products, as shown in the images below of the packaging in which those products arrived and documentation provided with those products.



**PUBLIC VERSION**

|                               |  |
|-------------------------------|--|
| 发货人                           |  |
| <b>Shipper's information:</b> |  |
| COMPANY(寄件公司)                 | Zhuhai Henryun Image Co., Ltd.   |
| ADD(寄件地址)                     | No.76,Nanping Technology Industrial Park,Xiangzhou District,Zhuhai,China |

SUMF V.27.

Because Zhuhai Henryun has defaulted, Canon has not been able to obtain discovery from it regarding the period during which it has imported into the United States and/or sold within the United States the GPR58K, GPR58C, GPR58M, and GPR58Y Accused Toner Supply Containers. Nevertheless, these Accused Toner Supply Containers were sold to Canon's investigator on December 13, 2020, which is well after the last of the Asserted Patents issued on September 5, 2017. SUMF V.8, V.20.

As discussed above in Section II.E.1, the Representative Accused Toner Supply Container is representative of the GPR58K, GPR58C, GPR58M, and GPR58Y Accused Toner Supply Containers imported and/or sold by Zhuhai Henryun for purposes of establishing infringement of the Asserted Claims. And, as established below in Section VI.B, the Representative Accused Toner Supply Container infringes all of the Asserted Claims of the Asserted Patents.

The foregoing undisputed evidence establishes that Zhuhai Henryun has imported into the United States and/or sold within the United States after importation infringing Accused Toner Supply Containers, in violation of Section 337.

**PUBLIC VERSION**

**c. The Wiztoner Respondents’ Sale for Importation, Importation, and/or Sale After Importation of Accused Toner Supply Containers**

The LCL-GPR-53 (CAN P022 Y 1-3) product is an example of an Accused Toner Supply Container manufactured, sold for importation into the United States, imported into the United States, and sold within the United States by the Wiztoner Respondents.

Respondent Sichuan XingDian sold LCL-GPR-53 Accused Toner Supply Containers to Canon’s investigator in the United States on December 5, 2020. SUMF V.28. The LCL-GPR-53 Accused Toner Supply Containers were purchased on *Amazon.com* from the Amazon seller “StarTech Office Supplies.” *Id.*; SUMF V.29. The StarTech Office Supplies storefront on *Amazon.com* is owned and operated by Sichuan XingDian. SUMF V.28, V.29. In addition, the LCL-GPR-53 Accused Toner Supply Containers arrived in boxes with labels identifying “Sichuan Xingdian Technology Co., Ltd.” (*i.e.*, Sichuan XingDian) as the source of those products, as shown below.



SUMF V.30, V.31.

In addition, the LCL-GPR-53 Accused Toner Supply Containers arrived in LCL-branded packaging bearing a registered LCL trademark owned by Sichuan Wiztoner, as shown in the images below.



**PUBLIC VERSION**



SUMF V.32.

Sichuan Wiztoner is the owner of U.S. Registration No. 5,320,173 for the trademark depicted below for use with “[f]illed toner cartridges,” “[p]rinting ink,” and “[t]oner cartridges, filled, for printers and photocopiers.” SUMF V.33.



In connection with this trademark registration, Sichuan Wiztoner submitted as a specimen of use the following image of toner cartridge packaging bearing the LCL mark:



SUMF V.34.

As can be seen, not only does Sichuan Wiztoner’s registered trademark appear on the packaging for the LCL-GPR-53 Accused Toner Supply Containers, the LCL-GPR-53 packaging is very similar to that of the toner cartridge packaging depicted in the specimen of use that Sichuan Wiztoner submitted in connection with its trademark application. In addition, this

## PUBLIC VERSION

trademark and similar packaging appear in the images in the *Amazon.com* listing for the LCL-GPR-53 Accused Toner Supply Container sold via the StarTech Office Supplies storefront.



SUMF V.35.

The box of this LCL-GPR-53 Accused Toner Supply Container also indicates that it was manufactured in China. SUMF V.17; *see also Certain Lighting Control Devices*, Order No. 18 at 10-11 (finding a “Made in China” marking on a product to be sufficient evidence of importation).

Because the Wiztoner Respondents have defaulted, Canon has not been able to obtain discovery from the Wiztoner Respondents regarding the period during which they have imported like products into the United States and/or sold like products for importation into the United States. Nevertheless, Sichuan XingDian sold the LCL-GPR-53 (CAN P022 Y 1-3) toner supply container to Canon’s investigator on December 5, 2020, which is well after the last of the Asserted Patents issued on September 5, 2017. SUMF V.9, V.20.

The foregoing undisputed evidence establishes that the Wiztoner Respondents have sold for importation into the United States, imported into the United States, and/or sold within the United States after importation Accused Toner Supply Containers after the issuance of all of the

## PUBLIC VERSION

Asserted Patents, including at least the LCL-GPR-53 Accused Toner Supply Containers (CAN P022 Y 1-3).

### **VI. INFRINGEMENT OF THE ASSERTED PATENTS**

Each of the Accused Toner Supply Containers infringes the Asserted Claims of the Asserted Patents. By virtue of their default, each of the Defaulting Respondents has waived its right to contest infringement. *See* 19 C.F.R. §§ 210.16(b), 210.17; *see also* Section V.A (listing uncontested allegations in Canon's complaint demonstrating infringement by the Defaulting Respondents' Accused Toner Supply Containers). Thus, there is no genuine issue of material fact on this issue. Moreover, the undisputed evidence set forth below establishes conclusively that each of the Accused Toner Supply Containers infringes each of the Asserted Claims of the Asserted Patents.

#### **A. Claim Construction**

Canon and the Staff have agreed that the claim terms listed below require construction, and that each should be construed as a means-plus-function limitation under 35 U.S.C. § 112(6). SUMF VI.1. Canon and the Staff have further agreed on the following recited functions and corresponding structures for each such term:

**PUBLIC VERSION**

| No. | Claim Term   | Proposed Construction  | SUMF |
|-----|--|--|------|
| 1   | <p>“a feeding portion configured and positioned to feed the developer in said developer accommodating chamber with rotation thereof”</p> <p>(’649 patent, claim 1)</p> | <p>This term is subject to § 112(6).</p> <p><b>Recited Function:</b> to feed the developer in said developer accommodating chamber with rotation thereof</p> <p><b>Corresponding Structures:</b></p> <p>a helical projection <i>2c</i>, provided inside of the developer accommodating chamber, such as depicted in Figs. 7, 11, 25, 26<sup>5</sup>, 30-33, 37, 39, 41, 44, and 47, and such as described at col. 17, lines 44-59;</p> <p>a partition wall 6, having one or more inclined projections <i>6a</i>, such as depicted in Fig. 45, and such as described at col. 56, lines 15-27;</p> <p>a combination of (i) a helical projection <i>2c</i>, provided inside of the developer accommodating chamber, and (ii) a partition wall 6, having one or more inclined projections <i>6a</i>, such as depicted in Figs. 33, 35, 39, 41, 42, 44, and 48, and such as described at col. 44, line 66 – col. 45, line 19, col. 47, lines 1-4 and 26-32, and col. 56, lines 28-31; and</p> <p>a stirring member <i>2m</i> provided with a shaft portion and a feeding blade portion fixed to the shaft portion, such as depicted in Fig. 24, and such as described at col. 34, line 58 – col. 35, line 7 and col. 59, lines 54-57.</p> <p>This claim term also encompasses equivalents of the aforementioned structures.</p> | VI.2 |

<sup>5</sup> In Fig. 26, the helical projection (feeding portion) labeled 20c should be labeled 2c. SUMF VI.2.

PUBLIC VERSION

| No. | Claim Term   | Proposed Construction  | SUMF |
|-----|--|--|------|
| 2   | <p>“a driving force receiving portion configured and positioned to receive a rotational force for rotating said feeding portion”</p> <p>(’649 patent, claim 1)</p> | <p>This term is subject to § 112(6).</p> <p><b>Recited Function:</b> to receive a rotational force for rotating said feeding portion</p> <p><b>Corresponding Structures:</b></p> <p>a gear portion <i>2a</i>, such as depicted in Figs. 3, 5, 7, 11, 23, 24, 27, 29, 33-35, 38, 39, 41, 44-46<sup>6</sup>, and 48, and such as described at col. 19, lines 28-39 and 48-55;</p> <p>a known coupling mechanism, such as described at col. 19, lines 56-61;</p> <p>a non-circular recess, such as described at col. 19, lines 61-67;</p> <p>a gear portion <i>7a</i>, such as depicted in Figs. 25 and 26, and such as described at col. 36, lines 43-55 and col. 38, lines 20-23; and</p> <p>a non-circular male coupling portion <i>2a</i>, such as depicted in Figs. 31 and 37, and such as described at col. 42, lines 33-39 and col. 48, lines 56-61.</p> <p>This claim term also encompasses equivalents of the aforementioned structures.</p> | VI.3 |

---

<sup>6</sup> In Fig. 44(a), the gear portion labeled *6a* should be labeled *2d*. SUMF VI.3.

PUBLIC VERSION

|          |   |  |             |
|----------|---|--|-------------|
| <p>3</p> | <p>“a drive converting portion configured and positioned to convert the rotational force received by said driving force receiving portion to a force for operating said pump portion”</p> <p>(’649 patent, claim 1)</p> | <p>This term is subject to § 112(6).</p> <p><b>Recited Function:</b> to convert the rotational force received by said driving force receiving portion to a force for operating said pump portion</p> <p><b>Corresponding Structures:</b></p> <p>a cam mechanism comprised of at least one cam projection <i>2d</i> and a cam groove <i>3b</i> (which can include cam grooves <i>3c</i>, <i>3d</i>, and <i>3e</i>), such as depicted in Figs. 7, 11, 12, and 16-21<sup>7</sup>, and such as described at col. 20, lines 1-17, col. 20, line 58 – col. 21, line 53, col. 23, lines 45-54, col. 28, lines 12-34, col. 28, line 53 – col. 29, line 50, col. 30, lines 5-22, col. 31, lines 55-64, col. 32, lines 6-9 and 59-64, and col. 33, lines 31-36;</p> <p>a cam flange portion 15, provided with a cam groove <i>15a</i>, and one or more cam projections <i>2d</i>, such as depicted in Fig. 23, and such as described at col. 33, line 50 – col. 34, line 3, col. 34, lines 36-44, and col. 59, lines 51-53;</p> <p>a cam mechanism comprised of a cam flange portion <i>3i</i>, provided with a cam groove <i>3b</i> which is engaged with one or more cam projections <i>2d</i>, such as depicted in Fig. 24, and such as described at col. 34, lines 58-61, col. 35, lines 14-23 and 39-45, and col. 59, lines 51-53;</p> <p>a cam groove <i>7b</i> engaged with one or more cam projections <i>2d</i>, such as depicted in Fig. 25, and such as described at col. 36, lines 43-55, col. 37, lines 10-23, and col. 59, lines 51-53;</p> <p>a cam groove <i>7b</i> engaged with one or more cam projections <i>2d</i>, such as depicted in Fig. 26, and such as described at col. 37, line 63 – col. 38, line 3, col. 38, lines 20-24 and 34-49, and col. 59, lines 51-53;</p> <p>a gear portion <i>8a</i>, a bevel gear 9, and a connecting portion 14, such as depicted in Figs. 27 and 28, and such as described at col. 39, line 56 – col. 40, line 2<sup>8</sup> and col. 40, lines 15-24;</p> | <p>VI.4</p> |
|----------|---|--|-------------|

**PUBLIC VERSION**

| No. | Claim Term | Proposed Construction   | SUMF |
|-----|------------|---|------|
|     |            | <p>a gear portion 8a, a bevel gear 9 provided with a magnet 19, and a magnet 20, such as depicted in Fig. 29, and such as described at col. 40, line 59 – col. 41, line 13 and col. 41, lines 28-30;</p> <p>a cam flange portion 15 and one or more cam projections 15a engaged with a cam groove 2n, such as depicted in Figs. 30-32<sup>9</sup> and 47, and such as described at col. 42, lines 19-32, col. 42, line 64 – col. 43, line 6, col. 43, lines 55-60, col. 57, lines 63-65, and col. 59, lines 51-53;</p> <p>a cam projection 3g and a cam groove 2e engageable with the cam projection 3g, such as depicted in Figs. 33, 38, 39, 44, and 48, and such as described at col. 44, lines 35-44 and 64-65, col. 46, lines 22-30, col. 49, lines 54-57, col. 55, lines 4-8, and col. 58, lines 62-64;</p> <p>at least one compressing projection 2l, such as depicted in Figs. 34 and 35, and such as described at col. 46, lines 52-67, col. 47, lines 46-54, and col. 47, line 60 – col. 48, line 13;</p> <p>a weight 2v, such as depicted in Fig. 37, and such as described at col. 48, lines 40-42 and col. 48, line 54 – col. 49, line 12; and</p> <p>a gear portion 42 and a gear portion 43 with a shaft portion 44 that is provided with an eccentric cam 45, such as depicted in Fig. 46, and such as described at col. 56, line 50 – col. 57, line 3.</p> <p>This claim term also encompasses equivalents of the aforementioned structures.</p> |      |

<sup>7</sup> In Fig. 20, the cam projection labeled 3d should be labeled 2d. SUMF VI.4.

<sup>8</sup> At col. 39, line 58 of the '649 patent, "bevel gear 8" should say "bevel gear 9." SUMF VI.4.

<sup>9</sup> The cam groove 2n is shown in dashed lines in Figs. 32(a) and (b) but is not labeled. SUMF VI.4.

PUBLIC VERSION

|          |  |   |             |
|----------|--|---|-------------|
| <p>4</p> | <p>“a drive converting portion configured and positioned to convert the rotational force received by said gear portion to a force for operating said pump portion”</p> <p>(’551 patent, claim 1)</p> | <p>This term is subject to § 112(6).</p> <p><b>Recited Function:</b> to convert the rotational force received by said gear portion to a force for operating said pump portion</p> <p><b>Corresponding Structures:</b></p> <p>a cam mechanism comprised of at least one cam projection <i>2d</i> and a cam groove <i>3b</i> (which can include cam grooves <i>3c</i>, <i>3d</i>, and <i>3e</i>), such as depicted in Figs. 7, 11, 12, and 16-21<sup>10</sup>, and such as described at col. 20, lines 33-49, col. 21, line 23 – col. 22, line 16, col. 24, lines 8-18, col. 28, lines 41-63, col. 29, line 15 – col. 30, line 12, col. 30, lines 35-51, col. 32, lines 18-27 and 36-39, and col. 33, lines 28-33 and 60-64;</p> <p>a cam flange portion 15, provided with a cam groove <i>15a</i>, and one or more cam projections <i>2d</i>, such as depicted in Fig. 23, and such as described at col. 34, lines 12-32, col. 34, lines 65 – col. 35, line 6, and col. 60, lines 41-43;</p> <p>a cam mechanism comprised of a cam flange portion <i>3i</i>, provided with a cam groove <i>3b</i> which is engaged with one or more cam projections <i>2d</i>, such as depicted in Fig. 24, and such as described at col. 35, lines 22-25 and 44-53, col. 36, lines 1-7, and col. 60, lines 41-43;</p> <p>a cam groove <i>7b</i> engaged with one or more cam projections <i>2d</i>, such as depicted in Fig. 25, and such as described at col. 37, lines 7-19 and 41-53 and col. 60, lines 41-43;</p> <p>a cam groove <i>7b</i> engaged with one or more cam projections <i>2d</i>, such as depicted in Fig. 26, and such as described at col. 38, lines 29-35 and 52-56, col. 38, line 66 – col. 39, line 14, and col. 60, lines 41-43;</p> <p>a gear portion <i>8a</i>, a bevel gear 9, and a connecting portion 14, such as depicted in Figs. 27 and 28, and such as described at col. 40, lines 23-36<sup>11</sup> and 49-58;</p> | <p>VI.5</p> |
|----------|--|---|-------------|

**PUBLIC VERSION**

| No. | Claim Term | Proposed Construction   | SUMF |
|-----|------------|---|------|
|     |            | <p>a gear portion 8a, a bevel gear 9 provided with a magnet 19, and a magnet 20, such as depicted in Fig. 29, and such as described at col. 41, lines 28-43 and 63-65;</p> <p>a cam flange portion 15 and one or more cam projections 15a engaged with a cam groove 2n, such as depicted in Figs. 30-32<sup>12</sup> and 47, and such as described at col. 42, line 56 – col. 43, line 2, col. 43, lines 33-42, col. 44, lines 25-30, col. 58, lines 49-51, and col. 60, lines 41-43;</p> <p>a cam projection 3g and a cam groove 2e engageable with the cam projection 3g, such as depicted in Figs. 33, 38, 39, 44, and 48, and such as described at col. 45, lines 7-16 and 36-37, col. 46, line 63 – col. 47, line 3, col. 50, lines 34-37, col. 55, lines 54-58, and col. 59, lines 50-52;</p> <p>at least one compressing projection 2l, such as depicted in Figs. 34 and 35, and such as described at col. 47, lines 27-42, and col. 48, lines 21-29 and 35-54;</p> <p>a weight 2v, such depicted in Fig. 37, and such as described at col. 49, lines 17-19 and 31-57; and</p> <p>a gear portion 42 and a gear portion 43 with a shaft portion 44 that is provided with an eccentric cam 45, such as depicted in Fig. 46, and such as described at col. 57, lines 35-55.</p> <p>This claim term also encompasses equivalents of the aforementioned structures.</p> |      |

<sup>10</sup> In Fig. 20, the cam projection labeled 3d should be labeled 2d. SUMF VI.5.

<sup>11</sup> At col. 40, line 25 of the '551 patent, "bevel gear 8" should say "bevel gear 9." SUMF VI.5.

<sup>12</sup> The cam groove 2n is shown in dashed lines in Figs. 32(a) and (b) but is not labeled. SUMF VI.5

## PUBLIC VERSION

Dr. Lux opined that the relevant field of art and the level of ordinary skill in the art agreed to in the 337-TA-1259 investigation equally apply for the Asserted Patents here, namely, that the relevant field of art is “toner supply containers for copy machines” and that a person of ordinary skill in the art at the time of the inventions would have had a level of knowledge roughly equivalent to that of a person holding a bachelor’s degree in mechanical engineering or with several years of experience in the design of toner supply containers. SUMF VI.6-VI.8. The Staff has not contested these positions. In view of the above, there are no disputes as to the proper claim constructions to be applied to the infringement analysis or the analysis of the technical prong of the domestic industry requirement.

### **B. The Accused Toner Supply Containers Infringe the Asserted Claims of the Asserted Patents**

In this section, Canon sets forth undisputed evidence establishing that the Accused Toner Supply Containers literally meet all of the limitations of, and therefore directly infringe, all of the Asserted Claims of the Asserted Patents. What follows is a description of features common to all of the Accused Toner Supply Containers. The individual Asserted Claims recite these features in different combinations and with slight variations. Claim charts comparing the Representative Accused Toner Supply Container to each Asserted Claim are provided as Appendices 1-3 to the accompanying declaration of Canon’s expert, Dr. Lux.

Each Accused Toner Supply Container is a toner supply container that includes a developer accommodating chamber that is configured to contain developer, a gear, a developer discharging chamber, a pump, a cam mechanism including cam projections and a cam groove, and a shutter, among other components. SUMF VI.9. In each Accused Toner Supply Container there is an open pathway from the developer accommodating chamber to the developer discharging chamber through which toner flows. SUMF VI.10. A helical projection and a

## PUBLIC VERSION

partition wall with inclined projections (together a feeding portion) are provided inside of the developer accommodating chamber, and this feeding portion moves developer from the developer accommodating chamber to the developer discharging chamber as the developer accommodating chamber rotates relative to the developer discharging chamber. SUMF VI.11. The developer discharging chamber has a discharge opening that is located in a bottom portion of the developer discharging chamber and is configured to permit the discharge of toner from the developer discharging chamber. SUMF VI.12.

The gear surrounds the developer accommodating chamber and rotates together with the developer accommodating chamber. SUMF VI.13. Rotational force is imparted to the gear of the toner supply container by another gear in the copying machine. SUMF VI.14. Rotation of the developer accommodating chamber relative to the developer discharging chamber (discussed below) causes developer (*i.e.*, toner) to move from the developer accommodating chamber into the developer discharging chamber. SUMF VI.15.

The gear is operatively connected to a cam mechanism. SUMF VI.16. The cam mechanism includes a reciprocating member that includes cam projections that engage a cam groove of the developer accommodating chamber. SUMF VI.17. The cam mechanism converts a rotational force imparted by the gear to a translational force in the direction of the rotational axis for operating the pump. SUMF VI.18. The pump is a bellows-type pump that expands and compresses with reciprocation of the cam mechanism. SUMF VI.19. When the pump expands, it draws air through the discharge opening and loosens the toner in the area of the discharge opening. SUMF VI.20. The internal pressure of the developer supply container decreases when the pump expands. SUMF VI.21. When the pump compresses, it causes toner to be expelled

## PUBLIC VERSION

through the discharge opening. SUMF VI.22. The internal pressure of the developer supply container increases when the pump compresses. SUMF VI.23.

The developer supply container also includes a shutter that is movable between an open position and a closed position. SUMF VI.24, VI.25. The shutter is provided with a shutter opening that aligns with the discharge opening of the developer discharging chamber when the shutter is in the open position. SUMF VI.26. When the shutter is in the closed position, the opening in the shutter is not aligned with the discharge opening and thereby closes the discharge opening. SUMF VI.27.

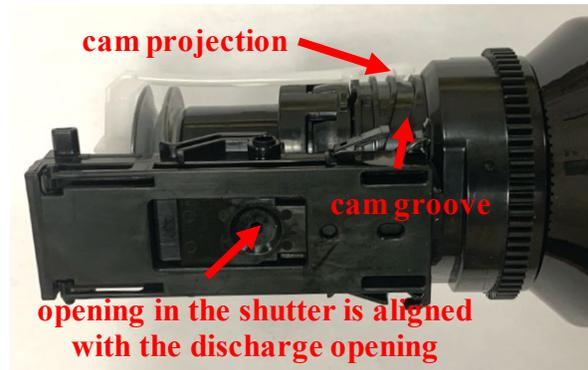
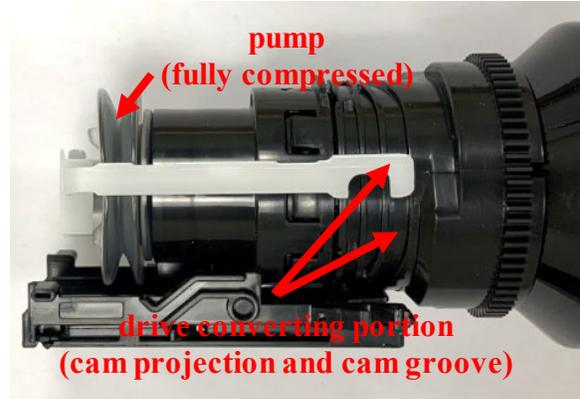
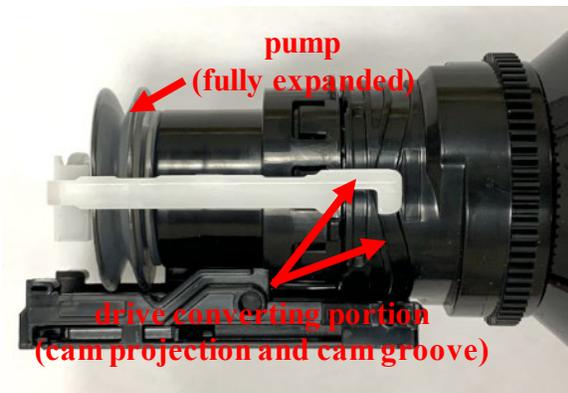
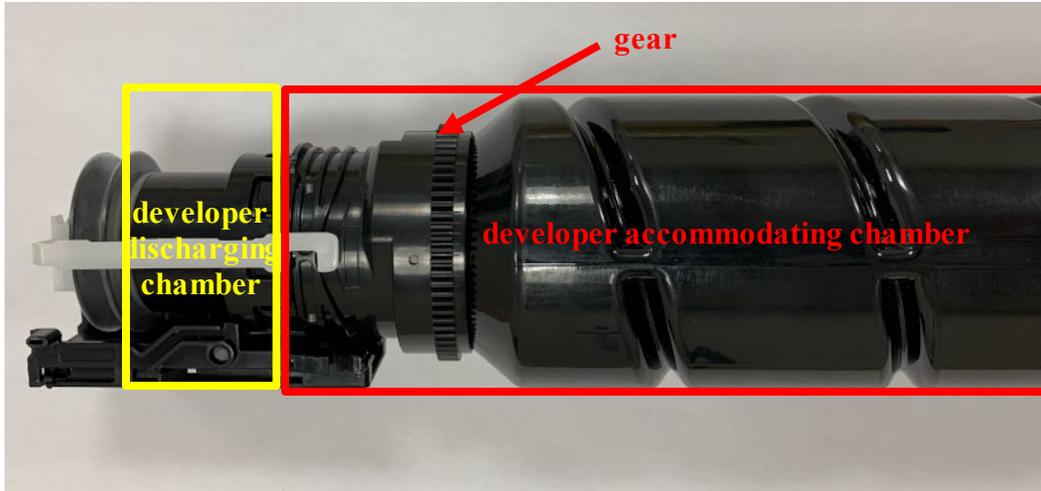
The below photographs show the above-described features of the Representative Accused Toner Supply Container (*i.e.*, the Do It Wiser 08-08.9-ITCANON3325K1 (CAN P008 K) Accused Toner Supply Container).<sup>13</sup>



---

<sup>13</sup> As set forth in the Declaration of Sean M. McCarthy in Support of Canon's Motion for Summary Determination on Violations and Recommended Determination on Remedy and Bonding ("McCarthy Decl.") submitted herewith, all of the photographs of Accused Toner Supply Containers and their packaging included herein, and in the accompanying declarations of Richard A. Lux, Ph.D, John E. Shane, and Michael F. Falsone, and the exhibits and appendices thereto, were taken by Mr. McCarthy or at his direction. *See* McCarthy Decl. at ¶¶ 7-11.

PUBLIC VERSION



SUMF VI.28.

As explained in detail by Dr. Lux, including in the claim charts attached as Appendices 1-3 to his declaration, the Representative Accused Toner Supply Container literally meets each limitation of each of the Asserted Claims of the Asserted Patents identified in the table below.

## PUBLIC VERSION

SUMF VI.29. The table below lists, for each Asserted Claim of each Asserted Patent, statements of undisputed material fact and associated claim chart appendices to Dr. Lux’s declaration establishing infringement of that claim by the Representative Accused Toner Supply Container. Because the other Accused Toner Supply Containers described above in Section II.E.1 are substantially the same as the Representative Accused Toner Supply Container in relevant structure and infringe the Asserted Claims in the same way, Dr. Lux’s analyses of these claims with respect to this Representative Accused Toner Supply Container apply to all of the other Accused Toner Supply Containers described above in Section II.E.1 and thus establish that all of the other Accused Toner Supply Containers likewise infringe these claims. SUMF VI.30. In addition, Exhibit 2 to Dr. Lux’s declaration includes photographs of each of the Accused Toner Supply Containers. *See supra* Section II.E.1; Lux Decl., Ex. 2.

| <b>Patent</b> | <b>Asserted Claims &amp; SUMF Nos.</b>     | <b>Lux Claim Chart Appendix</b> |
|---------------|--|---------------------------------|
| '649 patent   | 1, 6, 7, 12, 25, 26 (SUMF VI.31)           | 1                               |
| '551 patent   | 1, 4, 5 (SUMF VI.32)                       | 2                               |
| '402 patent   | 1, 15, 16, 17, 18, 32, 36, 37 (SUMF VI.33) | 3                               |

### **VII. DOMESTIC INDUSTRY**

Canon has an established domestic industry in the United States with respect to the Asserted Patents. As set forth below, Canon’s domestic investments relate to “articles protected by the patent[s],” and are commercially significant both quantitatively and qualitatively as required by 19 U.S.C. § 1337(a)(2). Accordingly, there can be no genuine dispute that Canon’s domestic investments satisfy both the technical prong and the economic prong of the domestic industry requirement.

## PUBLIC VERSION

### A. Technical Prong

As noted above, Canon manufactures in the United States 26 different Covered CVI Toner Supply Containers that meet the limitations of at least one claim of every Asserted Patent. *See supra* Section II.E.2. What follows is a description of features common to all of the Covered CVI Toner Supply Containers. The individual Asserted Claims recite these features in different combinations and with slight variations. Claim charts comparing the Representative Covered CVI Toner Supply Container to each Asserted Claim are provided as Appendices 4-6 to the accompanying declaration of Canon's expert, Dr. Lux.

Each Covered CVI Toner Supply Container is a toner supply container that includes a developer accommodating chamber that is configured to contain developer, a gear, a developer discharging chamber, a pump, a cam mechanism including cam projections and a cam groove, and a shutter, among other components. SUMF VII.1. In each Covered CVI Toner Supply Container there is an open pathway from the developer accommodating chamber to the developer discharging chamber through which toner flows. SUMF VII.2. A helical projection and a partition wall with inclined projections (together a feeding portion) are provided inside of the developer accommodating chamber, and this feeding portion moves developer from the developer accommodating chamber to the developer discharging chamber as the developer accommodating chamber rotates relative to the developer discharging chamber. SUMF VII.3. The developer discharging chamber has a discharge opening that is located in a bottom portion of the developer discharging chamber and is configured to permit the discharge of toner from the developer discharging chamber. SUMF VII.4.

The gear surrounds the developer accommodating chamber and rotates together with the developer accommodating chamber. SUMF VII.5. Rotational force is imparted to the gear of the toner supply container by another gear in the copying machine. SUMF VII.6. Rotation of

## PUBLIC VERSION

the developer accommodating chamber relative to the developer discharging chamber (discussed below) causes developer (*i.e.*, toner) to move from the developer accommodating chamber into the developer discharging chamber. SUMF VII.7.

The gear is operatively connected to a cam mechanism. SUMF VII.8. The cam mechanism includes a reciprocating member that includes cam projections that engage a cam groove of the developer accommodating chamber. SUMF VII.9. The cam mechanism converts a rotational force imparted by the gear to a translational force in the direction of the rotational axis for operating the pump. SUMF VII.10. The pump is a bellows-type pump that expands and compresses with reciprocation of the cam mechanism. SUMF VII.11. When the pump expands, it draws air through the discharge opening and loosens the toner in the area of the discharge opening. SUMF VII.12. The internal pressure of the developer supply container decreases when the pump expands. SUMF VII.13. When the pump compresses, it causes toner to be expelled through the discharge opening. SUMF VII.14. The internal pressure of the developer supply container increases when the pump compresses. SUMF VII.15.

The developer supply container includes a shutter that is movable between an open position and a closed position. SUMF VII.16, VI.17. The shutter is provided with a shutter opening that aligns with the discharge opening of the developer discharging chamber when the shutter is in the open position. SUMF VII.18. When the shutter is in the closed position, the opening in the shutter is not aligned with the discharge opening and thereby closes the discharge opening. SUMF VII.19.

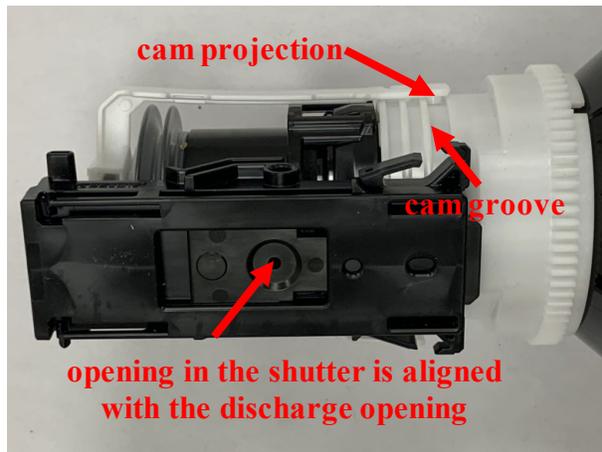
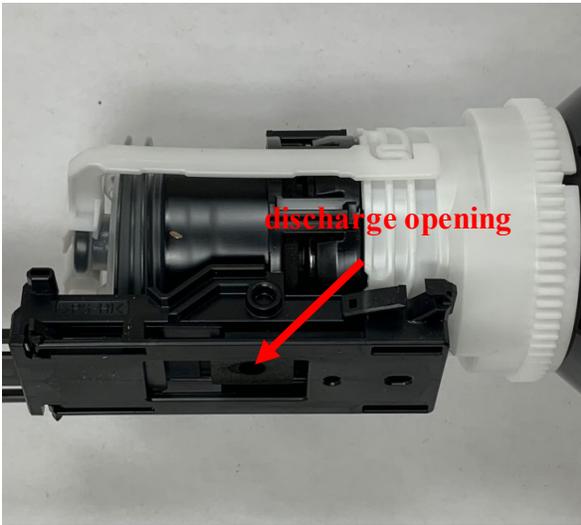
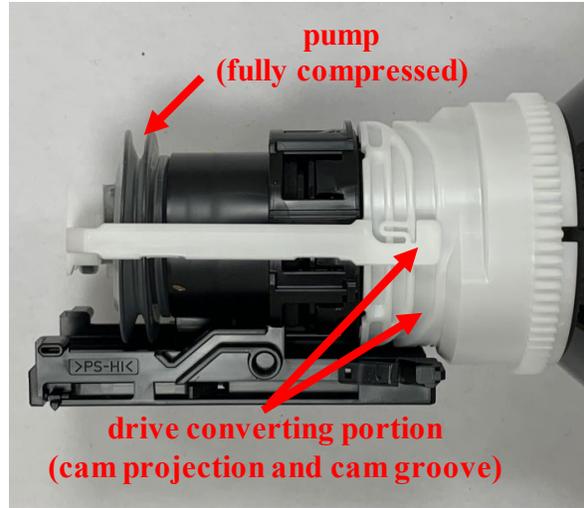
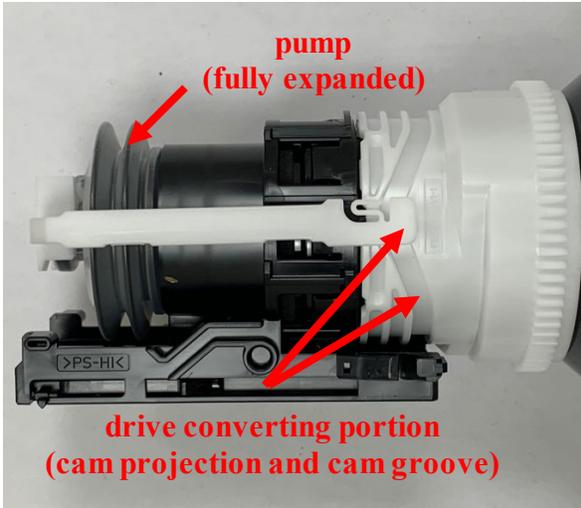
**PUBLIC VERSION**

The below photographs show the features of the Representative Covered CVI Toner Supply Container (*i.e.*, the Canon GPR-53 K (CAN P026 K) toner supply container).<sup>14</sup>



<sup>14</sup> As set forth in the McCarthy Decl. submitted herewith, all of the photographs of Covered CVI Toner Supply Containers and their packaging included herein, and in the accompanying declarations of Richard A. Lux, Ph.D and John E. Shane, and the exhibits and appendices thereto, were taken by Mr. McCarthy or at his direction. *See* McCarthy Decl. at ¶¶ 7-11.

PUBLIC VERSION



SUMF VII.20.

As noted above, Canon's expert witness, Dr. Lux has examined samples of each of the Covered CVI Toner Supply Container models and has concluded that each of them is substantially the same in relevant structure, and covered by the claims of the Asserted Patents in substantially the same way, as the Representative Covered CVI Toner Supply Container. SUMF VII.21, VII.22. Dr. Lux explains in his accompanying declaration and appendices thereto how the Representative Covered CVI Toner Supply Container, and therefore each of the other Covered CVI Toner Supply Containers, literally meets all of the limitations of claims of each

**PUBLIC VERSION**

Asserted Patent and therefore satisfies the technical prong of the domestic industry requirement. SUMF VII.23. In addition, Exhibit 3 to Dr. Lux’s declaration include photographs of each of the Covered CVI Toner Supply Containers. *See supra* Section II.E.2; Lux Decl., Ex. 3.

In particular, Dr. Lux explains that the Representative Covered CVI Toner Supply Container literally meets all of the limitations of the following claims of the Asserted Patents:

| <b>Asserted Patent</b> | <b>Claims Practiced by Covered CVI Toner Supply Containers &amp; SUMF Nos.</b> | <b>Lux Claim Chart Appendix</b> |
|------------------------|--|---------------------------------|
| '649 patent            | 1, 6, 7, 12, 25, 26 (SUMF VII.24)  | 4                               |
| '551 patent            | 1, 4, 5 (SUMF VII.25)  | 5                               |
| '402 patent            | 1, 15, 16, 17, 18, 32, 36, 37 (SUMF VII.26)                                    | 6                               |

An explanation of how the Representative Covered CVI Toner Supply Container meets each and every limitation of each of the Asserted Claims is set forth in the claim charts attached to Dr. Lux’s accompanying declaration, as set forth in the table above.

Based on the above evidence, there can be no dispute that Canon satisfies the technical prong of the domestic industry requirement with respect to each of the Asserted Patents.

**B. Economic Prong**

Pursuant to 19 U.S.C. § 1337(a)(3)(A) and (B), Canon satisfies the economic prong of the domestic industry requirement at least through its significant investments in plant and equipment and its significant employment of labor and capital all relating to Canon’s manufacture in the United States of the above-described Covered CVI Toner Supply Containers. Indeed, Canon satisfies the economic prong for many of the same reasons that the ALJ and Commission had found that Canon satisfied the economic prong in Investigation Nos. 337-TA-829 (“829 investigation”), 337-TA-918 (“918 investigation”), and 337-TA-1106 (“1106 investigation”), which involved the same general category of products at issue in this investigation, namely toner

## PUBLIC VERSION

cartridges, which, like the products at issue here, were manufactured at CVI's facilities in Newport News, Virginia. *See* 829 Investigation, Order No. 24 (Feb. 26, 2013); 918 Investigation, Order No. 22 (Jan. 16, 2015); 1106 Investigation, Order No. 31 (Oct. 26, 2018).

### **1. CVI Allocates Significant Percentages of Its Total Investments to Products Protected by the Asserted Patents**

#### **a. Production-Based Allocation**

CVI manufactures both the Covered CVI Toner Supply Containers and several models of toner supply containers that are not covered by the asserted patents. SUMF VII.27, VII.28. CVI does not generally maintain facilities, equipment, or labor allocations on the level of specific models of toner supply containers, although in various instances, it does track such values for its toner supply container business overall. SUMF VII.29. Where such investments and activities are tracked as to toner supply containers generally, a discount rate based on the proportion of the number of Covered CVI Toner Supply Containers manufactured by CVI to the number of all toner supply containers manufactured by CVI can be used to determine the values allocable to the Covered CVI Toner Supply Containers. *See, e.g.,* 829 Investigation, Order No. 24 (using a █% allocation based on percentage of covered products to total products manufactured to determine investments allocated to covered products); *Certain Laminated Floor Panels*, Inv. No. 337-TA-545, Order No. 17 at 3-4 (Mar. 2, 2006) (“[u]sing an allocation based on percentages of sales revenues” to determine investments allocated to protected products).

In 2020, CVI made █ toner supply containers in total, and of that, █ were Covered CVI Toner Supply Containers. SUMF VII.30. Thus, about █% of the CVI Toner Supply Containers made by CVI in Virginia in 2020 were Covered CVI Toner Supply Containers. SUMF VII.31.

**PUBLIC VERSION**

**b. Area-Based Allocation**

CVI's main campus has three main facilities, one of which—CVI's Toner Plant—is used for the manufacture of toner supply containers, mostly Covered CVI Toner Supply Containers. SUMF VII.32. In some instances, CVI does not track investments at the level of specific facilities, but rather tracks them as to its main campus generally. SUMF VII.33. Where such investments are tracked as to the main campus generally, a discount rate based on the proportion of the area of the Toner Plant to the combined area of CVI's three main facilities can be used to determine the values allocable to the Covered CVI Toner Supply Containers.

As of the filing of the complaint, the Toner Plant's area was [REDACTED] ft<sup>2</sup>, and the combined area of the three main facilities was [REDACTED] ft<sup>2</sup>. SUMF VII.34. Thus, about [REDACTED] % of CVI's main campus facilities is the Toner Plant. SUMF VII.35.

**2. Canon's Investment in Plant and Equipment**

A domestic industry exists by virtue of Canon's significant investments in plant and equipment under 19 U.S.C. § 1337(a)(3)(A) devoted to manufacturing, packaging, inspecting, and performing engineering activities related to Covered CVI Toner Supply Containers.

**a. CVI's Facilities**

**i. Descriptions and Sizes**

CVI's main campus in Newport News, Virginia, has three primary facilities: (1) a Main Plant with [REDACTED] ft<sup>2</sup>; (2) an Advanced Cartridge Manufacturing ("ACM") Plant with [REDACTED] ft<sup>2</sup>; and (3) a Toner Plant with [REDACTED] ft<sup>2</sup>. SUMF VII.36.

Of the three primary facilities at CVI's main campus, as of the complaint, about [REDACTED] ft<sup>2</sup> was dedicated to toner supply containers, consisting of (1) the area of the Toner Plant plus (2) the area of the Main Plant utilized for storage of toner supply container finished goods. SUMF VII.37, VII.38. In particular, the Toner Plant accounted for about [REDACTED] ft<sup>2</sup> of this

## PUBLIC VERSION

total, and the Main Plant accounted for about [REDACTED] ft<sup>2</sup> of this total. SUMF VII.39, VII.40.

Applying the [REDACTED] % production-based discount rate, as of the filing of the complaint, CVI used about [REDACTED] ft<sup>2</sup> to manufacture Covered CVI Toner Supply Containers. SUMF VII.41.

CVI maintains warehouse space integral with its main campus facilities. Specifically, as of the complaint, the Main Plant had about [REDACTED] ft<sup>2</sup> of finished goods and parts storage space dedicated to toner supply container inventory, as noted above, while the Toner Plant had about [REDACTED] ft<sup>2</sup> of finished goods and parts storage space dedicated to toner supply container inventory. SUMF VII.42, VII.43. Applying the [REDACTED] % production-based discount rate, as of the complaint, about [REDACTED] ft<sup>2</sup> was allocated for Covered CVI Toner Supply Container inventory (this being a subset of the [REDACTED] ft<sup>2</sup> used to manufacture Covered CVI Toner Supply Containers). SUMF VII.44.

### ii. Assessed Values

As of Canon's complaint, CVI's main campus primary facilities were assessed at about \$ [REDACTED]. SUMF VII.45. Applying the [REDACTED] % area-based discount rate, the Toner Plant, which is used mostly for the manufacture of Covered CVI Toner Supply Containers, was valued at about \$ [REDACTED] as of the complaint. SUMF VII.46.

### iii. Costs

CVI spent about \$ [REDACTED] on maintenance and repair of its main campus facilities in 2020, not counting maintenance and repair of the equipment therein (discussed *infra* Section VII.B.2.b.iii). SUMF VII.47. Based on the [REDACTED] % area-based discount rate, CVI spent about \$ [REDACTED] on maintenance and repair of its Toner Plant in 2020. SUMF VII.48.

**PUBLIC VERSION**

**b. CVI's Equipment**

**i. Descriptions**

As of the filing of the complaint, CVI's manufacturing facilities included substantial systems directly involved in the manufacture of Covered CVI Toner Supply Containers, such as

[REDACTED]

[REDACTED]

[REDACTED]. SUMF VII.49. As of the date of the complaint, CVI also [REDACTED]

[REDACTED]. SUMF VII.50.

**ii. Assessed Values**

CVI's primary facilities included about \$ [REDACTED] in assessed equipment as of the complaint. SUMF VII.51. Of that equipment value, as of the complaint, about \$ [REDACTED] was related to toner supply container production. SUMF VII.52. Using the [REDACTED] % production-based discount rate, of the \$ [REDACTED] million value, the value of the equipment allocated to Covered CVI Toner Supply Containers at CVI as of the complaint was about \$ [REDACTED]. SUMF VII.53.

**iii. Costs**

CVI spent about \$ [REDACTED] on maintenance and repair of the equipment in its primary facilities in 2020. SUMF VII.54. Based on the [REDACTED] % area-based discount rate, CVI spent about \$ [REDACTED] on maintenance and repair of the equipment attributable to the Toner Plant in 2020. SUMF VII.55.

**c. CVI's Land**

**i. Descriptions and Sizes**

CVI's main campus encompasses about [REDACTED] acres of land and, as of the complaint, utilized about [REDACTED] of those acres for buildings, parking, and driveways. SUMF VII.56.

## PUBLIC VERSION

### ii. Costs

CVI leases the land from CUSA for about \$ [REDACTED], and owns the buildings and equipment discussed above. SUMF VII.57.

### 3. Canon's Employment of Labor and Capital

A domestic industry exists also by virtue of Canon's significant employment of labor and capital in the United States under 19 U.S.C. § 1337(a)(3)(B) to manufacture, package, inspect, and perform engineering activities related to Covered CVI Toner Supply Containers.

#### a. CVI's Labor Pool—Headcounts and Activities

##### i. Overview

As of the complaint, CVI employed about [REDACTED] personnel and [REDACTED] in total. SUMF VII.58, VII.59. Of that, [REDACTED] personnel and [REDACTED] were dedicated to CVI's toner supply container business. SUMF VII.60. And of those [REDACTED] individuals, [REDACTED] personnel and [REDACTED] were dedicated to manufacturing activities; [REDACTED] personnel were dedicated to engineering activities; and [REDACTED] employees were dedicated to warehousing activities. SUMF VII.61. Applying the [REDACTED] % production-based discount rate, as of the complaint, CVI employed about [REDACTED] personnel and [REDACTED] in connection with Covered CVI Toner Supply Containers, of which about [REDACTED] personnel and [REDACTED] were dedicated to manufacturing activities; about [REDACTED] personnel were dedicated to engineering activities, and about [REDACTED] personnel were dedicated to warehousing activities. SUMF VII.62.

##### ii. Manufacturing

As of the complaint, the about [REDACTED] personnel and [REDACTED] conducting manufacturing activities related to Covered CVI Toner Supply Containers were distributed among the following cost centers tracked by CVI: "[REDACTED]," "[REDACTED],"

PUBLIC VERSION

“ [REDACTED] ,” “ [REDACTED] ,” “ [REDACTED] ,” “ [REDACTED] [REDACTED] ,” and “ [REDACTED] .” SUMF VII.63, VII.64.

iii. Engineering

A significant portion of the aforementioned labor pool for toner supply containers conducts engineering related to toner supply containers made by CVI. SUMF VII.65, VII.66. As of the filing of the complaint, these activities were conducted in CVI’s Chemical Product Engineering Division, Manufacturing Engineering Division, Chemical Automation Maintenance & Engineering Division, Advanced Manufacturing Technology Division, Toner Automation Maintenance & Engineering Division, and Chemical Quality Management Division. SUMF VII.67.

As of the complaint, CVI’s Chemical Product Engineering Division employed about [REDACTED] personnel, and of that, [REDACTED] personnel were working on toner supply containers activities, distributed among CVI cost centers “ [REDACTED] ” and “ [REDACTED] [REDACTED] .” SUMF VII.68. Applying the [REDACTED] % production-based discount rate, as of the complaint, about [REDACTED] personnel performed services related to Covered CVI Toner Supply Containers in CVI’s Chemical Product Engineering Division. SUMF VII.69. This division performs activities relating to Covered CVI Toner Supply Containers, such as, as of the filing of the complaint, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

SUMF VII.70.



**PUBLIC VERSION**

[REDACTED]  
[REDACTED]  
[REDACTED]. SUMF VII.75.

As of the complaint, CVI's Chemical Quality Management Division—which has two departments: (1) the Chemical Quality Assurance Department and (2) the Chemical Quality Engineering Department—employed about [REDACTED] personnel in connection with toner supply containers, distributed among CVI cost centers “[REDACTED]” and “[REDACTED].” SUMF VII.76. Applying the [REDACTED] % production-based discount rate, as of the filing of the complaint, about [REDACTED] personnel performed services related to Covered CVI Toner Supply Containers in CVI's Chemical Quality Management Division. SUMF VII.77. This division performs activities relating to Covered CVI Toner Supply Containers, such as, as of the filing of the complaint, [REDACTED]

[REDACTED]  
[REDACTED]. SUMF VII.78.

**iv. Warehousing**

As of the complaint, CVI employed about [REDACTED] personnel in warehousing operations relating to toner supply containers, distributed among CVI cost centers “[REDACTED]” and “[REDACTED].” SUMF VII.79. Applying the [REDACTED] % production-based discount rate, as of the filing of the complaint, about [REDACTED] personnel performed warehousing operations related to Covered CVI Toner Supply Containers. SUMF VII.80.

**b. CVI's Labor Pool—Costs**

Maintaining CVI's toner supply container labor pool cost about \$ [REDACTED] for salary and benefits in 2020. SUMF VII.81. Of this, about \$ [REDACTED] was dedicated to the labor pool for manufacturing and engineering for CVI's toner supply containers, while about \$ [REDACTED] was

## PUBLIC VERSION

dedicated to the labor pool for warehousing. SUMF VII.82. Applying the [REDACTED] % production-based discount rate, CVI spent about \$ [REDACTED] on the labor pool in 2020 related to Covered CVI Toner Supply Containers, of which about \$ [REDACTED] was dedicated to the labor pool for manufacturing and engineering. SUMF VII.83.

#### 4. Canon's Domestic Industry Investments and Activities Are Significant

Canon's domestic investments in plant and equipment and employment of labor and capital relating to the Covered CVI Toner Supply Containers are quantitatively significant in absolute terms. As noted above, in 2020, CVI manufactured [REDACTED] Covered CVI Toner Supply Containers. SUMF VII.30. The total market value of the [REDACTED] Covered CVI Toner Supply Containers manufactured by CVI in 2020, based on CUSA's average sales price per toner supply container for the fourth quarter of 2020, was \$ [REDACTED]. SUMF VII.84. In 2021, CVI is projected to manufacture [REDACTED] Covered CVI Toner Supply Containers. SUMF VII.85. Using the same average selling prices, the total market value of CVI's projected production volume of Covered CVI Toner Supply Containers in 2021 will be about \$ [REDACTED]. SUMF VII.86. As of December 31, 2020, CVI had [REDACTED] Covered CVI Toner Supply Containers in finished goods inventory at CVI awaiting distribution, which accounted for about [REDACTED] % of CVI's total inventory of toner supply containers. SUMF VII.87. And, as allocable to the Covered CVI Toner Supply Containers, CVI had, as of the complaint:

- a Toner Plant valued at about \$ [REDACTED] and which cost about \$ [REDACTED] for maintenance and repair in 2020 (*supra* Section VII.B.2.a),
- manufacturing and packaging equipment valued at about \$ [REDACTED] and which cost about \$ [REDACTED] for maintenance and repair in 2020 (*supra* Section VII.B.2.b),

## PUBLIC VERSION

- about [REDACTED] ft<sup>2</sup> of space between the Toner Plant and the Main Plant, including about [REDACTED] ft<sup>2</sup> of finished goods and parts storage space (*supra* Section VII.B.2.a.i),
- about [REDACTED] personnel and [REDACTED], on which CVI spent about \$ [REDACTED] in 2020 for salary and benefits, of which about \$ [REDACTED] was dedicated to the labor pool for manufacturing and engineering (*supra* Section VII.B.3).

All of these activities, investments, and expenditures are large in absolute terms, in and of themselves.

Canon's domestic investments in plant and equipment and employment of labor and capital relating to the Covered CVI Toner Supply Containers also are quantitatively significant in the context of Canon's worldwide operations and U.S. sales. First, CVI's production of Covered CVI Toner Supply Containers has been a sizeable percentage of Canon's worldwide production of products covered by the Asserted Patents: about [REDACTED] % in 2018, about [REDACTED] % in 2019, and about [REDACTED] % in 2020. SUMF VII.88. Additionally, the Covered CVI Toner Supply Containers comprise [REDACTED] toner supply containers sold by CUSA in the United States that are covered by the Asserted Patents. When limited to the model designations of the Covered CVI Toner Supply Containers, out of those models sold by CUSA in the United States, CVI manufactured the vast majority of them: about [REDACTED] % in 2018, about [REDACTED] % in 2019, and about [REDACTED] % in 2020. SUMF VII.89. Even when including other covered model designations sold by CUSA in the United States but not made by CVI (namely, the GPR-57 Toner (Black)), CVI still manufactured [REDACTED] covered products that were sold by CUSA in the United States: about [REDACTED] % in 2018, about [REDACTED] % in 2019, and about [REDACTED] % in 2020. SUMF VII.90.

## PUBLIC VERSION

This investigation is thus unlike *Certain Electronic Candle Products and Components Thereof*, Inv. No. 337-TA-1195, Comm'n Op. (Sept. 13, 2021), in which the Commission recently vacated and remanded a finding of economic prong on a motion for summary determination of violation. Aside from the fact that the domestic industry products in the 1195 investigation were made in China, *see id.* at 19, the complainants' contextual analysis in that case was either underdeveloped (for one asserted patent) or absent (for the other patents), *id.* at 18-19. The complainants neither explained how low-single-digit percentages in its cost of goods showed significance, addressed record evidence of foreign investments in its manufacture of the products, nor presented any other quantitative contextual analysis such as comparing to foreign investments or providing a value-added analysis. *Id.* Here, Canon has explained how CVI's manufacture of the Covered CVI Toner Supply Containers lines up in the context of its worldwide production as well as these products' impact on Canon's U.S. market, as indicated by CUSA's sales.

Canon's domestic investments in plant and equipment and employment of labor and capital relating to the Covered CVI Toner Supply Containers also are qualitatively significant. Indeed, such investments and activities are used to manufacture the Covered CVI Toner Supply Containers, converting them from parts and materials into saleable articles. *See, e.g., Certain Magnetic Data Storage & Tapes & Cartridges Containing the Same*, Inv. No. 337-TA-1076, Initial Determination and Recommended Determination at 158, 160-161 (Oct. 25, 2018). As such, they are critical and foundational to the existence and sale of those products. *See Lelo v. Int'l Trade Comm'n*, 786 F.3d 879, 882-83 (Fed. Cir. 2015); *Certain Movable Barrier Operator Sys. & Components Thereof*, Inv. No. 337-TA-1118, Comm'n Op. at 33 (Jan. 12, 2021).

## PUBLIC VERSION

### VIII. VALIDITY OF THE ASSERTED PATENTS

The Asserted Patents are presumed valid as a matter of law. 35 U.S.C. § 282. This presumption of validity may be overcome only by “clear and convincing evidence.” *Microsoft Corp. v. i4i Ltd. P’ship*, 564 U.S. 91, 95 (2011). Having defaulted, the Defaulting Respondents have waived their right to contest validity. *See* 19 C.F.R. §§ 210.16(b)(4), 210.17. None of the respondents named in the notice of investigation has responded to Canon’s complaint or otherwise participated in this investigation, and therefore none of them have raised any invalidity defenses in this investigation. Moreover, Staff has not raised any invalidity arguments or identified in its notice of prior art any purported prior art. Thus, there is no issue of material fact as to the validity or enforceability of the Asserted Patents. *See Lannom Mfg. Co. v. Int’l Trade Comm’n*, 799 F.2d 1572, 1580 (Fed. Cir. 1986) (Commission did not have authority to re-determine patent validity when no defense of invalidity had been raised).

### IX. REMEDY AND BONDING

Canon requests that the Commission issue: (1) a general exclusion order (“GEO”), or, alternatively, a limited exclusion order, pursuant to 19 U.S.C. § 1337(d), forbidding entry into the United States of all toner supply containers and components thereof that infringe any of the Asserted Claims; (2) permanent cease and desist orders, pursuant to 19 U.S.C. § 1337(f), prohibiting certain of the Defaulting Respondents from marketing (including via the internet or electronic mail), distributing, selling (including via the internet or electronic mail), offering for sale, warehousing inventory for distribution, or otherwise transferring or importing into the United States any toner supply containers and components thereof that infringe any of the Asserted Claims; and (3) such other orders and further relief as the Commission deems just and

## PUBLIC VERSION

proper based upon the facts determined by the investigation and under the authority of the Commission.

### **A. General Exclusion Order**

A GEO is warranted as the remedy in this investigation both to prevent circumvention of any exclusion order limited to products of named entities (*see* 19 U.S.C. § 1337 (d)(2)(A)), and because there is a pattern of violation of Section 337 and it is difficult if not impossible to identify the source of infringing products (*see* 19 U.S.C. § 1337(d)(2)(B)), as discussed below.

#### **1. Manufacturers and Sellers of Aftermarket Toner Cartridges and Photosensitive Drum Units May Easily Circumvent Limited Exclusion Orders**

Based on Canon's investigations of many aftermarket toner cartridge manufacturers, Canon's experiences with Respondents in this investigation and those in *Certain Toner Supply Containers and Components Thereof (I)*, Inv. No. 337-TA-1259 ("1259 investigation"); *Certain Toner Cartridges and Components Thereof*, Inv. No. 337-TA-731 ("731 investigation"); the 829 investigation; and the 918 investigation, the ongoing and expanding activities of companies around the world dealing in aftermarket toner supply containers and their components, and the realities of the marketplace for aftermarket toner supply containers, it cannot reasonably be disputed that manufacturers and sellers of infringing products can easily circumvent any limited exclusion order. As explained below, many manufacturers and sellers of aftermarket toner supply containers engage in practices that would allow them to circumvent a limited exclusion order, such as masking their identities or the sources of their products, using unmarked, generic, and/or reseller-branded packaging with no apparent origin markings, using various corporate names and complex corporate structures, and by operating through internet websites which often fail to identify the true owner and which allow sellers of aftermarket toner supply containers to easily close one website and open a new website through which to conduct their operations.

## PUBLIC VERSION

Moreover, foreign aftermarket toner supply container manufacturers (particularly in China) have the capacity to replicate their operations so as to appear to be a new business in a matter of months. *See infra* Section IX.A.1.d. Even where a given source of aftermarket toner supply containers is successfully excluded, resellers of aftermarket toner supply containers could quickly and easily find another source in any one of several foreign countries. *See infra* Section IX.A.1.e. Thus, a GEO is warranted in this investigation.

### a. Masking of Identities and Product Source

Many manufacturers and sellers of infringing toner supply containers actively try to remain unknown and unidentifiable, particularly to original equipment manufacturers (“OEMs”) like Canon, and/or hide or keep hidden the source of their products, which often makes it difficult, if not impossible, for Customs to determine whether a given toner supply container is made by a particular entity. SUMF IX.1; *see also* 829 Investigation, Order No. 25 (Initial Determination and Recommended Determination) at 123 (Feb. 28, 2013) (“829 RD”) (“The undisputed evidence indicates that in the toner cartridge market, it is difficult to trace the origin of a particular import even when all of the players involved are operating honestly.”); *Certain Toner Cartridges, Components Thereof, & Sys. Containing Same*, Inv. No. 337-TA-1174 (“1174 investigation”), Order No. 40 (Initial Determination and Recommended Determination) at 6, 137 (July 23, 2020) (“1174 RD”) (in an investigation that also involved aftermarket toner cartridges, finding that “many of the Respondents have engaged in business practices deliberately designed to mask their identities, which makes enforcement of a limited exclusion order difficult”).

For example, manufacturers and sellers of infringing toner supply containers often employ complex business arrangements, frequently change corporate structures, do business under multiple different names and frequently change names, and operate as webs of confusingly similar corporate entities acting together under common control, all of which would further

## PUBLIC VERSION

complicate Customs' ability to detect illegal toner supply container importations. SUMF IX.2, IX.3; *see* 918 Investigation, Order No. 34 (Initial Determination and Recommended Determination) at 270 (May 12, 2015) ("918 RD"); *Certain Toner Cartridges & Components Thereof*, Inv. No. 337-TA-740 ("740 investigation"), Order No. 26 (Initial Determination and Recommended Determination) at 25 (June 1, 2011) ("740 RD"). "Indeed, many manufacturers and sellers of aftermarket toner cartridges, while technically separate entities, form intricate arrays of similar subsidiaries, which typically act together as a common enterprise and under common management, and are all in the same business syndicate."<sup>15</sup> 918 RD at 270; SUMF IX.7. It has been recognized that "the manufacturers and trading entities that make, sell for importation, and/or import accused [toner cartridges] 'employ complex business arrangements that make enforcement of U.S. intellectual property ('IP') rights difficult.'" 829 RD at 123 (citation omitted). Indeed, of the respondents named in this investigation, multiple appear to do business under more than one name, including the following:

| <b>1260 Investigation Respondents with Multiple Identities</b>   |
|--|
| Sichuan XingDian Technology Co., Ltd. and Sichuan Wiztoner Technology Co., Ltd. (with <i>Amazon.com</i> storefront "StarTech Office Supplies") |
| Digital Marketing Corporation d/b/a Digital Buyer Marketing Company  |
| Do It Wiser, Inc. d/b/a Image Toner  |
| Anhuiyatengshangmaoyouxiangongsi (with <i>Amazon.com</i> storefront "yatengshangmaoyou")   |
| Hefeierlandianzishangwuyouxiangongsi (with <i>Amazon.com</i> storefront "erlandianzishang USA")  |
| Shenzhenshi Keluodeng Kejiyouxiangongsi (with <i>Amazon.com</i> storefront "KenoGen")  |

<sup>15</sup> As discussed below, while the 918 and 829 investigations, as well as others discussed herein, involved toner cartridges, as opposed to toner supply containers, many of the practices that were analyzed and found to support a GEO in those investigations are common to the toner supply container industry as well. SUMF IX.4. Indeed, many of the same manufacturers, distributors, and sellers make, market, and/or sell both types of products. SUMF IX.5. It even is common for toner supply containers to be referred to as "toner cartridges." SUMF IX.6.

**PUBLIC VERSION**

| <b>1260 Investigation Respondents with Multiple Identities</b>                           |
|--|
| MITOCOLOR INC. (with <i>Amazon.com</i> storefront “TopInk”)                              |
| Xianshi yanliangqu canqiubaihuodianshanghang (with <i>Amazon.com</i> storefront “CJ-us”) |

SUMF IX.8. Likewise, for entities named as respondents in the 1259 investigation but not the 1260 investigation (hereinafter “1259-Only Respondents”), multiple ones appear to do business under more than one name, including the following:

| <b>1259-Only Respondents with Multiple Identities</b>   |
|---|
| Kuhlmann Enterprises, Inc. d/b/a Precision Roller   |
| Zinyaw LLC d/b/a TonerPirate.com and Supply District  |
| Copier Repair Specialists, Inc. (with <i>Amazon.com</i> storefront “Wholesale Imaging Products”)  |
| Easy Group, LLC (with different-branded websites <i>cartridgeamerica.com</i> , <i>499inks.com</i> , <i>123refills.com</i> , and <i>atlanticinkjet.com</i> ) |

SUMF IX.9. In addition, the Wiztoner Respondents, as well as the 1259-Only Ninestar Respondents and GPI Respondents, each operate as several differently named business entities.

SUMF IX.10.

The ever-changing web of entities that make up the 1259-Only Ninestar Respondents illustrate this point. In addition to Ninestar Image and Ninestar Tech, at least as of December 31, 2020, Ninestar Corporation had numerous subsidiaries that were not been named as respondents in the 1259 investigation, including the following, several of which even have their own subsidiaries:

| <b>Ninestar Corporation Subsidiaries Not Named as 1259 Investigation Respondents</b>                           |
|--|
| Apex Microelectronics Co., Ltd   |
| Zhuhai Lianxin Investment Limited  |
| Zhuhai Ninestar Zhishu Electronic Commerce Company Limited (and subsidiaries)                                  |
| Zhuhai Ninestar Enterprise Management Limited  |
| Zhuhai G&G Digital Technology Co. Ltd. (and subsidiaries including Shanghai G&G Computer Technology Co., Ltd.) |

**PUBLIC VERSION**

| <b>Ninestar Corporation Subsidiaries Not Named as 1259 Investigation Respondents</b> |
|--|
| Seine (Holland) B.V.   |
| Static Control Holdings Limited  |
| Static Control Components Limited  |
| Static Control Components (Europe) Limited (and subsidiaries)                        |
| Zhuhai SCC Fine Chemical Company Limited   |
| Ninestar Image (USA) Company Limited   |
| Apex R&D (USA) Company Limited   |
| Ninestar Holdings Company Limited  |
| Ninestar Group Company Limited   |
| Lexmark International Ltd (and subsidiaries)   |
| Topjet Technology Co., Ltd (and subsidiaries)  |
| Cinvi Technology Co., Limited (and subsidiaries)                                     |
| Zhuhai National Resources & Jingpie Printing Technology Co., Ltd. (and subsidiaries) |
| Ninestar Electronic Company Limited  |
| Zhuhai Ninestar Printing Technology Co., Ltd.  |
| Zhuhai Ninestar Information Technology Limited Company                               |
| Zhuhai Ninestar Lehmann Technology Co., Ltd. (and subsidiaries)                      |

SUMF IX.11.

The Ninestar Respondents' parent corporation is an entity named Zhuhai Seine Technology Co., Ltd., which was not been named as a respondent in the 1259 investigation.

SUMF IX.12, IX.13. However, Zhuhai Seine Technology Co., Ltd. was one of the named respondents in the 918 investigation, while Ninestar Corporation was not a named respondent in that investigation. SUMF IX.14. Additionally, Seine Tech (USA) Co., Ltd., Seine Image Int'l Co., Ltd.; Seine Image (USA) Co., Ltd.; and Nano Pacific Corporation were named as respondents in the 918 investigation as related to Zhuhai Seine Technology Co., Ltd., but those entities are not listed among Ninestar Corporation's current subsidiaries. SUMF IX.15. In the 1106 investigation, an entity named Apex Microtech Ltd. was initially named as a respondent

## PUBLIC VERSION

based on a good faith belief by Canon that it was involved in the manufacture, importation, or sale of accused products, but was later terminated from the investigation based on Ninestar's representation that the Apex Microtech Ltd. entity had not been engaged in such activities after the asserted patents there had issued. SUMF IX.16, IX.17. While Apex Microtech Ltd. is not among the Ninestar Corporation subsidiaries listed above, the list does include different entities with highly similar names, *i.e.*, Apex Microelectronics Co., Ltd and Apex R&D (USA) Company Limited.

As another example, in the 1106 investigation, Canon named as a respondent a New Jersey limited liability company named The Supplies Guys, LLC, which conducted sales through the website *www.suppliesguys.com*. SUMF IX.18. The website *www.suppliesguys.com* was owned by another respondent in the 1106 investigation, American Internet Holdings, LLC. *Id.* Now, The Supplies Guys, Inc., a Pennsylvania corporation and a respondent in the 1259 investigation, owns and conducts sales through the same *www.suppliesguys.com* website. SUMF IX.19, IX.20. The *www.suppliesguys.com* website is registered through Domains By Proxy, LLC, which The Supplies Guys, LLC stipulated in the 1106 investigation allows the true owner of the domain name to remain anonymous. SUMF IX.21. The ability to have different (but apparently related or successor) corporate entities conduct sales operations from the same website, whose ownership is kept anonymous due to a proxy domain name registrant, further demonstrates the difficulty of identifying the true source of aftermarket toner products. SUMF IX.22.

Similarly, Canon initially named as a respondent in this investigation Do It Wiser LLC, which was a named respondent in the 1106 investigation. SUMF IX.23, IX.24. On November 1, 2019, Do It Wiser LLC merged with another entity named Do It Wiser, Inc., and Canon amended

## PUBLIC VERSION

the complaint in this investigation to name Do It Wiser, Inc. as a respondent. SUMF IX.25, IX.26.

Importing toner supply containers into the United States under a different name can allow a manufacturer or seller to circumvent an exclusion order limited to products of a particular entity. SUMF IX.27. There are a variety of ways in which manufacturers and sellers can do this. SUMF IX.28. Not only could an entity change its name, but it also could have its products imported by a new or existing affiliated entity or contract its importation out to an entirely separate entity. SUMF IX.29. Foreign manufacturers of toner supply containers also sell their products to resellers outside of the United States, who then can import those products into the United States, thereby circumventing a limited exclusion order directed to the manufacturer. SUMF IX.30. The 1259-Only GPI Respondents have admitted in this investigation that they have sold toner supply containers to resellers outside of the United States, and that they have no control over whether those third-party resellers import those products into the United States or sell them to customers in the United States. SUMF IX.31, IX.32. Likewise, in the 1106 investigation, the 1259-Only Ninestar Respondents and other manufacturer respondents each admitted to these same facts. SUMF IX.33, IX.34. As Canon's industry expert, Mr. John Shane, has explained, because of this, at any given time, any of the numerous third-party imaging supplies resellers that exist outside of the United States could begin purchasing Accused Toner Supply Containers from a manufacturer and importing them into the United States, and that the ability for foreign third-party resellers to purchase and import toner supply containers renders limited exclusion orders ineffective at preventing infringing toner supply containers from entering the United States. SUMF IX.35.

## PUBLIC VERSION

Companies in the aftermarket toner supply container industry often use certain sales practices that make it difficult for an OEM to obtain and investigate their products. For example, manufacturers and sellers try to avoid selling toner supply containers to OEMs and investigators by selling only to customers with registered accounts, which requires submitting detailed paperwork and documentation, such as reseller certificates. SUMF IX.36. For example, the 1259-Only Ninestar Respondents have admitted that Ninestar Tech “does not sell toner cartridges to end users” and that “[i]n order to purchase toner cartridges from Ninestar Technology Company, Ltd., one must be a registered reseller with the company,” and that “[t]o become a registered seller, Ninestar Technology Company, Ltd. requires the prospective seller to have a state resale certificate.” SUMF IX.37-IX.39. As another example, CET Group USA Inc., which 1259-Only Respondent Precision Roller identified as the source from which it acquired its accused toner supply containers in that investigation, appears to require a customer account in order to view its online catalog with pricing and to place orders, and in doing so provides a customer application that requests detailed information. SUMF IX.40, IX.41. In addition, manufacturers and sellers often require a large minimum order size, which makes it more expensive for OEMs and investigators to purchase sample products. SUMF IX.39, IX.42. Such practices make it difficult for OEMs or investigators to obtain toner supply containers and component products and attempt to identify their source. SUMF IX.43. Often, an OEM or its investigator can obtain sample toner supply containers only by attempting to purchase them through resellers. But purchasing toner supply containers from resellers is inefficient and adds to the difficulty in identifying their source, for example, because toner supply containers purchased from resellers often arrive in generic, unmarked packaging, with no indication as to the source of the product, and because resellers often source their products from multiple manufacturers, such

## PUBLIC VERSION

that the source of a particular toner supply container model ordered from a reseller can vary. SUMF IX.44.

Companies in the aftermarket toner supply container industry also use importation practices that evade investigations by OEMs and U.S. Customs and allow for the circumvention of limited exclusion orders. SUMF IX.45. For example, rather than importing its products directly, a foreign manufacturer or reseller can use a third-party freight forwarding service to conduct the actual importation, thereby avoiding having the manufacturer's or reseller's name appear as the shipper on the import documentation. SUMF IX.46. As another example, importers of aftermarket toner supply containers often request that U.S. Customs not disclose consignee and shipper names and addresses listed on import manifests, which prevents people other than Customs, such as OEMs and investigators, from obtaining this information. SUMF IX.47. For example, while the 1259-Only Ninestar Respondents admitted to having continued to import toner cartridges into the United States until at least after January 23, 2018 (SUMF IX.48), importation records from Panjiva, Inc.<sup>16</sup> show numerous shipments from Ninestar Image to Ninestar Tech, which abruptly stop on February 6, 2017, suggesting that Ninestar took steps to conceal its importation activities. SUMF IX.49, IX.50. Panjiva's records show Ninestar's importations resuming again in February 2019 only to abruptly stop again after August 5, 2019, suggesting that Ninestar once again took steps to conceal its importation activities. SUMF IX.51, IX.52. Likewise, while the 1259-Only GPI Respondents admitted to having imported Accused Toner Supply Containers into the United States since January 1, 2020, Panjiva's importation records abruptly stop showing shipments from GPI to Katun after November 26,

---

<sup>16</sup> Panjiva, Inc. ("Panjiva") maintains a database of import/export information on the cargoes moving through ports in the United States, Mexico, Latin America, and Asia.

## PUBLIC VERSION

2019. SUMF IX.53-IX.55. However, beginning around that time and continuing to the present, Panjiva's importation records show numerous shipments where both the consignee information and the shipper information are blank, but where the container marks include indicia of "Katun" and the port of lading is Kaohsiung, Taiwan—the port associated with many shipments from GPI to Katun. SUMF IX.54, IX.56, IX.57. Importers of aftermarket toner supply containers also manipulate certain information in import documentation, such as shipper names and descriptions of goods. SUMF IX.58. For example, for shipments that do not come directly from a manufacturer, the import documentation may identify the name of the manufacturer's logistics provider instead of the manufacturer's name, or even a "d/b/a" name used by the logistics provider to further obscure the source of the products. SUMF IX.59. Moreover, importers of aftermarket toner supply containers and components sometimes also provide vague descriptions of the imported goods on import records, such as "copier replacement parts," which lack details about the specific products being imported. SUMF IX.60, IX.61. Importation practices such as these would enable manufacturers and sellers of aftermarket toner supply containers and components to easily circumvent an exclusion order limited to named products of particular entities. SUMF IX.62.

Use of mailbox centers or PO boxes by sellers of aftermarket toner supply containers and components also facilitates circumvention of limited exclusion orders. SUMF IX.63. Indeed, in the 1174 investigation, in which several respondents used rented personal mailboxes, the Judge noted that the use of mailbox centers or PO boxes "obviates the cost of setting up a brick-and-mortar storefront or warehouse, thereby making it easier to set up a new business with a different name and circumvent a limited exclusion order." 1174 RD at 138. Here, the registered business address of TopInk was a mailbox center, and in the 1259 investigation, and the registered

**PUBLIC VERSION**

business address of 1259-Only Respondent Copier Repair Specialists was a PO Box. SUMF IX.64-IX.66. Upon attempting service of process on TopInk, Canon learned not only that its registered address was a mailbox center, but that that address had been inactive for years. SUMF IX.64, IX.65. Eventually, after being unable to locate a legitimate business address for TopInk, Canon had to serve it with process via the California Secretary of State. SUMF IX.67. Canon’s experience with TopInk demonstrates how mailbox centers can be used by sellers of aftermarket toner supply containers to evade detection by OEMs and investigators.

**b. Facilitating Circumvention Through Use of the Internet**

The use of the internet by manufacturers and sellers of aftermarket toner cartridges facilitates circumvention of exclusion orders limited to products of named respondents. SUMF IX.68. For example, some of the respondents named herein conduct their operations via internet websites, including the following:

| <b>Reseller Respondent</b> | <b>Website(s)</b>   |
|----------------------------|---|
| Digital Buyer              | <i>digitalbuyer.com</i> (SUMF IX.69)  |
| Do It Wiser                | <i>doitwiser.com</i><br><i>imageretoner.com</i> redirects to <i>doitwiser.com</i><br>(SUMF IX.70) |

SUMF IX.71. Many 1259-Only Respondents also conduct their operations via internet websites, including the following:

| <b>1259-Only Respondent</b> | <b>Website(s)</b>   |
|-----------------------------|---|
| Copier Repair Specialists   | <i>crsservice.net</i> (SUMF IX.72)  |
| Easy Group                  | <i>cartridgeamerica.com</i><br><i>499inks.com</i><br><i>123refills.com</i><br><i>atlanticinkjet.com</i><br>(SUMF IX.73) |
| Ink Tech                    | <i>inktechnologies.com</i> (SUMF IX.74)   |
| Precision Roller            | <i>precisionroller.com</i> (SUMF IX.75)   |

PUBLIC VERSION

| 1259-Only Respondent | Website(s)                            |
|----------------------|---------------------------------------|
| LD Products          | <i>ldproducts.com</i> (SUMF IX.76)    |
| Sun Data Supply      | <i>sundatasupply.com</i> (SUMF IX.77) |
| Supplies Guys        | <i>suppliesguys.com</i> (SUMF IX.20)  |
| Zinyaw               | <i>tonerpirate.com</i> (SUMF IX.78)   |

SUMF IX.79.

In several cases, the names of these websites bear no resemblance to the respondent's name and the websites themselves do not contain any readily discernable indication as to what company actually operates the website: Reseller Respondents: *imageroner.com* (operated by Do It Wiser); 1259-Only Respondents: *cartridgeamerica.com*, *499inks.com*, *123refills.com*, and *atlanticinkjet.com* (operated by Easy Group); *tonerpirate.com* (operated by Zinyaw); and *precisionroller.com* (operated by Kuhlmann Enterprises, Inc.). SUMF IX.80. In addition, these websites sometimes include contact information that is incomplete, difficult to locate on the website, or in a form that would make it more difficult to determine the location of the operator of the website. SUMF IX.81. The use of website names that do not match the actual company names of the sellers and with no or incomplete contact information makes it difficult to identify the operator of these websites. SUMF IX.82. Moreover, websites offering aftermarket toner supply containers often include product photographs that do not resemble the actual products being sold. SUMF IX.83. In many cases, the product photos do not show any product packaging at all or show product packaging that is entirely different from what the purchaser receives. SUMF IX.84. And, in some cases, the website depiction even appears to be a genuine Canon toner supply container. SUMF IX.85, IX.86. These website photos also often hide or do not clearly show structural features of a product, which may be relevant to determining whether the product infringes an OEM's patents. SUMF IX.87. Thus, someone viewing a toner supply

**PUBLIC VERSION**

container on these websites may encounter difficulty both in determining whether it is likely infringing and in actually obtaining that particular toner supply container. SUMF IX.88.

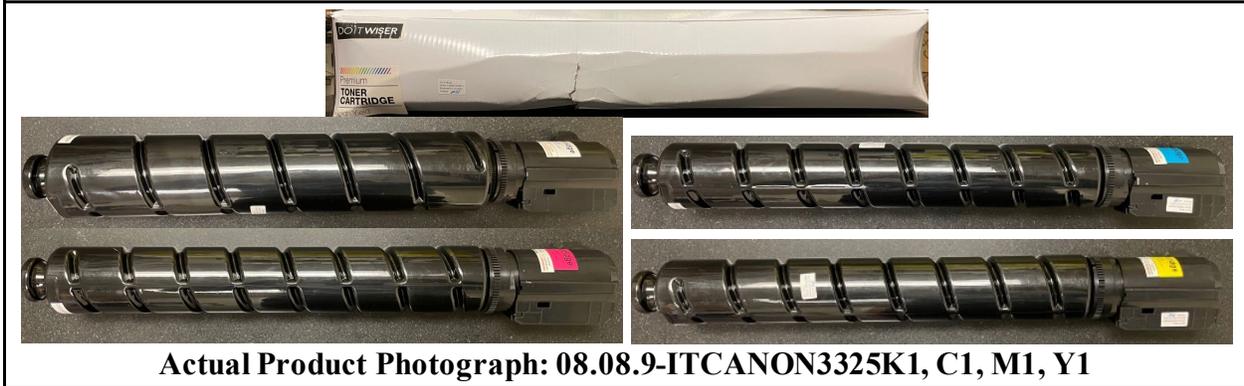
Indeed, Canon's expert, Mr. Shane, observed many instances in which the product photographs on websites used to purchase accused toner supply containers from respondents in this investigation and in the 1259 investigation did not match what actually was received, a few examples of which are shown below. SUMF IX.89, IX.90.

**PUBLIC VERSION**

**Reseller Respondent Do It Wiser**



**Website Depiction: GPR-53 Compatible (Set).**



**Actual Product Photograph: 08.08.9-ITCANON3325K1, C1, M1, Y1**

SUMF IX.91.

PUBLIC VERSION

1259-Only Respondent Ink Tech



SUMF IX.92.

**PUBLIC VERSION**

**1259-Only Respondent Sun Data Supply**



SUMF IX.93.

**PUBLIC VERSION**

**1259-Only Respondent Zinyaw**



**Website Depiction: GPR-58 Compatible (K, C, M, Y)**



**Actual Product Photograph: NCGPR58K, C, M, Y**

SUMF IX.94.

The ability of retailers to set up and conduct operations via internet websites such as these would allow them to circumvent limited exclusion orders. *See* 918 RD at 269 (“This practice of providing very little or no identifying information about the company operating and/or behind products on a given website permits the company to easily set up a new website

**PUBLIC VERSION**

with new contact information to avoid detection by OEMs and circumvent any exclusion order limited to named companies.”).

Moreover, it is common for internet-based retailers to engage in a practice known as “drop shipping,” whereby instead of maintaining an actual inventory of toner supply containers, their customers’ orders are fulfilled directly by a manufacturer or other distributor. SUMF IX.95. For example, Canon’s expert, Mr. Shane, observed that the Digital Buyer had their Accused Toner Supply Containers drop shipped as follows:

| <b>Reseller Respondent</b> | <b>Accused Product Return Address(es)</b> | <b>Drop-Shipper(s)</b> |
|----------------------------|---|------------------------|
| Digital Buyer              | 3892 Delp St<br>Memphis, TN 38118         | Supplies Wholesalers   |

SUMF IX.96. He also observed that the following 1259-Only Respondents had their Accused Toner Supply Containers drop shipped as follows:

| <b>Reseller Respondent</b> | <b>Accused Product Return Address(es)</b>    | <b>Drop-Shipper(s)</b>        |
|----------------------------|--|-------------------------------|
| Easy Group                 | 13875 Ramona Ave<br>Chino, CA 91710          | Ninestar Tech                 |
| Ink Tech                   | 13875 Ramona Ave<br>Chino, CA 91710          | Ninestar Tech                 |
| LD Products                | 13875 Ramona Ave<br>Chino, CA 91710          | Ninestar Tech                 |
| NAR Cartridges             | 7300 No. Brady Street<br>Davenport, IA 52806 | Katun                         |
| Sun Data Supply            | 4435 Concourse Drive<br>Ann Arbor, MI 48108  | Diversified Computer Supplies |
|                            | 7300 No. Brady Street<br>Davenport, IA 52806 | Katun                         |
|                            | 13875 Ramona Ave<br>Chino, CA 91710          | Ninestar Tech                 |
| Supplies Guys              | 13875 Ramona Ave<br>Chino, CA 91710          | Ninestar Tech                 |

**PUBLIC VERSION**

| <b>Reseller Respondent</b> | <b>Accused Product Return Address(es)</b> | <b>Drop-Shipper(s)</b> |
|----------------------------|---|------------------------|
| Zinyaw                     | 13875 Ramona Ave<br>Chino, CA 91710       | Ninestar Tech          |

SUMF IX.97.

Indeed, certain respondents have acknowledged that they do not manufacture the Accused Toner Supply Containers, but rather procure them from other entities, some of which are not respondents in this investigation and thus would not be subject to a limited exclusion order issued in this investigation. For example, Digital Buyer has procured Accused Toner Supply Containers from non-respondent Supplies Wholesalers in Nevada, as shown above (SUMF IX.98); and Do It Wiser has procured Accused Toner Supply Containers from a non-respondent entity called “Mito Color Imaging Co., Ltd.” in China (SUMF IX.99). The same is true for some 1259-Only Respondents: Ink Tech has procured Accused Toner Supply Containers from non-respondents “Color Imaging” in Georgia, “DCS” in Michigan, “Imagestar” in Connecticut, and “Synnex” in Illinois (SUMF IX.100); and Precision Roller has procured Accused Toner Supply Containers from non-respondent “CET Group USA Inc.” in Massachusetts (SUMF IX.101).

Moreover, 1259-Only Respondent Katun has stipulated that it engages in drop shipping, whereby when one of its reseller customers receives an order from an end purchaser for a product made by 1259-Only Respondent GPI, Katun will ship that product directly to the end purchaser without the reseller ever taking possession, or needing to maintain an inventory, of the product. SUMF IX.102.

By eliminating the need to carry inventory, drop-shipping reduces a company’s start-up and operational costs, making it very easy for new online sellers of toner supply containers to enter the market and for existing sellers to shut down operations and restart new websites or

## PUBLIC VERSION

online marketplace storefronts under a new name to continue operations in the face of a limited exclusion order. SUMF IX.103; 918 RD at 269 (“Internet-based retailers in the aftermarket toner cartridge industry use drop-shipping knowing that it enables them to shut down a given website and begin operations through a new website, thus allowing them to circumvent an exclusion order specifically directed to named companies, and at least some of these companies do so with the intent of evading detection by OEMs. Therefore, if an exclusion order ... listed the website(s) through which the respondents were known to conduct their operations, it would be simple for those respondents to set up new website(s) and continue their operations.”).

Additionally, well-known online marketplaces such as, for example, *Amazon.com*, *Ebay.com*, and *Alibaba.com*, provide manufacturers and sellers of infringing toner supply containers with dedicated, flexible infrastructure to sell directly to U.S. consumers without revealing the true source of such toner supply containers. *See* 1174 RD at 141 (citing 918 Investigation Comm’n Op. at 11 (Oct. 1, 2015) (“918 Opinion”)); SUMF IX.104. Not surprisingly, as of February 12, 2021, a search for “canon compatible toner” (i.e., a non-OEM toner supply container) on *Alibaba.com* alone revealed over 213 foreign suppliers, including suppliers from China, India, Singapore, Macau, and the United Kingdom. SUMF IX.105. The *Alibaba.com* search results identified North America as one of the top markets for those suppliers, in aggregate. *Id.* Similarly, a February 12, 2021 search for “Canon compatible toner” on *Made-in-China.com* revealed 224 suppliers in China (including Hong Kong). SUMF IX.106. In addition, most of the respondents operate through virtual storefronts on *Amazon.com*, as shown below.

| <b>Respondent</b>   | <b><i>Amazon.com</i> Storefront</b>              |
|---|--|
| Sichuan XingDian Technology Co., Ltd<br>Sichuan Wiztoner Technology Co., Ltd. | StarTech Office Supplies<br>(SUMF IX.107-IX.109) |

**PUBLIC VERSION**

| <b>Respondent</b>                              | <b><i>Amazon.com</i> Storefront</b>                          |
|--|--|
| Anhuiyatengshangmaoyouxiangongsi               | yatengshangmaoyou (SUMF IX.110)                              |
| ChengDuXiangChangNanShi-YouSheBeiYouXianGongSi | ChengDuXiangChangNanShi-YouSheBeiYouXianGongSi (SUMF IX.111) |
| Hefeierlandianzishangwuyouxiangongsi           | erlandianzishang USA (SUMF IX.112)                           |
| Shenzhenshi Keluodeng Kejiyouxiangongsi        | KenoGen (SUMF IX.113)  |
| MITOCOLOR INC.                                 | TopInk (SUMF IX.114)   |
| Xianshi yanliangqu canqiubaihuodianshanghang   | CJ-us (SUMF IX.115)  |

SUMF IX.116. Several 1259-Only Respondents operate through virtual storefronts on *Amazon.com* as well, as shown below.

| <b>Respondent</b>               | <b><i>Amazon.com</i> Storefront</b>     |
|---------------------------------|---|
| Copier Repair Specialists, Inc. | Wholesale Imaging Products (SUMF IX.72) |
| LD Products, Inc.               | LD Products (SUMF IX.76)                |
| NAR Cartridges                  | NAR Cartridges (SUMF IX.117)            |

SUMF IX.118.

As can be seen, these respondents' *Amazon.com* storefront names often bear no resemblance to their business entity names. In addition, some of these respondents appear to have provided *Amazon.com* with incomplete or false contact information. Indeed, as noted above, Canon attempted service via express delivery on Yatengshang, ChengDuXiang, Erlandianzishang, KenoGen, and CJ-us at the addresses listed in their *Amazon.com* seller pages, but those addresses could not be located. *See supra* Section II.A. For Yatengshang and CJ-us, the addresses appeared to be incomplete on their face, either omitting or truncating street address information. SUMF IX.119. While Canon was able to serve most of these respondents electronically through their *Amazon.com* storefronts, Canon was unable to serve KenoGen by

## PUBLIC VERSION

any means and eventually had to move for partial termination of the investigation as to KenoGen. SUMF IX.120. Canon's inability to serve KenoGen, despite KenoGen actively selling Accused Toner Supply Containers to customers within the United States via *Amazon.com*, demonstrates how the use of *Amazon.com* allows entities to avoid limited exclusion orders.

*Amazon.com* product pages offering aftermarket toner supply containers often include product photographs that do not resemble the actual products being sold. SUMF IX.121. In many cases, the product photos do not show any product packaging at all or show product packaging that is entirely different from what the purchaser receives. SUMF IX.122. And, in some cases, the *Amazon.com* depiction even appears to be a genuine Canon toner supply container. SUMF IX.123. These *Amazon.com* photos also often hide or do not clearly show structural features of a product, which may be relevant to determining whether the product infringes an OEM's patents. SUMF IX.124. Thus, someone viewing a toner supply container on *Amazon.com* may encounter difficulty both in determining whether it is likely infringing and in actually obtaining that particular toner supply container. SUMF IX.125.

Indeed, Canon's expert, Mr. Shane, observed several instances in which the product photographs on websites used to purchase accused toner supply containers from respondents in this investigation and in the 1259 investigation did not match what actually was received, some examples of which are shown below. SUMF IX.126, IX.127.

PUBLIC VERSION

Reseller Respondent TopInk



Amazon Depiction: GPR-53 Compatible (Same Box Image, Separate Toner Supply Container Images for K, C, M, Y)

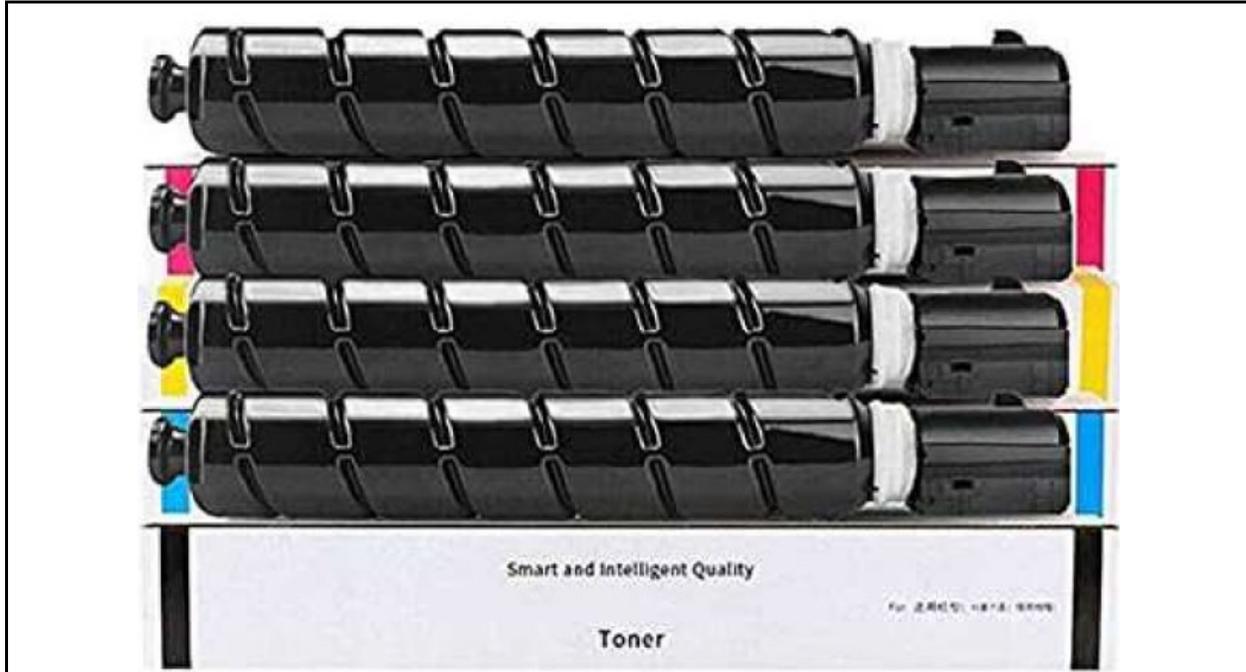


Actual Product Photograph: 08.08.9-ITCANON3325K1, C1, M1, Y1

SUMF IX.128.

PUBLIC VERSION

Reseller Respondent CJ-us



Amazon Depiction: GPR-58 Compatible (Set)



Actual Product Photograph: GPR58K, C, M, Y

SUMF IX.129.

*Amazon.com* offers three different types of fulfillment services: first, Amazon acts as both seller and shipper of the product; second, Amazon can stock items for third-party sellers, which Amazon ships to the consumer (while the transaction is between the third-party seller and the consumer); and third, Amazon can act essentially as an intermediary, taking orders from

## PUBLIC VERSION

consumers that the third-party reseller fulfills on its own (transaction is between third-party seller and consumer, with Amazon taking a fee). SUMF IX.130. Where Amazon fulfills a customer's orders, Amazon's address appears on shipping materials as opposed to the reseller's, such that the customer does not necessarily know the source of the purchased item. SUMF IX.131. This was the case for Accused Toner Supply Containers sold by Wiztoner, Do It Wiser, Yatengshang, ChengDuXiang, Erlandianzishang, and KenoGen—as well as toner supply containers sold by 1259-Only Respondent Copier Repair Specialists—as evidenced by the return addresses on the packaging for these products, which are for Amazon fulfillment centers. SUMF IX.132-IX.140.

The ease with which online sellers can make multiple storefronts on online marketplaces also facilitates circumvention of limited exclusion orders. As LD Products stipulated in the 1106 investigation:

the ease with which Amazon sellers can set up shop on Amazon enables patent-infringing sellers of toner cartridges to enter and re-enter the marketplace. If Amazon catches such sellers and removes products listings, or even entire storefronts, it is easy for the firm or individuals to begin selling again under a different name. LD Products has seen other Amazon sellers have their stores suspended or even permanently shut down, only to see the same seller open a new store under a different name.

SUMF IX.141.

Indeed, as observed in the 1174 investigation, in which various respondents sold toner cartridges on *Amazon.com*, “[i]f limited exclusion orders were directed to the entities named as Respondents in this investigation, it is likely that the same entities would continue online sales and importation using different names.” 1174 Investigation, Initial Determination at 137. Similarly, an *Amazon.com* seller could also run multiple storefronts simultaneously, so if one is shut down, the others are unaffected. SUMF IX.141, IX.142. For example, it appears that Yatengshang, ChengDuXiang, and Erlandianzishang are connected, in light of the uncanny

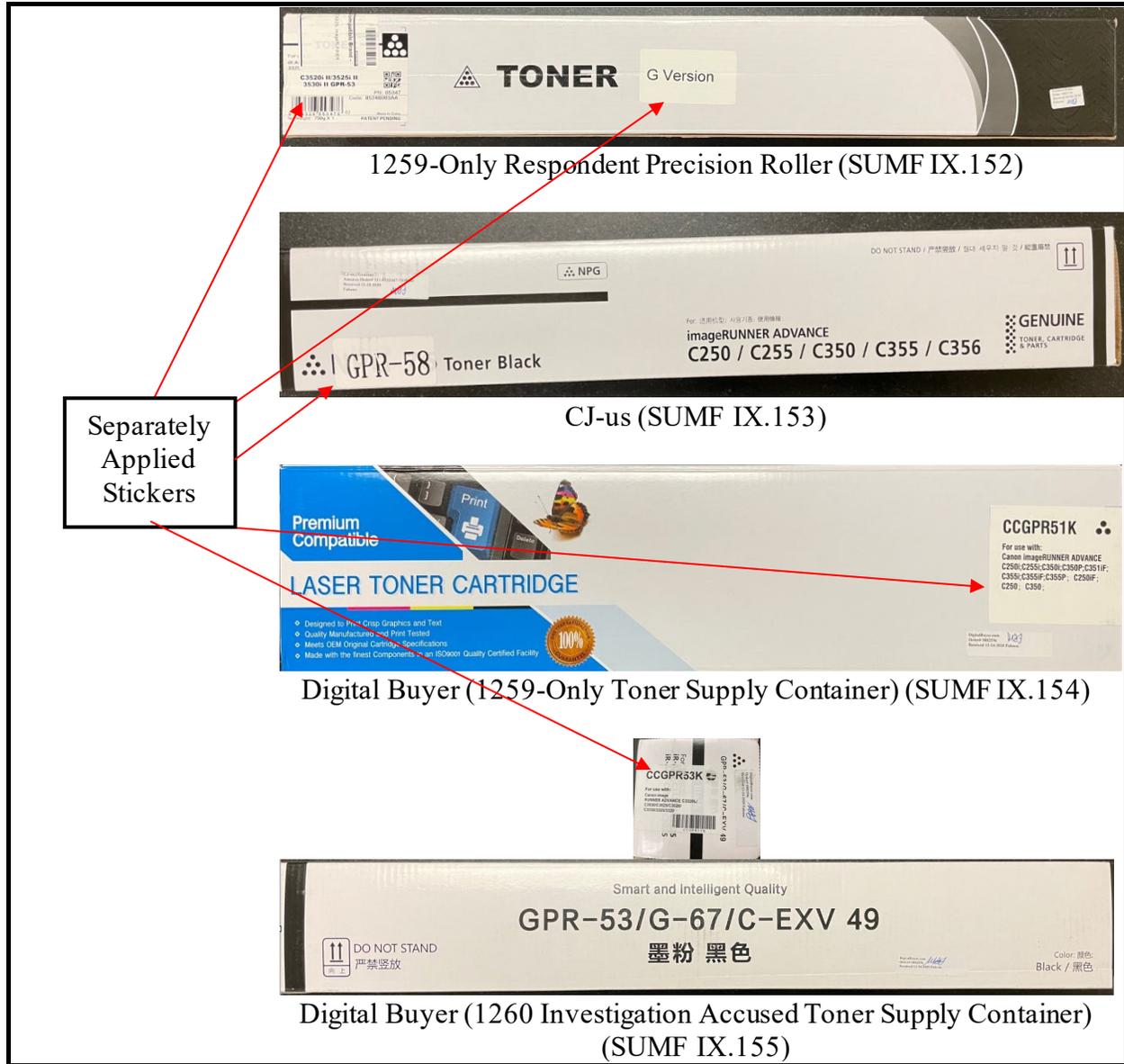
## PUBLIC VERSION

similarities in the content, and near-identical timing, of their responses to Canon's alternative service messages sent to their *Amazon.com* storefronts. SUMF IX.143-IX.146. Accordingly, the ability for sellers to utilize online marketplaces would enable circumvention of an order limited to products of a named entity. SUMF IX.147.

### **c. Use of Unmarked, Generic, and/or Reseller-Branded Packaging**

Manufacturers and sellers also often package toner supply containers in unmarked, generic, and/or reseller-branded packaging without any origin markings, let alone any marking specifically identifying the true source (*e.g.*, manufacturer name). SUMF IX.148. "This legitimate practice [of private labeling] inevitably obscures the identity of the cartridges' original manufacturer, making enforcement of a limited exclusion order difficult at best." 829 RD at 124. In addition to not including any information about the source, such generic packaging can easily be changed should Customs become aware of it and associate it with a particular source. SUMF IX.149. This makes it extremely difficult and impractical for Customs to use a product's packaging as a means to identify the source of the toner supply containers inside. SUMF IX.150.

Indeed, various Accused Toner Supply Containers that Canon obtained from the respondents in this investigation, as well as various toner supply containers that Canon obtained from 1259-Only Respondents, arrived in generic packaging, including the four shown in the below images. SUMF IX.151.



As can be seen, these boxes are generic, revealing nothing about the actual manufacturer or any other supplier or distributor. SUMF IX.156.

Moreover, Canon obtained toner supply containers from numerous sellers, some of which are respondents in this investigation and/or the 1259 investigation, that arrived in substantially

**PUBLIC VERSION**

identical, generic packaging devoid of any indication of the manufacturer or the country of origin, as shown below.<sup>17</sup> SUMF IX.157-IX.164.



Reseller Respondent Digital Buyer GPR53C



1259-Only Respondent Ink Tech GPR53C



1259-Only Respondent LD Products GPR53C



1259-Only Respondent Supplies Guys GPR53M



1259-Only Respondent Zinyaw GPR53C

<sup>17</sup> As set forth in the McCarthy Decl. submitted herewith, all of the photographs of these generic toner supply containers of unknown origin and their packaging included herein, or in the accompanying declarations of Richard A. Lux, Ph.D, John E. Shane, and Michael F. Falsone and the exhibits and appendices thereto, were taken by Mr. McCarthy or at his direction. See McCarthy Decl. at ¶¶ 7-11.

PUBLIC VERSION



1259-Only Respondent Copier Repair Specialists GPR51C



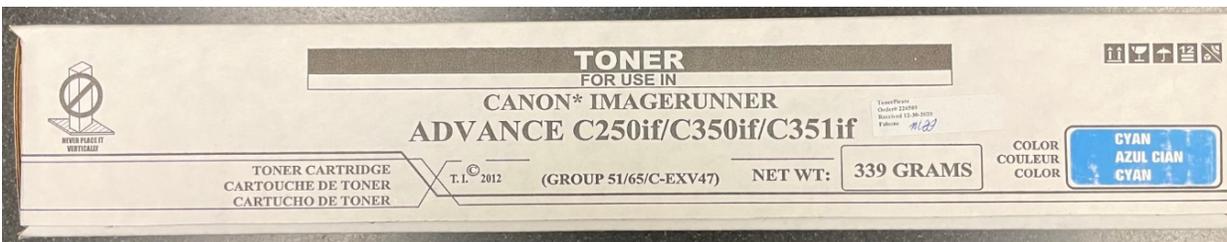
1259-Only Respondent Ink Tech GPR51K



1259-Only Respondent Precision Roller GPR51Y



1259-Only Respondent Sun Data Supply GPR51C



1259-Only Respondent Zinyaw GPR51C

PUBLIC VERSION



1259-Only Respondent Copier Repair Specialists GPR55M



1259-Only Respondent Precision Roller GPR55M



1259-Only Respondent Precision Roller GPR58M

Not only do these boxes provide no information as to the country of origin or manufacturer, the toner supply containers contained therein also provide no such information. SUMF IX.165, IX.166.<sup>18</sup>

Often, the only information on the packaging about the toner supply containers inside was on separately applied stickers—*i.e.*, stickers placed on the outside of generic packaging. SUMF IX.151. In many cases, these stickers contain no information about the actual source of the products. SUMF IX.165, IX.166. For example, while the packaging for the Accused Toner Supply Containers of Do It Wiser, Yatengshang, ChengDuXiang, Erlandianzishang, KenoGen, and TopInk bore Do It Wiser branding, the packaging actually consisted of plain white boxes, with all of the Do It Wiser branding and model numbers provided by separately applied stickers,

<sup>18</sup> Unlike in the 1259 investigation, Canon does not contend that these generic toner supply containers of unknown origin infringe the Asserted Claims here.

## PUBLIC VERSION

and not identifying the ultimate source, Mito Color Imaging Co., Ltd. SUMF IX.167. In addition, these stickers can be applied to the boxes after importation, such that a Customs agent inspecting a shipment of toner supply containers may not see anything on the packaging to indicate what is contained inside, such as the OEM brand, the OEM copier model numbers the containers are made for use in, or the models of the corresponding OEM toner supply containers. SUMF IX.168. These stickers also often include product codes or information that only the foreign manufacture or domestic reseller can decipher. SUMF IX.169. Moreover, it would be easy for a foreign importer to apply stickers to its toner supply container boxes with misleading information prior to importation, such as the name of a different manufacturer that is not subject to a limited exclusion order. SUMF IX.170. Further still, providers of toner supply containers are not beholden to use the same packaging over time or for all of their products, such as in the case of Digital Buyer, whose toner supply containers came in three different types of packaging, all of unknown origin. SUMF IX.154, IX.155, IX.171, IX.172. Using tactics like those discussed above, foreign manufacturers of infringing toner supply containers may easily circumvent a limited exclusion order. SUMF IX.173.

### **d. Replication of Operations**

Foreign manufacturers and distributors of infringing toner supply containers can quickly evolve from start-up entities into dominant players in the aftermarket toner supply container industry. SUMF IX.174. An example of this is the rapid formation of Aster Graphics, Inc. (“Aster”), which was named as a respondent in the 1146 and 1106 investigations. SUMF IX.175. As Aster stipulated in the 1106 investigation, in March 2011 several prominent members of Zhuhai Seine Technology Co., Ltd. and Seine Image Int’l Co., Ltd. (collectively “Seine”) left Seine to join Aster. SUMF IX.176. Around the same time, construction began on Aster’s factory in Jiangxi, China. SUMF IX.177. Construction of the factory was completed

## PUBLIC VERSION

less than a month later, with an initial manufacturing capacity of 300,000 toner cartridges. SUMF IX.178. Mass production at the factory was approved on April 20, 2011, and mass production of toner cartridges began by the end of that month. SUMF IX.179. By May 10, 2011, Aster opened a global marketing and sales center, and by May 18, 2011, Aster had opened a U.S. branch, Aster Graphics, Inc., including a 12,000 square foot warehouse capable of storing over 100,000 cartridges. SUMF IX.180. As Aster's rapid formation demonstrates, it is easy for key personnel to leave a foreign manufacturer or seller of aftermarket toner cartridges and replicate its operations to become a major manufacturer and importer which would not be subject to an exclusion order limited to particular products of a named entity. SUMF IX.181.

### **e. Even After One Source Is Excluded, Resellers of Aftermarket Toner Cartridges Could Easily Find Another Source**

A GEO is necessary to avoid circumvention of an exclusion order limited to products of named respondents in view of the numerous foreign manufacturers and sellers of toner supply containers and components that are not named as respondents in this investigation.

A manufacturer group, the Wiztoner Respondents, has been named as respondents in this investigation, and 1259-Only Respondents Ninestar and GPI are manufacturers as well. *See supra* Section II.B.2.a; SUMF IX.182. However, there are many other foreign manufacturers, particularly in China, that fabricate or assemble imaging supplies such as toner supply containers. SUMF IX.182, IX.183. Indeed, one of the largest such manufacturers, Mito Color Imaging Co., Ltd., was identified by Do It Wiser as the source of its Accused Toner Supply Containers. SUMF IX.99, IX.184. In addition, 1259-Only Respondent Precision Roller identified the source of its Accused Toner Supply Containers as being "CET Group USA Inc.," the U.S subsidiary of CET Group Co., Ltd., another major Chinese manufacturer of imaging supplies, including aftermarket toner supply containers. SUMF IX.101, IX.185-IX.187. And,

## PUBLIC VERSION

while Canon was able to identify many of the sources of the Accused Toner Supply Containers its investigator purchased from Reseller Respondents in connection with this investigation, there were also a good number of Accused Toner Supply Containers for which Canon could not identify the source. SUMF IX.188; *see supra* Section IX.A.1.a. Accordingly, even if an exclusion order limited to the products of the named manufacturer respondents issued, resellers could source infringing aftermarket toner supply containers from any of the other existing suppliers and evade the limited exclusion order. SUMF IX.189.

In addition, Accused Toner Supply Containers can be sourced from various distributors and/or resellers, including those not named as respondents in this investigation. SUMF IX.190. As noted above, Canon has learned through discovery that various resellers not named as respondents in this investigation have sold Accused Toner Supply Containers. *See supra* Section V.B. In addition, online marketplaces such as *Amazon.com*, *eBay.com*, or *Alibaba.com* make it easy for customers to obtain aftermarket toner cartridges from various sellers and for sellers to create a new online marketplace and obtain immediate access to customers. SUMF IX.104, IX.141. Indeed, in such online marketplaces, consumers' choices in suppliers of aftermarket toner cartridges are largely driven by price, and brand loyalty is not generally a factor. SUMF IX.191.

Given the numerous suppliers of aftermarket toner supply containers and components, as well as the ease with which resellers and end users can find new sources of these products once one seller is excluded, a GEO is necessary here to prevent rampant circumvention of exclusion orders limited to named products of named entities. SUMF IX.192, IX.193.

## PUBLIC VERSION

### **2. Widespread Pattern of Importation and Sale, and Difficulty of Identifying the Sources, of Infringing Toner Supply Containers**

A widespread pattern of importation and sale of infringing toner supply containers in the United States exists and several factors, including those discussed above, make it extremely difficult to identify the sources of those products.

#### **a. There Is a Widespread Pattern of Importation and Sale**

The widespread pattern of importation of infringing toner supply containers is evidenced by the large number of respondents in this investigation and identified non-respondents that import and/or sell of Accused Toner Supply Containers. *See* SUMF IX.194; *see also* 1174 RD at 140 (where, out of 32 named respondents, “all of those that were successfully served were found in violation or stipulated to a consent order ... [t]hat alone demonstrates a widespread pattern of violation of section 337”); 829 RD at 121 (“Given the number of respondents involved, the activities of the defaulting respondents and their suppliers alone would be sufficient to demonstrate a pattern of violation.”) In addition, there are numerous other manufacturers and sellers of imported toner supply containers, including unnamed and unknown manufacturers and sellers of Accused Toner Supply Containers. Moreover, the low barriers to entry into the market make importation of violating products potentially more widespread and make it increasingly difficult to identify the sources of infringing products.

Foreign manufacturers of aftermarket toner cartridges have significant production capacity, which further supports the existence of a widespread pattern of violation. SUMF IX.195. For example, the Wiztoner Respondents claim to have 6,000-square-meter advanced manufacturing facilities with a monthly production capacity of 150,000 pieces of toner cartridges. SUMF IX.196-IX.198. Also, the 1259-Only Ninestar Respondents have stated that they have an annual toner cartridge output of 220 million pieces, which they claim ranks them as

## PUBLIC VERSION

“No. 1 in Chinas export market share.” SUMF IX.199, IX.200. According to 1259-Respondent GPI, it “has steadily expanded production facilities [in Central Taiwan] to meet increasing demands” and “if a project has a potential to grow to an acceptable scale, [it] will consider expanding capacity or investing in a new technology in-house.” SUMF IX.201, IX.202. Mr. Shane points out that the production capacity these manufacturers devote to making Accused Toner Supply Containers could be increased by expanding overall manufacturing operations or by shifting manufacturing capacity from other products to Accused Toner Supply Containers. SUMF IX.203. And, again, the above does not even include the production capabilities of any of the numerous other foreign manufacturers of imaging supplies, including the likely additional manufacturers of Accused Toner Supply Containers that have not been named as respondents here. Thus, the manufacturing capacity of foreign manufacturers is additional evidence of a widespread pattern of violation. SUMF IX.204.

As Mr. Shane explains, the barriers for entry into the aftermarket toner cartridge industry are low, for both retailers and manufacturers. SUMF IX.205. Accordingly, new manufacturers and sellers can easily enter the market, making importation of violating products potentially more widespread and also making it increasingly difficult to identify the source of infringing products. SUMF IX.206.

Numerous component suppliers sell individual toner supply container components to manufacturers to be used in assembling the complete toner supply containers, and the availability of these component parts creates a low barrier to entry into the aftermarket toner cartridge market. SUMF IX.207, IX.208. In Mr. Shane’s experience, a manufacturer can source most, if not all, all of the individual components needed to assemble a toner supply container from aftermarket parts suppliers. SUMF IX.209. For example, searches for various things like “toner

## PUBLIC VERSION

powder canon” and “empty toner cartridge canon” on websites like *Alibaba.com* and *Made-in-China.com* reveal numerous suppliers of various different toner supply container components, including components of toner supply containers for use in the same Canon copiers as the Accused Toner Supply Containers in this investigation. SUMF IX.210. Mr. Shane also searched for “toner cartridge filling machine” on *Alibaba.com* and found results as inexpensive as \$1,000. SUMF IX.211. However, Mr. Shane notes that even this relatively minor investment would not be necessary to start up a small manufacturing operation, as empty toner supply containers could be filled using manual labor. SUMF IX.212.

The ability to source all of the individual materials of a toner supply container lowers the barrier to entry into the toner supply container market greatly by reducing the upfront investment in manufacturing equipment and facilities required to set up a toner supply container manufacturing operation. SUMF IX.213. By purchasing the individual materials rather than manufacturing them, a toner supply container manufacturer can avoid incurring capital expenditures to establish fabrication processes for those components. SUMF IX.214. Indeed, where most or all of the individual components of a toner supply container are sourced from component suppliers, the assembly of the final product may require nothing more than manual labor. SUMF IX.215. The multiple manufacturers and sellers of materials for toner supply containers that exist in the marketplace would allow prospective manufacturers and sellers of infringing toner supply containers to quickly and cheaply set up operations and begin importing them into the United States without being subject to a limited exclusion order. SUMF IX.216.

The internet greatly facilitates the marketing and sale of aftermarket toner supply containers, and thus allows for widespread violations. SUMF IX.217. As explained above in Section IX.A.1.b, the internet provides flexibility to manufacturers and sellers of aftermarket

## PUBLIC VERSION

toner supply containers to appear, disappear and reappear under different trade names as needed, within a matter of days. SUMF IX.218. The internet also enables manufacturers and sellers of aftermarket toner supply containers to mask or impede discovery of their true identities. SUMF IX.219. The use of the internet to sell products combined with the availability of “drop shipping,” including through online marketplace fulfillment services, has made it easier than ever for sellers of infringing toner supply containers and components to enter the market. SUMF IX.220. Accordingly, the use of the internet promotes the widespread importation of infringing toner supply containers and components. SUMF IX.221.

### **b. The Sources of Aftermarket Toner Supply Containers Are Often Difficult to Identify**

In the complaint in this investigation, Canon identified those entities about which it had substantial evidence regarding the importation of infringing toner supply containers and components thereof into the United States. But Canon was unable to independently identify the source of infringing products sold by many other entities, including certain respondents, such as, for example, Digital Buyer, Precision Roller, CJ-us, and Zhuhai Henyun. *See supra* Section IX.A.1.c. For the infringing products sourced by Do It Wiser, including the products it sold and those sold by Yatengshang, ChengDuXiang, Erlandianzishang, KenoGen, and TopInk, Canon was only able to identify a source after receiving a post-complaint affidavit from Do It Wiser, and thus was not able to name that source as a respondent in its complaint. *See supra* Section V.B.2.a.

The difficulty in identifying the source of infringing toner supply containers is yet further compounded by the use of the internet as a sales mechanism. As discussed above, the internet allows for anonymity, and permits website operators to characterize themselves, their businesses, and their products in any way, regardless of the veracity of those characterizations. *See supra*

## PUBLIC VERSION

Section IX.A.1.b. In addition, the ability to use unmarked, generic, and/or reseller branded packaging makes it extremely difficult to identify the sources of infringing toner supply containers. *See supra* Section IX.A.1.c. Identifying the source of infringing toner supply containers is also frustrated by the various other above-described business and importation practices often used by manufacturers and sellers of aftermarket toner supply containers to evade investigations by OEMs and U.S. Customs, such as, for example, the use of multiple business names, the use of complex and shifting corporate structures, and seeking to prevent public access to import records. *See supra* Section IX.A.1.d-e.

Specifically as to respondents in this investigation:

- multiple respondents appear to do business by more than one name or be made up of multiple corporate entities (SUMF IX.8, IX.10);
- Do It Wiser has exhibited shifting corporate entities (SUMF IX.23-IX.26);
- TopInk uses a mailbox center for its registered address (SUMF IX.64, IX.65);
- Digital Buyer and Do It Wiser conduct their activities through internet websites that (for Do It Wiser) does not indicate the company that operates the website or provide a regional phone number or street address and (for both) depict products and packaging that do not match the actual accused products and packaging to various degrees and obscure whether the product has the patented structure (SUMF IX.71, IX.80-IX.82, IX.91, IX.222);
- Digital Buyer engages in drop-shipping (SUMF IX.96);
- most of the respondents operate via storefronts on *Amazon.com*, many of which provided invalid address information, and all of which depict products and packaging that do not match the actual accused products and packaging to various

## PUBLIC VERSION

degrees and obscure whether the product has the patented structure (SUMF IX.107-IX.116, IX.128, IX.129, IX.223-IX.226);

- multiple respondents have their accused products fulfilled by Amazon (SUMF IX.131-IX.138);
- Yatengshang, ChengDuXiang, and Erlandianzishang appear to be related to each other in some way despite operating distinct Amazon storefronts (SUMF IX.143-IX.146);
- multiple respondents' accused products come from unidentified manufacturers or other non-respondent manufacturers (SUMF IX.151, IX.167); and
- multiple respondents' accused products arrived in plain white boxes with the sole identifying information being on separately applied stickers, or in generic boxes that do not indicate a brand or other source, with Digital Buyer's accused products coming in generic a box design that differs from that of other products it sold to Canon (SUMF IX.153, IX.155, IX.156, IX.165, IX.171).

In addition, several respondents have provided false, incomplete, and/or invalid addresses. TopInk (MITOCOLOR INC.) provided a registered address in its corporate filings with the California Secretary of State, and it has repeatedly stated that the address was current, but that address has been confirmed to be false. SUMF IX.227-IX.230. The address is a mailbox center that TopInk stopped using two years prior to Canon's complaint. SUMF IX.231, IX.232. Also, as noted above, Yatengshang, ChengDuXiang, Erlandianzishang, KenoGen, and CJ-us provided business addresses on their respective *Amazon.com* seller profile pages, which apparently were invalid. *See supra* Section II.A.

## PUBLIC VERSION

Accordingly, a GEO is the appropriate relief in this case, given the numerous sources abroad of infringing toner supply containers and components thereof and the difficulty identifying their sources.

### **3. The Commission Previously Issued GEOs Under Similar Circumstances**

The Commission previously issued GEOs to Canon in the 829 and 918 investigations under circumstances substantially similar to those here. Indeed, the products at issue in the 829 and 918 investigations were the same category of products at issue in this investigation, and those investigations included some of the same respondents. *See generally* 829 RD; 829 Investigation Comm'n Op. (July 29, 2013) ("829 Opinion") (issuing GEO); 918 RD; 918 Opinion (issuing GEO). The Commission also previously issued GEOs to other complainants under circumstances similar to those in this investigation. *See* 1174 RD (granting summary determination of violation and recommending issuance of a GEO); 1174 Investigation Comm'n Op. (Dec. 17, 2020) ("1174 Opinion") (issuing GEO); 740 RD (granting summary determination of violation and recommending issuance of a GEO); 740 Investigation, Comm'n Op. (Oct. 5, 2011) ("740 Opinion") (issuing GEO).

In the 829 investigation, Canon asserted two patents against 34 manufacturers and retailers of aftermarket toner cartridges and components thereof. SUMF IX.233, IX.234. In the 918 investigation, Canon asserted five patents against 33 manufacturers and retailers of aftermarket toner cartridges and components thereof. SUMF IX.235, IX.236. In issuing GEOs in those investigations, the ALJ and the Commission considered several facts that also apply to this investigation, namely:

- Manufacturers and sellers of toner cartridges subject to a limited exclusion order could easily reorganize under a different name. 829 RD at 120 ("[T]his same sort of scenario

## PUBLIC VERSION

could easily repeat itself if another limited exclusion order issues as a result of the current investigation.”); 918 RD at 291-292 (“The Internet facilitates the marketing and sale of aftermarket toner cartridges, inasmuch as it allows manufacturers and sellers of aftermarket toner cartridges the flexibility to appear, disappear, and reappear under one or more different trade names as needed (within a few days or even less time if desired), and even to mask or impede discovery of their true identities”).

- Manufacturers and sellers of toner cartridges have “packaging and shipping practices [that] would enable them to circumvent a limited exclusion order by making it difficult for U.S. Customs to identify imports subject to the order.” 829 RD at 120; *see also* 829 Opinion at 7; 918 RD at 273; 918 Opinion at 8.

- Manufacturers and sellers of toner cartridges use multiple “suppliers of accused products, including multiple non-respondent suppliers both in the United States and overseas.” 829 RD at 122; *see also* 829 Opinion at 7; 918 RD at 266-267, 287-288; 918 Opinion at 9.

- Manufacturers and sellers of toner cartridges “employ complex business arrangements that make enforcement of U.S. intellectual property (‘IP’) rights difficult.” 829 RD at 123 (quoting 740 RD at 25); *see also* 829 Opinion at 7; 918 RD at 270-272; 918 Opinion at 8.

- “[I]n the toner cartridge market, it is difficult to trace the origin of a particular import even when all of the players involved are operating honestly.” 829 RD at 123; *see also* 829 Opinion at 7.

In the 740 investigation, the complainant (Lexmark International, Inc.) asserted several patents against manufacturers and resellers of aftermarket toner cartridges and components thereof, including several of the respondents named in the 731 investigation, the 829

## PUBLIC VERSION

investigation, the 918 investigation, and/or the instant investigation. 740 RD at 2-3. In issuing a GEO in that investigation, the ALJ and the Commission considered several facts which essentially are identical to those in this investigation, namely:

- The “respondents employ complex business arrangements that make enforcement of U.S. intellectual property (‘IP’) rights difficult,” and noting that several respondents “do business under more than one name.” 740 RD at 25; 740 Opinion at 5.
- The respondents created “an intricate array of confusingly similar subsidiaries [but] ... are all plainly in the same business syndicate.” 740 RD at 25.
- Deceptive packaging and labeling practices, including the use of packaging that “need not mention Lexmark at all,” the application of stickers after importation, and the use of private labeling. 740 RD at 26-27.
- “[M]arket conditions conducive to a pattern of violations,” including “robust demand” and high profit margins in the aftermarket toner cartridge business. 740 RD at 27-29; 740 Opinion at 5.
- A large number of aftermarket toner cartridge manufacturers (particularly in China) with very substantial production capacity. *See* 740 RD at 29-31; 740 Opinion at 5-6.
- Difficulty in identifying the source of products sold over the internet, “because the Internet inherently allows for anonymity.” 740 RD at 32 (citing *Certain Hair Irons & Packaging Thereof*, Inv. No. 337-TA-637, Order No. 14 (Initial Determination and Recommended Determination) (Mar. 10, 2009)); 740 Opinion at 6.
- The ability of an aftermarket toner cartridge company to “be set up in short order and just as quickly dismantled, in the event that it becomes the target of a lawsuit or a raid.” 740 RD at 33.

## PUBLIC VERSION

- The existence of counterfeit toner cartridge operations. *See* 740 RD at 34-35; 740 Opinion at 6.

In the 1174 investigation, the complainants (Brother Industries, Ltd. et al.) asserted several patents against manufacturers and resellers of aftermarket toner cartridges and components thereof, including several of the respondents named in the 731 investigation, the 829 investigation, the 918 investigation, and/or the instant investigation. 1174 RD at 6-7. In issuing a GEO in that investigation, the ALJ and the Commission considered several facts which essentially are identical to those in this investigation, namely:

- Respondents that sell accused products under multiple names on *Amazon.com* would be likely to “continue online sales and importation using different names” if limited exclusion orders were issued as to those respondents. 1174 RD at 137; 1174 Opinion at 17.

- “[M]any of the [r]espondents have engaged in business practices deliberately designed to mask their identities, which makes enforcement of a limited exclusion order difficult,” including operating from rented mailboxes and doing business under multiple names. 1174 RD at 137-140.

- “[M]any [r]espondents purchased their accused products from non-parties,” and the “multiplicity of suppliers and distributors of infringing toner cartridges qualitatively demonstrates a widespread pattern of violation.” 1174 RD at 140-141; 1174 Opinion at 17-18.

- The source of infringing products is difficult to identify, due to, for example, private labeling and custom packaging, generic packaging omitting branding, the channels of commerce that help conceal the identity of infringers such as *Amazon.com* and other e-commerce sites. 1174 RD at 141-143; 1174 Opinion at 18-19.

## PUBLIC VERSION

Thus, considering the activities of aftermarket toner supply container companies, including the 26 originally-named respondents in this investigation, there can be no doubt that there is a widespread pattern of importation and sale of infringing products, and that such companies could easily circumvent a limited exclusion order. Therefore, the proper remedy in this investigation is a GEO.

### **B. Cease and Desist Orders**

In addition to a GEO, the Commission should issue cease and desist orders (“CDOs”) directed to domestic Defaulting Respondents Digital Buyer, Do It Wiser, and TopInk (the “Domestic Defaulting Respondents”), as well as foreign Defaulting Respondents Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang. CDOs are necessary in view of these respondents’ significant inventories of infringing products and/or significant domestic operations.

#### **1. Domestic Defaulting Respondents**

CDOs should be issued against the Domestic Defaulting Respondents at least because they maintain commercially significant inventories of infringing toner supply containers and components thereof. “In determining whether the issuance of a CDO against a defaulted respondent is appropriate, the Commission considers whether the defaulted respondent maintains commercially significant inventories in the United States or has significant domestic operations that could undercut the remedy provided by an exclusion order.” *Certain Hand Dryers & Housing for Hand Dryers*, Inv. No. 337-TA-1015, Comm’n Op. at 10 (Oct. 30, 2017). Where a defaulting respondent is located in the United States, “the Commission infers the presence of commercially significant domestic inventories due to their domestic presence and lack of participation in the proceeding.” *Id.* As alleged in Canon’s complaint, each of the Domestic Defaulting Respondents is located in the United States. SUMF IX.237-IX.239. Accordingly, the

## PUBLIC VERSION

Domestic Defaulting Respondents are presumed to have commercially significant inventories of Accused Toner Supply Containers and components, and thus CDOs should be issued against them.

### 2. CDOs Against the Wiztoner Respondents

CDOs also should be issued against the Wiztoner Respondents (*i.e.*, Sichuan XingDian and Sichuan Wiztoner) due to their significant domestic operations and inventory of Accused Toner Supply Containers, which could undercut the remedy provided by an exclusion order. As set forth in Canon’s complaint, the Wiztoner Respondents are related companies, under common ownership and control, and part of a common enterprise known as “Wiztoner.” SUMF IX.240. While the Wiztoner Respondents both are foreign entities, as alleged in Canon’s complaint, they import Accused Toner Supply Containers into the United States and sell them to customers in the United States, at least through Sichuan XingDian’s “StarTech Office Supplies” storefront on *Amazon.com*. SUMF IX.241. Indeed, as described above and in Canon’s complaint, Canon’s investigator purchased the Wiztoner LCL-GPR-53 Accused Toner Supply Containers through this StarTech Office Supplies storefront on *Amazon.com* on December 5, 2020. *See supra* Section V.B.2.c; SUMF IX.242, IX.243. Just three days later, on December 8, 2020, Canon’s investigator received the Wiztoner LCL-GPR-53, which arrived in packaging with a return address of 1600 Worldwide Boulevard, Hebron, Kentucky 41048, which is an Amazon fulfillment center. SUMF IX.244, IX.245. The identification of an Amazon fulfillment center as the return address indicates that Amazon warehoused Wiztoner Respondents’ domestic inventory of Accused Toner Supply Containers and distributed them on the Wiztoner Respondents’ behalf. SUMF IX.246. The Commission has found that the sale and fulfillment of imported accused products through *Amazon.com* “supports the inference that [foreign defaulting respondents] maintain a commercially significant inventory of infringing articles in the United States” and

## PUBLIC VERSION

thus that issuing CDOs against them in such circumstances is appropriate. *Certain Hand Dryers*, Comm'n Op. at 11. Given the relatedness and common enterprise of Sichuan XingDian and Sichuan Wiztoner, coupled with their use of Amazon to sell, warehouse, and distribute Accused Toner Supply Containers, the CDOs should be issued against both of these respondents. *See id.*; *see also* 829 Opinion at 9-11.

### **3. CDOs Against Respondents Yatengshang, ChengDuXiang, and Erlandianzishang**

CDOs also should be issued against foreign Defaulting Respondents Yatengshang, ChengDuXiang, and Erlandianzishang due to their significant domestic operations and inventory of Accused Toner Supply Containers. As alleged in Canon's complaint and described above, each of these respondents sold Canon's investigator Accused Toner Supply Containers through their *Amazon.com* storefronts. *See supra* Sections V.B.1, V.B.2.a; SUMF IX.247-IX.249. In addition, all of the Accused Toner Supply Containers that Canon's investigator received from these respondents arrived in boxes with a return address of 1600 Worldwide Boulevard, Hebron, Kentucky 41048, which, as noted above, is an *Amazon.com* fulfillment center and indicates that these respondents' keep their Accused Toner Supply Containers in an Amazon warehouse and that Amazon.com fulfills their orders. SUMF IX.250-IX.252. Such evidence is sufficient to infer that each of these foreign defaulting respondents has a significant domestic inventory of Accused Toner Supply Containers and thus CDOs should be issued against them. *Certain Hand Dryers*, Comm'n Op. at 11.

In sum, the Commission should issue CDOs directed to each of the Domestic Defaulting Respondents") as well as Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, and Erlandianzishang.

## PUBLIC VERSION

### C. Bonding

The Commission should set the bond amount at 100% of the entered value of the Accused Toner Supply Containers during the Presidential review period. Pursuant to 19 U.S.C. § 1337(j)(3), the ALJ and the Commission must determine the amount of bond to be required of a respondent during the Presidential review period. The purpose of the bond is to protect the complainant from any injury. *See* 19 C.F.R. §§ 210.42(a)(1)(ii), 210.50(a)(3). When reliable price information is available, the Commission has often set the bond at the price differential between the domestic product and the imported, infringing product. *See Certain Microsphere Adhesives, Processes for Making Same, & Prods. Containing Same, Including Self-Stick Repositionable Notes*, Inv. No. 337-TA-366, Comm'n Op. at 24, USITC Pub. 2949 (Jan. 1996). In other cases, such as when “a reliable price differential cannot be obtained,” the Commission has required a 100% bond. *See, e.g.,* 740 Opinion at 11 (citing *Certain Cigarettes*, Comm'n Op. at 30).

Here, the evidence shows that “the pricing of the accused products varies significantly from one respondent to another and from OEM pricing within the same cartridge models.” 918 Opinion at 16. Indeed, the significant variation in the pricing of Accused Toner Supply Containers from one respondent to another is shown in the below chart, which compares the retail pricing for accused products purchased by Canon’s investigator, Mr. Michael Falsone.

**PUBLIC VERSION**

| <b>Seller</b>    | <b>GPR-51</b>                            | <b>GPR-53</b>                            | <b>GPR-55</b> | <b>GPR-58</b> | <b>SUMFs</b> |
|------------------|--|--|---------------|---------------|--------------|
| Yatengshang      |  | \$99.20                                  |               |               | IX.253       |
| ChengDuXiang     |  | \$113.40                                 |               |               | IX.254       |
| Digital Buyer    | \$55.99<br>(Black)<br>\$66.99<br>(Color) | \$64.99<br>(Black)<br>\$74.99<br>(Color) |               |               | IX.255       |
| Do It Wiser      |  | \$58.51                                  |               |               | IX.256       |
| Erlandianzishang |  | \$92.20                                  |               |               | IX.257       |
| TopInk           |  | \$129.00                                 |               |               | IX.258       |
| CJ-us            |  |  |               | \$150.00      | IX.259       |
| Sichuan XingDian |  | \$55.99                                  |               |               | IX.260       |

In view of the foregoing, the bond amount should be set at 100% of the entered value of the Accused Toner Supply Containers.

**X. CONCLUSION**

For the reasons discussed above, Canon seeks (1) an initial determination finding that the Defaulting Respondents have violated Section 337, (2) a recommended determination recommending that the Commission issue (i) a general exclusion order and (ii) cease and desist orders directed to each of Sichuan XingDian, Sichuan Wiztoner, Yatengshang, ChengDuXiang, Digital Buyer, Do It Wiser, Erlandianzishang, and TopInk, and (3) a bond set at the amount of 100% of the entered value of the Accused Toner Supply Containers.

\* \* \*

**Ground Rule 1.6 Certification**

Pursuant to Ground Rules 1.6 and 5.3, and Order No. 14, I hereby certify that the foregoing memorandum complies with the word count limitations as, according to Microsoft

**PUBLIC VERSION**

Word's word count feature, it contains 26,965 words, excluding items exempted by Ground Rule 1.6.

Dated: October 1, 2021

Respectfully submitted,

/s/ Michael P. Sandonato

Michael P. Sandonato

Dennis J. McMahon

Andrew J. Kutas

Sean M. McCarthy

Nicholas D. Marcello

VENABLE LLP

1270 Avenue of the Americas

New York, New York 10020

Phone: 212-307-5500

Fax: 212-307-5598

Edmund J. Haughey

VENABLE LLP

600 Massachusetts Avenue, NW

Washington, D.C. 20001

Phone: 202-344-4000

Fax: 202-344-8300

*Counsel for Complainants*

*Canon Inc., Canon U.S.A., Inc., and*

*Canon Virginia, Inc.*

**PUBLIC CERTIFICATE OF SERVICE**

I hereby certify that on October 8, 2021, copies of the foregoing, as well as the accompanying declarations, appendices, and exhibits, were filed and served as indicated below.

/s/ Andrew Kutas  
Andrew Kutas

The Honorable Lisa R. Barton  
Secretary of the Commission  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E. Street SW, Room 112-A  
Washington, DC 20436

Via EDIS

The Honorable Clark S. Cheney  
Administrative Law Judge  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E. Street SW  
Washington, DC 20436

Via EDIS

Aaron D. Rauh, Esq.  
Office of Unfair Import Investigations  
U.S. INTERNATIONAL TRADE COMMISSION  
500 E Street SW  
Washington, DC 20436

Via electronic service with  
notification provided to  
*Aaron.Rauh@usitc.gov*

**Respondents:**

**Sichuan XingDian Technology Co., Ltd.**  
23B/24A, East Building, New Century Computer Mall  
Wuhou District  
Chengdu  
Sichuan, China 610041

Via First Class Mail

**Sichuan Wiztoner Technology Co., Ltd.**  
No.2666, 4th Section of Konggang Road,  
Southwest Airlines Economic Development Zone  
Chengdu  
Sichuan, China 610200

Via First Class Mail

**Anhuiyatengshangmaoyouxiangongsi**  
Xiaokoucun  
Haitouzhen  
Ganyuqu, China 222002

Via *Amazon.com*

**ChengDuXiangChangNanShiYouSheBeiYouXianGongSi**

ShaWanLu63Hao1Dong2DanYuan5Lou1HaoFu7Hao  
JinNiuQu  
ChengDuShi  
SiChuanSheng, China 610000

*Via Amazon.com*

**Digital Marketing Corporation d/b/a Digital Buyer  
Marketing Company**

155 W. Washington Blvd.  
Suite 306  
Los Angeles, California 90015

*Via First Class Mail*

**Do It Wiser, Inc. d/b/a Image Toner**

3422 Old Capitol Trail, #747  
Wilmington, Delaware 19808

*Via First Class Mail*

**Hefeierlandianzishangwuyouxiangongsi**

Xuefushequhuanchengdongluyiduan193 195ha  
Piduqutuanjiezheng  
Chengdushi, China 610000

*Via Amazon.com*

**MITOCOLOR INC.**

18351 Colima Road, Suite A #2810  
Rowland Heights, California 91748

*Via Amazon.com*

**Xianshi yanliangqu canqiubaihuodianshanghang**

Yanliangqu XinhualujiedaobanbeizhushichangX-572  
Xianshi  
Shanxisheng, China 710089

*Via Amazon.com*

**Zhuhai Henyun Image Co., Ltd.**

No. 76, Nanping Technology Industrial Park  
Xiangzhou District  
Zhuhai, China 519000

*Via First Class Mail*