

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INK JET PRINT CARTRIDGES
AND COMPONENTS THEREOF**

Inv. No. 337-TA-446

LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation and sale by Respondent Microjet Technology Co., Ltd of Taiwan ("Microjet") of ink jet print cartridges by reason of infringement of claim 4 of U.S. Letters Patent 4,872,027, claim 4 of U.S. Letters Patent 4,635,073, claim; 1 and 3 of U.S. Letters Patent 4,827,294, claims 1-4 and 12 of U.S. Letters Patent 4,992,802, claims 8-9 and 18-20 of U.S. Letters Patent 5,409,134, and claims 2-3 of U.S. Letters Patent 4,680,859, in violation of section 337 of the Tariff Act of 1930, as amended. 19 U.S.C. § 1337.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding.

The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of infringing ink jet print cartridges manufactured by Respondent Microjet. The Commission has also determined to issue a cease and desist order against Respondents Price-Less Inkjet Cartridge Company and ABCCo.net, Inc.

The Commission has also determined that the public interest factors enumerated in 19 U.S.C. § 1337 (d) and (f) do not preclude issuance of the limited exclusion order or the cease and desist order, and that the bond during the Presidential review period shall be in the amount of 100% of the entered value of any imported infringing ink jet print cartridges.

Accordingly, the Commission hereby **ORDERS** that:

1. Ink jet print cartridges covered by claim 4 of U.S. Letters Patent 4,872,027, claim 4 of U.S. Letters Patent 4,635,073, claims 1 and 3 of U.S. Letters Patent 4,827,294, claims 1-4 and 12 of U.S. Letters Patent 4,992,802, claims 8-9 and 18-20 of U.S. Letters Patent 5,409,134, or claims 2-3 of U.S. Letters Patent 4,680,859, that are manufactured abroad and/or imported by or on behalf of Microjet, or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining terms of the patents, except under license of the patent owner or as provided by law.

2. Ink jet print cartridges that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 100% of entered value pursuant to subsection (j) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), from the day after this Order is received by the President until such time as the President notifies the Commission that he approves or disapproves this action but, in any event, not later than sixty (60) days after the date of receipt of this order.

3. In accordance with 19 U.S.C. § 1337(1), the provisions of this Order shall not apply to ink jet print cartridges that are imported by and for the use of the United States, imported for, and to be used for, the United States with the authorization or consent of the Government.

4. The Commission may modify this Order in accordance with the procedures descnoed in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R.. § 210.76.

5. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and the U.S. Custom Service.

6. Notice of this Order shall be published in the *Federal Register*.

By Order of the Commission.


Marilyn R. Abbott
Secretary

Issued: April 25, 2002

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INK JET PRINT CARTRIDGES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-446

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Respondent cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting u.s. agents or distributors for certain ink jet print cartridges, as described below, covered by claim 4 of U.S. Letters Patent 4,872,027, claim 4 of U.S. Letters Patent 4,635,073, claims 1 and 3 of U.S. Letters Patent 4,827,294, claims 1-4 and 12 of U.S. Letters Patent 4,992,802, claims 8-9 and 18-20 of U.S. Letters Patent 5,409,134, or claims 2-3 of U.S. Letters Patent 4,680,859 in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

(Definitions)

As used in this Order:

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

(B) "Complainant" shall mean Hewlett-Packard Company, Complainant in this investigation, and its successors and assigns.

(C) "Respondent" shall mean ABCCo.net, Inc..

(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association,

corporation, or other legal or business entity other than Respondents or their majority owned or controlled subsidiaries, their successors, or assigns.

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

(G) The term "import" and "importation" refer to importation for entry for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption Under the Customs Laws of the United States.

(H) The term "covered products" shall mean: ink jet print cartridges covered by claim 4 of U.S. Letters Patent 4,872,027, claim 4 of U.S. Letters Patent 4,635,073, claims 1 and 3 of U.S. Letters Patent 4,827,294, claim; 1-4 and 12 of U.S. Letters Patent 4,992,802, claims 8-9 and 18-20 of U.S. Letters Patent 5,409,134, or claims 2-3 of U.S. Letters Patent 4,680,859 that are not imported by, Under license from, or with the permission of Complainant.

II.

(Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

(Conduct Prohibited)

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

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

(B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the

United States imported covered products;

(C) advertise imported covered products; and

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

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

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Letters Patent 4,872,027, 4,635,073, 4,827,294, 4,992,802, 5,409,134, and 4,680,859 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting periods shall commence on July of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2002. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

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

VI.

(Record Keeping and Inspection)

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

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

VII.

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in

subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration of the last to expire of the patents specified in Section I above.

VIII.

(Confidentiality)

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

IX.

(Enforcement)

Violation of this Order may result in any of the actions specified in section 210.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(t) of the Tariff Act of 1930. 19 V.S.C. § 1337(t). and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

(Modification)

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

XI.

(Bonding)

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond in the amount of 100% of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section N of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on

Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.

Marilyn R. Abbott
Secretary

Issued: April 25, 2002

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN INK JET PRINT CARTRIDGES
AND COMPONENTS THEREOF**

Investigation No. 337-TA-446

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Respondent cease and desist from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), or soliciting u.s. agents or distributors for certain ink jet print cartridges, as described below, covered by claim 4 of U.S. Letters Patent 4,872,027, claim 4 of U.S. Letters Patent 4,635,073, claims 1 and 3 of U.S. Letters Patent 4,827,294, claim; 1-4 and 12 of U.S. Letters Patent 4,992,802, claims 8-9 and 18-20 of U.S. Letters Patent 5,409,134, or claims 2-3 of U.S. Letters Patent 4,680,859 in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

(Definitions)

As used in this Order:

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

(B) "Complainant" shall mean Hewlett-Packard Company, Complainant in this investigation, and its successors and assigns.

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(D) "Person" shall mean an individual, or any non-governmental partnership, firm, association,

corporation, or other legal or business entity other than Respondents or their majority owned or controlled subsidiaries, their successors, or assigns.

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

(G) The terms "import" and "importation" refer to importation for entry for consumption, entry for consumption from a foreign-trade zone, and withdrawal from warehouse for consumption under the Customs Laws of the United States.

(H) The term "covered products" shall mean: ink jet print cartridges covered by claim 4 of U.S. Letters Patent 4,872,027, claim 4 of U.S. Letters Patent 4,635,073, claim) 1 and 3 of U.S. Letters Patent 4,827,294, claims 1-4 and 12 of U.S. Letters Patent 4,992,802, claims 8-9 and 18-20 of U.S. Letters Patent 5,409,134, or claims 2-3 of U.S. Letters Patent 4,680,859 that are not imported by, under license from, or with the permission of Complainant.

II.

(Applicability)

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, *infra*, for, with, or otherwise on behalf of Respondent.

III.

(Conduct Prohibited)

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

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

(B) market, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the

United States imported covered products;

(C) advertise imported covered products; and

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

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

IV.

(Conduct Permitted)

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Letters Patent 4,872,027, 4,635,073, 4,827,294, 4,992,802, 5,409,134, and 4,680,859 licenses or authorizes such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

(Reporting)

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2002. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

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

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

VI.

(Record Keeping and Inspection)

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

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

VII.

(Service of Cease and Desist Order)

Respondent is ordered and directed to:

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

(B) Serve, within fifteen (15) days after the succession of any persons referred to in

subparagraph VII (A) of this Order, a copy of the Order upon each successor; and

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

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the expiration of the last to expire of the patents specified in Section I above.

VIII.

(Confidentiality)

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

IX.

(Enforcement)

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

X.

(Modification)

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

XI.

(Bonding)

The conduct prohibited by Section III of this Order may be continued during the sixty (60) day period in which this Order is under review by the President pursuant to section 337(j) of the Tariff Act of 1930, 19 U.S.C. § 1337(j), subject to Respondent posting a bond in the amount of 100% of the entered value of the covered products. This bond provision does not apply to conduct that is otherwise permitted by Section N of this Order. Covered products imported on or after the date of issuance of this order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

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

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

The bond is to be released in the event the President disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the President, upon service on

Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order of the Commission.


Marilyn R. Abbott
Secretary

April 25, 2002