



**PAGE 16**  
CONTINUOUS INK  
SUPPLY SYSTEMS  
EVOLVE



**PAGE 40**  
TRENDS IN THE  
OFFICE EQUIPMENT  
INDUSTRY

**PAGE 34**  
A SURVIVOR'S GUIDE TO  
SECTION 337 INVESTIGATIONS



**PAGE 45**  
STRAIGHT TALK  
ON OEM AND  
AFTERMARKET  
STRATEGIES



# RecyclingTimes

Your Global Media Partner

Incorporating **Recharger** and **CONSUMIBLES** magazines



# Baseball PRO

Plays Ball with the  
Aftermarket

CMYK Industries' Patrick Naude  
Talks InkTank and other new technology  
opportunities in South Africa

**PAGE 24**

Issue 72 (US\$10.00)  
ISSN 2050 6449

9 772050 644909

Watch inTouch TV News Daily Online



Imaging Summit & Expo  
**Europe**  
BARCELONA · SPAIN  
April 21-22, 2016

Imaging Summit & Expo  
**AMERICAS**  
CANCUN · MEXICO  
JUNE 2-3, 2016

# RECYCLING TIMES

No. 72 | 2016

07 | EDITORIAL



09 | NEWS IN BRIEF

- New HP Ink Tank Printers Released for Small Businesses
- Ricoh Boosts Recycling in Europe

10 | WORLD NEWS

13 | LEGAL UPDATES

15 | INTO INDIA

The Answer Is An Emphatic NO! They Are Not!



15 | TRENDS

Growing Demand for Printer Supplies

40 | IN MY VIEW

What do you think of the recent Federal Circuit’s decisions about patent rights after the first sale of products?

24 | FRONT COVER STORY



Ink Tanks and Other New OEM Technologies  
Patrick Naude, CMYK Industries  
Photo: Patrick Naude



*Barkha Mittal, founder and Managing Director at India-based, printer cartridge recycler and rented printer service provider Greenvolution, has been listed as one of “The 50 Most Impactful Green Leaders” at the World CSR congress.*

FEATURES

16 An Update on Continuous Ink Supply Systems

CISS systems in the aftermarket were forced to migrate to other uses as more OEM's followed the trend by integrating the CISS feature into their printers.

34 A Survivor’s Guide to Section 337 Investigations and ITC General Exclusion Orders

Part I: The International Trade Commission and the ink and toner cartridge remanufacturing industry

40 Trends in the Office Equipment Industry

North America is expected to decline at a 1.3% compound annual growth rate, shrinking from 5.9 million to 5.5 million unit sales by 2019.

44 | TECHZONE



Remanufacturing the HP LaserJet Enterprise M506/MFP M527 CF-287A/X toner cartridge

47 | PATENTLY SPEAKING



Defenses to Patent Infringement

49 | MY WORD



HOW to Engage Prospective Buyers and Help Them Answer Their Purchasing Questions

52 | THE LISTS

Berto Cartoon

45 | CHALLENGES

Straight Talk on OEM and Aftermarket Strategies  
Vincent Teubler, Managing Director, Inkspot



Recycling Times informs, educates, and nurtures the global printer consumables industry innovatively through an integrated broadcast, print, digital and social media strategy. As such, we honor and respect the intellectual property of all businesses and individuals. Consequently, we take a zero tolerance position to the manufacture, distribution and sale of patent infringing and counterfeit printer cartridges and components. We continue to strive to avoid promoting such in our advertisements, articles and editorial content.

All rights reserved. ©March 2016 by Recycling Times Media Corporation. The contents are not to be copied or republished without official written consent.

The view of the writers and columnists in Recycling Times do not necessarily reflect the official position and views of Recycling Times Media Corporation. They are published to encourage thinking and discussion among and between the aftermarket and OEM imaging sectors.

Readers should apply due diligence when doing business with any advertiser or company listed in this publication.

A close-up photograph of a person's hand holding a fountain pen, writing on a document. The person is wearing a dark suit jacket and a white shirt. The background is blurred, showing other people in suits. The lighting is dramatic, highlighting the hand and the pen.

# a SURV

## GUIDE TO INVEST

Part I: The International Trade Commission and the  
cartridge remanufacture

Merritt R. Blakeslee, The Blakeslee Law Firm

# IVOR'S

## TO SECTION 337

### STIGATIONS

ink and toner  
manufacturing industry

and ITC General Exclusion  
Orders

The ink and toner cartridge remanufacturing industry has, for many years, been a battleground, with the original equipment manufacturers (OEMs) seeking to prevent third party remanufacturers from selling remanufactured and compatible cartridges (remans and compatibles) in the consumables aftermarket in competition with the OEMs' own replacement cartridges.

To combat this third party competition, the OEMs have developed extensive patent portfolios covering their cartridges and have sought to bar the sale in the U.S. market of third party remans and compatibles on the ground that these violate the OEM's patent rights. While the OEMs have in some cases filed patent infringement litigation in

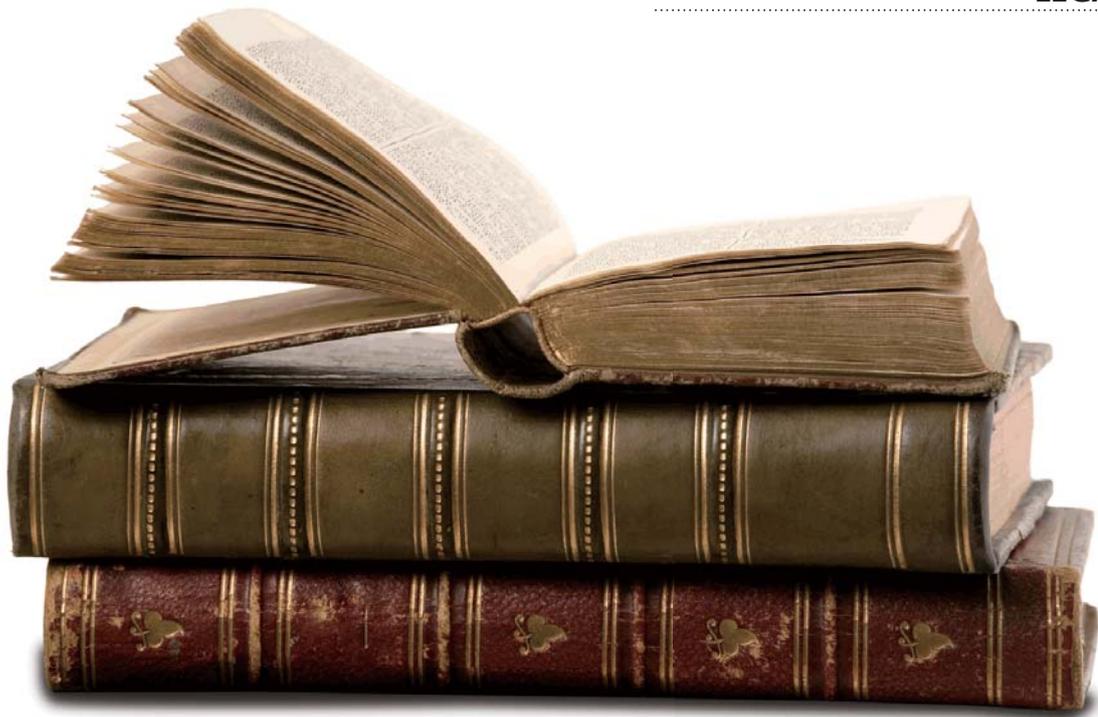
This article is a user's guide for those who find themselves embroiled in litigation, as well as for those who, not having been made a party to the investigation, nevertheless find themselves subject to the injunction issued at the end of the investigation.

It discusses not only the mechanics of the 337 investigation but, equally important, the measures that a third party seller must adopt in order to continue to sell legally into the U.S. market in the new legal environment created by a successful 337 investigation.

Its intended audience is not the OEMs who are likely to file a 337 investigation but the third party manufacturers, exporters, importers, and resellers whose aftermarket cartridges are the target of the patent infringement allegations lodged in, and the injunctions that flow from, the investigation.

So, what do you need to know if you are named as a defendant in an ITC 337 investigation? Part II will answer that next month.

And, what do you need to know in order to continue to operate legally after the ITC issues a general exclusion order or other injunction covering your products? Good question. That will follow in Part III.



federal district court, more often they have taken advantage of the specialized forum for patent infringement litigation provided by the U.S. International Trade Commission (ITC) in Washington, D.C. Indeed, since 2006, four OEMs – Epson, Hewlett Packard, Lexmark, and Canon have requested a total of eight ITC patent infringement litigations, called 337 investigations because they are authorized by Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337.

So why is the ITC the forum of choice for OEMs in our industry? Most patent infringement litigation in the United States is filed in the federal district courts. The ITC, which has developed into a forum that deals almost exclusively with patent infringement, is the only court of its kind in the United States, one whose jurisdiction, authority, and rules differ significantly from that/those of the federal district courts. Legally speaking, an ITC 337 investigation is a strange creature, lacking certain features normally associated with patent infringement litigation in federal district court (no monetary damages are available in a 337 investigation) while possessing other features absent from patent infringement litigation in federal district court (limited jurisdiction, exceptional

injunctive powers). The special powers and peculiar features of the ITC dovetail neatly with the characteristics of the ink and toner cartridge aftermarket, making 337 litigation an ideal vehicle for OEMs seeking to prevent the loss of market share to third party remanufacturers.

First, the ITC has jurisdiction only over products that are imported into the United States. But since nearly all remans and compatibles are manufactured abroad and

### A 337 INVESTIGATION RESEMBLES IN CERTAIN RESPECTS A CLASS ACTION LAW SUIT IN FEDERAL DISTRICT COURT.

subsequently imported, this limitation on the ITC's powers is not an impediment to the complainant's objectives.

Second, while a federal district court plaintiff must, generally speaking, file a separate law suit against each defendant it accuses of infringing its patent, at the ITC a plaintiff (called a complainant) has the ability to name as defendants (called respondents) a large number of accused infringers. In this sense, a 337 investigation

resembles in certain respects a class action law suit in federal district court. This is a vital advantage for an OEM who faces competition from a large number of manufacturers, exporters, importers, and resellers of aftermarket cartridges.

Third, in federal district court litigation it is notoriously difficult to bring suit against a foreign entity (because of the difficulty of meeting the requirements for showing that the U.S. court has personal

jurisdiction over the defendant).

And even if the plaintiff is successful in making the foreign entity a party to the litigation, the plaintiff will encounter further, significant obstacles in prosecuting the litigation successfully, chiefly because of the difficulty of taking discovery outside of the United States. These twin obstacles are simply non-existent at the

ITC. The ITC's jurisdiction (called in rem jurisdiction) is predicated upon the importation of goods, not upon the connection of the defendant with the federal district where the litigation is brought (called in personam jurisdiction). And the ITC's rules, unlike those governing the federal district courts, do not mandate special procedures for serving the foreign respondent with the complaint or for taking discovery outside of the United



Merritt R. Blakeslee has practiced in the fields of international law and international trade regulation since 1991. His practice focuses on international trade and specifically on disputes lying at the intersection between international trade and intellectual property law. His principal practice areas include Section 337 investigations at the International Trade Commission; Customs counseling, enforcement, and litigation; anticounterfeiting and trademark protection; antidumping and countervailing duty investigations; and export controls.

States. These features of ITC litigation are perfectly adapted to the ink and toner cartridge industry, where, as noted, the manufacturers and exporters are largely located outside of the United States and would be difficult to join in federal district court litigation.

Fourth, while the ITC lacks the authority to award monetary damages to a successful complainant, it possesses extraordinary injunctive powers, powers that are unmatched by the federal district courts. If the ITC determines that certain imported products violate the patent (or other intellectual property) rights of the complainant, it has the authority to issue an injunction (called an exclusion order) barring any future importation of the infringing products. U.S. Customs and Border Protection (CBP) is responsible for enforcing ITC exclusion orders by preventing infringing products from entering the United States. When CBP detains a shipment of products subject to an ITC exclusion order at a U.S. port of entry, it “excludes” the shipment, that it, it requires that it be re-exported. In addition, the ITC has the authority to issue a general exclusion order, that is, an exclusion order

directed not just against the imported products of a respondent who participated in the 337 investigation and whose products were found to be infringing. A general exclusion order is operates to bar the importation of any infringing imported product, regardless of whether its manufacturer, importer, or reseller was a party to the ITC investigation. An ITC

## AN ITC GENERAL EXCLUSION ORDER IS A REMEDY OF ASTONISHING BREADTH AND POWER.

general exclusion order is a remedy of astonishing breadth and power. There is no equivalent remedy in the federal district courts. And while an ITC general exclusion order is intended to be an extraordinary remedy used only in exceptional cases, it has become the norm in 337 investigations in the ink and toner cartridge industry. And here again is a peculiarity of ITC litigation that, from the complainant’s perspective, fits perfectly the characteristics of the

remanufacturing industry, with its host of small and medium-sized players, whose sheer numbers would elude any injunction less comprehensive than a general exclusion order.

Thus, it is hardly surprising that the OEMs have come to rely on ITC 337 investigations as their preferred legal vehicle for challenging the aftermarket remans and compatibles that seek to displace the OEMs’ replacement cartridges.

The second part of this article will discuss the mechanics of a 337 investigation, and what a respondent must do to ensure the best possible outcome for itself, its affiliates, and its customers. The third and last part of this article will discuss the steps that a company in the reman/compatible business must do to ensure that it can continue to participate profitably and legally in the U.S. market following the issuance of an ITC general exclusion order, and of the other injunctions and orders within the authority of the ITC – limited exclusion orders, cease-and-desist orders, and seizure and forfeiture orders. ■