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# What does Static Control's victory over Lexmark® mean?

## Prebate ruled *Invalid!*

Federal Court ruling over prebate means:

Rechargers can now remanufacture prebate cartridges without fear of being sued by Lexmark® for patent infringement

No other OEM can use Lexmark's® Prebate Program template blessed by a court decision

The Static Control victory means that cartridge remanufacturing can now be seen as a long term profitable and viable industry

READ  
THE FULL  
STORY

Turn the page to see  
what would have happened if  
Static Control had lost!



**Static Control**

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# What would have happened if Lexmark® had won!

## Prebate ruled *Valid* program under patent law

Static Control loses DMCA argument  
Static Control loses \$ 92 million lawsuit  
Static Control files for bankruptcy

Other OEM's have a court enforced legal precedent to  
prohibit rechargers from remanufacturing their cartridges

Other OEM's now can use the Lexmark® case as a template  
to destroy the remanufacturing industry

The remanufacturing industry has no future

# Thank goodness Lexmark® lost and Static Control won!

We humbly ask you as a remanufacturer for your parts and supplies business  
*Your success is our success!*



**Static Control**

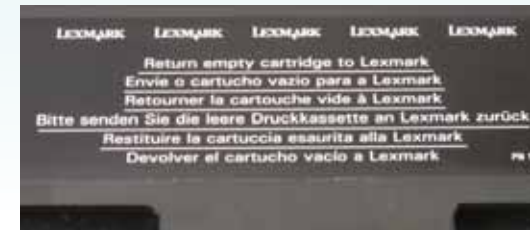
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## WHAT IS PREBATE?

Most in this industry have no idea exactly what was at stake when Lexmark® sued Static Control in 2002.

For the first time Static Control unfolds the full story, to inform, to dispel untruths that have inevitably surfaced in the six and a half years of litigation and to put the record straight.



Lexmark's® box, return label and instructions for prebate cartridges



Lets start at the beginning. What is prebate? We say, what *is* prebate because Lexmark® still offers a prebate cartridge to its customer base, despite Judge Gregory Van Tatenhove's ruling on March 31<sup>st</sup> 2009, that Lexmark's® Prebate Program is invalid under patent law, and they have no patent rights on the prebate cartridge after its first sale. Prebate is simply the opposite of rebate. An end user buying laser cartridges from Lexmark® theoretically has a choice. Buy a prebate laser cartridge or a non prebate laser cartridge. They are identical except for the label and the price. The prebate cartridge is on average \$52.50 cheaper than the non prebate cartridge. However, the end user must send the empty prebate cartridge back to Lexmark®. Lexmark® claimed restrictive patent rights on the prebate cartridge after its first sale and even after its full use prohibiting remanufacturing of the empty cartridge. Lexmark® could sue remanufacturers for recycling prebate cartridges under patent infringement law.

The result of Lexmark's® Prebate Program, via a label on the cartridge claiming Lexmark® have a right to prevent it from being remanufactured, simply led rechargers to become fearful in recycling empty prebate cartridges at the risk of being sued by Lexmark®.

Static Control has been in litigation with Lexmark® for over 6 years, and it is not over yet. However we can categorically inform you that Prebate is dead, Judge Van Tatenhove of the United States District Court, Eastern District ruled on March 31<sup>st</sup> 2009, that " Lexmark's® attempt to impose single use restrictions on the cartridges, fails. The prebate program is *invalid* under patent law."

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**There have been many legal battles and successes during the six and a half years of litigation.**

On December 30<sup>th</sup> of 2002 Lexmark® filed suit against Static Control leaving just 10 days to prepare for the January 10<sup>th</sup> 2003 first preliminary hearing. Lexmark® claimed that Static Control's chips, sold for use on remanufactured Lexmark® cartridges, violated their copyright using the *Digital Millennium Copyright Act* (DMCA) of 1998. The DMCA was instituted to protect book authors and musicians against pirated copies of books, CDs and DVDs over the internet, not OEM's who wanted to protect their original supplies business, in our opinion.

Lexmark® filed for an injunction, preventing Static Control from making or selling chips. This was subsequently granted by the court. Static Control was prohibited from making and selling Lexmark® replacement chips for more than a year as a result.



**In July 2004 Static Control defeated the copyright and DMCA claims. The U.S. Copyright Office said the DMCA copyright did not apply to Lexmark® and the injunction was lifted.**

**But what was at stake here?**

Had Static Control lost this DMCA battle, these same strategies, in our opinion, could have been used by other printer OEM's. Firstly, to protect their own original supplies business and secondly, to ensure they remained competitive in the marketplace against Lexmark®.

After losing the DMCA claim, Lexmark® sued Static Control in 2004 for patent infringement relating to the use of prebate in order to stop rechargers from remanufacturing Lexmark® prebate cartridges. Millions of documents were provided to lawyers to defend our position. Thousands of questions were asked and Static Control's staff had to attend court sessions and give depositions and testimony. Lexmark® sued Static Control for \$92 million, an amount that would have bankrupted Static Control.

**This lawsuit was trying to put the remanufacturing industry out of business.**

**June 2007 was the month in which a jury trial was held to hear the case.** The location was Frankfort, Kentucky, about 30 miles outside Lexington, home of Lexmark®. Following six weeks of hearing, the jury was directed by Judge Gregory Van Tatenhove to consider 49 questions. After due deliberation, the jury responded with 48 answers that were in Static Control's favor. Static Control did not contest the 49<sup>th</sup> as it was irrelevant to our defense and would have prolonged the legal procedures. However, the judge did not offer an immediate verdict, instead he awaited the outcome of the Supreme Court's case between Quanta® vs. LG® Electronics.

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**On March 31st, 2009 Judge Van Tatenhove of the United States District Court, Eastern District ruled:**

***Prebate is invalid under patent law.***

**A remanufacturer therefore cannot be sued by Lexmark® for use of a prebate cartridge under patent law.**

The Supreme Court decided in the Quanta® vs. LG® Electronics case that LG® Electronic's patent rights were exhausted after the first sale. This clearly meant that **prebate was dead** as the first sale was to the end user and the patent was exhausted by the end user.

So, **prebate is dead**, and Lexmark® cannot use single use restrictive patent rights to prohibit a remanufacturer from recycling a used prebate cartridge. IBM® prebate cartridges, Dell® prebate cartridges, Unisys® prebate cartridges and Toshiba® prebate cartridges are also included.

**After six and a half years and almost \$30 million in costs Static Control has:**

***Defeated the DMCA copyright claim***  
***Defeated the injunction***  
***Defeated the \$92 million law suit***

**And...**

***Defeated Prebate!***



Ed Swartz  
President and CEO  
Static Control Components, Inc.

**Many would have caved in long ago.**

Ed Swartz (President and CEO of Static Control) is no quitter, he is a winner, with firm resolve and a faith in fighting for what is right. Ed Swartz has had to work hard since the age of 10; he will be 74 this year. He knows no other way to be successful. He worked hard to win the victories not just for the sake of Static Control but also for the sake and the survival of the remanufacturing industry.

**Had Static Control lost the DMCA, it would have changed the aftermarket dynamics and caused this industry to eventually go out of business.**

Had Static Control lost the patent infringement lawsuit of \$92,000,000 dollars, Static Control would not be in business today and the recycling industry would have lost a world renown technology leader, and as a result not had a future when other OEM's adopted Lexmark's® program. Had Static Control lost the prebate issue, other OEM's would have, in our opinion, followed Lexmark's® prebate lead with legal precedent, to protect their original supplies business. It would have meant the beginning of the end for cartridge remanufacturing.



**6+ Years**  
**\$30,000,000**

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## A HUGE PROFIT OPPORTUNITY Now is the time!

### Let's look at profitability of Lexmark® cartridges compared to HP® cartridges

We have compared two similar printer models from each manufacturer. The chart below shows the OEM prices for each cartridge, a typical price you would pay for a remanufactured cartridge and what the component costs are (including drum, wiper blade, toner, chip, doctor bar or blade). Finally, the empty cartridge cost, labor and what is left for profit are shown.

This example was made using the highest cost of components, not taking *volume* purchases into account, and using *lower* finished good prices. So, profitability shown here is easily achieved and somewhat reserved.



The aftermarket share of Lexmark® cartridges will grow substantially over the coming months, as it rightly should.

	Higher Speed Model		Lower Speed Model	
	Lexmark® T630	HP® 4515	Lexmark® E350	HP® 1505
OEM Selling Price	388.00	252.48	197.08	63.76
Aftermarket Selling Price	144.00	119.00	93.99	35.99
Component Cost	20.98	29.15	33.55	17.30
Empty Cost	10.00	12.00	7.00	6.00
Labor Cost	3.75	5.25	2.25	1.00
Total Cost	34.73	46.40	42.80	24.30
<b>Profit Potential</b>	<b>\$109.27</b>	<b>\$72.60</b>	<b>\$51.19</b>	<b>\$11.69</b>

Lexmark® Remanufactured Cartridge Profitability Comparison

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## LEXMARK® CARTRIDGE REMANUFACTURING What you need is what we provide

Static Control is the global technology leader in the laser and ink jet cartridge remanufacturing industry.

Headquartered in Sanford, North Carolina, USA, Static Control manufactures more than 8,000 component parts required for the aftermarket. Static Control serves customers in 163 countries from 7 strategically located distribution centers. Static Control today offers more than 14,000 products, the broadest product catalogue available to the remanufacturing industry.

*Training and education programs are vital to gaining the technical knowledge to become a successful remanufacturer.* Static Control's webinar programs are designed to communicate to our customers and offer VIP executive briefings to owners, principles and commercial managers and also technical webinars for step by step instructions, all in multiple languages and repeated frequently. See our web site at [www.scc-inc.com](http://www.scc-inc.com) for details.

Webinar technical sessions for Lexmark® cartridges are available. Please call any Static Control representative at any worldwide office for further information. Contact numbers are located on the back page.

- You can count on Static Control for support.
- We want to count on *you* for your support.

We have all the Lexmark® products you need to become successful in remanufacturing Lexmark® toner cartridges. Static Control has the best imaging systems with the best performance and yields. We provide technical support and technical training programs that are free to our customers and we will be competitively priced. Static Control defeated

Lexmark's® attempt to use DMCA. Static Control defeated Lexmark's attempt to sue our company for \$92 million dollars for patent infringement. Static Control defeated prebate lifting a veiled threat of legal action imposed by Lexmark® on those who recycled a used prebate cartridge. Now, no other OEM can claim single use restrictive patent rights and follow Lexmark's® lead. **Prebate is dead.**

**Static Control has spent almost \$30,000,000 dollars defending itself and by association the industry from Lexmark®.**

Please seriously consider Static Control for all your parts and supplies requirements. We spent a great deal of money and time to capture the opportunities for remanufacturers for the long term. We will keep you competitively priced and we will provide the technical support and education programs needed using our very latest webinar technology.

Thank you for your continued support,  
**... your business is important to us!**



### Static Control Educational Webinars

Ask your Static Control representative for more information

# Global Operations

## Sales Offices

Argentina  
Australia  
Belgium  
Brazil  
Chile  
Colombia  
Hong Kong  
India  
Italy  
Japan  
Mexico  
New Zealand  
People's Republic of China  
Peru  
Russia  
South Africa  
South Korea  
Spain  
Thailand  
Ukraine  
United Arab Emirates  
United Kingdom  
United States of America

## Distribution Centers

Canada  
Hong Kong  
South Africa  
United Arab Emirates  
United Kingdom  
United States of America

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throughout our offices



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