

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN AUTOMATED MEDIA
LIBRARY DEVICES**

Investigation No. 337-TA-746

**NOTICE OF COMMISSION DECISION TO EXTEND THE TARGET DATE FOR
COMPLETION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation to October 25, 2012.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on November 24, 2010, based upon a complaint filed by Overland Storage of San Diego, California ("Overland") on October 19, 2010, and supplemented on November 9, 2010. *75 Fed. Reg.* 71735 (Nov. 24, 2010). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337) by reason of infringement of certain claims of U.S. Patent Nos. 6,328,766 ("the '766 patent") and 6,353,581 ("the '581 patent") (collectively, "the Asserted Patents"). The notice of investigation named as respondents BDT AG of Rottweil, Germany, BDT Solutions GmbH & Co. KG of Rottweil, Germany, BDT Automation Technology (Zhuhai FTZ), Co., Ltd. of Zhuhai Guandang, China, BDT de Mexico, S. de R.L. de C.V., of Jalisco, Mexico, and BDT Products, Inc., of Irvine, California; Dell Inc. of Round Rock, Texas ("Dell"); and International Business Machines Corp. of Armonk, New York ("IBM"). The Office of Unfair Import Investigations was not named as a party.

The ALJ granted BDT Solutions GmbH & Co. KG's motion for summary determination of no violation on September 2, 2011. *See* Notice of Commission Determination Not to Review

an Initial Determination Granting BDT Solutions' Motion for Summary Determination of No Violation of Section 337 (Sep. 21, 2011). On December 5, 2011, the ALJ granted a joint motion to terminate IBM and Dell from the investigation. *See* Notice of Commission Determination to Affirm an Initial Determination Granting a Joint Motion For Termination of the Investigation by Settlement as to Respondents International Business Machines Corp. and Dell Inc. (Jan. 27, 2012). BDT AG, BDT Automation Technology (Zhuhai FTZ), Co., Ltd., BDT de Mexico, S. de R.L. de C.V., and BDT Products, Inc. (collectively, "the BDT Respondents") remain as respondents in the investigation.

On June 20, 2012, the ALJ issued his final ID, finding no violation of Section 337 by the BDT Respondents with respect to any of the asserted claims. On July 5, 2012, the BDT Respondents filed a joint petition for review of certain aspects of the final ID's findings concerning infringement of the '766 patent, and invalidity and patent exhaustion with respect to the Asserted Patents. Also on July 5, 2012, Overland filed a petition for review of certain aspects of the final ID's findings concerning claim construction, invalidity and domestic industry with respect to the '581 patent, and infringement of the Asserted Patents. On July 13, 2012, Overland and the BDT Respondents each filed a response.

On August 20, 2012, the Commission determined to review the final ID in part and requested briefing on several issues it determined to review, and on remedy, the public interest and bonding. *77 Fed. Reg.* 51573 (August 24, 2012). Specifically, with respect to the '766 patent, the Commission determined to review the ALJ's finding that Overland did not prove the BDT Respondents possessed the requisite knowledge required for contributory infringement. The Commission also determined to review the ALJ's finding that the IBM documents related to certain IBM tape libraries do not qualify as printed publications under 35 U.S.C. § 102, and the ALJ's invalidity analysis concerning the IBM documents that are found to qualify as printed publications. With respect to the '581 patent, the Commission determined to review the ALJ's construction of the claim term "linear array," and the ALJ's findings on infringement and invalidity in view of the proper construction of that claim term. The Commission also determined to review the ALJ's finding that no domestic industry exists with respect to the '581 patent. The Commission further determined to review the ALJ's rejection of the BDT Respondents' patent exhaustion defense. The Commission determined not to review the remaining issues decided in the ID.

On September 4, 2012, the parties filed written submissions on the issues under review, remedy, the public interest, and bonding. On September 12, 2012, the parties filed reply briefs. The Commission did not receive any non-party submissions.

The Commission has determined to extend the target date for completion of this investigation to October 25, 2012.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.50).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 22, 2012