

**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'S DETERMINATION TO GRANT COMPLAINANT'S
PETITION FOR RECONSIDERATION; GRANT THE BDT RESPONDENTS' MOTION
FOR LEAVE TO FILE OUT OF TIME A PETITION FOR RECONSIDERATION;
DENY THE BDT RESPONDENTS' PETITION FOR RECONSIDERATION; DENY
COMPLAINANT'S MOTION FOR LEAVE TO FILE A REPLY; AND REMAND AN
ISSUE AS TO U.S. PATENT NO. 6,353,581**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to grant the complainant's petition for reconsideration, grant the respondents' motion for leave to file out of time a petition for reconsideration, deny the respondents' petition for reconsideration, deny the complainant's motion for leave to file a reply, and remand an issue to the presiding administrative law judge ("ALJ") with respect to U.S. Patent No. 6,353,581 ("the '581 patent").

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, Inc. 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 the '766 patent and 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; 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). The Commission determined to review various issues with respect to the ’766 patent. 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.

On October 25, 2012, the Commission determined to remand the investigation to the ALJ with respect to the ’766 and the ’581 patents, and to extend the target date for completion of this investigation to March 25, 2013. Specifically, with respect to the ’581 patent, the Commission found that the limitation “linear array” as recited in claims 1, 2, 5, 6, 7, 9, 10, 12, and 16 meant “media element storage locations [or cells] arranged in one or more straight lines.” The

Commission affirmed, with modified reasoning, the ALJ's finding of noninfringement. The Commission also affirmed, with modified reasoning, the ALJ's finding that the '581 patent was not shown to be invalid. In addition, the Commission reversed the ALJ's finding that Overland has failed to satisfy the technical prong of the domestic industry requirement. Accordingly, the Commission remanded the investigation to the ALJ to consider whether Overland has satisfied the economic prong of the domestic industry requirement.

On November 8, 2012, Overland filed a petition for reconsideration of the Commission's determination that the BDT Respondents did not infringe claims 10, 12, and 16 of the '581 patent. On November 13, 2012, the BDT Respondents filed a motion for leave to file out of time a petition for reconsideration of the Commission's determination that the BDT Respondents waived consideration of certain testimonies of Mr. Fago and Mr. Siegle in support of a finding of invalidity of the '581 patent. On November 16, 2012, the BDT Respondents filed their opposition to Overland's petition for reconsideration. Overland did not file an opposition to the BDT Respondents' motion or petition. On November 21, 2012, Overland filed a motion for leave to file a reply in support of its petition for reconsideration. On November 28, 2012, the BDT Respondents filed their opposition to Overland's motion for leave to file a reply.

Having considered the matter, the Commission determines to grant Overland's petition for reconsideration in view of the Commission's determination that the Accused Products meet its modified construction of the term "linear array." A revised Commission Opinion will issue at a later date. Accordingly, in addition to the issues remanded to the ALJ in the Commission's Order dated October 25, 2012, the Commission further remands the investigation to the ALJ to make all findings regarding direct infringement and, if necessary, indirect infringement, of claims 10, 12, and 16 based on the existing record. The Commission also determines to deny Overland's motion for leave to file a reply.

The Commission finds good and sufficient reason to waive the 14-day limit of rule 210.47 and grant the BDT Respondents' motion for leave to file out of time a petition for reconsideration. Having considered the BDT Respondents' petition for reconsideration, the Commission determines that the petition does not comply with 19 C.F.R. § 210.47 because it is not confined to "new questions" raised by the Commission determination and for which the BDT Respondents had no opportunity to submit arguments.

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.



Lisa R. Barton
Acting Secretary to the Commission

Issued: December 11, 2012