

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DOCUMENT CAMERAS
AND SOFTWARE FOR USE
THEREWITH**

Investigation No. 337-TA-967

**NOTICE OF THE COMMISSION'S DETERMINATION TO REVIEW
AN INITIAL DETERMINATION AMENDING THE NOTICE OF INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 15) amending the notice of investigation and terminating U.S. Design Patent No. D715,300 ("the 'D300 patent").

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2737. 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: The Commission instituted this investigation on September 24, 2015, based on a complaint filed on behalf of Pathway Innovations & Technologies, Inc. of San Diego, California ("Complainant"). 80 *Fed. Reg.* 57642 (September 24, 2015). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, or sale within the United States after importation of certain document cameras and software for use therewith by reason of infringement of certain claims of U.S. Design Patent No. D647,906; U.S. Design Patent No.

D674,389; the 'D300 patent; and U.S. Patent No. 8,508,751. The Commission's notice of investigation named the following respondents: Recordex USA, Inc., of Long Island City, New York ("Recordex"); QOMO HiteVision, LLC, of Wixom, Michigan ("QOMO"); and Adesso, Inc. of Walnut, California ("Adesso"). The Office of Unfair Import Investigations was named as a party but has subsequently withdrawn from the investigation. Adesso was terminated based on a consent order stipulation and consent order. Order No. 5 (unreviewed) (Nov. 23, 2015). QOMO was found to be in default. Order No. 10 (unreviewed) (Dec. 7, 2015).

On November 18, 2015, Complainant filed a motion to amend the complaint to drop the 'D300 patent asserted against Recordex and to add allegations of induced infringement for Recordex. Complainant asserted that amendment to the notice of investigation was not necessary because "the respondents remain the same, the asserted patent claims remain the same, and the accused articles of commerce remain the same." Motion at 1. On November 23, 2015, Recordex filed a response stating that it did not oppose the motion but explained that it did not agree with the alleged good cause to amend the complaint. On November 25, 2015, Complainant filed a reply in support of its motion.

On December 17, 2015, the ALJ granted the motion to amend the complaint. Order No. 15 at 2-3. However, the ALJ did not agree with Complainant's assertion the scope of the investigation would not change. *Id.* Specifically, the ALJ found that because the 'D300 patent is effectively being terminated from the investigation, the asserted patent claims do not remain the same. *Id.* at 2. Therefore, the ALJ found that the notice of investigation should be amended to reflect this change. *Id.* at 2-3. No petitions for review were filed.

The Commission has determined to review the ID. Complainant's motion to amend the complaint to remove the 'D300 patent infringement allegations against Recordex effectively withdraws the 'D300 patent from the investigation. Motions to withdraw a patent must be filed under Commission Rule 210.21(a). Rule 210.21(a) requires that the party withdrawing a patent state that "there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission." Complainant's motion fails to meet this requirement.

Complainant is directed to file a submission, with regard to the 'D300 patent, that complies with Commission Rule 210.21(a) by February 2, 2016.

WRITTEN SUBMISSIONS: Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-967") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. Part 210).

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', with a stylized flourish at the end.

Lisa R. Barton
Secretary to the Commission

Issued: January 19, 2016