

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN COMPUTER FORENSIC
DEVICES AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-799

**NOTICE OF COMMISSION DETERMINATION TO REVIEW AND REMAND AN
INITIAL DETERMINATION TO AMEND THE COMPLAINT AND 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 an initial determination (“ID”) (Order No. 16) granting a motion to amend the complaint and notice of investigation in the above captioned investigation. Upon review, the motion is remanded to the presiding administrative law judge for additional consideration.

FOR FURTHER INFORMATION: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2661. 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 (<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 August 29, 2011, based on a complaint filed by MyKey Technology Inc. of Gaithersburg, Maryland (“MyKey”). 76 *Fed. Reg.* 53695 (Aug. 29, 2011). The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computer forensic devices and products containing same by reason of infringement of two United States patents. The original complaint named numerous respondents, including Diskology, Inc., of Chatsworth, California.

On November 8, 2011, MyKey filed a motion to amend the complaint and notice of investigation to substitute Diskology, LLC, of Lincoln, California, for named respondent Diskology, Inc., of Chatsworth, California. In its motion MyKey stated that it discovered during the course of the investigation that Diskology, Inc. had dissolved. On November 10, 2011, the Commission

investigative attorney (“IA”) filed a response supporting the motion to amend, based on the assertions in MyKey’s motion. No other responses to the motion were received.

On November 22, 2011, the ALJ issued the subject ID (Order No. 16) granting the motion to amend the complaint and notice of investigation. The ALJ found good cause for the amendments because MyKey had stated that it did not know prior to filing its complaint that Diskology, Inc. had dissolved. Petitions for review of the ID were due by December 1, 2011, and no petitions were filed by that date.

On December 7, 2011, MyKey sent a letter to the presiding administrative law judge (“ALJ”) “to clarify the record” relating to MyKey’s motion to amend the complaint. The letter states that MyKey was aware prior to filing the complaint that Diskology, Inc. had dissolved. The factual statements in MyKey’s letter are contrary to the statements in MyKey’s motion, which states that MyKey discovered the dissolution during the course of the investigation.

On December 13, 2011, the IA filed a motion for leave to petition out of time for review of the ID. The IA argues that a complaint may be amended for good cause, but the factual statements that the ALJ relied upon for good cause when granting the motion are now known to be incorrect. The IA argues that the inaccuracies in MyKey’s motion were only revealed after the deadline for petitions for review of the ID, and therefore good cause exists to accept the IA’s petition out of time.

The Commission has reviewed the record of the investigation, including the subject ID, MyKey’s motion to amend, MyKey’s letter dated December 7, 2011, and the IA’s motion for leave to petition out of time for review of the ID. The Commission has determined to review the ID on its own initiative pursuant to 19 C.F.R. § 210.44 because it appears that, through no fault of the ALJ, an error is present in the initial determination. Because the Commission has determined to review the ID on its own initiative, the Commission has determined to deny as moot the motion by the IA for leave to petition for review out of time. Upon review of the ID, the Commission has determined to vacate the ID and remand to the ALJ MyKey’s motion to amend the complaint and notice of investigation. Upon remand, the ALJ shall consider the factual statements in MyKey’s letter of December 7, 2011, when determining whether good cause exists for the amendments proposed by MyKey. The ALJ may request any additional briefing he deems necessary to resolve the motion to amend.

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.

/s/
James R. Holbein
Secretary to the Commission

Issued: December 22, 2011