

**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 REVERSE
AN INITIAL DETERMINATION AMENDING THE NOTICE OF INVESTIGATION;
TERMINATION OF U.S. DESIGN PATENT NO. D715,300**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reverse the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 15) amending the notice of investigation, and affirm the ALJ's determination to terminate 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 finding that good cause existed to amend the complaint to add an allegation of induced infringement against Recordex and to drop the 'D300 patent. Order No. 15 at 2-3. The ALJ did not agree with Complainant's assertion that the "asserted patent claims remain the same" because the 'D300 patent was being dropped. *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.

Complainant's motion was not in compliance with Rule 210.21(a) which requires that the moving party state "there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there 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." On January 19, 2016, the Commission determined to review the ID and requested that Complainant file a document in compliance with Commission Rule 210.21(a).

On February 2, 2016, Complainant submitted a motion to withdraw the complaint as to the 'D300 patent. In this motion, Complainant represented that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. Recordex does not oppose the motion.

It is Commission practice not to amend the notice of investigation when terminating patents from an investigation. Accordingly, the Commission terminates the 'D300 patent from the investigation, but reverses the ALJ's determination to amend the notice of investigation. 19 C.F.R. §210.21(a). The portion of Order No. 15 amending the complaint to add the allegations of induced infringement is not before the Commission. *See* 19 C.F.R. §210.14(b)(1).

On February 11, 2016, the ALJ issued Order No. 17 terminating the 'D300 patent. The Commission's final disposition of Order No. 15 herein renders ALJ Order No. 17 moot.

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: February 25, 2016