

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-853]

Certain Wireless Consumer Electronics Devices and Components Thereof; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 24, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Technology Properties Limited LLC of Cupertino, California, Phoenix Digital Solutions LLC of Cupertino, California, and Patriot Scientific Corporation of Carlsbad, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless consumer electronics devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,809,336 ("the '336 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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 SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (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>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations,

U.S. International Trade Commission, telephone (202) 205-2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 20, 2012, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless consumer electronics devices and components thereof that infringe one or more of claims 1, 6, 7, 9-11, and 13-16 of the '336 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:
Technology Properties Limited LLC, 20883 Stevens Creek Blvd., Suite 100, Cupertino, CA 95014.
Phoenix Digital Solutions LLC, 20883 Stevens Creek Blvd., Suite 100, Cupertino, CA 95014.
Patriot Scientific Corporation, 701 Palomar Airport Rd., Suite 170, Carlsbad, CA 92011.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:
Acer Inc., 8F, No. 88, Section 1, Hsin Tai Wu Road, Hsichih 221, Taipei Hsien, Taiwan.

Acer America Corporation, 333 West San Carlos Street, San Jose, CA 95110.
Amazon.com, Inc., 410 Terry Avenue North, Seattle, WA 98109-5210.

Barnes & Noble, Inc., 122 Fifth Avenue, New York, NY 10011.

Garmin Ltd., Mühllentalstrasse 2, 8200 Schaffhausen, Switzerland.

Garmin International, Inc., 1200 East 151st Street, Olathe, KS 66062.

Garmin USA, Inc., 1200 East 151st Street, Olathe, KS 66062.

HTC Corporation, 23 Xinghua Road, Taoyuan 330, Taiwan.

HTC America, 13920 SE Eastgate Way, Suite #200, Bellevue, WA 98005.

Huawei Technologies Co., Ltd., Huawei Industrial Base, Bantian Longgang, Shenzhen 518129, China.

Huawei North America, 5700 Tennyson Parkway, Suite 500, Plano, TX 75024.

Kyocera Corporation, 6 Takeda Tobadono-cho, Fushimi-ku, Kyoto 612-8501, Japan.

Kyocera Communications, Inc., 9520 Towne Centre Drive, San Diego, CA 92121.

LG Electronics, Inc., LG Twin Towers, 20 Yeouido-dong, Yeongdeungpo-gu, Seoul 150-721, Republic of Korea.

LG Electronics U.S.A., Inc., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.

Nintendo Co., Ltd., 11-1 Kamitoba Hokotate-cho, Minami-Ku, Kyoto 601-8501, Japan.

Nintendo of America, Inc., 4600 150th Avenue NE., Redmond, WA 98052.

Novatel Wireless, Inc., 9645 Scranton Road Suite #205, San Diego, CA 92121.

Samsung Electronics Co., Ltd., Samsung Main Building, 250, Taepyeongno 2-ga, Jung-gu, Seoul 100-742, Republic of Korea.

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, NJ 07660.

Sierra Wireless, Inc., 13811 Wireless Way, Richmond, British Columbia V6V 3A4, Canada.

Sierra Wireless America, Inc., 2200 Faraday Avenue, Suite 150, Carlsbad, CA 92008.

ZTE Corporation, ZTE Plaza, Keji South Road, Hi & New Tech Industrial Park, Nanshan District, Shenzhen 518057, China.

ZTE (USA) Inc., 2425 N. Central Expressway, Suite 323, Richardson, TX 75080.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in

accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: Tuesday, August 21, 2012.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2012–20835 Filed 8–23–12; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–746]

Certain Automated Media Library Devices; Determination To Review in Part a Final Initial Determination; Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on June 20, 2012, finding no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 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 SW., Washington, DC 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 FR 71735 (Nov. 24, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by reason of infringement of certain claims of U.S. Patent No. 6,328,766 and U.S. Patent No. 6,353,581 (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. Specifically, the ALJ found no violation of section 337 by the BDT Respondents in connection with claims 1–3 and 7–9 of the '766 patent and claims 1–2, 5–7, 9–10, 12 and 15–16 of the '581 patent. The ALJ also found that the asserted claims were not shown to be invalid except for claim 15 of the '581 patent. The ALJ further found that a domestic industry in the United States exists that practices the '766 patent. The ALJ, however, found that a domestic industry in the United States does not exist that practices the '581 patent. The ALJ also found that the BDT Respondents are not entitled to a patent exhaustion defense.

On July 5, 2012, Overland and the BDT Respondents each filed a petition for review of the ID. On July 13, 2012, Overland and the BDT Respondents each filed a response.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ALJ's final ID in part. Specifically, with respect to the '766 patent, the Commission has determined to review the ALJ's findings on contributory infringement, validity and patent exhaustion. With respect to the '581 patent, the Commission has determined to review the ALJ's construction of the claim term “linear array,” and the ALJ's findings on infringement, validity, domestic industry and patent exhaustion.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is only interested in responses to the following questions. Each party's brief responding to the following questions should be no more than 50 pages.

1. The ALJ found that the BDT Respondents did not prove by clear and convincing evidence that the IBM 3570, 3575, 7331, 7336 and 3494 documents qualify as printed publications under 35 U.S.C. 102. For each respective IBM document, please identify all evidence in the record that supports a finding that the document was publicly accessible before the filing date of the '766 patent.

2. To the extent the IBM 3570, 7331, 7336 and 3494 documents qualify as printed publications under 35 U.S.C. 102, how does each document either alone or in combination with other prior art of record anticipate or render obvious the asserted claims of the '766