

Issued: January 27, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

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INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-460]

Certain Sortation Systems, Parts Thereof, and Products Containing Same; Notice of Violation of Section 337 of the Tariff Act of 1930 and Issuance of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation and issued a limited exclusion order.

FOR FURTHER INFORMATION CONTACT:

Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3041. Copies of the limited exclusion order, the public version of the Commission's opinion, and all other nonconfidential 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 (<http://www.usitc.gov>). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation on July 19, 2001, based upon a complaint filed on June 25, 2001, by Rapistan Systems Advertising Corp. and Siemens Dematic Corp., both of Grand Rapids, Michigan. 66 FR 38741 (July 25, 2001). Named as respondents were Vanderlande Industries Nederland BV of the Netherlands, and Vanderlande Industries of Atlanta, Georgia (collectively referred to as "Vanderlande"). Vanderlande Industries

Nederland BV of the Netherlands designs and manufactures the accused sortation systems, and Vanderlande Industries of Atlanta imports, sells, and installs the accused sortation systems.

Complainants alleged that respondents had violated section 337 by importing into the United States, selling for importation, and selling within the United States after importation certain sortation systems, or components thereof, covered by independent claims 1, 13, 23, 30, and 42 and dependent claims 2, 3, 4, 8, 9, 17, 18, 20, 22, 24, 27, 29, 33, 35, 36, 37, 39, 43, 45, 46, 47, and 49 of U.S. Patent No. 5,127, 510 ("the '510 patent'"), owned by Rapistan Systems and exclusively licensed to Siemens Dematic. On April 5, 2002, complainants filed an unopposed motion asking for the termination of the investigation with respect to claims 2, 3, 8, 9, 18, 24, 36, 37, 29, 46, 47, and 49. On May 16, 2002, the presiding administrative law judge (ALJ) granted the motion in an ID (Order No. 32) and the Commission determined not to review that ID. The claims of the "510 patent at issue were therefore claims 1, 4, 13, 17, 20, 22, 23, 27, 29, 30, 33, 35, 42, 43, and 45. The complaint further alleged that an industry in the United States exists, as required by subsection (a)(2) of section 337.

An evidentiary hearing was held on June 4-17, 2002. On October 22, 2002, the ALJ issued his final initial determination (ID), in which he determined that respondents' sortation systems, and parts thereof, infringe claims 1 and 4 of the "510 patent, and that the "510 patent is valid and enforceable. Based upon these findings and the finding that there is a domestic industry, he found a violation of section 337.

The ALJ recommended issuance of a limited exclusion order barring importation of the respondents' accused Mark 2 Posisorter sortation system and its parts and components. He recommended exempting spare parts destined for UPS's Hub 2000 facility in Louisville, Kentucky from the scope of the limited exclusion order. He also recommended a bond during the Presidential review period in the amount of 100 percent of the entered value of the infringing products.

On November 4, 2002, Vanderlande and the Commission investigative attorney (IA) petitioned for review of portions of the ALJ's final ID, and Rapistan submitted a contingent petition for review asking that the Commission review certain issues if it decided to review the ID. On November 12, 2002, Vanderlande, Rapistan, and the IA filed reply submissions.

The Commission determined to review the ID on the following issues: (1) The ID's construction of the claim limitation "contiguous, generally planar surfaces sloping downward from an upper extent of said diverting surface laterally inward and longitudinally forward or rearward" in independent claim 30, and dependent claims 33, and 35, and the infringement findings related to this claim element; and (2) the ID's findings regarding the affirmative defense of equitable estoppel.

Rapistan, Vanderlande, and the IA filed submissions on December 23, 2002, and reply submissions on December 30, 2002, addressing the two issues under review and remedy, the public interest, and bonding.

The Commission reviewed these issues and the parties' submissions and determined: (1) To modify the ALJ's construction of the limitation in claim 30 quoted above, and to find that the accused product does not meet this limitation; (2) that the elements of equitable estoppel have not been established.

The Commission also determined that the appropriate remedy consists of a limited exclusion order prohibiting the importation of the infringing sortation systems, and shoes and slats thereof, manufactured abroad by Vanderlande Industries. The Commission determined to include an exemption in the limited exclusion order for importations of spare parts for United Parcel Service's Hub 2000 facility in Louisville, Kentucky. The Commission further determined that the statutory public interest factors do not preclude the issuance of such relief. Finally, the Commission determined that during the Presidential review period importation should be permitted pursuant to a bond requirement in the amount of 100 percent of the entered value of the infringing products.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.50 of the Commission's rules of practice and procedure (19 CFR 210.50).

By order of the Commission.

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