

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN AUTOMATED MEDIA  
LIBRARY DEVICES**

**Investigation No. 337-TA-746**

**NOTICE OF COMMISSION DETERMINATION THAT  
JULY 19, 2011, INITIAL DETERMINATION IS AN ORDER  
RATHER THAN AN INITIAL DETERMINATION**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined that Order No. 19, granting-in-part a motion of respondent International Business Machines Corp. of Armonk, New York (“IBM”) for partial summary determination that U.S. Patent No. 6,328,766 is not entitled to priority to an earlier filed application and that IBM products and references are prior art, is not an initial determination (“ID”).

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2301. 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 November 24, 2010, based on a complaint filed by Overland Storage, Inc. of San Diego, California (“Overland”), as supplemented by a letter dated November 9, 2010, alleging 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 automated media library devices by reason of infringement of certain claims of U.S. Patent No. 6,328,766 (“the ‘766 patent”). 75 *Fed. Reg.* 71735-36 (Nov. 24, 2010). The complainant named BDT AG of Rottweil, Germany; BDT-Solutions GmbH & Co. KG of Rottweil, Germany; BDT Automation Technology (Zhuhai FTZ), Co., Ltd. of Guangdong, China; BDT de México, S. de R.L. de C.V. of Jalisco, Mexico; BDT Products, Inc. of Irvine, California; Dell Inc. of Round Rock, Texas; and IBM as respondents.

On June 24, 2011, respondent IBM moved for partial summary determination that (1) the '766 patent is not entitled to claim priority to U.S. Patent Application Serial No. 08/786,702 ("the '702 application") and (2) certain IBM products, and the documents describing them, qualify as prior art under 35 U.S.C. § 102(a), 102(b), or both. On July 6, 2011, Overland opposed the motion in part with respect to IBM's assertion that it is entitled to summary determination that the IBM products qualify as prior art.

On July 19, 2011, the ALJ granted-in-part the motion in an ID. Specifically, the ALJ found that the asserted claims of the '766 patent are not entitled to claim priority to the '702 application. No petitions for review of this ID were filed.

The Commission has determined that the motion should not have been granted as an ID pursuant to Commission Rule 210.42(c) (19 C.F.R. § 210.42(c)). The priority matter decided in Order No. 19 was uncontested. By operation of Commission Rule 210.31(d) (19 C.F.R. § 210.31(d)), matters admitted in response to requests for admissions are conclusively established. To the extent a ruling under Commission Rule 210.31(d) is appropriate, where uncontested, such ruling is by order rather than summary determination under Commission Rule 210.18 (19 C.F.R. § 210.18).

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 section 210.44 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.44).

By order of the Commission.

/s/  
James R. Holbein  
Secretary to the Commission

Issued: August 18, 2011