

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 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.**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm an initial determination (“ID”) (Order No. 35) granting a joint motion for termination of the investigation by settlement as to Respondents International Business Machines Corp. (“IBM”) and Dell Inc. (“Dell”) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3065. 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: This investigation was instituted on November 24, 2010, based upon a complaint filed on behalf of Overland Storage of San Diego, California on October 19, 2010, and supplemented on November 9, 2010. 75 *Fed. Reg.* 71735. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the sale for importation, importation, or sale after importation of certain automated media library devices by reason of infringement of certain claims of U.S. Patent No. 6,328,766 and U.S. Patent No. 6,353,581. 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, and BDT Products, Inc., of Irvine, California (collectively, “the BDT Respondents”); Dell of Round Rock, Texas; and IBM of Armonk, New York.

On November 21, 2011, Complainant Overland Storage and Respondents IBM and Dell moved to terminate the investigation as to IBM and Dell on the basis of a settlement agreement, and requested that the settlement agreement not be disclosed to counsel for the non-settling respondents. On November 30, 2011, the BDT Respondents filed a response. The BDT Respondents took no position on whether termination of the investigation as to IBM and Dell is in the public interest, but opposed the request by the moving parties that the settlement agreement not be disclosed to counsel for the non-settling respondents. On December 5, 2011, the administrative law judge issued Order No. 35, granting the joint motion to terminate the investigation as to IBM and Dell, but denying the request for non-disclosure of the settlement agreement to counsel for the non-settling respondents. In the ID, the administrative law judge found that the moving parties satisfied the requirements under 19 C.F.R. § 210.21(b)(1), including a statement in the motion that the parties have no other agreements concerning the subject matter of this investigation. No petitions for review were filed.

On December 7, 2011, the BDT Respondents filed a letter with the administrative law judge requesting that the settling parties disclose certain documentation referenced in the agreements filed with the motion to terminate the investigation as to IBM and Dell on the basis of a settlement agreement pursuant to 19 C.F.R. § 210.21(b). On December 12, 2011, IBM filed a letter in response. On December 12, 2011, Overland filed a letter of intent to file a response, and on December 13, 2011, filed a letter stating that it agreed with IBM's response. On December 14, 2011, the BDT Respondents filed a reply. On December 20, 2011, the administrative law judge issued a notice, declining to act upon the letters. The administrative law judge stated that the relief requested was sought via a letter and not a properly filed motion.

On January 4, 2012, the Commission determined to review the subject ID. In addition, the Commission issued an order requiring Overland Storage, IBM, and Dell to submit certain documentation. On January 5, 2012, Overland Storage submitted the required documentation. Having reviewed the ID and the relevant parts of the record, the Commission has determined to affirm the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

/s/
James R. Holbein
Secretary to the Commission

Issued: January 27, 2012