

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN MACHINE VISION
SOFTWARE, MACHINE VISION
SYSTEMS, AND PRODUCTS
CONTAINING SAME**

Investigation No. 337-TA-680

**NOTICE OF COMMISSION DECISION TO REVIEW-IN-PART A FINAL INITIAL
DETERMINATION FINDING NO VIOLATION OF SECTION 337; REQUEST FOR
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 a final initial determination (“ID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gardine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. 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 July 16, 2009 based on a complaint filed on May 28, 2009, by Cognex Corporation of Natick, Massachusetts and Cognex Technology & Investment Corporation of Mountain View, California (collectively “complainants”). 74 *Fed. Reg.* 34589-90 (July 16, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 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 machine vision software, machine vision systems, or products

containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,016,539 (“the ‘539 patent”); 7,065,262 (“the ‘262 patent”); and 6,959,112 (“the ‘112 patent”). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complaint named numerous respondents including the following: Multitest Elektronische Systems GmbH of Germany and Multitest Electronic Systems, Inc. of Santa Clara, California (collectively, “Multitest respondents”); Yxlon International GmbH of Germany and Yxlon International, Inc. of Mogadore, Ohio (collectively, “Yxlon respondents”); Amistar Automation, Inc. (“Amistar”) of San Marcos, California; Techno Soft Systemnics, Inc. (“Techno Soft”) of Japan; Fuji Machine Manufacturing Co., Ltd. of Japan and Fuji America Corporation of Vernon Hills, Illinois (collectively, “Fuji respondents”); E. Zoller GmbH & Co. KG of Germany and Zoller, Inc. of Ann Arbor, Michigan (collectively, “Zoller respondents”); IDS Imaging Development Systems GmbH of Germany and IDS Development Systems, Inc. of Woburn, Massachusetts (collectively, “IDS respondents”); Delta Design, Inc. (“Delta”) of Poway, California; Subtechnique, Inc. (“Subtechnique”) of Alexandria, Virginia; Rasco GmbH (“Rasco”) of Germany; MVTec Software GmbH of Germany and MVTec LLC of Cambridge, Massachusetts (collectively, “MVTec respondents”); Omron Corporation (“Omron”) of Japan, Resolution Technology, Inc. (“Resolution”) of Dublin, Ohio; Visics Corp. (“Visics”) of Wellesley, Massachusetts; Daiichi Jitsugyo Viswill Co., Ltd. of Japan; and Daiichi Jitsugyo (America), Inc. of Wood Dale, Illinois (collectively, “Daiichi respondents”).

On November 19, 2009, the Commission issued notice of its decisions not to review IDs terminating the investigation as to the Multitest respondents and the Yxlon respondents based on a consent order and settlement agreement. On February 16, 2010, the Commission issued notice of its decisions not to review IDs terminating the investigation as to Amistar based on a consent order and settlement agreement, and as to Techno Soft based on partial withdrawal of the complaint. On April 20, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to the Fuji respondents based on a settlement agreement. On May 5, 2010, the Commission issued notice of its decisions not to review IDs terminating the investigation as to the Multitest respondents based on a consent order and settlement agreement, and as to the Zoller respondents, the IDS respondents, and Delta based on partial withdrawal of the complaint. On June 11, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to Subtechnique based on a consent order. On June 18, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to Rasco based on a consent order and settlement agreement (notice of rescission and issuance of revised order on July 6, 2010).

The respondents remaining in the investigation include: MVTec respondents, Omron, Resolution, Visics, and the Daiichi respondents.

On April 9, 2010, the Commission issued notice of its decision not to review an ID terminating the investigation as to the ‘112 patent on the basis of partial withdrawal of the complaint. On April 20, 2010, the Commission issued notice of its decision not to review an ID

granting complainants' motion for summary determination on the economic prong of the domestic industry requirement with respect to the remaining asserted patents, the '539 and '262 patents. On May 18, 2010, the Commission issued notice of its decision not to review an ID granting complainants' motion for summary determination that the importation element under Section 337(a)(1)(B) has been satisfied as to the MVTech respondents, Omron, and the Daiichi respondents.

On July 16, 2010, the ALJ issued his final ID finding no violation of section 337 by the remaining respondents. He concluded that each accused product did not infringe any asserted claim of the '539 or '262 patents. Also, he found that claims 1, 12, 13, 28, and 29 of the '262 patent are anticipated under 35 U.S.C. § 102. Further, he found that all asserted claims of both patents are invalid, pursuant to 35 U.S.C. § 101, for failure to claim patent-eligible subject matter. On August 2, 2010, complainants, respondents, and the Commission investigative attorney each filed a petition for review of the final ID. Each party filed responses to the other parties' petitions on August 10, 2010.

Upon considering the parties' filings and the record, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review the following: (1) relating to the '539 patent, the ALJ's construction of the claim terms "test," "match score surface," and "gradient direction," all of his infringement findings except for the claim steps containing the limitations "locating local maxima" and "comparing the magnitude of each local maxima," and his invalidity and domestic industry findings; (2) the ALJ's finding that the '539 and '262 patents are invalid, pursuant to section 101, for failure to claim patent-eligible subject matter; and (3) the ALJ's findings concerning anticipation of claims 1, 12, 13, 28, and 29 of the '262 patent. The Commission has determined not to review the remainder of the ID.

On review, the parties are requested to submit briefing limited to the following issue:

How would adopting complainants' proposed construction for the claim terms "test," "match score surface," and "gradient direction" relating to the '539 patent affect the ID's infringement, domestic industry, and invalidity findings.

In addressing the issue, the parties are requested to make specific reference to the evidentiary record and to cite relevant authority. The written submissions must be filed no later than close of business on October 8, 2010. Reply submissions must be filed no later than the close of business on October 15. No further submissions on this issue will be permitted unless otherwise ordered by the Commission.

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 sections 210.42(h) and 210.43 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42(h), 210.43.

By order of the Commission.

/s/

Marilyn R. Abbott
Secretary to the Commission

Issued: September 24, 2010