

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

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In the Matter of)	
)	Inv. No. 337-TA-460
CERTAIN SORTATION SYSTEMS, PARTS)	
THEREOF, AND PRODUCTS CONTAINING)	
SAME)	
)	

**NOTICE OF COMMISSION DETERMINATION TO RESCIND A 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 to rescind the limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Rodney Maze, Esq., 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 patent-based section 337 investigation was instituted by the Commission based on a complaint filed by Rapistan Systems Advertising Corp. and Siemens Dematic Corp., both of Grand Rapids, Michigan. 66 *Fed. Reg.* 38741 (July 25, 2001). The complaint named Vanderlande Industries Nederland BV of the Netherlands, and Vanderlande Industries of Atlanta, Georgia (collectively "Vanderlande") as respondents.

Complainants alleged that Vanderlande 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 2-4, 8, 9, 17, 18, 20, 22, 24, 27, 29, 33, 35-37, 39, 43, 45-47, 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 the 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.

On October 22, 2002, the ALJ issued his final initial determination (ID) on violation and his recommended determination on remedy. The ALJ found a violation of section 337 by reason of infringement of claims 1 and 4 of the ‘510 patent. He also found that the ‘510 patent is not invalid or unenforceable. With respect to remedy, 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. On November 4, 2002, Vanderlande and the Commission investigative attorney (IA) petitioned for review of portions of the ALJ’s final ID. Rapistan submitted a contingent petition for review asking that the Commission review certain issues if it decided to review the ID. All parties filed responses to the petitions on November 12, 2002.

On December 10, 2002, the Commission determined to review the ID and requested submissions regarding the issues under review as well as remedy, the public interest and bonding. On January 27, 2003, the Commission issued a notice indicating that it had determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, and had issued a limited exclusion order prohibiting the importation of the infringing sortation systems, parts and components thereof, manufactured abroad by Vanderlande. The Federal Circuit affirmed the Commission’s determination on May 3, 2004. *See Vanderlande Indus. v. Int’l Trade Comm’n*, 366 F.3d 1311 (Fed. Cir. 2004).

On February 2, 2005, Vanderlande and complainants filed a joint petition to rescind the remedial order under Commission Rule 210.76(a)(1) on the basis of a settlement agreement between the parties. The parties asserted that their settlement agreement constituted “changed conditions of fact or law” sufficient to justify rescission of the order under Commission Rule 210.76(a)(1), 19 C.F.R. § 210.76(a)(1). The IA filed a response in support of the motion on February 14, 2005.

Having reviewed the parties’ submissions, the Commission has determined that the settlement agreement satisfies the requirement of Commission Rule 210.76(a)(1), 19 C.F.R. § 210.76(a)(1), that there be changed conditions of fact or law. The Commission therefore has issued an order rescinding the limited exclusion order previously issued in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19

U.S.C. § 1337) and section 210.76(a)(1) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.76(a)(1)).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: March 3, 2005