

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, "MVTech 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.

On September 24, 2010, the Commission issued notice of its determination to review only 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 requested the parties to respond to a certain question concerning issue (1) under review. 75 FR 60478-80 (September 30, 2010). On October 8 and 15, 2010, respectively, complainants, respondents, and the Commission investigative attorney filed briefs and reply briefs on the issue for which the Commission requested written submissions.

Having reviewed the record in this investigation, including the final ID and the parties' briefing, the Commission has determined to: (1) Modify-in-part

the final ID and issue an Opinion supplementing the ID's analysis concerning its finding that the '539 and '262 patents fail to claim patent-eligible subject matter pursuant to section 101; (2) set aside the ID's finding that claims 1, 12, 13, 28, and 29 of the '262 patent are invalid as anticipated; and (3) affirm all other findings of the ID under review. The Commission terminates the investigation with a finding of no violation of section 337.

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 210.45 of the Commission's Rules of Practice and Procedure, 19 CFR 210.45.

By order of the Commission.

Issued: November 16, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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## DEPARTMENT OF JUSTICE

### United States Parole Commission

#### Record of Vote of Meeting Closure

(Pub. L. 94-409) (5 U.S.C. Sec. 552b)

I, Isaac Fulwood, of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 10:30 a.m., on Tuesday, November 9, 2010, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20615. The purpose of the meeting was to decide eleven petitions for reconsideration pursuant to 28 CFR 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Isaac Fulwood, Cranston J. Mitchell and Patricia K. Cushwa, J. Patricia Wilson Smoot.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: November 10, 2010.

**Isaac Fuiwood,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 2010-29354 Filed 11-19-10; 8:45 am]

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