

August 19, 2005 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Bavarian Nordic A/S. A letter supplementing and amending the complaint was filed on September 9, 2005. The complaint, as supplemented and amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain Modified Vaccinia Ankara viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of claims 1, 4, 5, and 34 of U.S. Patent No. 6,761,893 and claims 1, 2–9, and 13–16 of U.S. Patent No. 6,913,752, and misappropriation of trade secrets. The complaint further alleges that there exists an industry in the United States as required by section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint and supplemental letter, except for any confidential information contained therein, are 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, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 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>.

**FOR FURTHER INFORMATION CONTACT:** Erin D.E. Joffe, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2550 or Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

**Scope of Investigation:** Having considered the complaint, the U.S.

International Trade Commission, on September 19, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain Modified Vaccinia Ankara ("MVA") viruses and vaccines and pharmaceutical compositions based thereon by reason of infringement of claims 1, 4, 5, or 34 of U.S. Patent No. 6,761,893 or claims 1, 2–9, 13–15 or 16 of U.S. Patent No. 6,913,752, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337; and

(b) Whether there is a violation of subsection (a)(1)(A) of section 337 in the importation of certain MVA viruses and vaccines and pharmaceutical compositions based thereon or in the sale of such articles by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States, and whether an industry in the United States.

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact on this issue.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Bavarian Nordic A/S, Bogeskovvej 9, DK–3490 Kvistgard, Denmark.

(b) The respondent is the following company alleged to be in violation of Section 337 and upon which the complaint is to be served—Acambis, Plc, Peterhouse Technology Park, 100 Fulbourne Road, Cambridge, CB1 9PT, United Kingdom.

(c) Erin D.E. Joffe and Thomas S. Fusco, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorneys, party to this investigation;

(4) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 19, 2005

**Marilyn Abbott,**

*Secretary to the Commission.*

[FR Doc. 05–19037 Filed 9–22–05; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–454]

### In the Matter of Certain Set-Top Boxes and Components Thereof; Notice of Commission Determination To Terminate the Investigation on the Basis of a Settlement Agreement

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation on the basis of a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090, or Michael Liberman, Esq., Office of the General Counsel, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3115. 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, SW., Washington, DC 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:** The Commission instituted this patent-based investigation, which concerns allegations of unfair acts in violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain set-top boxes, on March 21, 2001. 66 FR 15887 (March 21, 2001). Complainants Gemstar-TV Guide International, Inc. of Pasadena, California, and StarSight Telecast, Inc. of Fremont, California (collectively, "Gemstar"), named Pioneer Corporation, Pioneer North America, Inc., Pioneer Digital Technologies, Inc., and Pioneer New Media Technologies, Inc. (collectively, "Pioneer"); EchoStar Communications Corporation and SCI Systems, Inc. (collectively, "Echostar"); and Scientific-Atlanta, Inc. ("Scientific-Atlanta") as respondents. Gemstar alleged that these respondents infringed certain claims of its patents, including: U.S. Patent No. 4,706,121 ("the '121 patent"); U.S. Patent No. 5,479,268 ("the '268 patent"); and U.S. Patent No. 5,809,204 ("the '204 patent").

The presiding administrative law judge ("the ALJ") issued his final initial determination ("final ID") on June 21, 2002, in which he concluded that there was no violation of section 337, based on the following findings: (a) Complainants had failed to establish that asserted claims 18-24, 26-28, 31-33, 36, 42-43, 48-50, 54, 57, 59-61, and 66 of the '121 patent; claims 1, 3, 8, and 10 of the '268 patent; and claims 1, 3, 8, and 10 of the '204 patent are infringed by respondents; (b) respondents had failed to establish that the asserted claims are not valid; (c) respondents had established that the '121 patent is unenforceable for failure to name a co-inventor; (d) complainants had engaged in patent misuse with respect to the '121

patent; (e) no industry existed in the United States, as required by subsection (a)(2) of section 337, that exploits each of the '121, '268, and '204 patents in issue; and (f) there had been an importation of the set-top boxes which are the subject of this investigation.

On July 5, 2002, all parties to the investigation, including the Commission investigative attorney, filed petitions for review of various portions of the final ID.

On August 29, 2002, the Commission issued notice that it had determined to review in part, to take no position in part, and to not review in part the ALJ's final ID. Specifically, the Commission determined to review the issue of the technical prong of the domestic industry as it relates to claim 42 of '204 patent for the purpose of making a finding as to claim 42 of that patent. This finding had been omitted by the ALJ. The Commission also determined to take no position on the issue of patent misuse and not to review the remainder of the final ID. Finally, the Commission determined to affirm three ALJ rulings (involving ALJ Order No. 62, an ALJ ruling excluding evidence concerning the doctrine of equivalents, and an ALJ ruling limiting the testimony time of one witness) that were appealed to the Commission by the complainants. In light of these determinations, the Commission determined that there was no violation of section 337 in this investigation.

Gemstar appealed the Commission's final determination to the United States Court of Appeals for the Federal Circuit ("the Federal Circuit" or "the Court"). During the course of the appeal, Gemstar settled with Pioneer and EchoStar, and these respondents were dismissed from the appeal. On September 16, 2004, the Federal Circuit issued its decision in the appeal, in which the Commission's final determination was affirmed in part, vacated in part, and reversed in part, and the case remanded for further proceedings consistent with the Court's opinion. *Gemstar-TV Guide International, Inc. v. International Trade Commission*, 383 F.3d 1352 (Fed. Cir. 2004).

On November 29, 2004, the Court denied Scientific-Atlanta's petitions for rehearing and rehearing en banc. On January 11, 2005, the Court denied Scientific-Atlanta's motion to stay issuance of the mandate and simultaneously issued its mandate, returning the case to the Commission, with Scientific-Atlanta as the sole respondent.

On February 8, 2005, the Commission issued an order seeking comments from

the parties as to how they believed the Commission should proceed with the remanded investigation. The original 30-day deadline for receiving comments from the parties was extended twice, to June 13, 2005. On that date the private parties filed a joint motion to terminate the investigation based on a settlement agreement, including a patent license agreement. On June 23, 2005, the Commission investigative attorney filed a response supporting the joint motion. On August 5, 2005, the private parties filed a public version of the joint motion.

Having examined the joint motion to terminate the investigation, the response thereto, and other relevant documents of record in this investigation, the Commission has determined to grant the joint motion, terminating this investigation in its entirety.

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 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21).

Issued: September 19, 2005.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Controlnet International, Ltd

Notice is hereby given that, on September 1, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ControlNet International, Ltd. ("ControlNet") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, McNaughton-McKay Electric Company, Madison Heights, MI; IDC Corporation, Dimondale, MI; and Kawasaki Robotics (USA), Inc., Wixom, MI have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned