

Hesai filed petitions for *inter partes* review before the Patent Trial and Appeal Board with respect to two of the patents at issue in this investigation. On September 14, 2023, Hesai and OUII filed their responses to Ouster's notice of recent developments.

The Commission has determined to review and, on review, to affirm the subject ID with modification. In particular, the Commission strikes the "wholly groundless" legal standard discussion and analysis at pages 11–12 and 16 of the subject ID, including the following statements: (1) "[T]he ALJ then must make a secondary inquiry to determine whether the assertion of arbitrability is 'wholly groundless.' If it is determined that the assertion of arbitrability is not 'wholly groundless.'" ID at 11. (2) "Therefore, Hesai's claim for arbitration is not 'wholly groundless.'" ID at 11–12. (3) "In other words, the demand for arbitration is 'not wholly groundless.'" ID at 16. The Supreme Court previously overruled the "wholly groundless" exception, holding that "[w]hen the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract . . . even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless . . . In sum, we reject the 'wholly groundless' exception." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529–31 (2019).

The Commission also addresses a typographical error at page 10 of the subject ID by modifying "See *id.* at ¶ 9.5" to state "See *id.* at ¶ 9.4." This is a citation for the sentence in the subject ID that states "[t]he Choice of Law for purposes of construing the Settlement Agreement is designated as California law," and Section 9.4 of the Settlement Agreement on "Governing Law" is the section that determines the choice of law for the Settlement Agreement.

With regard to Ouster's notice of recent developments, the Commission finds that, under the facts of this investigation, Hesai's separately filed *inter partes* review petitions do not prevent the Commission from determining that the investigation must be terminated in favor of arbitration. The Commission also notes that the Settlement Agreement provides that "either Party shall have the right to challenge the validity and enforceability of any Patent in defense to a suit or assertion of a claim relating to any such Patent that is brought against a Party or alleging infringement by a Licensee Product or a Velodyne Product." Settlement Agreement section 3.4 ("Contesting Validity").

The investigation is terminated. The Commission vote for this determination took place on October 10, 2023.

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 part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 11, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–22754 Filed 10–13–23; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

On October 10, 2023, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Nebraska in the lawsuit entitled *United States of America v. Dravo Corp., et al.*, Civ. No. 8:01–cv–00500–JFB–TBT (D. Neb.).

The proposed consent decree resolves claims against Desco Corporation pursuant to section 107(a) CERCLA for response costs incurred and to be incurred by EPA for Operable Unit 01 of the Hastings Groundwater Contamination Superfund Site and requires the Defendant to make a payment of \$131,067 to EPA.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America v. Dravo Corp., et al.*, D.J. Ref. No. 90–11–2–1260/10. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined

and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$3.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia McKenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

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DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of the individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to serve on the Department's Performance Review Board:

Permanent Membership

Chair—Nikki McKinney, Associate Deputy Secretary
Vice-Chair—Carolyn Angus-Hornbuckle, Assistant Secretary for Administration and Management
Alternate Vice-Chair—Sydney Rose, Chief Human Capital Officer

Rotating Membership—Appointments Expire on 09/30/26

BLS Tony Williams, Associate Commissioner for Technology and Survey Processing
EBSA Amber Rivers, Director of Health Plan Standards and Compliance Assistance
ETA Nicholas Lalpui, Regional Administrator, Dallas
ILAB Molly McCoy, Associate Deputy Undersecretary
MSHA Brian Goepfert, Administrator for Mine Safety and Health Enforcement
OASAM Carl Campbell, Senior Procurement Executive
ODEP Jennifer Sheehy, Deputy Assistant Secretary