

PUBLIC VERSION

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

In the Matter of

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

Inv. No. 337-TA-680

Order No. 51

Respondent MVTec Software GmbH (“MVTec”) moves for summary determination of non-infringement of U.S. Patent No. 7,016,539 (“the ‘539 patent”) and U.S. Patent No. 7,065,262 (“the ‘262 patent”). (Motion No. 680-38). Each of the remaining respondents join in this motion. The motion is opposed by complainants Cognex Corporation and Cognex Technology & Investment Corporation (collectively, “Cognex”) and by the Commission Investigative Staff (“Staff”). For the reasons that follow, the motion is denied.

Summary determination is available under Commission Rule 210.18. This rule provides, in part, that judgment may be rendered on behalf of the moving party “if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.” 19 C.F.R. 210.18(b). The evidence is to be viewed in a light most favorable to the nonmoving party. *Avia Group International, Inc. v. L.A. Gear California, Inc.*, 853 F.2d 1557, 1560 (Fed. Cir. 1988).

With respect to the ‘262 patent, MVTec argues that its Halcon software does not infringe

for two reasons. The first is because “[t]here is no dispute that the accused product, the ‘shape-based matching’ portion of MVTec’s Halcon software, does not use a model with any of a field dipole list, a field, and a set of operating parameters.” Resp. Mem. at 1. The second is because the Halcon software “uses the exact opposite of the claimed ‘pose,’ mapping from the model to the image, instead of from the image to the model.” *Id.*

Insofar as the ‘539 patent is concerned, MVTec argues that there is no infringement because “Halcon stops evaluating the model points at a given pose when it becomes clear that the pose will not yield a match.” Resp. Mem. at 2. MVTec further argues that the ‘539 patent is not infringed because Halcon “computes partial match scores for poses that may yield a match, ranks the scores, and then returns a predetermined number of the highest scores, not all scores that exceed a threshold.” *Id.* (emphasis in original).

In its opposition, Cognex, among other things, takes issue with MVTec’s construction of the claim term “model pattern” in the ‘262 patent, stating that respondent’s construction impermissibly reads limitations from the specification into the claims. Opp. at 3-7. Cognex similarly takes issue with MVTec’s construction of “pose.” *Id.* at 7-10. Furthermore, complainants challenge MVTec’s claim construction of the claim terms “probe” and “at least one test is performed” in the ‘539 patent. *Id.* at 12-15.

Cognex’s criticism of MVTec’s arguments in seeking summary determination is well-taken. While the outcome of this investigation may be uncertain, what is not uncertain is that Cognex has established that there exists disputed issues of material fact and that MVTec is not entitled to judgment as a matter of law. Indeed, the Staff succinctly notes, “[t]his investigation

does not involve simple technology that can be easily interpreted without a detailed discussion of the claim terms.” Staff Resp. at 3.¹ The Staff is correct on both counts. If anything, the motion and the oppositions have underscored the necessity of conducting a hearing to resolve the disputed material facts that exist and to provide a basis for construing the disputed claim terms.

Accordingly, because the requirements of 19 C.F.R. 210.18 have not been satisfied, summary determination is not appropriate. Therefore, Motion No. 680-38 is denied.

Within seven days of the date of this document, each party shall submit to the Office of Administrative Law Judges a statement as to whether or not it seeks to have any portion of the document redacted from the public version. The parties’ submissions may be made by facsimile and, or, by hard copy. Any party seeking to have a portion of this document redacted from the public version must submit to this office a copy of this document with red brackets indicating the portion, or portions, asserted to contain confidential business information.

So Ordered.



Carl C. Charneski
Administrative Law Judge

Issued: April 13, 2010

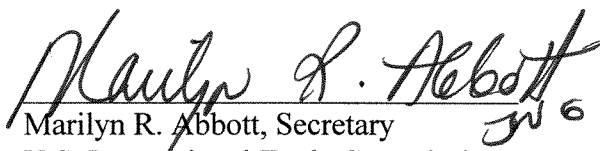
¹ The Staff also identifies instances of factual disputes concerning the operation of the accused product. *Id.*

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PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Order No. 51** has been served by hand upon the Commission Investigative Attorney, Kevin Baer, Esq., and the following parties as indicated, on May 10, 2010.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
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