

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of

CERTAIN DATA STORAGE PRODUCTS  
AND COMPONENTS THEREOF

Inv. No. 337-TA-748

**Order 9: INITIAL DETERMINATION Terminating The Investigation**

Complainant Data Storage Network LLC (“DSN”), pursuant to Commission Rule 210.21(a), moves to terminate this investigation as to all respondents<sup>1</sup> based on a withdrawal of the complaint. (Motion No. 748-6). Respondents do not oppose the motion. The Commission Investigative Staff (“Staff”) supports the motion.

Commission Rule 210.21(a)(1) provides in part that, “Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein . . .” 19 C.F.R. § 210.21(a)(1). The Commission has stated that “in the absence of extraordinary circumstances, termination of the investigation will be readily granted to a complainant during the prehearing stage of an investigation.” *Certain Transport Vehicle Tires*, Inv. No. 337-TA-390, Order No. 17 (unreviewed initial determination) at 4-5 (January 30, 1997) (Public Version February 12, 1997) (quoting *Certain Ultrafiltration Membrane Sys. and Components Thereof, Including Ultra Membranes*,

---

<sup>1</sup> Respondents are: NetApp, Inc., Dell, Inc., Xyratex, Ltd., Xyratex International Inc., Xyratex (Malaysia) Sdn Bhd, Dot Hill Systems Corp., International Business Machines Corporation, Cisco Systems, Inc., and QNAP Systems, Inc.

Inv. No. 337-TA-107, Commission Action and Order at 2 (Mar. 11, 1982)). Furthermore, public policy supports termination to conserve public and private resources. *Certain Semiconductor Light Emitting Devices*, Inv. No. 337-TA-444, Order No. 7 (Jun. 27, 2001).

DSN asserts:

DNS moves to terminate the Investigation in view of the Honorable David C. Godbey's summary judgment ruling and final order (collectively "rulings") issued December 8, 2010, in the parallel district court action before the United States District Court for the Northern District of Texas, Dallas Division (Case No: 3:08-cv-0294). Judge Godbey's rulings granted defendants, and present Respondents, Dell, Inc. and NetApp, Inc.'s motion for summary judgment of noninfringement of the asserted claims. Those same claims are at issue in this Investigation and have been asserted against all Respondents.

Mot. at 2 (citations omitted).

This motion comports with Commission Rules and is in the interest of public policy. This motion is filed well in advance of the hearing, which is scheduled to begin on October 11, 2011. Pursuant to Commission Rule 210.21(a)(1), DSN states that "there are no agreements, written or oral, express or implied between the parties concerning the subject matter of this Investigation." *Id.* The Staff states that it "is not aware of any extraordinary circumstance that should prevent the termination of this investigation." Furthermore, the termination of this investigation is in the public interest, as public and private resources will be conserved.

Accordingly, it is the INITIAL DETERMINATION of the undersigned that Motion No. 748-6 is granted. This investigation is terminated in its entirety.

Pursuant to 19 C.F.R. § 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the initial determination or certain issues contained herein.

So Ordered.

---

Carl C. Charneski  
Administrative Law Judge

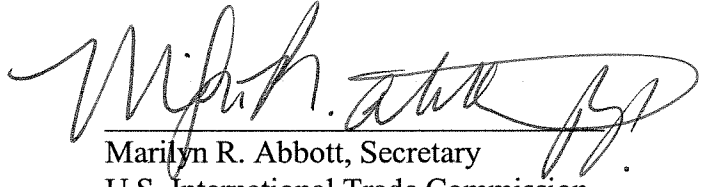
Issued: December 22, 2010

**CERTAIN DATA STORAGE PRODUCTS AND COMPONENTS THEREOF**

**INV. NO. 337-TA-748**

**PUBLIC CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **ORDER NO. 9** has been served by hand upon the Commission Investigative Attorney Jeffrey T. Hsu, Esq., and the following parties as indicated, on DEC 22 2010.



Marilyn R. Abbott, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112A  
Washington, D.C. 20436

**FOR COMPLAINANT DATA NETWORK STORAGE, LLC.:**

Daniel E. Yonan, Esq.  
**STERNE, KESSLER, GOLDSTEIN & FOX PLLC**  
1100 New York Ave., N.W.  
Washington, D.C. 20005

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**FOR RESPONDENT NETAPP. INC.**

Brian E. Ferguson, Esq.  
**WEIL, GOTSHAL & MANGES**  
1300 Eye St., N.W. Suite 900  
Washington, D.C. 20005

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN DATA STORAGE PRODUCTS AND COMPONENTS THEREOF**

**INV. NO. 337-TA-748**

**FOR RESPONDENTS XYRATEX, LTD., XYRATES  
(MALAYSIS) SDN BHD AND XYRATEX INTERNATIONAL  
INC.:**

Marcia H. Sundeen, Esq.  
**KENYON & KENYON LLP**  
1500 K St., N.W.  
Washington, D.C. 20005

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**FOR RESPONDENT INTERNATIONAL BUSINESS  
MACHINES CORP.**

V. James Adduci, II., Esq.  
**ADDUCI, MASTRIANI & SCHAUMBERG, LLP**  
1200 Seventeenth St., N.W. Fifth Floor  
Washington, D.C. 20036

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**FOR RESPONDENT DOT HILL SYSTEMS CORP.:**

Christopher C. Campbell, Esq.  
**COOLEY LLP**  
One Freedom Square  
Reston Town Center  
11951 Freedom Drive  
Reston, VA 20190-5656

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**FOR RESPONDENT DELL, INC.:**

Scott F. Partridge, Esq.  
**BAKER BOTTS L.L.P.**  
One Shell Plaza  
910 Louisiana St.  
Houston, TX 77002-4995

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**CERTAIN DATA STORAGE PRODUCTS AND COMPONENTS THEREOF**

**INV. NO. 337-TA-748**

**FOR RESPONDENT CISCO SYSTEMS, INC. AND QNAP  
SYSTEMS, INC.:**

Daniel S. Mount, Esq.  
**MOUNT & STOELKER, P.C.**  
RiverPark Tower, Suite 1650  
San Jose, CA 95110

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

**PUBLIC MAILING LIST**

Heather Hall  
LEXIS-NEXIS  
9443 Springboro Pike  
Miamisburg, OH 45342

Kenneth Clair  
Thomson West  
1100 Thirteen Street, NW, Suite 200  
Washington, D.C. 20005