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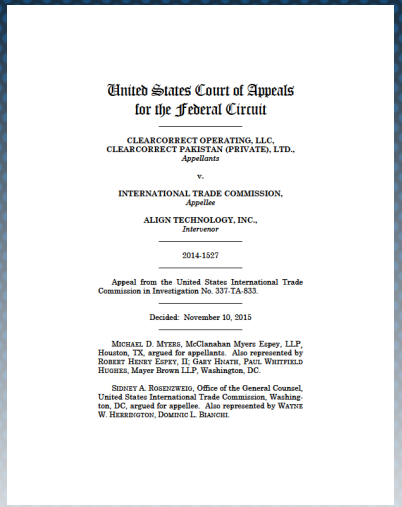
ClearCorrect Operating, LLC v. ITC

A Discussion of the Importation of Digital Data Files

810 F.3d 1283



United States Court of Appeals
for the Federal Circuit

CLEARCORRECT OPERATING, LLC,
CLEARCORRECT PAKISTAN (PRIVATE), LTD.,
Appellants

v.

INTERNATIONAL TRADE COMMISSION,
Appellee

ALIGN TECHNOLOGY, INC.,
Intervenor

2014-1527

Appeal from the United States International Trade Commission in Investigation No. 337-TA-833.

Decided: November 10, 2015

MICHAEL D. MYERS, McClanahan Myers Espey, LLP, Houston, TX, argued for appellants. Also represented by ROBERT HENRY ESPEY, II; GARY HEATH, PAUL WHITFIELD HUGHES, Mayer Brown LLP, Washington, DC.

SIDNEY A. ROSENZWEIG, Office of the General Counsel, United States International Trade Commission, Washington, DC, argued for appellee. Also represented by WAYNE W. HERRINGTON, DOMINIC L. BIANCHI.

Before PROST, *Chief Judge,* NEWMAN and O'MALLEY, *Circuit Judges*

Alexander Taousakis

Background

- The ITC "The Commission" instituted an investigation based on a complaint filed by Align Technology, Inc. ("Align").
- Align alleged a violation of 19 U.S.C § 1337 ("Section 337") by reason of infringement of various claims of seven (7) different patents. 1337: "Unfair practices in import trade"
- The patents in question are directed to orthodontic appliances (i.e., aligners) that are configured to be placed on the patient's teeth to reposition the teeth from an initial tooth arrangement.
- ClearCorrect includes ClearCorrect US and ClearCorrect Pakistan.
- ClearCorrect US scans physical models of the patient's teeth, creates a digital recreation, and electronically transmits it to ClearCorrect Pakistan, where the digital recreation is altered to create a final tooth position.
- ClearCorrect Pakistan then **electronically transmits** the altered digital models to ClearCorrect US, which then 3D prints the aligners.

Background

- The patent claims are divided into the following Groups:

  Group I - Methods of forming dental appliances;

  Group II - Methods of producing digital data sets;

  Group III - Treatment plan based on a series of digital data sets on a storage medium; and

  Group IV - Methods of producing dental appliances.

- **The Commission found the Groups I and II claims to be infringed and not invalid and are at issue in the appeal**, and Groups III and IV claims to be either beyond the scope of the Commission's jurisdiction or not infringed.

Background

Align Technology - US 6,217,325 (one of the infringed Patents) – Discussion of conventional process for installing and adjusting braces

- X-rays and photographs are taken, and an "alginate" mold of the patient's teeth is made (column 1, lines 27-33).
- A weak acid is applied to teeth surfaces for bonding brackets and bands thereto by a cement (column 1, lines 38-45).
- Archwire is the primary force-inducing appliance, which is periodically adjusted (column 1, lines 59-65).
- This conventional process is described as "a tedious and time consuming process and requires many visits to the orthodontist's office … [and] the use of braces is unsightly, uncomfortable, presents risk of infection, and makes … dental hygiene procedures difficult" (column 1, line 66 – column 2, line 5).

Background

US 6,217,325

- "The present invention provides improved methods and systems for repositioning teeth from an initial tooth arrangement to a final tooth arrangement" (column 2, lines 63-65).
- Repositioning is accomplished with a system comprising: a series of appliances configured to receive the teeth in a cavity and incrementally reposition individual teeth in a series of steps using a successive number of appliances (column 2, line 65 – column 3, line 12).

Background

US 6,217,325

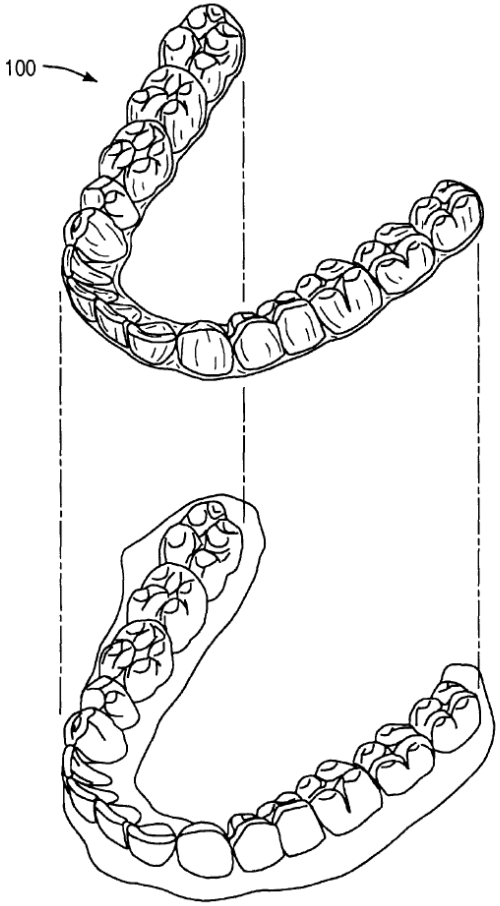


FIG. 1C

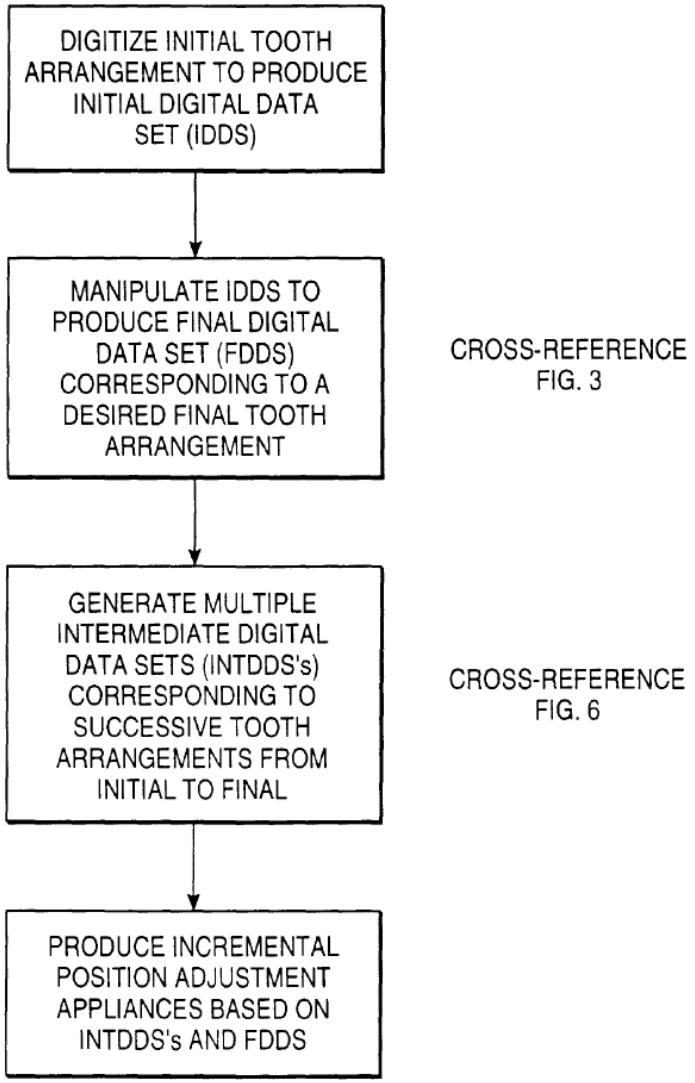


FIG. 2

Background

Claim 1 of U.S. Patent No. 6,217,325:

1. A method for producing a digital data set representing a final tooth arrangement, said method comprising:

- providing an initial digital data set representing an initial tooth arrangement;
- a visual image based on the initial data set;
- manipulating the visual image to reposition individual teeth in the visual image;
- producing a final digital data set representing the final tooth arrangement with repositioned teeth as observed in the image; and
- producing a plurality of intermediate digital data sets representing a series of successive tooth arrangements progressing from the initial tooth arrangement to the final tooth arrangement.

Background

Claim 21 of U.S. Patent No. 6,217,325:

21. A method for fabricating a dental appliance, said method comprising:

- providing a digital data set representing a modified tooth arrangement for a patient;

- controlling a fabrication machine based on the digital data set to produce a positive model of the modified tooth arrangement; and

- producing the dental appliance as a negative of the positive model.

Discussion

- The Tariff Act of 1930 provides the International Trade Commission ("Commission") with authority to remedy only those unfair acts that involve the importation of "articles" as described in 19 U.S.C. § 1337(a).
- Here, the Commission concluded that "articles" "should be construed to include electronic transmission of digital data. . . ." *In re Certain Digital Models*, Inv. No. 337-TA-833 at 55 (Apr. 3, 2014) ("*Final Comm'n Op.*"). We disagree.
- The Commission's decision to expand the scope of its jurisdiction to include electronic transmissions of digital data runs counter to the "unambiguously expressed intent of Congress." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984).

Discussion

19 U.S.C. § 1337 is an enforcement statute enacted by Congress to stop at the border the entry of goods, *i.e.*, articles, that are involved in unfair trade practices." Section 1337(a)(1) reads as follows:

Subject to paragraph (2), **the following are unlawful**, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) Unfair methods of competition and unfair acts in the importation of *articles* ….

(B) **The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of *articles* that—**

(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17; . . .

(C) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of *articles* that infringe a valid and enforceable United States trademark registered under the Trademark Act of 1946 [15 U.S.C. 1051 …

Discussion

- When there is no importation of "articles" there can be no unfair act, and there is nothing for the Commission to remedy.
- Here, the only purported "article" found to have been imported was digital data that was transferred *electronically*, **i.e., not digital data on a physical medium, such as a compact disk or thumb drive**.
- The Federal Circuit reviews the Commission's interpretation pursuant to *Chevron*, by addressing:

  (1) whether Congress has directly spoken to the precise question at issue (i.e., step one), and

  (2) whether the agency's answer to the precise question at issue is based on permissible construction of the statute (i.e., step two).

Discussion – Chevron Step One

- "In construing a statute, we begin with its literal text, giving it its plain meaning." *Hawkins v. United States*, 469 F.3d 993, 1000 (Fed. Cir. 2006).
- So when deciding whether the language is plain, we must read the words in their context and with a view to their place in the overall statutory scheme.
- Here we conclude that the literal text by itself, when viewed in context and with an eye towards the statutory scheme, is clear and thus answers the question at hand.
- "Articles" is defined as "material things," and thus does not extend to electronic transmission of digital data.
  - "articles" is not defined in the Act, and thus is construed "with its ordinary or natural meaning" *FDIC v. Meyer*, 510 U.S. 471, 476 (1994).

Discussion – Chevron Step One

- To determine its plain meaning, look to 1922 Tariff Act:

That unfair methods of competition and unfair acts in the importation of ***articles*** *into the United States*, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, *are hereby declared unlawful*, and when found by the President to exist shall be dealt with, in addition to any other provisions of law, as hereinafter provided.

Discussion – Chevron Step One

- The Commission also relies on the 1924 edition of Webster's Dictionary that defines "article," in pertinent part, as "something considered by itself and as apart from other things of the same kind or from the whole of which it forms a part; also, a thing of a particular class or kind; as an article of merchandise; salt is a necessary article."
- Based on this definition, the Commission concluded that "the term 'article' was understood at the time of the enactment of the Tariff Act to carry the meaning of an identifiable unit, item or thing, with examples indicating that *such articles may be traded in commerce or used by consumers*" and thus would include digital data.

Discussion – Chevron Step One

- Federal Circuit Disagrees, and limits the term "article" to a "material thing" and thus could not include digital data, citing FUNK & WAGNALLS NEW STANDARD DICTIONARY OF THE ENGLISH LANGUAGE published in 1931, among others. This dictionary defines "article" in relevant part as "a particular object or substance; a *material thing* or class of things . . . ."
- As the contemporaneous dictionaries demonstrate, the meaning of the term "article" at the time of the passage of the 1922 Tariff Act was a "material thing" and thus would not include digital data.

Discussion – Chevron Step One

- Modern dictionaries (looked to Webster 1966, 2001 and 2002 versions), United States Tariff Commission and Black's Law Dictionary all define defined "articles" as material things.
- Further, the use of the term "articles" in other sections of the 1930 Tariff Act reinforces "articles" to mean "material things."
  - The Supreme Court has consistently held that "identical words used in different parts of the same act are intended to have the same meaning." *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990).

Discussion – Chevron Step One

- The Commission concluded that because the term "articles" appears in the statutory provisions defining a violation of Section 1337, 19 U.S.C. §§ 1337(a)(1)(A), (B), (C), and (E), with the terms "importation" and "sale," the term "articles" is meant to encompass all "imported items that are bought and sold in commerce." *Final Comm'n Op.* at 40.
- The Commission then stated that, in accordance with various Supreme Court and circuit court cases, "articles of commerce" includes digital files.
- The Federal Circuit disagrees, indicating that if the term "articles" was defined to include intangibles, numerous statutory sections would be superfluous at best.

Discussion – Chevron Step One

- One such example is the forfeiture subsection of Section 337 (19 U.S.C. § 1337(i)). This section reads in part:

(i) Forfeiture

(1) In addition to taking action under subsection (d) of this section, the Commission may issue an order providing that any *article* imported in violation of the provisions of this section be seized and forfeited to the United States if—

(A) the owner, importer, or consignee of the article previously attempted to import the *article* into the United States;

(B) the *article* was previously denied entry into the United States by reason of an order issued under subsection (d) of this section; . . .

Discussion – Chevron Step One

- The forfeiture subsection permits the Commission to exclude "articles" from importation into the United States; however, **it is difficult to see how one could physically stop electronic transmissions at the borders under the current statutory scheme**.
- Further, an electronic transmission cannot be "seized" or "forfeited."
- By way of example, digital transmissions from satellites do not move through border crossings, nor can they be stopped at our borders via any enforcement mechanism contemplated in the statutory scheme.
- That is, prohibiting importation of electronic transmission is simply not enforceable.

Discussion – Chevron Step One

Tariff Act of 1930, Pub. L. 71-361, 46 Stat. 704 (1930)

"Whenever the existence of any such unfair method or act shall be established to the satisfaction of the President he shall direct that the articles concerned in such unfair methods or acts, imported by any person violating the provisions of this Act, shall be excluded from entry into the United States, and upon information of such action by the President, the Secretary of the Treasury shall, through the proper officers, refuse such entry" (emphasis added).

- This sole remedy of exclusion could only have an impact on material things. Obviously, intangibles, such as electronic transmissions, do not pass through United States ports and cannot be excluded by Customs.

Discussion – Chevron Step One

- The Commission points to the 1974 authorization of cease and desist orders as support for its conclusion that "articles" includes digital data. The Commission argues that the addition of this section "strengthened the statute to protect against unfairly traded imports by providing additional remedies for a violation . . . ." *Final Comm'n Op.* at 47.
- The addition of the cease and desist order was meant to be used as a lesser and "softer remedy" than exclusion orders rather than the exclusive remedy for considering digital data as an "article." S. Rep. No. 93- 1298, 1974 U.S.C.C.A.N. 7186, 7327 (1974).
- If "articles" was defined to include electronic transmissions, the addition of cease and desist orders would not be a lesser alternative for exclusion orders, but an expansion of the exclusion power.

Discussion – Chevron Step One

- Finally, Section 337's connection to the Harmonized Tariff Schedule of the United States (HTSUS) supports defining "articles" as material things, which describes the duties to be paid upon all articles important into the US.
- HTSUS includes ninety-fives pages of schedules identifying specific dutiable and non-dutiable goods, each of which are material things, and includes catchall clauses, including: "That each and every imported article, not enumerated in this Act, which is similar, either in material, quality, texture, or the use to which it may be applied to any article enumerated in this Act . . . shall be subject to the same rate of duty which is levied on the enumerated article."
- Thus, the Tariff Act of 1930 limits articles to tangibles.

Discussion – Chevron Step One

- The Commission argues that the legislative history relating to the Omnibus Trade and Competitiveness Act of 1988 reaffirmed that "articles" was meant to include digital data.
- The Commission relies on the relevant Senate Report's statement that the will of Congress was to block any United States sale of a product covered by an IP right, because "[t]he importation of any infringing *merchandise* derogates from the statutory right, diminishes the value of the intellectual property, and thus indirectly harms the public interest." *Final Comm'n Op.* at 48 (quoting S. Rep. 100-71 at 12-29 (1987); H.R. Rep. 100-40 at 156 (1987)).
- The Commission argues that the use of the word "commerce" in the Act indicates that "articles" should be read broadly.

Discussion – Chevron Step One

- The Commission's argument fails to take into account the contemporaneous definition of the term "merchandise."
- The contemporaneous definition of the term "merchandise" was defined at the time as "[a]ll goods which merchants usually buy and sell and is limited to *tangible* items." Merchandise, Goods, BLACK'S LAW DICTIONARY (5th ed. 1979).
- This analysis comports with our opinion in Bayer, in which we analyzed the history of section 271(g) along with its overlap with Section 337.
- In *Bayer*, the court held, with respect to the term "article" adopted from Section 337, that "there is no indication of any intent to reach products other than tangible products produced by manufacturing processes."

Discussion – Chevron Step Two

- As Congress's expressed intent is unambiguous, we need not address step two of *Chevron*.
- Step two of *Chevron* requires us to determine "whether the [Commission's] answer is based on a permissible construction of the statute."
- Because the Commission failed to properly analyze the plain meaning of "articles," failed to properly analyze the statute's legislative history, and improperly relied on Congressional debates, the Commission's analysis does not warrant deference.
- Finally, the Commission wrongly focuses on current debates in Congress as indicative of what "articles" means. The Commission comments as follows:

Discussion – Chevron Step Two

- We note recent developments that show the acceptance of digital goods traded in commerce as falling within international trade. Senators Baucus and Hatch and Congressman Camp have introduced Trade Promotion Authority bills that instruct the Administration to seek increased protection for digital trade in future trade agreements.
- Moreover, Congress has requested that the Commission study the impact of digital trade under Section 332, another part of Title 19. This analysis is improper.
- First, Congress has not passed any of the cited bills.
- Second, even if the bills were passed, they would not have informed us as to whether the Commission has jurisdiction over digital goods.

Holding

- In sum, the Commission repeatedly and unreasonably erred in its analysis of the term "article." It is not simply a question of the Commission having the choice between two "right" definitions, but instead it represents a systematic pattern of the Commission picking the wrong conclusion from the evidence.
- We recognize, of course, that electronic transmissions have some physical properties—for example an electron's invariant mass is a known quantity—but commonsense dictates that there is a fundamental difference between electronic transmissions and "material things."

Holding

- Under these circumstances we think it is best to leave to Congress the task of expanding the statute if we are wrong in our interpretation. Congress is in a far better position to draw the lines that must be drawn if the product of intellectual processes rather than manufacturing processes are to be included within the statute. *Bayer*, 340 F.3d at 1376-77.
- We reverse and remand the Commission's decision, finding that the Commission does not have jurisdiction over this case.

Dissent

Judge Newman

- Tariff Acts of 1922 and 1930 were enacted to provide additional support to domestic industries that dealt in new and creative commerce, by providing an efficient safeguard against unfair competition by imports that infringe United States patents or copyrights.
- New technologies of the Information Age focus on computer-implemented methods and systems, whose applications of digital science provide benefits and conveniences not imagined in 1922 and 1930.
- The court today removes Section 337 protection from importations that are conducted by electronic transmission, reasoning that electronically transmitted subject matter is not "tangible," and that only tangible imports are subject to exclusion.

Dissent

- The imports are infringing "digital models, digital data, and treatment plans for use in making incremental dental positioning adjustment appliances," produced for ClearCorrect in Pakistan and imported into the United States by electronic transmission.
- The ITC found, and it is not disputed, that the imported data sets are "virtual three-dimensional models" of a patient's teeth, and that the imports are used in the United States to make a three-dimensional physical model of the dental appliance.
- Thus, the only issue is whether the Section 337 remedy is available to exclude the infringing digital subject matter and the Commission held that "the digital data sets at issue . . . are true articles of international commerce that are imported into the United States, and their inclusion within the purview of section 337 would effectuate the central purpose of the statute." Comm'n Op. at 55

Dissent

- The Senate Report stated: "The provision relating to unfair methods of competition in the importation of goods is broad enough to prevent every type and form of unfair practice and is, therefore, a more adequate protection to American industry than any antidumping statute the country has ever had." S. Rep. No. 67-595 at 3 (1922).
- Court of Customs and Patent Appeals emphasized that this purpose is "to give to industries of the United States, not only the benefit of the favorable laws and conditions to be found in this country, but also to protect such industries from being unfairly deprived of the advantage of the same and permit them to grow and develop." *Frischer & Co. v. Bakelite Corp.*, 39 F.2d 247, 259 (CCPA 1930).

Dissent

- Patents are for things that did not previously exist, including kinds of technology that were not previously known.
- It is not disputed that digital information, such as the data sets and models here imported, is patentable subject matter and can be infringing subject matter, and thus there is no basis to exclude imported infringing subject matter, whatever the form.
- The Supreme Court in Fortnightly Corp. v. United Artists Television, Inc., 392 U.S. 390 (1968), considered "a statute that was drafted long before the development of the electronic phenomena with which we deal here," stating that "[w]e must read the statutory language . . . In the light of drastic technological change." Id. at 395-96.
- This rule aptly applies to the Tariff Acts of 1922 and 1930.

Dissent

- In *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1321 (Fed. Cir. 2009), the court rejected the argument that digital files, such as computer software, are not a "material or apparatus" subject to infringement as set forth in the Patent Act at 35 U.S.C. § 271(c).
- The court's decision today is a distortion of the statute's language and purpose, for Section 337 is designed to cover infringing subject matter; and digital software, as noted in *Lucent*, can be infringing subject matter.
- The term "article" includes any commodity, whether grown, produced, fabricated, manipulated, or manufactured. 19 U.S.C. § 1332(e)(1).

Dissent –

- The Tariff Act did not lock Section 337 into the technology in existence in 1922 or 1930.
  - Further, the particles and waveforms of electronics and photonics and electromagnetism are not intangible, although not visible to the unaided eye.
- It is not reasonable to impute the legislative intent to exclude new fields of technology, and inventions not yet made, from a statute whose purpose is to support invention.

Dissent

- The court placed weight on selected definitions of "article" in certain dictionaries while dismissing unselected definitions as "imprecise at best." Maj. Op. at 15.
- For example, the court rejects Webster's New International Dictionary 1924 and 1934 Editions, as "a thing of a particular class or kind as distinct from a thing of another class or kind; a commodity; as, an article of merchandise," and "merchandise" as "the objects of commerce; whatever is usually bought and sold in trade; wares; goods."
- The Court of Customs and Patent Appeals in 1940 explained that, in the Tariff Act of 1930, "Congress said: 'and paid upon all articles when imported from any foreign country' Unquestionably, Congress meant, by employing that language, to include under the word 'articles' any provided for substance, material or thing of whatever kind or character that was imported into this country." *United States v. Eimer & Amend*, 28 CCPA 10, 12 (1940).

Dissent

- The Supreme Court defined "articles of commerce" to include pure information, holding in *Reno v. Condon*, 528 U.S. 141 (2000), that the Commerce Clause applies to interstate transmission of information in motor vehicle records sold or released "into the interstate stream of business." *Id*. at 148.
- Data carried by electronic particles or waves constitute articles of commerce, and may be imported, bought and sold, transmitted, and used.

Dissent – Importation Not Restricted

The Commission correctly held that importation of infringing articles is not restricted to specific kinds of carriers or modes of entry.

- Importation subject to Section 337 **does not depend on the mode of entry** into the territory of the United States: Importation . . . consists in bringing an article into a country from the outside. If there be an actual bringing in it is importation regardless of the mode in which it is effected. Entry through a customs house is not of the essence of the act. *Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 122 (1923).
- The Bureau of Customs and Border Protection has established that Internet transmission is "importation" into the United States. *See* HQ 114459 (Sept. 17, 1998) ("We further find that the transmission of software modules and products to the United States from a foreign country via the Internet is an importation of merchandise into the customs territory of the United States").

Dissent – Importation Not Restricted

- The Customs statute classifies software as "merchandise" under 19 U.S.C. § 1401(c) and it is established that telecommunications transmissions, including electronically imported software, are within the purview of the Customs service.
- The Commission explained in *Hardware Logic Emulation Systems*, *supra*, that "it would be anomalous for the Commission to be able to stop the transfer of a CD-ROM or diskette containing respondents' software, but not be able to stop the transfer of that very same software when transmitted in machine readable form by electronic means." *Id.* at 29.

Dissent

- The Department of Labor, interpreting the Trade Act for purposes of Trade Adjustment Assistance, stated that "[s]oftware and similar intangible goods that would have been considered articles, for the purposes of the Trade Act, if embodied in a physical medium will now be considered to be articles regardless of their method of transfer."

Dissent

Difficulty of enforcement is not grounds for discarding a remedial statute

- The court argues that violation of Section 337 by electronic transmission into the United States, such as via the Internet or other cloud technologies, may be difficult to track and enforce.
- This argument cannot apply the facts of this case, the electronically imported digital goods are produced by the Pakistani affiliate of the United States importer, who is subject to the Commission's Cease-and-Desist Order.
- Cease-and-desist orders as a remedy for Section 337 violations are not new, including orders relating to infringement by digital importation. *See Hardware Logic Emulation Systems*

Dissent – Judicial Deference

- If Section 337 were deemed ambiguous, the Commission's well-reasoned interpretation, amid extensive corroboratory rulings, is entitled to judicial deference.
- "Congress cannot, and need not, draft a statute which anticipates and provides for all possible circumstances in which a general policy must be applied to a specific set of facts. It properly leaves this task to the authorized agency." *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1312 (Fed. Cir. 2001).
- The Commission's ruling is consistent with the language, structure, and purpose of Section 337, and decades of precedent concerned with digital data, electronic transmission, and infringing importation.

3D Printing Notes

- In order to protect against third parties from 3D printing a product, the claims to a patent can be directed to the digital file itself. Computer programs embodied in a tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. § 101 and must be examined under 35 U.S.C. §§ 102 and 103. *Beauregard*, 53 F.3d at 1584.
- USPTO specifically suggests claiming a "non-transitory, tangible computer readable storage medium," per MPEP 2106, to claim software in order to tie a tangible product with a particular application. Otherwise, claiming a signal per se covers non-statutory subject matter (In re Nuijten).

3D Printing Notes

- Claims take the general form: “a computer usable medium having computer readable code” or “a computer readable medium storing a computer program.”

Example 1:
A non-transitory computer-readable medium storage for creating an object, comprising instructions stored thereon, that when executed by a 3D printer, causes the 3D printer to print (/create) the object comprising:
(features of the object).

- This form of claiming will cover any type of 3D printing process, and protects the instructions for creating the object.

3D Printing Notes

Example 2:
A non-transitory computer-readable medium storage for creating an object, comprising instructions stored thereon, that when executed by a 3D printer, perform the steps of:
(recites steps of 3D printer, additive manufacturing, etc.)

Example 3:
Alternatively, the computer program can be a dependent claim that depends on a method, for example:

A non-transitory computer-readable medium storage for creating an object, comprising instructions stored thereon, that when executed by a 3D printer, perform the method of claim __.

Other Ways to Protect 3D Printing

Copyright

- Copyright protection extends to "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."
- Copyright infringement is the unauthorized reproduction, duplication, distribution, or creation of a derivative work of an original work.
- Using 3D printing, any individual may scan a copyrighted work, such as using a 3D scanner, and reproduce the work. If any object is scanned without the original owner's permission, and printed on a 3D printer, it may constitute copyright infringement.

Other Ways to Protect 3D Printing

- However, copyright protection does not "extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work." 17 U.S.C. §102(b). Designs that are "dictated solely by a utilitarian function of the article that embodies it" is not protected. 17 U.S.C. §1302(4).

- That is, copyrights do not extend to works typically protected under patent law. It is unlikely that spare parts for a mechanical device will be protected under Copyright Law, as such components are likely to be construed as either a system or a discovery that have solely a utilitarian function.

Questions?

Thank you!