

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

In the Matter of:

CERTAIN AUTOMATED MEDIA LIBRARY  
DEVICES

Investigation No. 337-TA-\_\_\_\_\_

**COMPLAINT OF OVERLAND STORAGE, INC.,  
UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

**Complainant**

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**Proposed Respondents**

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78628 Rottweil, Germany

BDT-Solutions GmbH & Co. KG  
Saline 29  
78628 Rottweil, Germany

BDT Automation Technology (Zhuhai FTZ)  
Co., Ltd.  
No. 51 Free Trade Zone  
Zhuhai Guangdong  
P.R.China (Postcode 519030)

BDT de México, S. de R.L. de C.V.  
Av. El Bosque 1220  
Parque Industrial El Bosque II  
45590 Tlaquepaque, Jalisco

BDT Products, Inc.  
17222 Armstrong Ave.  
Irvine, CA 92614

Dell Inc.  
One Dell Way  
Round Rock, TX 78682

International Business Machines Corp.  
1 New Orchard Road  
Armonk, New York 10504-1722

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## **I. INTRODUCTION**

1. This Complaint is filed by Overland Storage, Inc. (“Overland Storage”) for violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by proposed Respondents BDT AG, BDT-Solutions GmbH & Co. KG, BDT Automation Technology (Zhuhai FTZ) Co., Ltd., BDT de México, S. de R.L. de C.V, and BDT Products, Inc. (collectively the “BDT Respondents”); and proposed Respondents Dell Inc. and International Business Machines Corporation (collectively the “Reseller Respondents”). The BDT Respondents and the Reseller Respondents will be collectively referred to below as “Respondents.”

2. The violation is based on the unlawful importation into the United States, the sale for importation, or the sale within the United States after importation of certain automated media library devices by Respondents. Respondents’ automated media library devices infringe one or more claims of United States Patent No. 6,328,766 (“the ’766 patent”) and United States Patent No. 6,353,581 (“the ’581 patent”) (collectively “the asserted patents”). Certified copies of the asserted patents are included in Appendix A.

3. Overland Storage is the owner by assignment of the asserted patents. Overland Storage seeks an order permanently excluding from entry into the United States Respondents’ infringing automated media library devices. Overland Storage also seeks a cease and desist order prohibiting Respondents’ importation, sale, offer for sale, soliciting of the sale, advertising, marketing, demonstrating, promoting, supporting and servicing of the infringing automated media library devices covered by the claims of the asserted patents.

## **II. THE PARTIES**

### **A. Overland Storage**

4. Overland Storage is a corporation organized and existing under the laws of California, having a principal place of business at 9112 Spectrum Center Boulevard, San Diego, California 92123.

5. Founded in San Diego in 1980, Overland Storage today develops and delivers a comprehensive solution set of award-winning products and services for moving and storing data throughout an organization. In particular, Overland Storage's NEO® Series of tape storage libraries are designed to meet the need for reliable data storage for long-term archiving and compliance requirements.

6. Overland Storage's stock is publicly traded on the NASDAQ stock exchange under the symbol "OVRL." Excerpts from Overland Storage's 2010 Annual Report reflecting Overland Storage's results for fiscal year 2010 (ending June 30, 2010) is attached as Exhibit 1. In fiscal year 2010, Overland Storage sold approximately \$77.7 million worth of products and services worldwide. As detailed below, several of Overland Storage's products practice one or more claims of the asserted patents.

### **B. The Proposed Respondents**

7. On information and belief, Respondent BDT AG is a corporation organized and existing under the laws of Germany, having a principal place of business at Saline 29, 78628 Rottweil, Germany. On information and belief, BDT AG is an affiliate of BDT-Solutions GmbH and a parent company of BDT Products, Inc. BDT AG is an original equipment manufacturer ("OEM") of automated tape libraries. As an OEM, BDT and/or its subsidiaries develop and manufacture automated tape libraries for rebranding by other companies, including IBM, Dell and others. BDT AG and/or its subsidiaries operate in Lauffen, Germany; Guadalajara,

Mexico; and Zhuhai Guangdong, China. BDT AG is a privately held company, and therefore detailed information about its operations are not publicly available through Securities and Exchange Commission filings. However, based on general industry knowledge and BDT's Web site, Overland Storage understands that BDT AG and/or its subsidiaries' development, manufacturing and/or assembly of automated tape libraries occurs at BDT facilities in Germany, China and Mexico. (Ex. 2, "Our Locations" Web Page.)

8. On information and belief, Respondent BDT-Solutions GmbH & Co. KG ("BDT-Solutions") is a limited liability corporation organized and existing under the laws of Germany, having a principal place of business at Saline 29, 78628 Rottweil, Germany. On information and belief, BDT-Solutions is an affiliate of BDT AG and BDT Products, Inc. BDT-Solutions advertises to other companies: "You can sell well-proven products to your customers using your own brand labels. For decades well-known companies trust in our capabilities and develop new systems together with BDT-Solutions." (Ex. 3, "Welcome to BDT-Solutions" Web Page.) BDT-Solutions also advertises:

BDT-Solutions are specialized in the areas of backup and archiving of many application fields. Wherever you encounter our solutions, usually well hidden underneath the labels of well-known manufacturers, you can expect the latest in design and technology: performance, longevity, cost-effectiveness, security, comfort and simple handling.

(Ex. 4, BDT-Solutions "About Us" Web Page.) BDT-Solutions is a privately held company, and therefore detailed information about its operations are not publicly available through Securities and Exchange Commission filings. However, based on general industry knowledge and BDT's Web site, it appears that BDT-Solutions is responsible for development, manufacturing and/or assembly of BDT AG's automated tape libraries at facilities in Germany, China and Mexico. (Ex. 2, "Our Locations" Web Page.)

9. On information and belief, Respondent BDT Products, Inc. (“BDT Products”) is a corporation organized and existing under the laws of California, having a principal place of business at 17222 Armstrong Avenue, Irvine, California 92614. On information and belief, BDT Products is a subsidiary of BDT AG and an affiliate of BDT-Solutions GmbH. BDT Products is a privately held company, and therefore detailed information about its operations are not publicly available through Securities and Exchange Commission filings. However, based on general industry knowledge and BDT’s Web site, Overland Storage understands that BDT Products is responsible for BDT’s worldwide sales and marketing. (Ex. 2, BDT “Our Locations” Web Page.)

10. On information and belief, Respondent BDT Automation Technology (Zhuhai FTZ) Co., Ltd. (“BDT-China”) is a limited liability corporation organized and existing under the laws of China, having a principal place of business at No. 51 Free Trade Zone, Zhuhai Guangdong, P.R. China (Postcode 519030). On information and belief, BDT-China is an affiliate of BDT AG. BDT-China is a privately held company, and therefore detailed information about its operations are not publicly available. However, based on general industry knowledge and BDT’s Web site, it appears that BDT-China is responsible for manufacturing and/or assembly of BDT’s automated tape libraries at facilities in China. (Ex. 2, BDT “Our Locations” Web Page.)

11. On information and belief, Respondent BDT de México, S. de R.L. de C.V. (“BDT-Mexico”) is a limited liability corporation organized and existing under the laws of Mexico, having a principal place of business at Av. El Bosque 1220, Parque Industrial El Bosque II, 45590 Tlaquepaque, Jalisco. On information and belief, BDT-Mexico is a subsidiary BDT AG. BDT-Mexico is a privately held company, and therefore detailed information about its operations are not publicly available. However, based on general industry knowledge and BDT’s Web site, it appears

that BDT-Mexico is responsible for manufacturing and/or assembly of BDT's automated tape libraries at facilities in Mexico. (Ex. 2, BDT "Our Locations" Web Page.)

12. On information and belief, Respondent Dell Inc. ("Dell") is a corporation organized and existing under the laws of Delaware, having a principal place of business at One Dell Way, Round Rock, Texas 78682. Dell is a reseller of the BDT Respondents' infringing articles, and the BDT Respondents provide automated tape libraries to Dell on an OEM basis. The BDT Respondents manufacture and/or assemble the FlexStor II automated tape libraries outside the United States, and the FlexStor II automated tape libraries are rebranded with the Dell brand label. (Ex. 13 (Dell Product Labels), 21 (BDT Web Site, Listing Products), 23 (Dell Email Receipt).) On information and belief, the rebranded Dell automated tape libraries are then imported for sale in the United States. (Ex. 2, BDT "Our Locations" Web Page; Ex. 20, BDT Web Site, Listing Products; Ex. 21, Confidential Declaration of Kurt Kalbfleisch In Support of Complaint ("Kalbfleisch Decl."), ¶ 42.)

13. On information and belief, Respondent International Business Machines Corporation ("IBM") is a corporation organized and existing under the laws of New York, having a principle place of business at 1 New Orchard Road, Armonk, New York 10504-1722. IBM is a reseller of the BDT Respondents' infringing articles, and the BDT Respondents provide automated tape libraries to IBM on an OEM basis. The BDT Respondents manufacture and/or assemble the FlexStor II automated tape libraries outside the United States, and the FlexStor II automated tape libraries are rebranded with the IBM brand label. (Ex. 15, IBM Datasheet; Ex. 21, BDT Web Site, Listing Products.) On information and belief, the rebranded IBM automated tape libraries are then imported for sale in the United States. (Ex. 2, BDT "Our Locations" Web Page; Ex. 21, BDT Web Site, Listing Products; Ex. 21, Kalbfleisch Decl., ¶ 42.)

14. On information and belief, Respondents and/or their agents import the infringing articles into the United States, and Respondents and/or their agents are the owners, importers and/or consignees of the infringing articles. (Ex. 13 (Dell Product Labels), 21 (BDT Web Site, Listing Products).)

### **III. BACKGROUND ON THE ARTICLES AT ISSUE**

15. The infringing articles and the domestic articles protected by the asserted patents are various models and types of automated media library devices, also called tape libraries. An automated media library is a system in which one or more tape drives and more than two tape cartridges are integrated in a rack configuration or a free-standing floor unit. Automated media libraries have the ability to move tape cartridges from one drive to another without human intervention. This is typically done with robotic arms or actuators that reside inside the media library itself.

16. Automated media libraries are primarily used by businesses as backup storage for company data. Businesses today must retain data for extended periods of time to comply with regulatory requirements, conduct internal audits, and ensure best practices. Keeping data stored, accessible and secure has become increasingly complex and expensive as companies are faced with massive data growth, increasingly stringent regulatory requirements and distributed environments that can range from across the hall to around the globe. As data storage needs have increased from megabytes to gigabytes to terabytes, automated media libraries have become vital. Automated media libraries allow users to store digital data in a central location, then search for and retrieve that data from networked computers when necessary.

17. In the 1990s, Overland Storage marketed the first scalable automated media library solution that eliminated the physical limitations of conventional tape library designs.



Overland Storage has continued to improve on its media library technology and has developed and marketed product line families, including its NEO Series Tape Libraries.

18. The NEO S Series provides affordable, expandable tape backup for small and medium-sized businesses. The NEO S systems incorporate the latest linear tape-open (LTO) technologies, as well as SCSI, SAS and FC connectivity. The NEO 200s is a 2U tape library that supports up to 24 slots and 2 tape drives. The NEO 400s is a 4U tape library that supports up to 48 slots and 4 tape drives. The references to “2U” and “4U” refer to a “rack unit,” which is a unit of measure that describes the height of equipment intended for mounting in a rack. The height of a piece of rack-mounted equipment is frequently described as a number and the letter “U.” For example, one rack unit is often referred to as “1U”, two rack units as “2U,” and so on.

19. The NEO E Series provides scalable, high capacity, data-center class tape automation that is ideal for large businesses. The NEO E systems incorporate the latest LTO technologies as well as redundant robotics and SCSI, SAS and FC connectivity. The NEO 2000e is a 5U tape library that supports up to 30 slots and 2 tape drives. The NEO 4000e is a 10U tape library that supports up to 60 slots and 4 tape drives. The NEO 8000e is a 43U tape library that supports up to 500 slots and 12 tape drives.

20. Overland Storage’s patented technologies encompass both the apparatus that comprises the media library and the methods of storing and retrieving that data from host computers. Using Overland Storage’s technologies, customers can create network-based, virtual media libraries to maintain data for continuous local backup and remote disaster recovery, or to store data for long-term archiving and compliance requirements. These cutting-edge products provide a more cost-effective way of keeping customers’ data stored, accessible and secure.

#### **IV. THE PATENTS AT ISSUE**

##### **A. The '766 Patent**

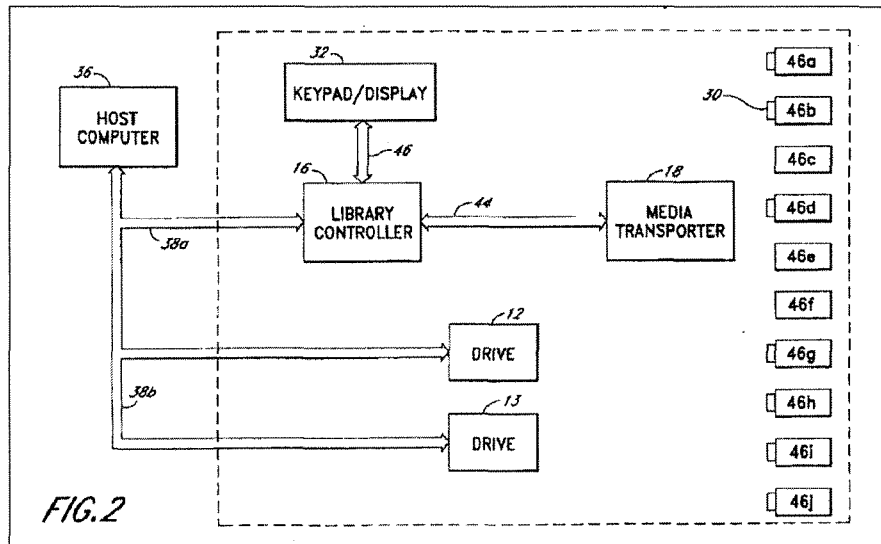
##### **1. Identification of the Patent and Ownership by Overland Storage.**

21. Overland Storage owns by assignment the entire right, title and interest in the '766 patent, entitled "Media Element Library with Non-Overlapping Subset of Media Elements and Non-Overlapping Subset of Media Element Drives Accessible to First Host and Unaccessible to Second Host." The '766 patent issued on December 11, 2001. A true and correct copy of the '766 patent is attached as Exhibit 5. A true and correct copy of the recorded assignments for the '766 patent is attached as Exhibit 6. A certified copy of the recorded assignments for the '766 patent has been ordered and will be provided upon receipt. A true and correct copy of the prosecution history of the '766 patent is attached as Exhibit 7.

22. Pursuant to Rule 210.12 of the Commission's Rules of Practice and Procedure, this Complaint is accompanied by four copies of the prosecution history of the '766 patent (Appendix B) and four copies of each reference document cited in the prosecution history of the patent (Appendix C). A certified copy of the prosecution history of the '766 patent has been ordered and will be provided upon receipt.

##### **2. Description of the Patented Invention.**

23. The '766 patent teaches an innovative data storage system containing a plurality of media elements, in which each media element may be a member of one of a plurality of sets of media elements, and a controller configured so that a subset of media elements and media element drives are available for read/write access by one set of host computers, but are unavailable for read/write access by another set of host computers. An example of the system taught in the '766 patent is depicted in Figure 2 of the patent, reproduced below:



24. The '766 patent teaches a moveable carriage adapted to transport media elements from a media element storage location to a media element drive, so that host computers can store and retrieve data to and from separate portions of the media library without interfering with one another. In the exemplary figure above, that moveable carriage is represented by media transporter 18.

25. Prior art data management solutions required cabinet-sized or even room-sized systems, and could be connected to only a single host computer at any given time. Also, prior data management solutions often imposed unacceptably long periods of downtime in cases where individual files and directories needed to be quickly restored. These systems were cumbersome, expensive and inefficient. The '766 patent solved these problems by providing a media library having several input-output or network interfaces for communicating with several host computers, each of which can be assigned a separate virtual partition of the media library, and each of which can store and retrieve information from its assigned partition without interfering with other host computers.

**3. Foreign Counterparts to the '766 Patent.**

26. A PCT application (PCT/US98/01327) was filed for the parent of the '766 patent and was allowed to lapse in 1999. No other foreign patent applications corresponding to the '766 patent have been filed, abandoned, or rejected, or remain pending.

**B. The '581 Patent**

**1. Identification of the Patent and Ownership by Overland Storage.**

27. Overland Storage owns by assignment the entire right, title and interest in the '581 patent, entitled "Media Access in a Media Library." The '581 patent issued on March 5, 2002. A true and correct copy of the patent is attached as Exhibit 8. A true and correct copy of the recorded assignments for the '581 patent is attached as Exhibit 9. A certified copy of the recorded assignments for the '581 patent has been ordered and will be provided upon receipt. A true and correct copy of the prosecution history of the '581 patent is attached as Exhibit 10.

28. Pursuant to Rule 210.12 of the Commission's Rules of Practice and Procedure, this Complaint is accompanied by four copies of the prosecution history of the '581 patent (Appendix D) and four copies of each reference document cited in the prosecution history of the patent (Appendix E). A certified copy of the prosecution history of the '581 patent has been ordered and will be provided upon receipt.

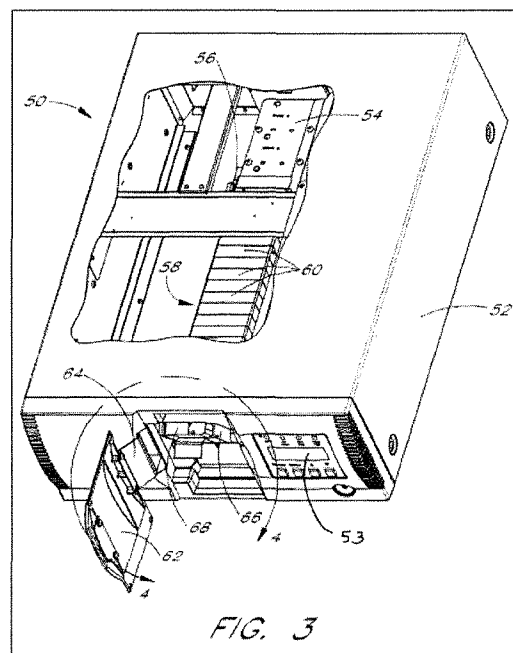
**2. Description of the Patented Invention.**

29. The '581 patent teaches an innovative automated media library and retrieval system where a user can easily insert or remove storage media, such as magnetic tapes, through a mail slot without removing a magazine of storage media from the media library and without disturbing other media library operations. The patent also discloses methods of moving a

particular storage medium contained in the media library from a readable location to a manually accessible location.

30. Security of the physical media elements is of great concern in tape libraries. Generally, automated tape libraries are locked enclosures or cabinets, allowing complete access to the media elements stored inside only to users with the appropriate key or password. It is often desirable to allow limited access to media elements to other users of the system. Therefore, mail slots are often used, which can receive individual media elements or groups of media elements from the internal robotic transport mechanism and route them outside the enclosure through the mail slot.

31. Figure 3 from the '581 patent, reproduced below, is a perspective view of one embodiment of a media library that incorporates a pivoting moveable magazine cell, which has a portion of its top panel cut away to illustrate some internal components of the library:



32. Prior art systems were complex and expensive to manufacture, requiring an independent transport path between a rack or magazine of media element storage locations and

the mail slot. The '581 patent solved these problems by providing a data storage and retrieval system that allows a user to quickly add or replace tape cartridges without having to remove the magazine of media elements, without requiring complicated transport mechanisms, and without limiting system options for media access security.

### **3. Foreign Counterparts to the '581 Patent.**

33. No foreign patent applications corresponding to the '581 patent have been filed, abandoned, or rejected, or remain pending.

## **V. LICENSES**

34. The asserted patents are not subject to any license agreements currently in force. However, the asserted patents have been the subject of a license agreement. Pursuant to 19 C.F.R. § 210.12(a)(9)(iii), the identity of the licensee is listed in Confidential Exhibit 22.

## **VI. UNLAWFUL AND UNFAIR ACTS OF THE PROPOSED RESPONDENTS – PATENT INFRINGEMENT**

### **A. Respondents' Infringing Articles.**

35. On information and belief, Respondents unlawfully sell for importation, import, and/or sell after importation into the United States automated media library devices that infringe the asserted claims of the '766 and '581 patents, as set forth in detail below.

36. The BDT Respondents provide automated tape libraries on an OEM basis to the Reseller Respondents. The BDT Respondents manufacture and/or assemble automated tape libraries for the Reseller Respondents that are based on the FlexStor II platform. (Exs. 3, 4, 21, 22; Ex. 21, Kalbfleisch Decl., ¶ 41.) The FlexStor II automated tape libraries are then rebranded Dell or IBM. (Exs. 3, 4, 21, 22; Ex. 21, Kalbfleisch Decl., ¶ 41.) On information and belief, the rebranded Dell and IBM automated tape libraries are identical to the FlexStor II platform for all relevant purposes. (Exs. 3, 4, 21, 22; Ex. 21, Kalbfleisch Decl., ¶ 42.) The same infringement

analysis applies equally to all infringing articles—that is, rebranded Dell and IBM automated tape libraries that are based on the FlexStor II platform.

**B. Respondents' Infringement of the '766 Patent**

37. On information and belief, Respondents unlawfully sell for importation, import, and/or sell after importation into the United States automated media library devices that directly infringe independent claims 1, 2 and 10 and dependent claims 3 through 9 and 11 of the '766 patent.

38. On information and belief, Respondents also induce infringement of and/or contributorily infringe the asserted claims of the '766 patent. For example, Respondents induce infringement and/or contributorily infringe when consumers operate Respondents' infringing products in the United States and/or when Respondents perform quality assurance testing or otherwise operate the infringing products in the United States.

39. Respondents' contributory infringement includes but is not limited to: (i) Respondents' knowledge of the '766 patent; (ii) Respondents' knowledge that their infringing products are especially adapted to infringe the '766 patent; and (iii) the lack of substantial noninfringing uses for Respondents' infringing products. The lack of substantial noninfringing uses with respect to the '766 patent is confirmed by the fact that Respondents' infringing products ship with all the features required to infringe the asserted claims of the '766 patent. Not only are all of the infringing products designed to implement the infringing features, but the default settings of the infringing products, as shipped, are set accordingly.

40. Respondents' inducement of infringement includes but is not limited to: (i) Respondents' knowledge of the '766 patent; (ii) Respondents' intent to induce direct infringement of the '766 patent; (iii) Respondents' active inducement of third parties' direct infringement; and (iv) Respondents' actual or constructive knowledge that their actions would

induce infringement. For example, Respondents have induced infringement of the asserted claims of the '766 patent at least by providing the infringing products in a default configuration that implements the infringing features.

41. Respondents have received notice of the infringement asserted in this Complaint because, among other things, correspondence has been sent to Respondents alleging infringement of the asserted patents, Overland Storage has previously initiated litigation in the United States District Court for the Southern District of California with respect to the asserted patents, and Respondents will be served with copies of this Complaint. *See* Exhibits 11 and 12 (Correspondence to BDT; District Court Complaint).

42. The automated media library devices that infringe the asserted claims of the '766 patent include at least the BDT FlexStor II tape library series, which is marketed and sold in the United States as the Dell PowerVault TL 2000 Tape Library and the IBM System Storage TS3100 Tape Library, among others. *See* Exhibit 13 (photographs of Dell product); Exhibit 14 (Declaration of Ian Jestice In Support of Complaint); Exhibit 15 (Dell and IBM Product Datasheets); Exhibit 23 (Dell sales receipt).

43. Attached to Exhibit 14 (Jestice Declaration) as Exhibit A is a claim chart demonstrating that the limitations of independent claims 1, 2 and 10 of the '766 patent are present in the Dell PowerVault TL 2000 tape library product, which is the Dell-branded version of the BDT FlexStor II 2U tape library product and is an exemplary infringing article.

**C. Respondents' Infringement of the '581 Patent**

44. On information and belief, Respondents unlawfully sell for importation, import, and/or sell after importation into the United States automated media library devices that directly infringe independent claims 1, 10, 15, 16, and 19 and dependent claims 2, 5-9, 11-12, 17-18 of the '581 patent.



45. On information and belief, Respondents also induce infringement of and/or contributorily infringe the asserted claims of the '581 patent. For example, Respondents induce infringement and/or contributorily infringe when consumers operate Respondents' infringing products in the United States and/or when Respondents' perform quality assurance testing or otherwise operate the infringing products in the United States.

46. Respondents' contributory infringement includes but is not limited to: (i) Respondents' knowledge of the '581 patent; (ii) Respondents' knowledge that their infringing products are especially adapted to infringe the '581 patent; and (iii) the lack of substantial noninfringing uses for Respondents' infringing products. The lack of substantial noninfringing uses with respect to the '581 patent is confirmed by the fact that Respondents' infringing products ship with all the features required to infringe the asserted claims of the '581 patent. Not only are all of the infringing products designed to implement the infringing features, but the default settings of the infringing products, as shipped, are set accordingly.

47. Respondents' inducement of infringement includes but is not limited to: (i) Respondents' knowledge of the '581 patent; (ii) Respondents' intent to induce direct infringement of the '581 patent; (iii) Respondents' active inducement of third parties' direct infringement; and (iv) Respondents' actual or constructive knowledge that their actions would induce infringement. For example, Respondents have induced infringement of the asserted claims of the '581 patent at least by providing the infringing products in a default configuration that implements the infringing features.

48. Respondents have received notice of the infringement asserted in this Complaint because, among other things, correspondence has been sent to Respondents alleging infringement of the asserted patents, Overland Storage has previously initiated litigation in the

United States District Court for the Southern District of California with respect to the asserted patents, and Respondents will be served with copies of this Complaint. *See* Exhibits 11 and 12 (Correspondence to BDT; District Court Complaint).

49. The automated media library devices that infringe the asserted claims of the '581 patent include at least the BDT FlexStor II tape library series, which is marketed and sold in the United States as the Dell PowerVault TL 2000 Tape Library and the IBM System Storage TS3100 Tape Library, among others. *See* Exhibit 13 (photographs of Dell product); *see* Exhibit 16 (Declaration of Homayoon Kazerooni, Ph.D., In Support of Complaint); *see* Exhibit 15 (Dell user manual).

50. Attached to Exhibit 16 (Kazerooni Declaration) as Exhibit A is a claim chart demonstrating that the limitations of each asserted independent claim of the '581 patent are present in the Dell PowerVault TL 2000 tape library product, which is the Dell-branded version of the BDT FlexStor II 2U tape library product and is an exemplary infringing article.

## **VII. SPECIFIC INSTANCES OF IMPORTATION AND SALE**

51. On information and belief, Respondents import, sell for importation and/or sell within the United States after importation the infringing articles. The specific instances of importation of infringing articles set forth below are representative examples of Respondents' unlawful importation of infringing articles.

52. On information and belief, the BDT FlexStor II is imported into the United States by or for Respondents and sold under various brand names, including those of the Reseller Respondents. Exhibit 17 is a sales receipt for a BDT FlexStor II branded as the Dell PowerVault TL 2000 tape library product, which was purchased by Overland Storage on August 30, 2010. Attached as Exhibit 18 are photographs of the labels from the shipping package of the Dell

PowerVault TL 2000, which includes a United States destination address and shipping instructions for international priority distribution.

53. The Dell PowerVault TL 2000 is marked a product of China. On information and belief, the BDT FlexStor II, including the Dell PowerVault TL 2000, is made by BDT-China in China. *See* Exhibits 2, 18.

54. On information and belief, the infringing articles are classified under at least the following subheadings of the Harmonized Tariff Schedule of the United States (“HTSUS”): 8471.70.01, 8471.70.90 and 8471.90.00. These classifications are exemplary in nature and are not intended to restrict the scope of any exclusion order or other remedy ordered by the Commission.

#### **VIII. RELATED LITIGATION**

55. On August 13, 2010, Overland Storage filed a patent infringement lawsuit against the BDT AG, BDT-Solutions and BDT Products in the United States District Court for the Southern District of California on the same two patents asserted in this Investigation. Overland Storage is unaware of any other court or related proceedings regarding the asserted patents.

#### **IX. DOMESTIC INDUSTRY**

56. An industry in the United States exists as required by subsection (a)(2) of Section 337, 19 U.S.C. § 1337(a)(2).

##### **A. Technical Domestic Industry—Application Of The Asserted Patents To Overland Storage’s Automated Media Library Devices.**

57. The protected domestic articles include Overland Storage’s NEO family of tape libraries, which includes the NEO 200s, NEO 400s, NEO 2000, NEO 2000e, NEO 4000, NEO 4000e, NEO 8000, and NEO 8000e. Attached to this complaint are visual representations and

information from Overland Storage's website describing examples of these products. (Exhibit 19).

58. Attached to the Jestice Declaration (Exhibit 14) as Exhibits B through F are five claim charts demonstrating that the limitations of exemplary claim 1 of the '766 patent are present in the Overland Storage NEO 200s, 400s, 2000, 2000e, 4000, 4000e, 8000 and 8000e products.

59. Attached to the Kazerooni Declaration (Exhibit 16) as Exhibits B through E are four claim charts demonstrating that the limitations of exemplary claim 10 of the '581 patent are present in the Overland Storage NEO 200s, 400s, 2000, 2000e, 4000, and 4000e products.

**B. Economic Domestic Industry—Overland Storage's Investment In Plant, Labor and Capital in the United States.**

60. A domestic industry as defined by 19 U.S.C. § 1337(a)(3)(A) or (B) exists in the United States with respect to the articles protected by the asserted patents by reason of Overland Storage's significant investment in plant, labor and capital with respect to the articles protected by the asserted patents.

61. Attached as Exhibit 21 is the Confidential Declaration of Kurt L. Kalbfleisch, Chief Financial Officer of Overland Storage ("Kalbfleisch Declaration"), setting forth the details of Overland Storage's investment in plant, equipment, labor, capital, and research and development related to the manufacture and service of Overland Storage's automated media library devices in the United States.

62. Overland Storage designs, develops and manufactures the 2000, 2000e, 4000, 4000e, 8000 and 8000e NEO Series Tape Libraries in San Diego, California. These tape libraries are Overland Storage's mid-range and high-end products. The 200s and 400s NEO Series Tape Libraries are OEM products of BDT. However, Overland Storage outsources final

assembly of the 200s and 400s NEO Series Tape Libraries to Hon Hai/Foxconn in Houston, Texas. Overland Storage's domestic investments in plant, equipment, labor, capital, and research and development related to the manufacture and service of these products are summarized further below and in the Kalbfleisch Declaration submitted as Exhibit 21.

63. In his declaration, Mr. Kalbfleisch explains his allocation methodology for attributing the portion of each Overland Storage domestic investment that is directly related to the domestic industry products. Manufacturing-related expenses, including for capital, labor, plant and equipment, were allocated based on the time spent manufacturing the domestic industry products in the United States as opposed to other Overland Storage products. Engineering labor expenses were allocated based on engineers' time spent on the domestic industry products as opposed to other products. Research and development expenditures were allocated based on whether the projects were related to domestic industry products. Investments related to service and warranties, including labor and costs, were allocated based on a service and warranty revenue model (*i.e.*, the percentage of total service and warranty revenue attributable to the domestic industry products). And other types of investments in general were allocated based on a total product revenue model (*i.e.*, the percentage of total product revenue attributable to the domestic industry product). Mr. Kalbfleisch explains these allocation methodologies in detail in his declaration, which attaches exhibits supporting his allocation calculations. (Ex. 21, Kalbfleisch Decl., ¶¶ 17, 20, 21, 22, 23, 29, 32, 35.)

64. Expenditures on Research and Development: In fiscal year 2010 (ended June 30, 2010), Overland Storage invested about \$5.8 million in research and development in the United States. (Ex. 1, Overland Storage 10-K, at 6.) A significant portion of this investment was related

to the 200s, 400s, 2000, 2000e, 4000, 4000e, 8000 and 8000e NEO Series Tape Libraries. (Ex. 21, Kalbfleisch Decl., ¶ 32; Ex. 21-F.)

65. Expenditures on Manufacturing (Other Than Labor): Overland Storage performs product assembly, integration and testing of the 2000, 2000e, 4000, 4000e, 8000 and 8000e NEO Series Tape Libraries at its integrated factory in San Diego, California. (Ex. 21, Kalbfleisch Decl., ¶¶ 13, 16) The vast majority of all products manufactured in the San Diego facility are the 2000, 2000e, 4000, 4000e, 8000 and 8000e NEO Series Tape Libraries. (Ex. 21, Kalbfleisch Decl., ¶ 17; Ex. 21-B.) Some examples of Overland Storage's financial investments in manufacturing and equipment include annual computer equipment costs of \$1.17 million, machinery and equipment costs of \$468,000, leasehold improvements of \$205,000 and furniture and fixture expenditures of \$65,000. (Ex. 1, 10-K at 54; Ex. 21, Kalbfleisch Decl., ¶ 35.) Overland Storage also pays third-party Hon Hai/Foxconn to perform final assembly of the 200s and 400s NEO Series Tape Libraries in Houston, Texas. (Ex. 21, Kalbfleisch Decl., ¶¶ 13, 27; Exs. 20-C, 20-D.)

66. Employees and Salary Expenditures: Overland Storage employs a significant number of full-time workers to manufacture the 2000, 2000e, 4000, 4000e, 8000 and 8000e NEO Series Tape Libraries in its San Diego facility. (Ex. 21, Kalbfleisch Decl., ¶¶ 16, 17; Ex. 21-A.) Overland Storage employs numerous additional engineers and other employees who work on engineering, research and development, marketing, sales and general administration related to manufacturing and selling these products in the United States. (Ex. 21, Kalbfleisch Decl., ¶¶ 20-25; Ex. 21-A.)

67. Expenditures on Real Estate: Overland Storage leases facilities in the United States at a significant monthly and annual cost. Overland Storage's headquarters is located in

San Diego, California. Overland Storage also leases a facility in San Jose, California. (Ex. 21, Kalbfleisch Decl., ¶¶ 14, 28; Ex. 21-E.)

68. General and Administrative Expenditures: General and administrative expenditures were \$11.9 million in fiscal year 2010 and \$10.4 million in fiscal year 2009. (Ex. 1, Overland Storage 10-K at 24.)

**X. RELIEF**

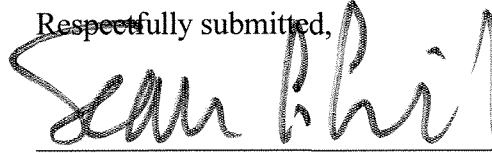
69. Overland Storage respectfully requests that the United States International Trade Commission:

- A. Institute an immediate Investigation pursuant to Section 337(b)(1) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, into the violations by proposed Respondents of Section 337 arising from the importation into the United States, and/or sale for importation and/or sale within the United States after importation, of Respondents' infringing automated media library devices;
- B. Set a target date of no more than fifteen (15) months;
- C. Schedule and conduct a hearing pursuant to Section 337(c) for the purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337, and following the hearing, to determine that there has been a violation of Section 337;
- D. Issue a permanent exclusion order, pursuant to Section 337(d), forbidding entry into the United States of Respondents' automated media library devices that infringe one or more claims of United States Patent No. 6,328,766 and United States Patent No. 6,353,581;
- E. Issue a permanent order, pursuant to Section 337(f), directing Respondents to cease and desist from, at a minimum, importing, selling, offering for sale, soliciting the sale of, using, demonstrating, promoting, marketing, advertising and supporting in the United States Respondents' automated media library devices that infringe one or more claims of United States Patent No. 6,328,766 and United States Patent No. 6,353,581; and

- F. Grant all such other and further relief as it deems appropriate under the law, based on the facts complained of herein and as determined by the Investigation.

Dated: October 8, 2010

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Sean Cunningham", written over a horizontal line.

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**Counsel for Complainant**  
**Overland Storage, Inc.**




### VERIFICATION TO COMPLAINT

I, Kurt L. Kalbfleisch, declare, in accordance with 19 C.F.R. §§ 210.4 and 210.12(a), under penalty of perjury, that the following statements are true:

1. I am Chief Financial Officer and Vice President of Finance for Overland Storage, Inc. ("Overland Storage");
2. I have read the foregoing Complaint of Overland Storage and am aware of its contents and the exhibits and appendices which it encloses;
3. The Complaint and all of its supporting material (exhibits and appendices) are not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
4. To the best of my knowledge, information, and belief founded upon reasonable inquiry, the claims and legal contentions of this Complaint are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
5. To the best of my knowledge, information, and belief founded upon reasonable inquiry, any allegations or factual contentions in this Complaint have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 7<sup>th</sup>, 2010

  
Kurt L. Kalbfleisch