

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

In the Matter of

**CERTAIN AUTOMATED TELLER
MACHINES, ATM MODULES,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

**Investigation No. 337-TA-989
(Enforcement Proceeding)**

**ENFORCEMENT COMPLAINT OF NAUTILUS HYOSUNG INC.
AND NAUTILUS HYOSUNG AMERICA INC.**

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4	U.S. Customs and Border Protection Letter Ruling HQ H288282 (“CBP Opinion”) (Public Version)
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I. INTRODUCTION

1.1. Nautilus Hyosung Inc. and Nautilus Hyosung America Inc. (collectively, “Nautilus Hyosung”) bring this enforcement action to force Diebold Nixdorf Incorporated and Diebold Self Services Systems (collectively, “Diebold Nixdorf”) to comply with violation and remedial orders issued by the International Trade Commission.

1.2. The invention in Nautilus Hyosung’s U.S. Patent No. 8,523,235 (“’235 patent”) was a major advancement in the financial industry—it resulted in an ATM machine capable of automatically processing and depositing “mixed bundles” of cash and checks. The Commission concluded in the underlying Investigation that Diebold Nixdorf’s ATMs with CCDMv2 deposit modules (also referred to as ActivMedia modules) infringe the ’235 patent, and issued a limited exclusion order (“LEO”) and cease-and-desist order (“CDO”) to prevent importation and sale of these goods in the United States. (Exhibit 1, Final Initial Determination, Inv. No. 337-TA-989 (Public Version).) The Commission made those determinations based on a “comprehensive analysis” of the record and detailed factual findings that went well beyond the minimum requirements of the asserted patent claims. (*Id.* at 97-172, 285.)

1.3. Rather than comply with the Commission’s broad infringement findings or its remedial orders, Diebold Nixdorf has ignored the Commission at every turn. It characterized the rulings of both ALJ Shaw and the Commission as finding mere “technical” infringements of the ’235 patent and continued to market its infringing technology. (Exhibit 2, Press Release, “Diebold Nixdorf Successfully Defeats Retaliatory Claims; Continues Pursuit Of Patent Infringement Case Against Korea-Based Nautilus Hyosung,” March 16, 2017.) Then it claimed to have developed a design around “that is not affected by [the ’235] patent.” (Exhibit 3, Press Release, “Diebold Nixdorf’s Prior Success Against Hyosung Claims Upheld,” July 17, 2017.) But this purported design around ignored the breadth and detail of the Commission’s findings.

1.4. The '235 patent claims recite performing “tripartite detection”—*i.e.*, using three sensors to detect overlapping notes (checks or cash) after the ATM separates the notes deposited by the customer. (*See* Final ID at 55-58.) The Commission found that Diebold Nixdorf’s ATMs with CCDMv2 modules (*see infra* at §§ 5.1, 5.2) have not just three sensors that detect overlap, but many such sensors: an ultrasonic sensor, Hall sensors, multiple MICR sensors, and “a number of photo sensors.” (*id.* at 121; *see also id.* at 122-23, 125-26, 129).

1.5. Diebold Nixdorf’s purported design around disabled only the Hall sensors and one of the many photo sensors found to infringe, and admittedly left untouched numerous other infringing sensors—including multiple MICR and photo sensors—that perform overlap detection. (Exhibit 4, U.S. Customs and Border Protection (“CBP”) Letter Ruling HQ H288282 (“CBP Opinion”) (Public Version), at 6-8.) Therefore, even assuming the purported design around works as advertised, it indisputably still perform “tripartite detection” and infringes the '235 patent.

1.6. Before CBP, however, Diebold Nixdorf argued that its modified products did not infringe the '235 patent and ignored the Commission’s sweeping findings that numerous sensors (above and beyond the Hall sensors and photo sensor that Diebold Nixdorf purportedly disabled) perform overlap detection. (Final ID at 121-22, 125.) Relying on Diebold Nixdorf’s misrepresentations and omissions, CBP ruled that the modified products did not infringe and could be imported to the United States under the LEO.

1.7. Based on CBP’s ruling, Diebold Nixdorf continues to operate as if the Commission never found a section 337 violation. It continues to advertise the infringing ActivMedia technology on its website and, on information and belief, ATMs incorporating this

technology have been installed in at least four bank branches opened after the Presidential review period.

1.8. Diebold Nixdorf's continuing infringement undermines the Commission's authority, damages the commercial standing of Nautilus Hyosung, and impairs innovation. The Commission should end Diebold Nixdorf's disregard for the Commission's rulings, and apply appropriate sanctions to remedy past violations and ensure future compliance.

II. JURISDICTION

2.1. The Commission has jurisdiction over this matter and the proposed parties pursuant to §§ 333 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §§ 1333, 1337. These proceedings are governed by the Commission's rules for enforcement of exclusion orders, and cease and desist orders. *See* 19 C.F.R. § 210.75.

III. PARTIES

A. Complainants

3.1. The complainants are Nautilus Hyosung Inc. and Nautilus Hyosung America Inc.

3.2. Nautilus Hyosung Inc. is a corporation organized under the laws of South Korea, with a principal place of business at 281 Gwangpyeong-ro, Gangnam-Gu, Seoul, South Korea. Nautilus Hyosung Inc. is a global technology company that is a leader in the design, development, manufacture and support of a wide range of self-service banking solutions including ATMs and modules thereof.

3.3. Nautilus Hyosung Inc. retains numerous intellectual property rights covering hardware, software, and mechatronics technologies relating to financial automation solutions, including the '235 patent. The invention of the '235 patent allowed mixed bundled deposits of cash and checks based on the use of at least three different sensors. Nautilus Hyosung Inc.'s ATM modules that implement its enhanced deposit technology include, but are not limited to, the

Cash and Check In Module that is capable of accepting cash and checks in a bundle together and the Bulk Note Acceptor that allows for a deposit of bulk notes. Because of these innovations (and others), Nautilus Hyosung's ATMs have enjoyed success in the marketplace. Nautilus Hyosung Inc.'s ATMs that implement its efficient cash handling technology include, but are not limited to, the Bill Recycling Machine that is capable of reusing deposited cash for dispensing and the Cash Dispenser Unit that is capable of dispensing cash for use. Nautilus Hyosung, Inc. has reached out to the global market, including the U.S. market, with its innovative ATM technologies.

3.4. Nautilus Hyosung America Inc., a wholly-owned subsidiary of Nautilus Hyosung, Inc., is a corporation organized under the laws of the State of Delaware with its principal place of business at 6641 Beltline Road, Suite 100, Irving, TX 75063. Nautilus Hyosung America, Inc. employs over 285 employees in the United States dedicated to the manufacturing, programming, customization, finishing, service, repair, updating, technical support, and software support of ATMs and ATM modules for U.S. customers.

B. Respondents

3.5. The respondents are Diebold Nixdorf, Incorporated and Diebold Self Service Systems.

3.6. Diebold Nixdorf, Incorporated is an Ohio corporation with a principal place of business at 5995 Mayfair Road, North Canton, OH 44720. According to its website (<https://www.dieboldnixdorf.com/en-us/systems/financial>), Diebold Nixdorf, Incorporated offers a broad range of ATMs and ATM modules with automatic deposit technology. In particular, Diebold Nixdorf, Incorporated offers infringing products, including but not limited to the Enhanced Note Acceptor module, the ActivMedia module, the ActivRecycle module, the ActivCash module, and ATMs containing the same. (See Final ID at 3-4.)

3.7. Diebold Nixdorf, Incorporated, or others on its behalf, manufactures the products in Germany or another foreign country. It then imports them into the United States, sells them for importation into the United States, sells them after importation into the United States, and/or engages in repair, service, and support related activities related to its products. (See Final ID at 4.)

3.8. Diebold Self-Service Systems is a New York general partnership with a principal place of business at 5995 Mayfair Road, North Canton, OH 44720. Diebold Self-Service System is a wholly-owned subsidiary of Diebold Nixdorf, Incorporated. (See Final ID at 3-4.)

3.9. Diebold Self-Service Systems, or others on its behalf, manufactures products in Germany or another foreign country. It then imports them into the United States, sells them for importation into the United States, sells them after importation into the United States, and/or engages in repair, service, and support related activities related to its products. (See Final ID at 4.)

IV. THE '235 PATENT

4.1. The '235 patent relates to “[a] cash and check automatic depositing apparatus [that] is capable of automatically depositing a bundle of cashes and checks inserted at once.” (Exhibit 5, '235 Patent, Abstract.) The patented invention is capable of receiving a bundle of mixed cash and checks at once, separating the checks from the cash, and directing them to the appropriate storage unit. The invention can also determine if the user has inserted an inauthentic bank note and quarantine it in a separate storage area.

4.2. Claim 1 is representative:

A cash and cheque automatic depositing apparatus for automatically depositing a bundle of banknotes including at least one cheque, the apparatus comprising:

a bundle insertion unit configured to receive the bundle of banknotes from a user;

a bundle separator coupled to the bundle insertion unit and configured to separate the bundle of banknotes received at the bundle insertion unit into individual sheets and transfer each of the individual sheets with a predetermined time interval;

a main transfer unit coupled to the bundle separator and configured to horizontally transfer the individual sheets of the banknotes along a main transfer path;

a verifying unit installed on the main transfer path and configured to verify authenticity or abnormality of each of the banknotes by acquiring features information on each of the banknotes, the verifying unit configured to produce a verification result indicating the authenticity or abnormality of each of the banknotes, the verification unit further configured to perform tripartite detection of overlapping of the individual sheets in the main transfer unit using three different sensors;

an abnormal sheet branch transfer unit having an abnormal sheet branch transfer path branched from the main transfer path, the abnormal sheet branch transfer unit configured to transfer abnormal banknotes verified by the verifying unit;

a first gate configured to selectively route the verified banknotes to the abnormal sheet branch transfer path or the main transfer path;

an abnormal sheet unloading transfer unit coupled to the first gate, the abnormal sheet unloading unit having an abnormal sheet unloading transfer path and configured to return the abnormal banknotes to the user;

an authentic cheque transfer unit coupled to an end of the main transfer path, the authentic sheet transfer unit having an authentic cheque transfer path and configured to transfer at least one authentic cheque in the bundle of banknotes verified by the verifying unit;

an authentic cash transfer unit coupled to the end of the main transfer path, the authentic cash transfer unit having an authentic cash transfer path and configured to transfer authentic banknotes other than cheques verified by the verifying unit;

a second gate configured to route the at least one cheque transferred by the main transfer unit to the authentic cheque transfer path and configured to route the banknotes transferred by the main transfer unit to the authentic cash transfer path;

an authentic cheque storage cassette coupled to the authentic cheque transfer unit, the authentic cheque storage cassette configured to store therein the at least one authentic cheque transferred by the authentic cheque transfer unit;

an authentic cash storage cassette coupled to the authentic cash transfer unit and configured to store therein the authentic banknotes other than cheques transferred by the authentic cash transfer unit;

a cheque standby unit placed in the main transfer path between the first gate and the second gate, the cheque standby unit configured to hold the at least one authentic cheque to return the at least one authentic cheque to the user responsive to receiving user instructions cancelling depositing of the at least one authentic cheque; and

a depositing controller connected to the first gate, the second gate and the verifying unit, the depositing controller configured to transfer the authentic banknotes to the main transfer path but transfer abnormal banknotes to the abnormal sheet branch transfer path based on the verification result, and transfer each of the individual sheets in the banknotes determined to be a cheque to the authentic cheque transfer path and the banknotes other than the cheque to the authentic cash transfer path based on the verification result.

('235 Patent at 9:58 – 10:65.)

V. THE COVERED PRODUCTS

5.1. The Covered Products, as defined by the Commission in its Cease and Desist Order (“CDO”), are “automated teller machines, ATM modules, components thereof, and products containing the same covered by one or more of claims 1-3, 6, 8, and 9 of the [’235] Patent.” (Exhibit 6, CDO, at 2.)

5.2. The Covered Products include, but are not limited to, ATMs that incorporate a deposit automation module such as Diebold Nixdorf’s ActivMedia module, also known as the CCDMv2 module. In particular, the Diebold Nixdorf 77xx series ATMs and 99xx series ATMs with the ActivMedia module sidecar, and all Diebold Nixdorf ATMs having a cash and check acceptor, including, but not limited to, the CCDMv2 module, are covered by the LEO and CDO issued by the Commission in this Investigation. (Exhibit 7, Commission Opinion Inv. No. 337-TA-989 (Public Version), at 8.)

VI. THE COMMISSION'S INFRINGEMENT DETERMINATION

A. Proceedings Before ALJ Shaw

6.1. On February 9, 2016, Nautilus Hyosung filed a request for an investigation pursuant to Section 337 of the Tariff Act of 1930 on four of its patents, including the '235 patent. (Exhibit 8, Original Complaint, No. 337-TA-989.) The Commission instituted the investigation on March 14, 2016, naming Diebold, Incorporated and Diebold Self Service Systems as Respondents.¹ (Exhibit 9, Notice of Institution, 81 Fed. Reg. 13419 (Mar. 14, 2016).) The Commission assigned the investigation to ALJ David P. Shaw. The Office of Unfair Import Investigations is not a party to this investigation. (Commission Op. at 3.)

6.2. After conducting an evidentiary hearing from November 1-3, 2016, ALJ Shaw issued a final Initial Determination ("ID") on March 13, 2017. The ID found that Diebold Nixdorf violated Section 337 by importing products that infringe claims 1-3, 6, 8, and 9 of the '235 patent. (Final ID at 97-172.) ALJ Shaw also recommended that the Commission issue (1) a limited exclusion order prohibiting the importation of Diebold Nixdorf's ATMs, ATM modules, components thereof, and products containing the same that infringe the asserted claims of the '235 patent and (2) cease and desist orders prohibiting Diebold Nixdorf from engaging in certain commercial activities in the United States relating to the Covered Products. (*Id.* at 330-43.)

6.3. In his infringement findings, ALJ Shaw determined that the Covered Products are "configured to perform tripartite detection of overlapping of the individual sheets in the main

¹ On August 15, 2016, Diebold, Incorporated acquired Wincor Nixdorf AG, and the combined organization began operating as Diebold Nixdorf, Incorporated on August 16, 2016. (See Final ID at 334.)

transfer unit using three different sensors.” (Final ID at 55-58, 118-31.) The key elements of ALJ Shaw’s analysis and conclusions are briefly reviewed below.

1. “Tripartite Detection” Does Not Require Multiple Sensor Types

6.4. ALJ Shaw construed the term “perform tripartite detection of overlapping of individual sheets in the main transfer unit using three different sensors” according to its plain and ordinary meaning, as Nautilus Hyosung proposed. (Final ID at 55-58.) He rejected Diebold Nixdorf’s proposed construction that would have required infringing products to perform overlap detection “using three different types of data sensed from three different types of sensors.” (*Id.* at 55-56.)

6.5. Therefore, under ALJ Shaw’s construction, a product meets the “tripartite detection” limitation if it contains at least three sensors that are involved in overlap detection. The type of data detected by the three sensors is not relevant to the infringement analysis.

2. The Covered Products Contain Many Sensors Providing At Least Four Different Types of Data

6.6. In his infringement analysis, the Final ID found that the CCDMv2 module contains numerous sensors that perform overlap detection and satisfy the “tripartite detection” limitation. (Final ID at 120.) Nautilus Hyosung only needed to prove that three sensors in the Covered Products contribute to overlap detection, even if those sensors were of the same type. But Nautilus Hyosung went well beyond this minimum requirement. Nautilus Hyosung established (and the Final ID found) that numerous sensors—an ultrasonic sensor and multiple Hall sensors, photo sensors, and MICR sensors—are capable of overlap detection. (*Id.* at 120-29.)

6.7. Diebold Nixdorf’s own documentation confirmed the presence of these sensors in the CCDMv2 module. (*See* Final ID at 118 (collecting exhibits).) Also, Nautilus Hyosung’s

expert (Dr. Howard) inspected a Diebold Nixdorf 7700 equipped with CCDMv2 module at Diebold Nixdorf's headquarters in Ohio. (*Id.* at 122-23.) Dr. Howard's experiments, which ALJ Shaw found credible, confirmed that the CCDMv2 module can detect overlap conditions using an ultrasonic sensor, Hall sensors, MICR sensors, and photo sensors. (*Id.* at 123-28.) ALJ Shaw gave significant weight to "Dr. Howard's comprehensive analysis of the CCDMv2, in which he relied on specific documentation, code review, product inspection, and deposition testimony," and discredited the "generalizations" and "uncorroborated characterizations" of Diebold Nixdorf's experts. (*Id.* at 285.)

6.8. ALJ Shaw also reviewed example source code from the CCDMv2 module. (Final ID at 128-29.) The source code confirmed that "the accused CCDMv2 module uses at least three different sensors ... to perform tripartite detection of overlapping sheets in the main transfer path." (*Id.* at 128.)

6.9. In light of this evidence, ALJ Shaw found that the CCDMv2's sensors perform tripartite detection of overlapped notes. ALJ Shaw did not make infringement of the '235 patent contingent on the type or configuration of the sensors used. (Final ID at 127-28.)

B. Proceedings Before The Full Commission

6.10. The Commission issued an opinion affirming the ID's finding of a violation and recommended determination of a remedy in all relevant respects on July 14, 2017. (Commission Op. at 8-19.) Diebold Nixdorf's submission to the Commission did not contest ALJ Shaw's finding that the CCDMv2 practices the "tripartite detection" limitation of claim 1, nor did it dispute the construction of the term reached by ALJ Shaw. (*Id.* at 11.)

6.11. The Commission issued a limited exclusion order on July 14, 2017 that provides, in relevant part:

Automated teller machines, ATM modules, components thereof, and products containing the same that infringe one or more of claims 1-3, 6, 8, and 9 of U.S. Patent No. 8,523,235 that are manufactured by, or on behalf of, or are imported by or on behalf of Diebold Nixdorf, Incorporated or Diebold Self-Service Systems or any of their affiliated companies, parents, subsidiaries, agents, or other related business entities, or their successors or assigns, including Wincor Nixdorf AG, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of U.S. Patent No. 8,523,235, except under license of the patent owner or as provided by law, and except for service or repair articles imported for use in servicing or repairing automated teller machines, ATM modules, components thereof, and products containing the same, for identical articles that were imported as of the date of this Order. This exception does not permit the importation of automated teller machines to replace such articles that were previously imported.

(Exhibit 10, LEO, at 2.)

6.12. The Commission also issued cease and desist orders against Diebold Nixdorf, Incorporated and Diebold Self Service Systems that prohibit them from the following activities with respect to automated teller machines, ATM modules, components thereof, and products containing the same covered by one or more of claims 1-3, 6, 8, and 9 of the '235 patent ("covered products"):

- (A) import or sell for importation into the United States covered products;
- (B) market, distribute, sell, or otherwise transfer (except for exportation), in the United States imported covered products;
- (C) advertise imported covered products;
- (D) solicit U.S. agents or distributors for imported covered products; or
- (E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

(CDO at 2-3.)

6.13. The sixty-day period for Presidential review of the Commission's Orders expired on September 12, 2017.

VII. PROCEEDINGS BEFORE U.S. CUSTOMS AND BORDER PROTECTION

7.1. On July 17, 2017, Diebold Nixdorf sent a letter request to CBP seeking an administrative ruling for an exception to the LEO. (CBP Opinion at 1.)

7.2. As relevant to this enforcement complaint, Diebold Nixdorf asserted that it had successfully redesigned the CCDMv2 module to disable the Hall sensors and “the infringing photo sensor” discussed by ALJ Shaw in the Final ID. (CBP Opinion at 6.) Diebold Nixdorf argued that these redesigned products did not meet the “tripartite detection” limitation of the asserted claims of the ’235 patent, and could therefore be imported to the United States under the LEO.

A. Diebold Nixdorf’s Proposed Design-Around

7.3. By its own admission, Diebold Nixdorf undertook a limited redesign of the CCDMv2 module in an attempt to address the Commission’s findings regarding “tripartite detection.” It made just three modifications to the source code of the Covered Products, which contains hundreds of thousands of lines of source code. (CBP Opinion at 8.) Otherwise, the source code of the Covered Products is unchanged, as are their physical and electrical components. (*Id.*)

7.4. Diebold Nixdorf argued that its “new and improved” CCDMv2 module “disabled the infringing photo sensor and Hall sensors in its verification unit, which therefore no longer ‘perform[s] tripartite detection of overlapping of the individual sheets in the main transfer unit using three different sensors.’” (CBP Opinion at 6.)

7.5. Diebold Nixdorf’s belief that these cursory changes work in the manner described is unsupported by inspection and testing of these complex devices. Without hands-on testing, it is difficult, if not impossible, to discern how the modified code interacts with the hardware of the

Covered Products and whether or not the sensors targeted by the source code changes are actually disabled. In an expert declaration submitted alongside Nautilus Hyosung's response to Diebold Nixdorf's request, (*see* CBP Opinion at 1), Dr. Howard showed that Diebold Nixdorf failed to completely disable the Hall sensors and the photo sensor singled out by Diebold Nixdorf.

7.6. Regardless, even if these modifications worked as Diebold Nixdorf claimed, Diebold Nixdorf misrepresented to CBP the breadth of the infringement findings made by the Commission.

7.7. The Final ID found that the Covered Products contain "a number of photo sensors" and "MICR sensors" involved in overlap detection, even though these sensors detect the same type of information. (*Id.* at 121-22.) The Final ID refers to the multiple photo sensors involved in overlap detection on multiple occasions:

- "The CCDMv2 includes *a number of photo sensors* throughout the main transport path. ... The *photo sensors* in the CCDMv2 detect ... conditions" by taking certain types of measurements. (Final ID at 121.)
- "The CCDMv2 also includes *one or more photo sensors* that detect overlapping notes...." (*Id.* at 129.)
- "In this case, the overlap condition was detected by the *photo sensors*...." (*Id.* at 125-26.)

ALJ Shaw also found that multiple "MICR sensors" and "MICR heads" are used in overlap detection. (*Id.* at 122, 126.)

7.8. But Diebold Nixdorf argued to the CBP that the Final ID had only identified a single infringing MICR and photo sensor. Diebold Nixdorf blatantly ignored these findings and

argued to CBP that by “disabl[ing] ... the infringing photo *sensor*” identified in the Final ID, the Covered Products no longer engaged in “tripartite detection.” (CBP Opinion at 8-9, 21-22, 24.) It also argued that the “MICR sensors” identified by ALJ Shaw should be treated as a single sensor. (*Id.* at 24.)

7.9. Therefore, even if the Covered Products were modified as Diebold Nixdorf claimed, they would still infringe the ’235 patent because they contain an ultrasonic sensor and multiple MICR sensors and photo sensors that detect overlap.

B. CBP Opinion

7.10. On September 20, 2017, CBP issued a letter ruling that found Diebold Nixdorf’s redesigned products did not infringe the “tripartite detection” limitation of claim 1 of the ’235 patent and were therefore not subject to the LEO. (CBP Opinion at 20-25.)

7.11. CBP concluded that Diebold Nixdorf successfully disabled the Hall sensors and “the infringing photo sensor.” (CBP Opinion at 20-23.) And CBP accepted Diebold Nixdorf’s arguments that the sensors *not* impacted by Diebold Nixdorf’s source code modifications—the ultrasonic sensor, the MICR sensors, and the additional photo sensors—were insufficient to meet the “tripartite detection” limitation, despite the Final ID’s findings that the three sensors involved in “tripartite detection” could be of the same data type and that the Covered Products contained multiple MICR sensors and photo sensors satisfying this claim limitation.

VIII. EVIDENCE OF VIOLATIONS OF THE REMEDIAL ORDERS

8.1. Diebold Nixdorf has violated the Commission’s CDO by marketing, distributing, offering for sale, selling, advertising, and/or aiding and abetting other entities in the sale and/or distribution of the Covered Products after September 12, 2017, the end of the Presidential review period.

8.2. Before Diebold Nixdorf's purported redesigns of the Covered Products, the Commission found that the Covered Products infringed the '235 patent. (Final ID at 97-172; Commission Op. at 11-19; Exhibit 11, Infringement Claim Chart, U.S. Patent No. 8,523,235.) This opinion was supported throughout by Dr. Howard's detailed analysis of the Covered Products.

8.3. The Covered Products have not materially changed since the Commission entered its ruling. As Diebold Nixdorf itself conceded before CBP, "the amended code functions as alleged and, apart from [] three cited instances, is unchanged." (CBP Opinion at 8.) And, as explained above, the redesigned products continue to infringe the '235 patent under the claim constructions and factual findings made in the Final ID.

8.4. Despite the Final ID's findings and the Commission's opinion affirming those findings, Diebold Nixdorf continues to market its CS 77xx series (formerly Diebold 77xx series) ATMs with ActivMedia and CS 99xx series (formerly Diebold 99xx series) ATMs to the public. (Exhibit 12, "Intelligent Deposits," Diebold Nixdorf Website; Exhibit 13, "Cash Recyclers," Diebold Nixdorf Website.) Diebold Nixdorf advertises its ActivMedia feature on many of these pages:

<p>Media Technology</p> <p>ActivCash™ Cash Module Dispenser</p> <ul style="list-style-type: none"> • Withdrawals of up to 75 notes in a bundle • Banknote reject/bundle retract <p>Banknote Storage</p> <ul style="list-style-type: none"> • Up to 4 cassettes • Maximum fill level: 432 mm • Money low indicator • Retract/reject cassette with 2 compartments <p>ActivMedia Mixed Media Deposit Module</p> <ul style="list-style-type: none"> • Mixed bundle deposit, up to 75 notes/checks • MICR and OCR recognition • Banknote validation in compliance with ECB Article 6 • Options: fit/unfit test

(See, e.g., Exhibit 14, “Diebold Nixdorf CS 7700 / CS 7750,” Diebold Nixdorf Website; Exhibit 15, “Diebold Nixdorf CS 7780,” Diebold Nixdorf Website; Exhibit 16, “Diebold Nixdorf CS 7790,” Diebold Nixdorf Website.)

8.5. Diebold Nixdorf continues to provide documentation to customers instructing them how to install these infringing products. (Exhibit 17, Product Cut Sheet, “ActivMedia Side Car For Installation Next To Diebold Nixdorf 9900 – In Lobby Teller,” Diebold Nixdorf Product Application Services Website; Exhibit 18, Product Cut Sheets, “Self Service Terminals: Intelligent Deposit,” Diebold Nixdorf Product Application Services Website.)

8.6. On information and belief, Nautilus Hyosung understands from its contacts with current and potential customers that Diebold Nixdorf is actively engaged in marketing, distributing, offering for sale, selling, advertising, and/or aiding and abetting other entities in the sale and/or distribution of Covered Products after September 12, 2017. For example, Nautilus Hyosung is aware of at least four installations of Covered Products occurring after the expiration of the sixty-day Presidential review period on September 12, 2017.

8.7. TD Bank opened a new branch in McLean, Virginia in late October or early November of 2017 which included a CS 77xx drive-up island ATM and a CS 99xx interior recycler with a sidecar. (Exhibit 19, Declaration of Scott Hackl, ¶ 6.a.)

8.8. Avidia Bank opened a new branch in Framingham, Massachusetts, with a CS 77xx ATM on September 27, 2017. (Hackl Decl. ¶ 6.b.)

8.9. Village Bank & Trust opened a new drive-thru branch in Rolling Meadows, Illinois, with a CS 77xx drive-up island ATM on October 14, 2017. (Hackl Decl. ¶ 6.c.)

8.10. Regions Bank installed a new CS 77xx drive-up island ATM at a Walmart in Houston after September 12, 2017. (Hackl Decl. ¶ 6.d.)

8.11. Although Nautilus Hyosung cannot confirm whether these institutions have enabled all available features on these ATMs, that is irrelevant to the question of infringement. The Final ID held that so long as “all of the requisite structural elements (both hardware and software) that practice the Asserted Claims are literally present,” devices sold to these institutions “infringe the asserted claims of the ’235 patent.” (Final ID at 169-70.)

8.12. Regardless of whether these newly installed ATMs are based on the redesigned CCDMv2 software cleared by CBP or an unmodified version of CCDMv2 imported prior to the expiration of the Presidential review period, these units continue to infringe claims 1-3, 6, 8, and 9 of the ’235 patent, and the sale or transfer of these units to Diebold Nixdorf’s customers violates the CDO and/or the LEO.

8.13. Diebold Nixdorf is therefore in clear violation of the CDO by marketing, distributing, offering for sale, selling, advertising, and/or aiding and abetting other entities in the sale and/or distribution of the Covered Products after September 12, 2017.

8.14. Nautilus Hyosung's requested relief will not adversely affect the public interest. The ATM market is highly competitive and fast-moving, and has undergone periods of rapid growth and innovation. Diebold Nixdorf has identified at least six competitors: NCR, Nautilus Hyosung, GRG Banking Equipment, Glory Global Solutions, Oki Data and Triton Systems. (Exhibit 20, Diebold Nixdorf 10K, Feb. 24, 2017, at 7.)

8.15. Diebold Nixdorf's statements to the public confirm that it is aware of the CDO but has simply refused to follow it. For instance, it has recognized—in parallel infringement litigation brought by Diebold Nixdorf against Nautilus Hyosung—that the entry of a CDO against a business prevents it from importing goods practicing a protected technology into the United States. (Exhibit 21, Diebold Nixdorf FAQs, at 1-2.) Likewise, Diebold Nixdorf was aware, or should have been aware, of the consequences of violating the CDO entered in this Investigation.

IX. APPROPRIATE RELIEF

9.1. WHEREFORE, by reason of the foregoing, Nautilus Hyosung Inc. and Nautilus Hyosung America Inc. respectfully request that the United States International Trade Commission:

- (a) Institute a formal enforcement proceeding, pursuant to 19 C.F.R. § 210.75, to confirm the violation of the Cease and Desist Order, including as described herein;
- (b) Expedite the proceeding and promptly refer this matter to an Administrative Law Judge for issuance of an Initial and Final Determination on the issues of the enforcement violation and remedy requested;
- (c) Direct the Administrative Law Judge to:
 - (1) Permit a necessary and expedited period for fast discovery on Diebold Nixdorf's continued violations of the Cease and Desist Order;


- (2) Hold a hearing; and
 - (3) Issue a Final Determination on enforcement as soon as practicable; and
- (d) After the enforcement proceeding, in the event the Commission determines that there has been a violation of the Cease and Desist Order, provide the following remedies:
- (1) Enforce the Cease and Desist Order pursuant to 19 U.S.C. § 1337(f) and 19 C.F.R. § 210.75, prohibiting Diebold Nixdorf, Incorporated; Diebold Self Service Systems; and any of their principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, including Wincor Nixdorf AG, from engaging in illegal activities;
 - (2) Modify the Commission's Limited Exclusion Order and/or Cease and Desist Order pursuant to 19 C.F.R. 210.75(b)(4), in any manner, to clarify the scope of the original orders, assist in the prevention of the unfair practices that were originally the basis for issuing such Order, or assist in the detection of violations of such Order;
 - (3) Impose the maximum statutory civil penalties for violation of the Commission's Cease and Desist Order (including monetary sanctions for each day's violation of the Cease and Desist Order of the greater of \$100,000.00 or twice the domestic value of the articles entered or sold, whichever is higher) against Diebold Nixdorf, Incorporated; Diebold Self Service Systems; and any of their principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether

by stock ownership or otherwise) and majority-owned business entities, successors and assigns, including Wincor Nixdorf AG, found to be in violation of the Cease and Desist Order;

- (4) Bring a civil action in an appropriate United States District Court pursuant to 19 C.F.R. § 210.75(c) and 19 U.S.C. § 1337(f) requesting collection of such civil penalties and the issuance of a mandatory injunction preventing further violations of the Cease and Desist Order; and
- (5) Impose such other remedies and sanctions as are appropriate and within the Commission's authority.

Dated: November 17, 2017

Respectfully Submitted,



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