U.S. Court of Appeals for the Federal Circuit

NOTE: This disposition is nonprecedential.

ITG VOMA CORPORATION, CHINA RUBBER INDUSTRY ASSOCIATION, SUB-COMMITTEE OF TIRE PRODUCERS OF THE CHINA CHAMBER OF COMMERCE OF METALS, MINERALS & CHEMICAL IMPORTERS, Plaintiffs-Appellants v. UNITED STATES INTERNATIONAL TRADE COMMISSION, UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO-CLC, Defendants-Appellees

Appeal Nos. 2017–2618, 2017–2619

Appeals from the United States Court of International Trade in Nos. 1:15-cv-00255-JCG, 1:15-cv-00258-JCG, Judge Jennifer Choe-Groves.

JUDGMENT

JONATHAN THOMAS STOEL, Hogan Lovells US LLP, Washington, DC, argued for plaintiff-appellant ITG Voma Corporation. Also represented by SEAN-MICHAEL CARLESIMO, CRAIG ANDERSON LEWIS.

NED H. MARSHAK, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, New York, NY, argued for plaintiffs-appellants China Rubber Industry Association, Sub-Committee of Tire Producers of the China Chamber of Commerce of Metals, Minerals & Chemical Importers. Also represented by BRUCE M. MITCHELL, MAX FRED SCHUTZMAN; JORDAN CHARLES KAHN, ANDREW THOMAS SCHUTZ, Washington, DC.

COURTNEY SHEEHAN MCNAMARA, Office of the General Counsel, United States International Trade Commission, Washington, DC, argued for defendant-appellee United States International Trade Commission. Also represented by DOMINIC L. BIANCHI, ANDREA C. CASSON.

GEERT M. DE PREST, Stewart & Stewart, Washington, DC, argued for defendant-appellee United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC. Also represented by NICHOLAS J. BIRCH, PATRICK JOHN MCDONOUGH, JENNIFER MICHELE SMITH, TERENCE PATRICK STEWART.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (NEWMAN, MAYER, and DYK, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

Dated: February 19, 2019

/s/ *Peter R. Marksteiner*
PETER R. MARKSTEINER
CLERK OF COURT

HOME DEPOT U.S.A., INC., Plaintiff-Appellant v. UNITED STATES, Defendant-Appellee

Appeal No. 2018–1206

Appeal from the United States Court of International Trade in No. 1:14-cv-00061-RWG, Senior Judge Richard W. Goldberg.

Decided: February 15, 2019

WILLIAM RANDOLPH RUCKER, Drinker Biddle & Reath LLP, Chicago, IL, argued for plaintiff-appellant.

EDWARD FRANCIS KENNY, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice, New York, NY, argued for defendant-appellee. Also represented by AMY RUBIN; JEANNE DAVIDSON, JOSEPH H. HUNT, Washington, DC; BETH C. BROTMAN, Office of the Assistant Chief Counsel, United States Bureau of Customs and Border Protection, United States Department of Homeland Security, New York, NY.

Before DYK, BRYSON, and CHEN, *Circuit Judges.*

BRYSON, *Circuit Judge*.

This tariff classification case comes to us from the Court of International Trade ("the Trade Court"). The case involves the proper classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of certain products imported by appellant Home Depot U.S.A., Inc. ("Home Depot").

The products are doorknobs with integral locks, such as those used on the outer entry doors of homes. U.S. Customs and Border Protection ("Customs") classified the products as locks under HTSUS heading 8301, and the Trade Court affirmed. Home Depot argues that the products should have been classified under HTSUS heading 8302 as metal fittings for doors, including metal doorknobs.

We vacate the decision of the Trade Court and hold that the products are properly classified as composite goods within the meaning of HTSUS General Rule of Interpretation ("GRI") 3(b). We remand to the Trade Court to make a finding as to the "essential nature" of the composite goods, as directed by GRI 3(b), in order to determine under which of the two competing headings the goods should be classified.

I

Home Depot sells doorknobs of several different types. Some, known as passage knobs, provide a means of latching and opening a door, but contain no locking mechanism on the knobs on either side of the door. Passage knobs are used on interior doors when no provision for privacy is desired. Other knobs, known as privacy knobs, have a locking mechanism on one side of the door but not the other. The locking mechanism typically consists of a device known as a "thumb-

turn" that can be turned by hand to lock the door from one side; the knob on the other side of the door typically has some form of emergency override but otherwise does not have a locking or unlocking mechanism. Privacy knobs are used for doors to rooms such as bedrooms or bathrooms for which privacy is desired. Knobs in the third class, known as entry knobs, are the type of knobs at issue in this case. The subject entry knobs all have a keyed cylinder lock mechanism by which the door can be locked and unlocked by a key from the outside, and they all have a thumbturn by which the door can be locked and unlocked from the inside.

The subject imported articles are four types of Defiant-brand entry knobsets. The knobsets are primarily made of steel, and each consists of an interior knob assembly, an exterior knob assembly, a key cylinder, a latch mechanism assembly, a flanged strike plate, and mounting hardware.

The articles were entered between July and December 2012 and liquidated between May and November 2013. Customs liquidated the articles under HTSUS subheading 8301.40.6030, which covers "locks (key, combination or electrically operated), of base metal," and in particular "[d]oor locks, locksets and other locks suitable for use with interior or exterior doors (except garage, overhead or sliding doors)." Home Depot protested Customs' classification of the merchandise. Home Depot argued that the articles should have been liquidated under HTSUS subheading 8302.41.60, which covers "[b]ase metal . . . fittings and similar articles suitable for . . . interior and exterior doors." Customs denied the protest, after which Home Depot filed this action in the Trade Court.

On cross-motions for summary judgment, the Trade Court held that Customs had appropriately classified the subject articles under HTSUS heading 8301. The court therefore denied Home Depot's motion for summary judgment and granted the government's cross-motion for summary judgment.

The Trade Court concluded that the subject articles are described in whole by heading 8301, in that (1) the articles are made of base metal, (2) each article is a "lock," as it is a "device for securing a door consisting . . . of a bolt or system of bolts propelled and withdrawn by a mechanism by a key, dial, etc.," and (3) each article is "key-operated," because "a key produces an appropriate effect of locking or unlocking the device." The court explained that "knobs can be, and are here, parts of a lock." A lock, the court added, "is a multi-component device, of which one component is a lever. In some types of locks, the lever is a door knob."

The court held that the subject articles are not described in whole by heading 8302. While acknowledging that the articles are clearly "knobs for doors," as described in Explanatory Note (D)(7) to heading 8302, the court noted that the articles nonetheless constitute more than simply doorknobs. Each article, the court explained, "is a device for securing a door, consisting of many parts. Together, those parts constitute a lock. The interior and exterior knobs are just two of those many parts." For that reason, the court concluded that although "the subject articles *include* 'knobs for doors, including those for locks' [as provided in Explanatory Note (D)(7) for heading 8302], the subject articles are not described in whole by heading [8302] or by the term 'knobs for doors.'"

The court added that the doorknob components of the subject articles "do not render the subject articles 'composite goods' subject to classification under GRI 3(b)." According to the court, that is because the articles are not prima facie classifiable under more than one heading, but instead are described in whole by heading 8301 and only by heading 8301.

Home Depot appealed to this court. We review the Trade Court's grant of summary judgment without deference. We also afford de novo review to questions of law, including the interpretation of the terms of the HTSUS. Factual findings of the Trade Court, including which heading the merchandise falls within, are reviewed for clear error. *CamelBak Prods., LLC v. United States*, 649 F.3d 1361, 1364 (Fed. Cir. 2011).

II

Under GRI 1, a court must determine the appropriate classification for particular goods according to the terms of the headings and any relevant Section and Chapter Notes. Unlike the headings and the Section and Chapter Notes, the Explanatory Notes for the HTSUS headings are not legally binding or dispositive, but "may be consulted for guidance and are generally indicative of the proper interpretation of the various HTSUS provisions." *BenQ Am. Corp. v. United States*, 646 F.3d 1371, 1376 (Fed. Cir. 2011); *Millennium Lumber Distrib., Ltd. v. United States*, 558 F.3d 1326, 1328–29 (Fed. Cir. 2009); *Agfa Corp. v. United States*, 520 F.3d 1326, 1329 (Fed. Cir. 2008).

On appeal, Home Depot argues that the Trade Court erroneously characterized the subject articles as locks classifiable under heading 8301. Instead, according to Home Depot, the court should have held them to be classifiable under heading 8302 as "[b]ase metal mountings, fittings and similar articles suitable for . . . doors." For its part, the government argues that the Trade Court was correct to rule that

the subject articles are key-operated locks under heading 8301, and that the fact that doorknobs make up part of the overall locking mechanism does not alter the fact that the products, viewed as a whole, are locks.

We conclude that the products are prima facie classifiable under both headings and that the case must be resolved by resort to GRI 3, which deals with articles that are classifiable under two or more headings.

A. Heading 8301

The subject articles clearly contain locks. Home Depot admits as much. Home Depot's argument that the lock components of the subject articles do not fall within heading 8301 depends entirely on Home Depot's contention that the subject locks are not "key-operated locks" within the meaning of the portion of heading 8301 that refers to "locks (key, combination or electrically operated)."

Home Depot's argument in support of that contention is that the term "key-operated lock" is limited to a lock in which a key operates the lock by propelling or withdrawing a bolt. That definition is quite restrictive, as it would apply only to locks such as deadbolt locks in which the key directly propels and withdraws the deadbolt rather than a locking mechanism such as the one in the subject articles, in which the key performs the unlocking and locking function by freeing or stopping the doorknob from withdrawing the bolt.

We agree with the Trade Court that the definition of a key-operated lock does not require that the key directly propel or withdraw a bolt; it merely requires that "a key produces an appropriate effect of locking or unlocking the device." The term "lock" is not defined in the HTSUS, and for terms not defined in the tariff schedule, we have held that the common and commercial meaning of the term governs. *See LeMans Corp. v. United States*, 660 F.3d 1311, 1316 (Fed. Cir. 2011); *Rollerblade, Inc. v. United States*, 282 F.3d 1349, 1352 (Fed. Cir. 2002); *Brookside Veneers, Ltd. v. United States*, 847 F.2d 786, 789 (Fed. Cir. 1988).

To determine that common meaning, courts are free to consult dictionaries and technical materials in the field. *See Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356–57 (Fed. Cir. 2001). We agree with the Trade Court that the common meaning of "key-operated lock" does not require that the key directly propel and withdraw a bolt; it is enough that action by the key results in locking or unlocking the lock. *See Operate*, Webster's Third New International Dictionary 1580–81 (1986) ("to produce an effect . . . to cause to occur: bring about by or as if by the exertion of positive effort or

influence"); *Operate*, Merriam Webster's Collegiate Dictionary 827 (9th ed. 1986) ("bring about, effect—to cause to function").

Home Depot argues that the subject articles do not fall within heading 8301 because they do not possess "key-operated bolts." But "key-operated bolts" is not the term used in heading 8301; the language of the heading is "locks (key, combination or electrically operated)." Even if Home Depot is correct that a key-operated bolt refers to a mechanism in which the key directly causes the movement of the bolt, the same is not necessarily true of the broader term "key-operated lock," which merely requires that the key has the effect of triggering the locking and unlocking mechanism.

The locking and unlocking mechanism in the subject articles is clearly effected or "operated" by a key, as the key has the effect of fixing or releasing the lever that moves the bolt. Therefore, we hold that the subject articles consist in part of "key-operated locks." For that reason, the articles are prima facie classifiable under HTSUS heading 8301.

B. Heading 8302

That, however, is not the end of the story. In addition to arguing that the locks in the subject articles are not "key-operated," Home Depot makes the affirmative argument that the articles qualify as "fittings and similar articles suitable for . . . doors," under HTSUS heading 8302, specifically those "[s]uitable for interior and exterior doors" under subheading 8302.41.60.45. The knobs at issue, Home Depot argues, are not only directly covered by the classification for "fittings" for "interior and exterior doors," but are also "similar articles" to the privacy and passage knobs that the government acknowledges are classifiable under heading 8302. The entry doorknobs, Home Depot points out, "share an identical construction and design" with the other types of doorknobs, and "are all used to grasp, open, close, and fasten a door." The subject articles differ from those products only in that they possess an additional attribute—they can be locked and unlocked by the use of a key.

By its plain terms, heading 8302 includes "fittings and similar articles suitable for . . . doors." We agree with Home Depot that this language is broad enough to include knobsets, regardless of whether they are fitted for locking mechanisms of the type found in the subject articles.

Both parties look to the Explanatory Notes to heading 8302 to support their views. Home Depot relies on Explanatory Note (D)(7) to heading 8302, which states, in pertinent part, that heading 8302 covers "handles and knobs for doors, including those for locks or latches." The government argues that the reference to knobs, "includ-

ing those for locks" indicates that "the knob component[s] of the products at issue on their own, without the incorporated keyed cylinder, would be covered by this provision," but that "knobs incorporated into a key operated lockset and imported as a whole" are not covered by the Explanatory Note. The government also relies on Explanatory Note (D)(2) to heading 8302, which states that heading 8302 covers "catches . . . bolts, fasteners, latches, etc., (other than key-operated bolts of heading 83.01) for doors."

We do not find the Explanatory Notes to be decisive in favor of either party. The reference in Explanatory Note (D)(7) to "knobs . . . for locks or latches" makes clear that the knob portion of the item is included within heading 8302, but it says nothing about the locking mechanism being included. Nor does it exclude a knob fitted with a locking mechanism. Thus, the Explanatory Note contains no clear indication of an intent to exclude from heading 8302 doorknobs containing a locking mechanism in general or a key-operated locking mechanism in particular, and no clear indication of an intent to include the entire locking knobset in heading 8302.

Similarly, Explanatory Note (D)(2) is ambiguous regarding how to classify locking doorknobs such as the subject articles. That Explanatory Note states that "key-operated bolts of heading 8301" are excluded from heading 8302. But that language is narrower than the reference to "key . . . operated . . . locks" in heading 8301. The fact that Explanatory Note (D)(2) uses the narrower term "key-operated bolts" to define the exclusion from heading 8302, while section 8301, as noted above, uses the broader term "key . . . operated . . . locks" to define the devices falling within heading 8301, suggests that a knobset in which the lock is operated by a key, but the bolt is not directly actuated by the key, could fall within heading 8301 but not be excluded from heading 8302.[1]

Because the language of heading 8302 covers the subject articles, and the Explanatory Notes are not to the contrary, we conclude that the subject articles are prima facie classifiable under heading 8302.

C. GRI 3(b)

In analyzing the classification issue, we begin with GRI 1. Under GRI 1, "when an imported article is described in whole by a single classification heading or subheading, then that single classification

[1] The Canadian International Trade Tribunal classified substantially similar products under heading 8302. *See Weiser, Inc. v. The Deputy Minister of Nat'l Revenue*, Appeal Nos. AP-98–041 and AP-98–060 (June 25, 2001). That decision is not binding on us but is entitled to respectful consideration. *See Cummins Inc. v. United States*, 454 F.3d 1361, 1366 (Fed. Cir. 2006). While we disagree with the *Weiser* court's ultimate decision, we note that the court's classification supports our finding that subject articles are covered by heading 8302.

applies, and the succeeding GRIs are inoperative." *CamelBak*, 649 F.3d at 1364. GRI 2 states that "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3." GRI 3 in turn provides that when goods are prima facie classifiable under two or more headings, classification shall be effected according to the three subsections of GRI 3: GRI 3(a), 3(b), and 3(c).

GRI 3(a) states that the heading "which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods . . . those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods."

GRI 3(b) provides, in pertinent part, that composite goods made up of different components that "cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." *See La Crosse Tech., Ltd. v. United States*, 723 F.3d 1353, 1359–60 (Fed. Cir. 2013).

GRI 3(c) provides that "[w]hen goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

We conclude that GRI 3(b) governs the classification of the subject articles in this case. As to the specificity of the description of the articles in the competing headings, we conclude that GRI 3(a) does not apply, because the two headings "each refer to part only" of the materials in the composite goods, and thus, according to GRI 3(a), the competing headings must be regarded as equally specific. In particular, heading 8301 refers to the lock component of the subject articles, which functions to lock and unlock the door, while heading 8302 refers to the doorknob component, which functions to allow the door to be grasped, opened, closed, and latched.

Even though the doorknob handle plays a role in the locking mechanism by serving as the lever that withdraws the bolt when the device is unlocked, the doorknob and lock components are nonetheless largely separate. They consist of separate physical components and serve different purposes. The locking mechanism in the subject articles fits within the doorknob, but is not a "fitting" for a door. And the doorknob of the subject articles is not simply an improved version of a lock. To the contrary, the subject articles possess "features substantially in excess of those within the common meaning" of the term

"lock." *CamelBak*, 649 F.3d at 1365 (quoting *Casio, Inc. v. United States*, 73 F.3d 1095, 1098 (Fed. Cir. 1996)); *see La Crosse*, 723 F.3d at 1359–60 ("[T]he time-related functions of the devices at issue are 'substantially in excess' of the features described in Heading 9015."). We therefore conclude that the subject articles cannot be classified exclusively as either locks under heading 8301 or metal fittings for doors under heading 8302. Instead, they must be deemed "composite goods. . . made up of different components," such that their classification is governed by GRI 3(b).

One example of an article that has been found to be a composite good under GRI 3 is the type of product that was at issue in *CamelBak Prods., LLC v. United States*, 649 F.3d 1361 (Fed. Cir. 2011). That case involved back-mounted packs that had one compartment for storing personal effects and a separate insulated compartment for storing liquid and delivering the liquid to the user in a "hands-free" fashion. The Trade Court ruled that the products were backpacks, but we disagreed. We held that the products were classifiable both under the subheading for "travel, sports, and similar bags" and under the separate subheading for "beverage bags." We therefore held that the products at issue were composite goods whose classification was governed by GRI 3(b). *CamelBak*, 649 F.3d at 1367–69.

GRI 3(b) dictates that when goods are deemed to be composite goods that fall within two different HTSUS headings, the classification is determined by which material or component gives the goods "their essential character." The inquiry into the "essential character" of a good for purposes of GRI 3(b) classification is a factual issue. *CamelBak*, 649 F.3d at 1370; *Home Depot U.S.A., Inc. v. United States*, 491 F.3d 1334, 1337 (Fed. Cir. 2007); *Structural Indus., Inc. v. United States*, 356 F.3d 1366, 1370 (Fed. Cir. 2004). Such a classification can be resolved on appeal if it is not reasonably disputable how that factual issue should be resolved, *see Arko Foods Int'l, Inc. v. United States*, 654 F.3d 1361, 1365–66 (Fed. Cir. 2011). That, however, is not the case here.

In *CamelBak*, we remanded so that the Trade Court could make the factual determination as to the "essential character" of the subject articles and make the classification determination based on its conclusion. 649 F.3d at 1369. We follow the same course here and remand to the Trade Court for further proceedings consistent with this opinion.

Each party shall bear its own costs for this appeal.

VACATED AND REMANDED

ADC TELECOMMUNICATIONS, INC., Plaintiff-Appellant v. UNITED STATES, Defendant-Appellee

Appeal No. 2018–1316

Appeal from the United States Court of International Trade in No. 1:13-cv-00400-RKM, Senior Judge R. Kenton Musgrave.

Decided: February 19, 2019

MICHAEL EDWARD ROLL, Pisani & Roll LLP, Los Angeles, CA, argued for plaintiff-appellant. Also represented by BRETT HARRIS, ROBERT J. PISANI, Washington, DC.

GUY EDDON, Commercial Litigation Branch, Civil Division, United States Department of Justice, New York, NY, argued for defendant-appellee. Also represented by AMY RUBIN; JEANNE DAVIDSON, JOSEPH H. HUNT, Washington, DC; BETH C. BROTMAN, Office of the Assistant Chief Counsel, United States Bureau of Customs and Border Protection, United States Department of Homeland Security, New York, NY.

Before PROST, *Chief Judge,* DYK and WALLACH, *Circuit Judges.*

WALLACH, *Circuit Judge.*

Appellant ADC Telecommunications, Inc. ("ADC") sued Appellee United States ("the Government") in the U.S. Court of International Trade ("CIT"), challenging U.S. Customs and Border Protection's ("Customs") classification of imported Value Added Modules ("VAM") consisting of fiber optic telecommunications network equipment under Harmonized Tariff Schedule of the United States ("HTSUS")[1] Subheading 9013.80.90, which bears a duty rate of 4.5% *ad valorem*. ADC and the Government filed cross-motions for summary judgment, with ADC arguing that the subject merchandise should be classified under HTSUS Subheading 8517.62.00, which bears a duty-free rate. The CIT denied ADC's Cross-Motion, and granted the Government's Cross-Motion, holding that Customs properly classified the subject merchandise under HTSUS Subheading 9013.80.90. *ADC Telecomms., Inc. v. United States*, No. 13–00400, 2017 WL 4708021, at *9 (Ct. Int'l Trade Oct. 18, 2017); *see* J.A. 12 (Judgment).

ADC appeals. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(5) (2012). We affirm.

BACKGROUND

The subject merchandise "consists of fiber optic telecommunications network equipment" and "is included in [ADC's VAMs] product line." *ADC*, 2017 WL 4708021, at *2 (citations omitted).[2] "Fiber optic telecommunications networks operate by pulses of light in the infra-

[1] "All citations to the HTSUS refer to the 20[12] version, as determined by the date of importation of the merchandise." *LeMans Corp. v. United States*, 660 F.3d 1311, 1314 n.2 (Fed. Cir. 2011); *see* J.A. 1057–58 (providing that the subject merchandise was imported on June 15, 2012).

[2] Because the parties do not dispute the material facts, we cite to the facts as recited by the CIT for ease of reference. *See ADC*, 2017 WL 4708021, at *2–3.

red wave-length range, which transmit voice, sound, images, video, e-mail messages, and other information from one point in the network to another." *Id.* (citations omitted). "The wavelength of the light typically used to transmit data in a fiber optic telecommunications network is approximately 1260 nanometers to 1650 nanometers; whereas human eyes can see light only in the wavelength range from about 400 nanometers to 700 nanometers," meaning "humans would not be able to see the light that is used" in the subject merchandise. *Id.* (citations omitted).

The VAM product line "is intended to ease installation of the articles into [ADC]'s telecommunications network operator customers' fiber optic networks" by including "connectors on the ends of the fibers, eliminating the need for telecommunications network providers to splice the fibers into their networks," and protective "housing" or "jacketing over the actual fiber itself" to prevent damage to the optical fibers "either during the installation process or from the environment during use." *Id.* (citations omitted). There are three categories of products in the VAM product line: (1) splitter modules, which "take individual signals from a single optical fiber and divide them, enabling that single signal to reach multiple telecommunication network subscribers," (2) monitor modules, which "allow access to signaling and control functions of a communications network in order to evaluate performance and detect problems," and (3) wavelength division multiplexer ("WDM") modules, which "permit infrared signals of two different wavelengths to travel simultaneously on a single fiber, thereby increasing the capacity." *Id.* (citations and footnotes omitted). The subject merchandise "is used primarily or exclusively for purposes of data transmission in a telecommunications network . . . exclusively using light in the infrared wavelength range," and the merchandise does not "contain any electronic components or electrical circuit boards." *Id.* at *3 (citations omitted).

The CIT determined that HTSUS Heading 9013, which covers "other optical appliances and instruments, not specified or included elsewhere in this chapter," is "an apt description of [ADC's] VAMs . . . because such appliances and instruments, used in conjunction with the 'optical fibers' of [HTSUS H]eading 9001 . . . are plainly covered by [C]hapter 90." *Id.* at *6 (internal quotation marks omitted). The CIT explained that HTSUS Heading 8517, which covers "other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network)," "would appear apt insofar as it describes the sole purpose of the VAMs." *Id.* at *5 (internal quotation marks omitted). However, the CIT concluded that

the subject merchandise "are prima facie classifiable" in HTSUS Heading 9013, and because they are included in Chapter 90, they are "therefore excluded from [C]hapter 85 pursuant to [Section XVI] Note 1(m)." *Id*. at *6 (italics omitted).

DISCUSSION

I. Standard of Review

We review the CIT's decision to grant summary judgment de novo, applying the same standard used by the CIT to assess Customs' classification. *See Otter Prods., LLC v. United States*, 834 F.3d 1369, 1374–75 (Fed. Cir. 2016). "Although we review the decision of the CIT de novo, we give great weight to the informed opinion of the CIT and it is nearly always the starting point of our analysis." *Schlumberger Tech. Corp. v. United States*, 845 F.3d 1158, 1162 (Fed. Cir. 2017) (internal quotation marks, alterations, and citation omitted). The CIT "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." USCIT R. 56(a).

The classification of merchandise involves a two-step inquiry. *See LeMans*, 660 F.3d at 1315. First, we ascertain the meaning of the terms within the relevant tariff provision, which is a question of law, and, second, we determine whether the subject merchandise fits within those terms, which is a question of fact. *See Sigma-Tau HealthSci., Inc. v. United States*, 838 F.3d 1272, 1276 (Fed. Cir. 2016). Where, as here, no genuine dispute exists as to the nature of the subject merchandise, the two-step inquiry "collapses into a question of law we review de novo." *LeMans*, 660 F.3d at 1315 (citation omitted).

II. The CIT Properly Granted Summary Judgment for the Government

A. Legal Framework

The HTSUS governs the classification of merchandise imported into the United States. *See Wilton Indus., Inc. v. United States*, 741 F.3d 1263, 1266 (Fed. Cir. 2013). The HTSUS "shall be considered . . . statutory provisions of law for all purposes." 19 U.S.C. § 3004(c)(1) (2012); *see Chemtall, Inc. v. United States*, 878 F.3d 1012, 1026 (Fed. Cir. 2017) (explaining that "the tenth-digit statistical suffixes . . . are not statutory," as those suffixes are not incorporated in the HTSUS's legal text).

"The HTSUS scheme is organized by headings, each of which has one or more subheadings; the headings set forth general categories of merchandise, and the subheadings provide a more particularized segregation of the goods within each category." *Wilton Indus.*, 741 F.3d at 1266. "The first four digits of an HTSUS provision constitute

the heading, whereas the remaining digits reflect subheadings." *Schlumberger*, 845 F.3d at 1163 n.4. "[T]he headings and subheadings . . . are enumerated in chapters 1 through 99 of the HTSUS (each of which has its own section and chapter notes) . . . ." *R.T. Foods, Inc. v. United States*, 757 F.3d 1349, 1353 (Fed. Cir. 2014). The HTSUS "also contains the 'General Notes,' the 'General Rules of Interpretation' ('GRI'), the 'Additional [U.S.] Rules of Interpretation' ('ARI'),[3] and various appendices for particular categories of goods." *Id*. (footnote omitted).

The GRI and the ARI govern the classification of goods within the HTSUS. *See Otter Prods.*, 834 F.3d at 1375. "The GRI apply in numerical order, meaning that subsequent rules are inapplicable if a preceding rule provides proper classification." *Schlumberger*, 845 F.3d at 1163. GRI 1 provides, in relevant part, that "classification shall be determined according to the terms of the *headings* and any relative section or chapter notes." GRI 1 (emphasis added). "Under GRI 1, [we] first construe[] the language of the heading, and any section or chapter notes in question, to determine whether the product at issue is classifiable under the heading." *Schlumberger*, 845 F.3d at 1163 (internal quotation marks and citation omitted). "[T]he possible headings are to be evaluated without reference to their subheadings, which cannot be used to expand the scope of their respective headings." *R.T. Foods*, 757 F.3d at 1353 (citations omitted). "Absent contrary legislative intent, HTSUS terms are to be construed according to their common and commercial meanings, which are presumed to be the same." *Well Luck Co. v. United States*, 887 F.3d 1106, 1111 (Fed. Cir. 2018) (internal quotation marks and citation omitted). "To discern the common meaning of a tariff term, we may consult dictionaries, scientific authorities, and other reliable information sources." *Kahrs Int'l, Inc. v. United States*, 713 F.3d 640, 644 (Fed. Cir. 2013) (citation omitted).

"After consulting the headings and relevant section or chapter notes" consistent with GRI 1, we may consider the relevant Explanatory Notes ("EN"). *Fuji Am. Corp. v. United States*, 519 F.3d 1355, 1357 (Fed. Cir. 2008). "The [ENs] provide persuasive guidance and are generally indicative of the proper interpretation, though they do

[3] The ARI contain, inter alia, specific rules for interpreting use and textile provisions in the HTSUS. *See* ARI 1(a)–(d). "Because th[is] appeal involves *eo nomine* provisions," as discussed below, "we find the ARI inapplicable." *Schlumberger*, 845 F.3d at 1163 n.5; *see infra* Section II.B. "An *eo nomine* classification provision is one which describes a commodity by a specific name," rather than by use, *Clarendon Mktg., Inc. v. United States*, 144 F.3d 1464, 1467 (Fed. Cir. 1998), and, "[a]bsent limitation or contrary legislative intent, an *eo nomine* provision includes all forms of the named article, even improved forms," *CamelBak Prods., LLC v. United States*, 649 F.3d 1361, 1364–65 (Fed. Cir. 2011) (internal quotation marks and brackets omitted).

not constitute binding authority." *Chemtall*, 878 F.3d at 1019 (internal quotation marks and citation omitted).

Once we determine the appropriate heading, we apply GRI 6 to determine the appropriate subheading. *See Orlando Food Corp. v. United States*, 140 F.3d 1437, 1442 (Fed. Cir. 1998). GRI 6 provides that "the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above [GRIs], on the understanding that only subheadings at the same level are comparable."

B. HTSUS Heading 9013 Covers the Subject Merchandise

ADC argues the subject merchandise is "not accurately described as 'optical appliances' or 'optical instruments'" under HTSUS Heading 9013. Appellant's Br. 19 (capitalization modified). According to ADC, "[a]lthough [the VAMs] act on or interact with light, as apparatus used exclusively for the transmission of data through a fiber optic telecommunications network[,] these items transmit light *solely* in the infrared" and thus are not classifiable under HTSUS Heading 9013, as they "cannot permit or enhance human vision[,] because the optical output of these items can never be seen by humans during normal operation." *Id.* at 22 (internal quotation marks omitted). We disagree.

"We first must assess whether the subject [h]eading[] constitute[s an] *eo nomine* or use provision[] because different rules and analysis will apply depending upon the heading type." *Schlumberger*, 845 F.3d at 1164 (first citing *Kahrs*, 713 F.3d at 645–46 (defining *eo nomine* provision); then citing *Aromont USA, Inc. v. United States*, 671 F.3d 1310, 1312–16 (Fed. Cir. 2012) (defining principal use provision)). HTSUS Heading 9013 recites "[l]iquid crystal devices not constituting articles provided for more specifically in other headings; lasers, other than laser diodes; *other optical appliances and instruments*, not specified or included elsewhere in this chapter; parts and accessories thereof." HTSUS Heading 9013 (emphasis added). It "is unquestionably *eo nomine* because it describes the articles it covers by name," and, therefore, "our analysis starts with [its] terms." *Schlumberger*, 845 F.3d at 1164.

We start with the language of the heading, looking to the relevant section and chapter notes. *See id.* at 1163; *see also* GRI 1. Additional U.S. Note 3 to Chapter 90 explains that "the terms 'optical appliances' and 'optical instruments' refer only to those appliances and instruments which incorporate *one or more optical elements*, but do not include any appliances or instruments in which the incorporated optical element or elements are solely for viewing a scale or *for some*

other subsidiary purpose." Additional U.S. Note 3, Chapter 90, HTSUS (emphases added). In other words, for the subject merchandise to fall within HTSUS Heading 9013's definition of optical appliances or instruments, it must (1) incorporate one or more optical elements and (2) the optical element cannot merely serve a subsidiary purpose.

Because the relevant section and chapter notes do not further define the terms "optical appliances" or "optical instruments," we turn to the common and commercial meaning of the statutory terms. *See Well Luck*, 887 F.3d at 1113 n.6 (employing dictionary definitions from the time of the HTSUS's enactment). A technical dictionary defines "optical instrument" as "[a]n optical system which *acts on light* in some desired way, such as to form a real or virtual image, to form an optical spectrum, or to produce light with a specified polarization or wavelength." *Optical Instrument*, McGraw-Hill Dictionary of Scientific and Technical Terms (4th ed. 1989) (emphasis added). Moreover, the same technical dictionary defines the term "optical element," which appears in Additional U.S. Note 3 to Chapter 90 of the HTSUS to delimit optical appliances and optical instruments, as "[a] part of an optical instrument which *acts upon the light* passing through the instrument, such as a lens, prism, or mirror." *Optical Element*, McGraw-Hill Dictionary of Scientific and Technical Terms (4th ed. 1989) (emphasis added).

Nontechnical dictionaries define the individual term "optical" as "[o]f or pertaining to sight in relation to the physical action of light upon the eye," "belonging to optics," and "[u]sed with reference *to electromagnetic radiation other than light* . . . relating to the transmission of such radiation." *Optical*, The Oxford English Dictionary (2d ed. 1989) (emphasis added); *see Optical*, Webster's Third New International Dictionary (1986) (defining "optical" as (1) "relating to the science of optics," (2) "designed or constructed to aid the vision," and (3) "acting by means of light or in accord with the principles of optics"). These dictionaries, in turn, define "optics" as "a science that deals with light, its genesis and propagation, the effects that it undergoes and produces, and other phenomena closely associated with it." *Optics*, Webster's Third New International Dictionary (1986); *see Optics*, The Oxford English Dictionary (2d ed. 1989) (defining "optics" as "[t]he science of sight, or the medium of sight, i.e. light; that branch of physics which deals with the properties and phenomena of light"). Based on the relevant chapter note and dictionary definitions, HTSUS Heading 9013 covers appliances and instruments that act on light, including (but not limited to) visible light.

These definitions accord with precedent. In *United States v. Ataka America, Inc.*, the U.S. Court of Customs and Patent Appeals

("CCPA") articulated criteria ("the *Ataka* criteria") used for determining whether certain gastrointestinal fiberscopes were classifiable as optical instruments under the HTSUS's predecessor. 550 F.2d 33, 37–38 (CCPA 1977). In *Celestaire, Inc. v. United States* (*Celestaire II*), we determined that an imported sextant was an optical instrument under HTSUS Subheading 9014.80.10 through application of the *Ataka* criteria, which ask: (1) "whether the device acts on or interacts with light," (2) "whether the device permits or enhances human vision through the use of one or more optical elements," and (3) "whether the device uses the optical properties of the device in something more than a 'subsidiary' capacity." 120 F.3d 1232, 1233 (Fed. Cir. 1997) (citation omitted); *see id.* at 1232. The *Ataka* court made explicit that "[n]one of the foregoing criteria is determinative in every case, but they are useful in determining the statutory meaning of optical instrument(s)," 550 F.2d at 37 (internal quotation marks omitted), thereby acknowledging that the *Ataka* criteria provide *factors* to be considered in such an analysis, *see id.* (explaining "the term optical instrument(s) *encompasses* devices" that satisfy the criteria listed above, rather than is limited to such devices (emphasis added)). Thus, if the device permits or enhances human vision, that is a strong indicator that it would be classified as an "optical instrument" or "optical appliance." The absence of such capabilities, however, does not preclude finding that a particular device, which otherwise satisfies the remaining criteria, is an "optical instrument." *See id.* ; *see also Celestaire II*, 120 F.3d at 1233 (referring to the three factors described in *Ataka* as "criteria" rather than elements).

The origin test for "optical instruments" arose from the Summary of Tariff Information, which was issued by the U.S. Tariff Commission and states:

> Optical instruments are *primarily used* to aid or supplement human vision; *they also include* apparatus which depends for its operation on the passage of light through prismatic or lenticular optical glass. Lenses and prisms are the fundamental parts of optical instruments.

Summary of Tariff Information, 552 (1929) (emphases added); *see Engis Equip. Co. v. United States*, 294 F. Supp. 964, 967 (Cust. Ct. 1969), *superseded by statute as recognized in Celestaire v. United States* (*Celestaire I*), 928 F. Supp. 1174, 1175 (Ct. Int'l Trade 1996).[4]

[4] The 1929 Summary of Tariff Information, which was published in volumes, "is a comprehensive summary of available tariff information" and "compiled by the [U.S.] Tariff Commission for the use of the Committee on Ways and Means [of the U.S. House of Representatives], in connection with an examination of the Tariff Act of 1922, for the purpose of making any readjustments in said act where found necessary." *Foreword* to Summary of Tariff Information at iii. "Each summary contains descriptive and economic data on the commodities or group of commodities provided for in the Tariff Act of 1922 . . . ." *Id.*

On its face, this indicates that optical instruments typically aid or supplement human vision, but a device that does not have such capabilities may still be classified as an optical instrument, e.g., "glass eyes for taxidermists." Summary of Tariff Information at 553. This was recognized by the CCPA as early as 1941, where it interpreted the term "[o]ptical instruments" in a predecessor to the HTSUS as having "to do with *light or vision*, *or both*." *United States v. Am. Mach. & Metals*, 29 C.C.P.A. 137, 145 (1941) (emphasis added).

Our holding that satisfying each of the *Ataka* criteria is not required does not mean that importers will lack necessary certainty. *See Jarvis Clark Co. v. United States*, 733 F.2d 873, 876 (Fed. Cir. 1984) ("The desire for uniform and consistent interpretation and application of the customs law is central to customs policy." (internal quotation marks and citation omitted)). We acknowledge that several headings and subheadings throughout the HTSUS use the terms "optical appliances" or "optical instruments," such that the determination of which *Ataka* criteria are the most relevant may depend on, inter alia, the statutory context. However, for classification within Chapter 90, the consideration of the *Ataka* criteria must accord with Additional U.S. Note 3, which is binding and requires only that optical appliances and instruments "incorporate one or more optical elements" in a non-subsidiary capacity. Additional U.S. Note 3, Chapter 90, HTSUS; *see Schlumberger*, 845 F.3d at 1163 (requiring courts to consider any relevant chapter notes under GRI 1).[5]

Here, ADC's subject merchandise falls within HTSUS Heading 9013's definition of optical appliances or instruments. The subject merchandise acts by means of light, given that the splitter modules, monitor modules, and WDM modules all seek to "ease installation" of the modules into ADC's "telecommunications network operator customers' fiber optic networks," such that the networks operate through "*pulses of light in the infrared wavelength range*" to transmit voice and other data. *ADC*, 2017 WL 4708021, at *2 (emphasis added) (citations omitted). Although the fiber optic networks employ a wavelength range of "approximately 1260 nanometers to 1650 nanometers," i.e., not within the range of visible light, *id.* (citations omitted), it is clear that the subject merchandise employs optical elements, *see, e.g.*, J.A. 1057 (explaining that the WDM modules employ "*lenses*, planar lightwave circuits, fused biconic tapers[,] or thin film filters" (emphasis added)); *see also* Additional U.S. Note 3, Chapter 90, HTSUS (explaining that an optical appliance or instrument contains

[5] While we may now turn to the relevant ENs, *see Fuji*, 519 F.3d at 1357, we have considered them and conclude that there are no ENs that would alter our interpretation of HTSUS Heading 9013.

"one or more optical elements"); *Optical Element*, McGraw-Hill Dictionary of Scientific and Technical Terms (4th ed. 1989) (defining an optical element as "[a] part of an optical instrument which acts upon the light passing through the instrument, such as a *lens*, prism, or mirror" (emphasis added)). These optical elements are not subsidiary to another purpose; instead, the subject merchandise "is used *primarily* or exclusively for purposes of data transmission in a telecommunications network . . . *exclusively using light* in the infrared wavelength range." *ADC*, 2017 WL 4708021, at *3 (emphases added) (citations omitted). Accordingly, the subject merchandise is classifiable under HTSUS Heading 9013.

ADC's counterarguments fail. First, ADC contends the subject merchandise should be classified under Chapter 85, which contains HTSUS Heading 8517, rather than Chapter 90, which contains HTSUS Heading 9013, because other headings in these respective chapters support finding a difference between types of fiber optic cables classifiable in Chapter 85 versus those in Chapter 90. *See* Appellant's Br. 30–31. According to ADC, "[H]eading 9001 by its very own terms only covers 'optical fiber cables *other* than those of [H]eading 8544,'" and Heading 8544 covers fiber optic cables *primarily used* for transmission of voice and other data. *Id.* at 31. However, the distinction between HTSUS Headings 8544 and 9001 is not based on the use of the optical fibers, and is instead based on the fibers' physical characteristics. Specifically, HTSUS Heading 8544 includes "optical fiber cables, made up of *individually sheathed fibers*, whether or not assembled with electric conductors or fitted with connectors," Heading 8544, HTSUS (emphasis added), whereas the ENs explain that the cables covered by HTSUS Heading 9001 "consist of a sheath containing one or more optical fibre bundles, the fibres of which are *not individually sheathed*," EN(A), HTSUS Heading 9001 (emphasis added); *see* Customs Ruling HQ H098958 (Sept. 27, 2017), 2017 WL 5696486, at *6 ("[T]he determining factor in the classification of optical fiber cables or bundles in [H]eading 8544 or [H]eading 9001 is the physical characteristics of the article; their use is secondary . . . . [The ENs to these headings do not] limit[] the use of these products exclusively to telecommunications for cables of [H]eading 8544 or optical apparatus for products of [H]eading 9001."). Moreover, certain ENs contradict ADC's alleged distinction between Chapters 85 and 90 because the optical appliances and instruments within Chapter 90 are not strictly limited to those acting on visible light. For example, the ENs to HTSUS Heading 9001 state that "[a]n optical element does more than merely allow light (visible, *ultraviolet or infrared*) to pass through it." EN(D), Heading 9001 (emphasis added). Similarly,

the EN to HTSUS Subheading 9031.49 explains that "[t]his [S]ubheading covers not only instruments and appliances which provide a direct aid or enhancement to human vision, but also other instruments and apparatus which function through the use of optical elements or processes." EN, Subheading 9031.49. Therefore, the subject merchandise is not excluded from Chapter 90.

Second, ADC argues "[m]ore than [fifty] years of customs jurisprudence concerning the tariff classification of optical instruments . . . firmly establishes that such articles must 'permit or enhance human vision.'" Appellant's Br. 36. To support this conclusion, ADC cites, inter alia, our decision in *Celestaire II*. *See id.* at 21–26.[6] For the reasons discussed above, *Celestaire II* does not support ADC's conclusion because we merely applied the Ataka criteria in that case to determine whether a device was an optical instrument. 120 F.3d at 1233. As has long been recognized, these criteria "are neither controlling nor exhaustive." *Celestaire I*, 928 F. Supp. at 1180 (internal quotation marks omitted); *see Ataka*, 550 F.2d at 37 (explaining that "[n]one of the . . . criteria is determinative in every case"). Instead, "it is the statute . . . which governs the classification of an article as an optical instrument." Celestaire I, 928 F. Supp. at 1179 (quoting Ataka, 550 F.2d at 36 n.4). We, therefore, conclude that HTSUS Heading 9013 aptly covers the subject merchandise.

C. The Subject Merchandise Does Not Fall Within HTSUS Heading 8517

ADC argues "the splitter modules, monitor modules[,] and [WDM] modules at issue in this case fall squarely within the terms of [H]eading 8517." Appellant's Br. 44. We disagree.

We start with the language of the heading, looking to the relevant section and chapter notes. *See Schlumberger*, 845 F.3d at 1163; *see also* GRI 1. HTSUS Heading 8517 covers "[t]elephone sets, including telephones for cellular networks or for other wireless networks" and "other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of [H]eading 8443, 8525, 8527, or 8528; parts thereof." Chapter 85 of the HTSUS is contained in Section XVI, and Note 1 to Section XVI provides that "[t]his section does not cover . . . (m) [a]rticles of [C]hapter 90." Therefore, because the subject merchandise is classifiable in HTSUS Heading 9013, which is found in Chapter 90, *see supra* Section II.B, it is *not* classifiable in Section XVI, in which HTSUS Heading 8517 is found.

[6] To the extent that ADC's argument also relies on CIT cases, *see* Appellant's Br. 35, the CIT cases are not binding precedent.

D. GRI 6 Dictates that the Subject Merchandise Is Properly Classified Under HTSUS Subheading 9013.80.90

Having determined that the subject merchandise is properly classified under HTSUS Heading 9013, we apply GRI 6, which is employed in a classification analysis to determine the appropriate subheading. *See* GRI 6 (applying to "the classification of goods in the subheadings" and explaining that "only subheadings at the same level are comparable"); *see also Orlando Food*, 140 F.3d at 1442 (conducting a GRI 6 analysis to determine the appropriate subheading). At the six-digit subheading level, the subject merchandise does not fall within the terms of HTSUS Subheading 9013.10, which covers "[t]elescopic sights for fitting to arms; periscopes; telescopes designed to form parts of machines, appliances, instruments or apparatus of this [C]hapter or [S]ection XVI," or HTSUS Subheading 9013.20, which covers "[l]asers, other than laser diodes." Instead, the subject merchandise is aptly described by HTSUS Subheading 9013.80, which covers "[o]ther devices, appliances and instruments." Because the subject merchandise does not fall within any of the eight-digit level subheadings preceding HTSUS Subheading 9013.80.90, it is properly classified under HTSUS Subheading 9013.80.90, which covers "[o]ther." *See Rollerblade, Inc. v. United States*, 282 F.3d 1349, 1354 (Fed. Cir. 2002) (holding that, where merchandise is properly classified under a particular heading, but does not fall within a specific subheading, it is properly classified under the relevant heading's "basket" or "catch-all" provision); *see also* Oral Arg. at 2:15–31, http://oralarguments.cafc.uscourts.gov/default.aspx?fl=2018–1316.mp3 (Q: "If we determine that [Heading] 9013 covers the subject merchandise, would you agree that 9013.80.90 is the appropriate Subheading?" A: "Yes, I would agree that that would be the outcome."). Indeed, the parties do not contest the CIT's conclusion that, if the subject merchandise is properly classified under HTSUS Heading 9013, then it falls within HTSUS Subheading 9013.80.90. *See ADC*, 2017 WL 4708021, at *9. *See generally* Appellant's Br.; Appellee's Br. Accordingly, we conclude that HTSUS Subheading 9013.80.90 is the appropriate classification for the subject merchandise.

CONCLUSION

We have considered ADC's remaining arguments and find them unpersuasive. Accordingly, the Judgment of the U.S. Court of International Trade is

AFFIRMED