

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

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

**Inv. No. 337-TA-972**

**ORDER NO. 10: DENYING COMPLAINANTS' MOTION TO COMPEL**

(February 29, 2016)

On February 5, 2016, Complainants Diebold Incorporated and Diebold Self-Service Systems (collectively, "Diebold") filed a motion to compel Respondents Nautilus Hyosung America, Inc., Nautilus Hyosung Inc. and HS Global, Inc. (collectively, "Respondents") to provide a witness to testify regarding certain corporate deposition topics (Motion Docket No. 972-006). Respondents filed an opposition on February 17, 2016. Diebold filed a reply brief on February 22, 2016.

Diebold served a notice of deposition on Respondents on December 15, 2015, and on January 29, 2016, Diebold took the deposition of a representative of Respondents who was designated to testify on all of the topics (nos. 1-27) in the notice. The witness was not able to answer questions related to topic nos. 5 and 6, however, and after the deposition, Diebold asked Respondents to provide another witness to testify on these topics. Mot. Ex. 7. Respondents did not commit to providing a witness but sought further discussion on the issue in an email dated February 4, 2016. *Id.* Diebold subsequently filed the present motion.

After the motion was filed, Respondents offered several deposition dates for a witness to testify on the disputed topics. Resp. Ex. D. Despite Respondents' offer, Diebold maintains that an order compelling discovery is necessary to allow Diebold to pursue sanctions if Respondents fail to produce a satisfactory witness. Reply at 10-11 (citing 19 C.F.R. § 210.33).

Ground Rule 4.1.1 provides that “[n]o motion to compel discovery may be filed unless the subject matter of the motion has first been brought to the Discovery Committee and the Committee has reached an impasse in resolving the matter.” Order No. 2 at 7 (Nov. 19, 2015). Diebold has failed to abide by Ground Rule 4.1.1, and its argument regarding sanctions is unavailing.<sup>1</sup> In addition, Respondents have agreed to make a witness available for deposition, and Diebold’s motion is therefore moot. *See, e.g. Certain Optical Disc Drives, Components Thereof, and Products Containing the Same*, Inv. No. 337-TA-897, Order No. 42 (Mar. 25, 2014) (denying motion to compel as moot based on representation that witness will be made available for second deposition); *Certain Activity Tracking Devices, Systems, and Components Thereof*, Inv. No. 337-TA-963, Order No. 25 (Jan. 15, 2016) (denying motion to compel as moot where witnesses agreed to be available for deposition).

Accordingly, Motion Docket No. 972-006 is DENIED.

**SO ORDERED.**



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Dee Lord  
Administrative Law Judge

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<sup>1</sup> Sanctions under Commission Rule 210.33 are intended for parties who refuse to cooperate in discovery, not to be used as a threat when parties disagree regarding the adequacy of discovery. 19 C.F.R. § 210.33. If Diebold believes that Respondents are making representations in bad faith, Commission Rule 210.4(d) allows parties to seek sanctions if filings are made for an improper purpose. *See* 19 C.F.R. § 210.4(c)-(d).

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

Inv. No. 337-TA-972

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the following parties as indicated, on **FEB 29 2016**



Lisa R. Barton, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainants Diebold, Incorporated and  
Diebold Self-Service Systems:**

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- Via Hand Delivery  
 Via Express Delivery  
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**On Behalf of Respondents Nautilus Hyosung Inc., Nautilus  
Hyosung America Inc., and HS Global Inc.:**

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