

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN AUDIO PROCESSING
HARDWARE AND SOFTWARE AND
PRODUCTS CONTAINING SAME

Inv. No. 337-TA-949

**ORDER NO. 15: INITIAL DETERMINATION GRANTING NON-PARTY
CONEXANT'S AND WAVES AUDIO, LTD'S MOTIONS TO
INTERVENE**

(August 7, 2015)

On June 16, 2015, Complainant Andrea Electronics Corporation (“Andrea”) served subpoenas *duces tecum* and *ad testificandum* on non-party Conexant Systems Inc. (“Conexant”). (Motion, Ex. 1.) On July 2, 2015, Conexant filed a motion to intervene as a party with full participation rights pursuant to Commission Rule 210.19.¹ (Motion Docket No. 949-012.) On July 14, 2015, the Commission Investigative Staff (“Staff”) filed a response in support of Conexant’s motion to intervene. On July 14, 2015, Andrea filed its response in opposition to Conexant’s motion.²

On June 24, 2015, Andrea served subpoenas *duces tecum* and *ad testificandum* on non-party Waves Audio, Ltd. (“Waves Audio”). (Motion, Ex. 1.) On July 14, 2015, Waves Audio filed a motion to intervene as a party with full participation rights pursuant to Commission Rule 210.19.³ (Motion Docket No. 949-013.) On July 20, 2015, the Staff filed a response in support

¹ Conexant states in its motion that it is seeking intervenor status and not respondent status.

² Andrea opposes Conexant’s request for intervenor status, but argues that if Conexant is permitted to intervene it should intervene as a Respondent.

³ I read Waves Audio’s motion as seeking intervenor status and not respondent status.

of Waves Audio's motion to intervene. On July 20, 2015, Andrea filed its response in opposition to Waves Audio's motion.⁴

Analysis

Commission Rule 210.19 establishes certain procedural requirements and provides, *inter alia*, that a motion to intervene may be granted "... to the extent and upon such terms as may be proper under the circumstances." 19 C.F.R. § 210.19. The Commission generally follows Federal Rule of Civil Procedure 24 in assessing the propriety of intervention. *See Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Order No. 27 (Feb. 15, 2006). Federal Rule of Civil Procedure 24 permits intervention as of right either "when a statute of the United States confers unconditional right to intervene," or:

When the application claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. Pro. 24.

On March 18, 2015, I issued Order No. 3 setting the procedural schedule in this investigation in view of the Commission's Notice requiring me to issue an Initial Determination ("ID") on Standing within 100 days of the date this investigation was instituted. Pursuant to the Commission's notice, on June 11, 2015, I issued Order No. 8 as an ID finding Andrea has standing to assert the asserted patents in this investigation. On July 13, 2015, the Commission issued a notice indicating that it had determined not to review the ID. On July 15, 2015, I issued

⁴ Andrea opposes Waves Audio's request for intervenor status, but states that it supports Waves Audio intervening as a Respondent.

Order No. 9 setting another procedural schedule to facilitate moving this investigation towards an evidentiary hearing on the merits. In view of that procedural schedule, on July 20, 2015, I issued Order No. 10 as an ID setting an approximately nineteen month target date.

Pursuant to Order No. 9, and correspondence I directed to the parties on July 27, 2015, on August 3, 2015, the parties filed a joint procedural schedule proposing deadlines for those events in the procedural schedule for which no deadline was provided. As can be readily seen from the parties' joint procedural schedule, this investigation is still in its infancy as fact discovery has only recently begun. Thus, I find both Conexant's and Waves Audio's motions to intervene are timely.

In the present investigation, Andrea alleges that certain Respondents are in violation of Section 337 for importing desktop computers, notebooks, laptops, or tablets that incorporate certain audio hardware/software components designed and manufactured by non-party Conexant and non-party Waves Audio. (*See* Compl. at 23; Motion, Ex. 1 at 2 (“Waves is a known supplier of audio processing software to certain Respondents in this Investigation, including at least ASUSTeK Computer Inc., ASUS Computer International, and Dell Inc.”).) Andrea alleges that these Conexant and Waves Audio hardware/software components infringe the asserted patents. (Compl. at 23; Andrea opp. at 1, 4) As such, I find Conexant and Waves Audio have an interest in this investigation and that disposition of Andrea's infringement allegations may as a practical matter impair or impede Conexant's and Waves Audio's ability to protect those interests.

Finally, I agree with the Staff that because Conexant and Waves Audio are not the only suppliers of audio processing hardware/software, it is not a given that the existing named Respondents will defend Conexant's and Waves Audio's products over those of alternate suppliers. Thus, I find that Respondents, as the accused device manufacturers, but not the designer or

manufacturer of the audio hardware/software components embedded in those devices, do not adequately represent Conexant's or Waves Audio's interests.

Accordingly, I find pursuant to 19 C.F.R. § 210.19 and Fed. R. Civ. Pro. 24, that Conexant and Waves Audio be GRANTED third-party intervenor status in this investigation.

Andrea argues that I should use my authority under 19 C.F.R. § 210.19 to grant Conexant and Waves Audio respondent status. The question of whether a party may intervene and whether a party may be accorded respondent status are separate issues. *Certain Network Interface Cards and Access Points for Use in Direct Sequence Spread Spectrum Wireless Local Area Networks and Products Containing Same* (hereinafter "Network Interface Cards"), 337-TA-455, Comm'n Op. (July 17, 2001); *see also*, 19 C.F.R. § 210.3 ("Intervenor means a person who has been granted leave by the Commission to intervene as a party to an investigation or a related proceeding under this part. . . . Party means each complainant, respondent, intervenor, or Commission investigative attorney."). A party allowed to intervene in an investigation cannot acquire respondent status as a matter of right. *Network Interface Cards*, Comm'n op. at 9. In determining whether to grant respondent status, the Commission looks to: (1) whether the party allowed to intervene "could be deemed to have violated section 337; for example, by importing allegedly infringing articles"; and (2) whether "the remedy sought by a complainant, if granted, would result in the direct exclusion of articles" supplied by the intervenor from entry into the United States. (*Id.* at 10.)

Although the audio hardware/software products of Conexant and Waves Audio are within the scope of this investigation, Andrea has only sought a limited exclusion order in this investigation and thus any remedy, if granted, would be limited to Respondents' accused devices and not the embedded hardware/software products of Conexant and Waves Audio. Thus, I find

no compelling reason to accord Conexant and Waves Audio respondent status because none of Conexant's or Waves Audio's products would be directly excludable by any exclusion order that could issue in this investigation. I find that Conexant and Waves Audio can only be impacted indirectly by the remedy sought by Andrea and that respondent status under these circumstances would be inappropriate. Accordingly, I find Andrea's argument for granting Conexant and Waves Audio respondent status not persuasive.

That being said, nothing in this order prevents Andrea from moving to amend the complaint to add Conexant and Waves Audio as Respondents.

Order

For the reasons stated above, it is my Initial Determination that pursuant to Commission Rule 210.19, Conexant and Waves Audio be granted intervenor status in this investigation, but not status as a respondent. This Initial Determination is hereby certified to the Commission.

Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders, on its own motion, a review of the Initial Determination or certain issues herein.

SO ORDERED.



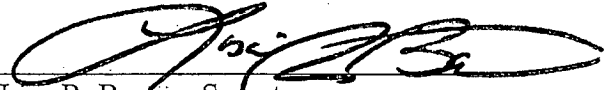
Thomas B. Pender
Administrative Law Judge

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SAME**

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CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC INITIAL DETERMINATION ORDER NO. 15** has been served upon the **Commission Investigative Attorney, Lisa Murray, Esq.**, and the following parties as indicated on AUG -7 2015 .



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