

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. 5: INITIAL DETERMINATION GRANTING COMPLAINANT'S
MOTION TO PARTIALLY TERMINATE THE INVESTIGATION AS
TO RESPONDENT TOSHIBA AMERICA INC.**

(April 7, 2015)

On April 1, 2015, Complainant Andrea Electronics Corp. ("Andrea") filed a motion to partially terminate the investigation as to Respondent Toshiba America Inc. (Motion Docket No. 949-003) On April 2, 2015 the Commission Investigative Staff ("Staff") filed a response in support of the present motion to terminate.

Under Commission Rule 210.21(a)(1),

[a]ny party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 for an order to terminate an investigation in whole or in part as to any or all respondents on the basis of withdrawal of the complaint or certain allegations contained therein

19 C.F.R. § 210.21(a)(1). Further, "if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion." *Id.* In determining whether to grant a motion to terminate an investigation as to a respondent based on the withdrawal of allegations in the complaint against the respondent, the Commission has found that "in the absence of extraordinary circumstances, termination of the investigation will be readily granted to a complainant during the pre-hearing stage of the investigation." *Certain Opaque Polymers*, Inv. No. 337-TA-883, Order No. 29 at 1-2 (November 3, 2014).

Complainant indicates in its motion that it wishes to terminate the investigation as to Toshiba America, Inc. only, based on a stipulation between Complainant and Toshiba America, Inc.

that was attached to the motion as Exhibit A. (See Motion at 1.) Toshiba America, Inc. represents in the Stipulation that “to the best of its knowledge it does not make, sell, or offer to sell in the United States, or import into the United States, any products accused of infringement in the Complaint or any products that are substantially similar.” (*Id.*, Ex. A at 1.)

As required by Commission Rule 210.21(a)(1), Andrea’s motion to terminate includes a statement that there are no agreements, written or oral, express or implied, between the parties concerning the subject matter of the investigation, other than the stipulation identified in the motion and attached as Exhibit A. (*Id.* at 1.) As the stipulation does not contain confidential business information, it was not necessary for Andrea to file a separate public version of the agreement. I find no extraordinary circumstances that prevent the termination of this Investigation with respect to Toshiba America, Inc. Terminating Toshiba America, Inc. from this Investigation is in the public interest, as public and private resources will be conserved. *Certain Power Supplies*, Inv. No. 337-TA-646, Order No. 18 (Jan. 5, 2009).

Accordingly, it is my Initial Determination that Motion Docket No. 949-003 is hereby GRANTED. Toshiba America, Inc. is hereby terminated from this investigation. This Initial Determination, along with any supporting documentation, 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.



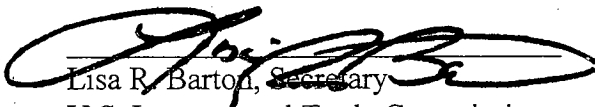
Thomas B. Pender
Administrative Law Judge

**IN THE MATTER OF CERTAIN AUDIO PROCESSING
HARDWARE AND SOFTWARE PRODUCTS CONTAINING
SAME**

337-TA-949

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC INITIAL DETERMINATION
ORDER NO. 05** has been served upon the **Commission Investigative Attorney, Lisa Murray,
Esq.**, and the following parties as indicated on APR 07 2015 2015.


Lisa R. Barton, Secretary
U.S. International Trade Commission
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**IN THE MATTER OF CERTAIN AUDIO PROCESSING
HARDWARE AND SOFTWARE PRODUCTS CONTAINING
SAME**

337-TA-949

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