

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN BASE STATIONS AND
WIRELESS MICROPHONES

Inv. No. 337-TA-653

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ORDER NO. 22: DENYING THE JOINT MOTIONS TO TERMINATE BASED UPON SETTLEMENT AGREEMENTS

(February 18, 2009)

On February 3, 2009, complainant L-3 Communications Mobile-Vision, Inc. (“Mobile-Vision”) and respondent KCi Communications, Inc. (“KCi”) filed a joint motion to terminate the investigation as to KCi based upon a settlement agreement. (Motion Docket No. 653-025.) On February 3, 2009, Mobile-Vision and respondent Digital Ally, Inc. (“Digital Ally”) filed a joint motion to terminate the investigation as to Digital Ally based upon a settlement agreement. (Motion Docket No. 653-026.) On February 10, 2009, Mobile-Vision and respondent Trinus Systems, Inc. (“Trinus Korea”) filed a joint motion to terminate the investigation as to Trinus Korea based upon a settlement agreement and consent order. (Motion Docket No. 653-031.) On February 13, 2009, the Commission Investigative Staff (“Staff”) filed a response in support of the motions to terminate KCi and Digital Ally.

In each of the motions, the parties request that the confidential settlement agreement is withheld from the other respondents. None of the other parties, including Staff, oppose this request. Further, no party has made a showing that there is a sufficient need for the information contained in the confidential settlement agreements. *See Certain Semiconductor Timing Signal*

Generator Devices, Components Thereof, & Products Containing Same, Inv. No. 337-TA-465, Order No. 7 (Feb. 19, 2002).

Because the parties sought to withhold the confidential settlement agreements from all of the respondents, they did not file the confidential settlement agreements as part of the motions to terminate. Instead, counsel for Mobile-Vision submitted the confidential settlement agreements as part of a letter to me and the Commission Investigative Staff (“Staff”).

Commission Rule 210.21(b)(1) states:

A motion for termination by settlement shall contain copies of the licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion.

Commission Rule 210.21(b)(2) further explains that I am required to certify both the confidential and public versions of the settlement agreement to the Commission when rendering my initial determination.

If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents.

Because the motions for termination filed with the Secretary did not actually contain the confidential settlement agreements, I find that they do not comply with Commission Rule 210.21(b).

Staff acknowledges this error in its response, and correctly opines that “[t]he better practice would have been to file complete copies of the confidential and public versions of the motion with the Secretary, plus a motion for leave to serve only the public version on the non-settling Respondents.” (Staff Resp. at fn. 1.) Staff suggests that I rule on the substantive

motions in their current form without waiting for the parties to cure the “procedural defect.”

(Id.) I decline to do so, as it would ignore clear Commission Rules regarding the filing of motions to terminate. I will rule on the substance of the motions to terminate when the motions comply with all applicable Commission Rules.

Thus, Motion Nos. 653-025, 653-026, and 653-031 are DENIED without prejudice for failure to comply with Commission Rule 210.21(b). The parties are free to re-file confidential and public versions of the motion with copies of the confidential and public versions of the settlement agreements attached in accordance with Commission Rule 210.21(b). If the parties seek to withhold the confidential settlement agreements from the other respondents, they shall also file a motion for leave to serve only the public version on the non-settling Respondents.

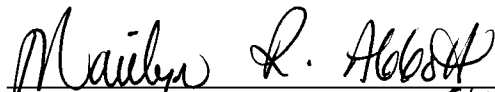
SO ORDERED.



Robert K. Rogers, Jr.
Administrative Law Judge

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon **Lisa A. Murray, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on February 18, 2009.


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