

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of

CERTAIN SEMICONDUCTOR  
INTEGRATED CIRCUITS USING  
TUNGSTEN METALLIZATION AND  
PRODUCTS CONTAINING SAME

Inv. No. 337-TA-648

2009 MAR 26 15:03

**Order No. 60: Denying Complainants' Motion To Amend The  
Complaint And Notice Of Investigation To Assert Claims 3  
And 4 Against Magnachip Semiconductor, Ltd.**

Complainants LSI Corporation and Agere Systems Inc. move to amend the complaint and notice of investigation to assert claims 3 and 4 of the '335 patent against respondent Magnachip Semiconductor, Ltd. ("MagnaChip"). (Motion No. 648-80). Magnachip opposes the motion. The Commission Investigative Staff ("Staff") also opposes the motion. For the reasons set forth below, the motion is DENIED.

There comes a time in every investigation when late is just too late. That is the case here. This investigation was instituted on May 21, 2008. 73 Fed. Reg. 29534 (2008). The target date is January 21, 2010, the date for the issuance of the initial determination is September 21, 2009, and the dates for the hearing are July 20-24, 2009. Order Nos. 22 & 23. In addition, initial expert reports were filed on March 20, 2009, with rebuttal expert reports due on April 6, 2009. Finally, fact and expert discovery will close on April 17, 2009. Order No. 22.

It is in the context of this procedural background that complainants' motion to amend must be considered. The standard for determining whether to grant or to deny complainants' post-institution motion to amend is contained in Commission Rule 210.14(b)(1). 19 C.F.R. §

210.14(b)(1). That Rule in part provides, “[a]fter an investigation has been instituted, the complaint or notice of investigation may be amended only by leave of the Commission for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation.” *Id.*; *see, e.g.*, Order Nos. 12, 13, & 15.

The fact of the matter is that, as identified above, in previous post-institution motions to amend the complainants have established good cause to allow the amendment. Here, however, complainants fail in that endeavor. In that regard, while “[c]omplainants are mindful that the discovery cutoff is looming and expert reports are due to be filed soon,” they seek to lay blame on MagnaChip for the tardiness of their post-institution proposed amendment. Compl. Mem. at 1. They assert, “Due to the lack of discovery received from MagnaChip – which was solely in MagnaChip’s power to provide – Complainants were unable to confirm a good faith basis for asserting Claims 3 and 4 against MagnaChip until just this week.” Compl. Mem. at 1-2. (The motion to amend was filed on March 13, 2009.)

In response, the Staff asserts that complainants served their first discovery in late October 2008, and in light of the procedural deadlines set in Order No. 22, “Complainants should have followed up with MagnaChip more expeditiously if they felt MagnaChip’s discovery responses were insufficient.” Staff Resp. at 2. The Staff notes that, moreover, “Complainants fail to state why they never filed a motion to compel against MagnaChip to obtain the information it sought much sooner than last week.” *Id.*

Not surprisingly, but understandably under the present circumstances, MagnaChip argues that granting complainants’ motion to amend so as to assert claims 3 and 4 at this late date (*i.e.*, six months after September 2008, when MagnaChip was added as a respondent) would be

“highly prejudicial.” Resp. Opp. at 1, 4, & 7.<sup>1</sup> Clearly, both respondent MagnaChip and the Staff have shown that to be the case. In addition, the substantial prejudice to MagnaChip were this motion to amend be granted could not be remedied by a further extension of the target date without adversely affecting the right of the remaining respondents in this investigation to a timely hearing and final agency decision.

Accordingly, complainants’ motion to amend the complaint and notice of investigation so as to assert claims 3 and 4 against MagnaChip is DENIED. (Motion No. 648-80).

So Ordered.



Carl C. Charneski  
Carl C. Charneski  
Administrative Law Judge

Issued: March 26, 2009

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<sup>1</sup> Given the finding in this order that allowing the complaint and notice of investigation to be amended to assert claims 3 and 4 against MagnaChip at this late date would be unduly prejudicial, there is no need to address respondent’s assertion that “Complainants had MagnaChip’s technical information and knowledge that the products identified in their moving papers were destined for the United States by at least December 2008.” Resp. Opp. at 4.

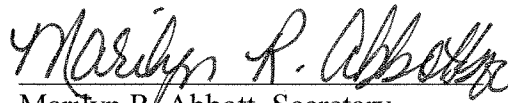
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**PUBLIC CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** has been served upon the Commission Investigative Attorney, Ret Snotherly, Esq., and the following parties as indicated, on

MAR 27 2009



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