

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN COLD CATHODE FLUORESCENT
LAMP ("CCFL") INVERTER CIRCUITS AND
PRODUCTS CONTAINING THE SAME**

Inv. No. 337-TA-666

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**ORDER NO. 16: GRANTING MOTION BY COMPLAINANTS TO COMPEL
RESPONDENTS LG ELECTRONICS AND LG DISPLAY TO
PROVIDE DOCUMENTS AND DENYING REQUEST FOR
SHORTENED RESPONSE TIME**

(August 4, 2009)

On July 6, 2009, Complainants O2 Micro International Ltd. and O2 Micro Inc. (collectively, "O2 Micro") moved for an order compelling Respondents LG Electronics Inc. and LG Electronics USA, Inc. (collectively, "LG Electronics") and LG Display Co., Ltd. and LG Display America, Inc. (collectively, "LG Display") to provide documents related to product sales and discovery regarding each of their products that use cold cathode fluorescent lamp ("CCFL") inverter circuits, irrespective of the manufacturer of the particular CCFL circuits. (Motion Docket No. 666-021.) O2 Micro argues that the information requested is responsive to O2 Micro's Requests for Production Nos. 1-3, 45-46, 48, 52-54, 56, and 58, at least, and is necessary to "ensure" that O2

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Micro has identified each of LG Electronics' and LG Display's infringing products. (Mot. at 1-2.)¹ O2 Micro also requested a shortened response time, arguing that the requested documents and information are needed prior to depositions that were scheduled to commence on July 10-17, 2009. (Mot. at 1.)²

O2 Micro's first contention is that, although LG Electronics and LG Display have provided sales summary charts and spreadsheets, they have refused to produce underlying sales records. (Mot. at 2; Mot. Mem. at 1-3.) O2 Micro argues that the sales summary charts and spreadsheets were created "solely for the purpose of this litigation." (Mot. Mem. at 3.) O2 Micro says that it has reviewed the LG Electronics and LG Display document productions and "has confirmed that the documents these spreadsheets purport to summarize have not been produced." (Mot. Mem. at 3-4.) O2 Micro further argues that LG Display provided information about only 2 of its products in its discovery responses, but advertises for 20 LCD monitors, 16 LCD televisions, and 17 notebook computers on its website and that "[i]t is extremely likely that each and every one of these products contains an inverter controller circuit and directly infringes the patent-in-suit." (Mot. Mem. at 4.) Similarly, O2 Micro argues that LG Electronics advertises for sale 31 LCD televisions and 16 LCD monitors, but has failed to provide any information about any of those products. (Mot. Mem. at 4.)

¹ The record shows that LG Electronics and LG Display served responses and objections to O2 Micro's discovery requests on March 5, 2009, produced documents on March 16, 2009, and supplemented their productions on April 16, 2009 (LG Display) and April 24, 2009 (LG Electronics). (Mot., Exs. 2-6.) O2 Micro, however, argues that the production is inadequate and that LG Electronics and LG Display failed to produce relevant technical, marketing, and sales documents. (Mot. Mem. at 3.)

² On July 8, 2009, Respondents LG Electronics and LG Display filed a written opposition to O2's request for a shortened response time. The Administrative Law Judge hereby finds that O2 Micro's request for a shortened response time is moot and is thus **DENIED**.

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O2 Micro's second contention is that LG Electronics and LG Display are limiting their discovery responses to include only documents and information regarding LG Electronics and LG Display products that incorporate CCFL inverter controllers that are manufactured by respondents in this Investigation, *i.e.*, Monolithic Power Systems Inc. ("MPS") and Microsemi Corporation ("Microsemi"). (Mot. at 2; Mot. Mem. at 1-3, 5-6.) O2 Micro argues that in its Complaint it "did not limit its infringement claims to include only products using MPS or Microsemi manufactured inverter controllers." (Mot. Mem. at 6.) O2 Micro further argues that the Notice of Investigation has determined that the scope of this Investigation "includes any and all CCFL inverter circuits," (Mot. Mem. at 6), and that LG Electronics' and LG Display's "improper limitation of discovery excludes almost all of the potentially directly infringing [LG Electronics and LG Display] products currently being sold which incorporate CCFL inverter controllers." (Mot. Mem. at 2.) O2 Micro asserts that "information about any [LG Electronics or LG Display] product *that uses any inverter controller* is relevant to O2 Micro's patent infringement claims and is therefore unquestionably discoverable." (Mot. Mem. at 6 (emphasis added).)

O2 Micro's remaining contention is that Respondents LG Electronics and LG Display refuse to produce technical and marketing documents regarding the CCFL inverter controllers used in LG Electronics' and LG Display's products and insist that O2 Micro must instead rely on the technical and marketing documents produced by Respondents MPS and Microsemi. (Mot. at 2; Mot. Mem. at 2-4, 7-8.) O2 Micro argues that LG Electronics' and LG Display's technical and marketing documents are relevant to contributory infringement and inducement. (Mot. Mem. at 8.) O2 Micro also argues that LG Electronics' "limited document production reveals that it possesses

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relevant and responsive technical documents,” citing user manuals and service manuals that LG Electronics produced, which allegedly “show no detail regarding inverter design” and wherein the “details are illegible.” (Mot. Mem. at 8 (citing Mot., Exs. 15-16).)

On July 16, 2009, Respondents LG Electronics and LG Display (“the LG Respondents”) filed a written opposition to O2 Micro’s motion. They say that O2 Micro has known since March 9, 2009 that the LG Respondents intended to limit their discovery responses and document productions to “the product identified in O2 Micro’s complaint and any other products that incorporate CCFL inverter controllers manufactured by [MPS or Microsemi].” (Opp. at 1 (citing Mot., Exs. 2-3).) The LG Respondents further state:

In keeping with their position, the *LG Respondents objected* to O2 Micro’s Interrogatory No. 2 seeking an identification of ‘each and every type of Respondent’s CCFL inverter circuit, inverter controller, or products containing same’ *because ‘it purports to require information relating to products that are not at issue’ in the investigation or are ‘covered by licensed patent rights.’*

(Opp. at 2 (citing Mot., Exs. 2-3) (emphasis added).) Thus, according to the LG Respondents, they have been “clear and forthcoming” about which products they believe are at issue and about which products they would provide discovery since the beginning of this Investigation. (Opp. at 2, 7.)

With respect to O2 Micro’s requests for additional information regarding products manufactured and sold by the LG Respondents that contain a CCFL inverter circuit, the LG Respondents argue that those requests “effectively ask[] LG Respondents to conduct and disclose an infringement analysis as to every one of their” products that contain a CCFL inverter circuit. (Opp. at 4.) The LG Respondents assert that they did not limit their discovery responses to the product mentioned in the complaint and that they “produced documents and information about all

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of the products reasonably in the ‘family’ from which the identified product came.” (Opp. at 7.)

The LG Respondents also assert that {

} (Opp. at 4, 11.) The LG Respondents

argue:

The documents requested are not limited to products with CCFL inverter circuits that are accused of infringing the patent at issue, are not limited to products that are sold or imported for sale into the United States, are not limited to products currently being designed, made or sold, and are *not limited to products having CCFL inverter circuits manufactured by any named respondent in this investigation*. Having identified only one LG Respondent product as infringing in their Complaint, a product that LG Electronics ceased to make or sell prior to the Complaint, O2 Micro has not established the relevance of the massive amount of additional information that it seeks.

(Opp. at 3-4 (emphasis added).) The LG Respondents add that, although they have identified “dozens of their product models” in the discovery responses, O2 Micro has only identified one discontinued LG Electronics product model and no LG Display product models as infringing the patent in suit. (Opp. at 9 (citing Opp., Roth Decl. at ¶ 9 and Ex. F) and 12 n.2 (citing Opp., Roth Decl. at ¶¶ 5, 9 and Exs. B, F.)) According to the LG Respondents, “[t]he appropriate scope of discovery is wholly derived from the devices as to which O2 Micro claims a good faith basis to believe infringe one or more of the identified claims [] of the ‘382 patent [in suit].” (Opp. at 9, 10-13.)

With respect to the underlying sales documentation requested by O2 Micro, the LG Respondents say that their counsel never made the statement that the LG Respondents believe that O2 Micro does not need the underlying documentation because the information has been provided in summary reports. (Opp. at 3, 6-7.) The LG Respondents assert that, to the contrary:

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[LG Display] produced over 800 pages of detailed sales documentation listing each worldwide transaction since 2006 involving each LG Display product having an MPS or Microsemi inverter controller and sold by LG Display at any time in 2008 or 2009.

(Opp. at 5 (citing Opp., Roth Decl. at ¶ 4 and Ex. A.)) In addition, the LG Respondents assert that O2 Micro has now confirmed that {

} (Opp. at 11 (citing Opp., Roth Decl. at ¶ 12 and Ex. D)

(emphasis added).) With respect to LG Electronics, the LG Respondents make the following statement:

The LG Electronics production shows sales of each LG Electronics product that has an MPS or Microsemi inverter controller and was sold by LG Electronics in the United States at any time in 2008 or 2009.

(Opp. at 5-6 (citing Opp., Roth Decl. at ¶ 5 and Ex. B.)) The LG Respondents argue that O2 Micro has no basis to question the credibility and trustworthiness of the sales documents produced, and that the LG Respondents have offered and remain willing to provide “additional data that is reasonably tailored to meet O2 Micro’s stated need and is not merely duplicative of data they have already produced to the extent that such data exists.” (Opp. at 6.)

The LG Respondents also argue that O2 Micro delayed filing the present motion to compel for over four months, that the discovery requested “at this late date will radically change the substance and complexity of this case and will radically increase the burden upon the LG Respondents” (Opp. at 2), and that O2 Micro’s “tardy attempt to expand discovery beyond the named manufacturer respondents is improper and unfair.” (Opp. at 5.) In addition, the LG Respondents argue:

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Because *the LG Respondents do not manufacture or sell CCFL inverter circuits or inverter controllers*, any modification of the scope of this Investigation to include products of CCFL inverter circuit or inverter controller manufacturers who have not been named as respondents by O2 will require extensive discovery from third party inverter controller manufacturers.

(Opp. at 2-3, 14 (emphasis added).)³

On July 16, 2009, the Commission Investigative Staff (“Staff”) also filed a written response to O2’s motion, which sets forth Staff’s view that the LG Respondents should be required to produce “any responsive documents in their possession, custody, or control concerning the products at issue.” (Staff Resp. at 1-4.) Specifically, Staff argues:

This is particularly true when certain claims of the patents at issue are allegedly directly infringed by the LG Respondents, not the chipmakers. [For example, independent claim 8 of U.S. Patent No. 7,417,382 (‘the ‘382 patent’) is explicitly drawn to “[a] liquid crystal display unit,” not simply a chip or an inverter circuit. (‘382 patent, col. 12:15).] The fact that the complaint specifically identifies only products containing chips manufactured by MPS and Microsemi should not limit the scope of discovery. [Indeed, a complainant often does not have complete knowledge of all potentially infringing products at the time the complaint was filed.]

(Staff Resp. at 2-3 (n.2 and n.3 in brackets).) Staff agrees with O2 Micro that it is entitled to verify the accuracy of any sales summaries produced by the LG Respondents. (Staff Resp. at 3-4.) Staff argues that, while the LG Respondents manufacture “downstream products,” *e.g.*, products that contain accused CCFL inverter circuits, such as televisions and computers, “there does not appear to be any basis for treating them differently from any other party for purposes of discovery,” because they are named respondents in this Investigation. (Staff Resp. at 2.)

³ The Administrative Law Judge notes that on July 2, 2009 he amended the procedural schedule, thereby extending some of the activity dates, and that the new cutoff date for fact discovery is August 14, 2009. (337-TA-666, Order No. 14.)

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Based upon the motion papers and responses thereto, the Administrative Law Judge finds as follows.

The Notice of Investigation (“NOI”) defines the scope of an investigation. Here, the NOI makes clear that this Investigation was instituted to determine whether there has been a violation of section 337 in the “importation into the United States, the sale for importation, or the sale within the United States after importation of certain cold cathode fluorescent lamp (“CCFL”) inverter circuits *or products containing same* that infringe one or more of claims 1, 2, 4, 6-9, 11, 13, and 14 of U.S. Patent No. 7,417,382 . . .” 74 FR 2099 (January 14, 2009) (emphasis added). Accordingly, this Investigation encompasses products that contain CCFL inverter circuits as well as CCFL inverter circuits themselves.

“The scope of discovery is necessarily commensurate with the scope of the investigation.” *Certain Rechargeable Lithium-Ion Batteries, Components Thereof, and Prods. Containing Same*, 337-TA-600, Order No. 8 (July 25, 2007). Commission Rule 210.27(b) governs the scope of discovery and says that a party may obtain discovery about any non-privileged matter that is relevant to any claim or defense it may have. It is not grounds for objection that the information sought may be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. 19 C.F.R. § 210.27(b). Thus the scope of discovery has been held to be broad. *See Certain Audio Processing Integrated Circuits, and Products Containing Same*, Inv. No. 337-TA-538, Order No. 6 at 5 (July 14, 2005); *Certain Optical Disk Controller Chips and Chipsets, and Products Containing Same, Including DVD Players and PC Optical Storage Devices*, Inv. No. 337-TA-506, Order No. 32 at 3 (Dec. 22, 2004).

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Because of this broad discovery rule, “the burden of proving that an issue is beyond discovery rests squarely with the party resisting the discovery.” *See Certain Encapsulated Integrated Circuit Devices and Products Containing Same*, Inv. No. 337-TA-501, Order No. 50 (May 18, 2004).

The Administrative Law Judge finds that the LG Respondents’ products that contain CCFL inverter circuits and are imported into the United States, sold for importation into the United States, or sold in the United States after being imported, fall within the scope of what is relevant and proper discovery in this Investigation. Thus, the Administrative Law Judge finds the discovery that O2 Micro seeks regarding the LG Respondents’ products that contain a CCFL inverter circuit is relevant, proper, and reasonably calculated to lead to admissible evidence. *See, e.g., Certain Rechargeable Lithium-Ion Batteries*, 337-TA-600, Order No. 8 (finding that the scope of discovery “encompasses more than the exemplar LEN-1 battery explicitly recited in the amended complaint”). The Administrative Law Judge cautions O2 Micro that he is not granting O2 Micro’s request for discovery without limitation. The Administrative Law Judge disagrees with O2 Micro’s assertion that information regarding any LG Electronics or LG Display product that uses *any inverter controller* is relevant and discoverable.⁴ Such unlimited discovery would be unfair and prejudicial to the LG Respondents.

⁴ The Administrative Law Judge notes, however, that while some asserted claims of the ‘382 patent are directed to a DC to AC CCFL inverter circuit, which, according to the complaint is an improved inverter circuit for controllably delivering power to CCFLs, (‘382 patent, claim 1; Complaint at ¶ 5.4), several additional asserted claims are directed to a liquid crystal display (“LCD”) unit comprising an LCD panel and a CCFL for illuminating said LCD panel, among other things. (‘382 patent, claims 8, 9, 11, 13, and 14.) Thus, the Administrative Law Judge finds that products that contain a DC to AC CCFL inverter circuit as well as products that contain an LCD unit and a CCFL (that may or may not be a DC to AC CCFL inverter circuit) are relevant to this Investigation.

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With respect to the three categories about which O2 Micro specifically requests fact discovery, *i.e.*, (i) sales documents underlying the LG Respondents' summary charts and spreadsheets, (ii) documents and information regarding LG Electronics and LG Display products that incorporate CCFL inverter circuits that are manufactured by entities other than Respondents MPS and Microsemi, and (iii) technical and marketing documents regarding CCFL inverter circuits that are used in the LG Respondents' products, the Administrative Law Judge finds that the LG Respondents should provide such information to the extent that it exists and is not protected by the attorney-client privilege or attorney work product doctrine. The NOI does not limit the scope of the investigation to any particular brand, model, or manufacturer of CCFL inverter circuits. Thus, for example, O2 Micro is entitled to information, documents and testimony regarding direct sales to entities/individuals in the United States of LG Electronics and LG Display products that contain CCFL inverter circuits and regarding the suppliers and/or manufacturers of the CCFL inverter circuits that the LG Respondents use in their products (where such products are imported into the United States, sold for importation into the United States, or sold in the United States after being imported).⁵ *See, e.g., Certain Semiconductor Chips with Minimized Chip Package Size and Prods. Containing Same*, 337-TA-605, Order No. 44 (Feb. 14, 2008) (stating, "Contrary to [Respondent] Motorola's assertion, it is not merely a 'downstream user' of the accused products in this investigation, but rather an importer of products that allegedly contain infringing semiconductor chips. As such both Motorola and its products fall squarely within the scope of the investigation. This is true regardless of who is the supplier of the semiconductor chips."). In

⁵ The Administrative Law Judge notes, however, that this is but one example of the information to

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contrast to the LG Respondents' arguments that O2 Micro is not entitled to information regarding products that are not already accused of infringing the '382 patent, products having CCFL inverter circuits that may be covered by licensed patent rights, or products having CCFL inverter circuits that are manufactured by an entity other than a named respondent in this Investigation, having reviewed the parties' motion papers and accompanying exhibits and declarations in support and opposition, the Administrative Law Judge finds that such information is relevant and discoverable pursuant to the Notice of Investigation.

For the reasons discussed above, the Administrative Law Judge finds that O2 Micro's discovery requests are relevant to its claims in this Investigation and appear to be reasonably calculated to lead to the discovery of admissible evidence. Accordingly, O2 Micro's motion to compel the LG Respondents to provide discovery commensurate with the scope of this Investigation is hereby **GRANTED**.

Although the LG Respondents may not be in possession of all of the information that O2 Micro seeks in its discovery requests, the evidence shows that the LG Respondents may have information beyond that which has been previously disclosed and/or produced and they should now disclose and/or produce whatever additional information they do have.⁶ Thus, the LG Respondents shall provide any remaining discovery responsive to O2 Micro's requests or

be provided by the LG Respondents and does not constitute the limit of what is to be produced.

⁶ It is apparent to the Administrative Law Judge, and O2 Micro is directed to take note, that the LG Respondents have already provided O2 Micro with some of the requested information. (*See, e.g.,* Opp., Ex. I (deposition testimony stating that {

have also indicated that {
e.g., Opp., Roth Decl. at ¶ 12 and Ex. I.)

}.) The LG Respondents
} (*See,*

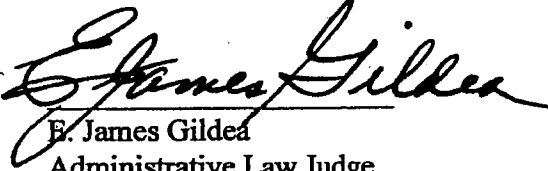
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explicitly state what information is not in their possession, custody, or control. The LG Respondents shall serve their discovery responses no later than ten business days from the date of this ORDER.

Within seven days of the date of this document, each party shall submit to the office of the Administrative Law Judge a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions must be made by hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information by the aforementioned date. The parties' submission concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.

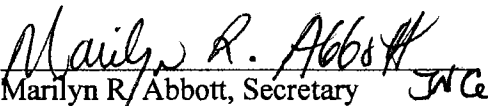

E. James Gildea
Administrative Law Judge

**IN THE MATTER OF CERTAIN COLD CATHODE
("CCFL") INVERTER CIRCUITS AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-666

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached has been served by hand upon, the Commission Investigative Attorney, **David O. Lloyd, Esq.**, and the following parties as indicated on August 17, 2009.


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**IN THE MATTER OF CERTAIN COLD CATHODE
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CERTIFICATE OF SERVICE - PAGE 2

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**IN THE MATTER OF CERTAIN COLD CATHODE
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