

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN VIDEO DISPLAYS, COMPONENTS
THEREOF, AND PRODUCTS CONTAINING TH
SAME**

Inv. No. 337-TA-687

**ORDER NO. 12: INITIAL DETERMINATION GRANTING COMPLAINANT'S
MOTION FOR LEAVE TO FILE A SECOND AMENDED
COMPLAINT AND AMEND THE NOTICE OF INVESTIGATION**

(January 8, 2010)

On November 25, 2009, Complainant LG Electronics, Inc. ("LGE") filed a motion for leave to file a second amended complaint and amend the Notice of Investigation ("NOI"). (Motion Docket No. 687-009.) On December 7, 2009, Respondent Vizio, Inc. ("Vizio") and Non-Parties AmTran Technology Co. Ltd. and AmTran Logistics, Inc. (collectively "AmTran") filed oppositions to LGE's motion for leave. On December 7, 2009, the Commission Investigative Staff ("Staff") filed a response in support of the present motion. On December 11, 2009, LGE filed a motion for leave to file a reply (Motion Docket No. 687-011) in support of its motion for leave to file a second amended complaint. On December 14, 2009, AmTran and Vizio each filed oppositions to LGE's motion for leave to file a reply. For good cause shown, LGE's motion for leave to file a reply is GRANTED.

~~LGE argues that good cause exists to grant its motion for leave to file a second amended~~
complaint. In particular, LGE argues that it only had limited information regarding the AmTran

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entities when this Investigation was initiated and that only through discovery conducted in this Investigation has it gained new knowledge and confirmed information about AmTran's involvement with the importation, sale for importation, and sale within the United States after importation of products accused of infringement in this Investigation. (LGE Mem. at 1-2.) LGE also argues that adding the AmTran entities as respondents would reduce the need to conduct third-party discovery, aid in developing a more complete record, and afford it effective relief. (*Id.* at 2.) Additionally, LGE argues that granting its motion would preserve Commission resources by adjudicating all related matters in one investigation. (*Id.*) LGE further argues that granting its present motion to amend will not prejudice the other parties. (*Id.*) LGE notes that Respondents Funai Electric Co., Ltd., Funai Corporation, and P&F USA, Inc. all indicated that they would not oppose the present motion to amend the complaint.

AmTran argues that the motion to amend should be denied, because LGE failed to show that its proposed amendment is based on new information obtained during discovery that was not known to LGE prior to the institution of this Investigation. (AmTran Opp. at 1.) AmTran also argues that amending the complaint at this juncture would prejudice both the named and proposed respondents, as well as, the public. (*Id.*) Additionally, AmTran argues that LGE's motion is procedurally defective because LGE did not serve it with a copy of the motion as required by Commission Rule 210.15.¹ (*Id.* at 1 n.1.)

¹ The purpose of the Rule 210.15 is to provide notice to the proposed respondent that a motion has been filed seeking to name them in an investigation and to give the proposed respondent an opportunity to file a response. AmTran filed a timely response thereby indicating that it received notice of the present motion. Accordingly, the Administrative Law Judge finds any error on LGE's part to be harmless. Notably, on December 9, 2009,

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Vizio incorporates AmTran's opposition by reference in arguing that LGE's motion to amend should be denied. (Vizio Opp. at 1.) Vizio primarily argues that LGE has failed to show good cause for amending the complaint at this juncture in the Investigation. (*Id.*) Vizio also argues that LGE's motion is procedurally defective.² (*Id.* at 1 n.1.)

The Staff argues that LGE's motion shows the requisite good cause required under Commission Rule 210.14(b)(1). (Staff Mem. at 1-2.) The Staff argues that LGE did not know of the full depth and extent of AmTran's involvement in the importation of the accused products until after it had filed its complaint with the Commission. (*Id.* at 2.) The Staff also argues that it is AmTran that appears to have the most detailed technical understanding of the Vizio accused products. (*Id.* at 4.) The Staff asserts that joining AmTran would be helpful in obtaining discovery, developing a complete record, and affording LGE effective relief. (*Id.*) The Staff further argues that granting LGE's motion to amend will not prejudice the parties or the public. (*Id.* at 5-6.)

Through its present motion, LGE seeks to add two additional respondents to this Investigation, AmTran Technology Co., Ltd., a Taiwanese Corporation, and AmTran Logistics, Inc., a U.S. subsidiary. Title 19, Section 210.14(b) of the Code of Federal Regulations provides that after the institution of an investigation the Commission may grant leave to amend the complaint "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." 19 C.F.R. § 210.14(b). After an investigation has been instituted, a complainant who seeks to amend the complaint and notice of investigation bears the

December 9, 2009, LGE served AmTran with a copy of the present motion. (LGE Reply, Ex. M.)

² See *supra*, at 3 n.1.

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of investigation bears the burden of establishing the existence of good cause to make the requested amendment. *Certain EPROM EEPROM Flash Memory, and Flash Microcontroller Semiconductor Devices and Products Containing Same*, Inv. No. 337-TA-395, Order No. 18 at 2 (August 27, 1997).

In addition, there must be an inquiry into whether granting the motion would prejudice the rights of the other parties and the public interest. *Id.*

Motions to amend the complaint to add new respondents have been granted when the complainant demonstrates that new information was obtained that was not known to the complainant prior to institution. *Certain Laminated Floor Panels*, Inv. No. 337-TA-545, Order No. 4 at 2 (Sept. 19, 2005); and *Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing the Same*, Inv. No. 337-TA-413, Order No. 21 at 5 (Dec. 10, 1998). Motions to amend the complaint to add respondents have also been granted when the complainant receives information during discovery that confirms information available to the complainant prior to institution. *See, e.g., Certain Display Controllers and Products Containing Same*, Inv. No. 337-TA-491, Order No. 5, 2003 WL 21479993 (June 20, 2003). Additionally, “good cause” to add a party as a respondent has been found, *e.g.*, when the party has, *inter alia*, information that is relevant to the investigation, which is necessary in developing a complete record. *Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same*, Inv. No. 337-TA-493, Order No. 17 at 4.

The evidence presented by LGE in support of its motion suggests that while LGE had reason to believe AmTran had information relevant to the issues in this Investigation prior to this

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Investigation's institution, LGE only discovered AmTran's full involvement through discovery obtained thereafter. In particular, the evidence shows that LGE learned through discovery in this Investigation that AmTran Technologies supplies Vizio with a large portion of Vizio's accused products and has knowledge of the technical aspects of the accused products.³ (*See, e.g.*, LGE Mem., Ex. B at 14-15 (Interrogatory No. 8).) In fact, the evidence shows that between the third quarter of 2008 and the second quarter of 2009, over 85 percent of Vizio brand model televisions were supplied by AmTran. (LGE Mem., Ex. C (see Exhibit A attached thereto).) The evidence also shows that LGE learned through discovery that AmTran Logistics imports the accused products into the United States. (*See* LGE Mem., Ex. B at 11-12 (Interrogatory No. 5); LGE Mem., Ex. E at ALI000007, ALI000394-95, ALI000397-98.) On this point, Vizio has stated in its interrogatory responses that:

Inventory of Vizio's accused products is held by third parties at third party warehouses. Vizio's suppliers own the inventory until title transfers pursuant to contractual delivery obligations. Vizio owns its accused products for very short periods of time between transfer from suppliers to its customers. Inventory of Vizio's accused products is managed by its suppliers and/or their subsidiaries while under their ownership.

(LGE Mem., Ex. C at 22 (Interrogatory No. 17).)

As Vizio's primary manufacturer and supplier, it appears from the evidence presented by LGE that AmTran has the most detailed understanding of the Vizio accused products. The evidence also suggests that AmTran is in possession of technical documents related thereto.

³ In its interrogatory responses, Vizio states that it does not manufacture the accused products and that its employees only have a "general understanding" of the design, development and operation of the accused products. (LGE Mem., Ex. B at 14-15 (Interrogatory No. 8).)

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related thereto. Furthermore, the evidence presented by LGE shows that AmTran is involved in the importation, sale for importation, and/or sale within the United States after importation of the Vizio accused products. Therefore joining AmTran in this Investigation would aid in obtaining discovery, developing a complete record and affording LGE effective relief.

Because the information on which LGE bases its present motion to amend was obtained through discovery, notably much of which is marked confidential, after the institution of this Investigation, the Administrative Law Judge finds good cause exists to allow LGE to amend the complaint and NOI.

In addition to requiring a showing of good cause, Commission Rule 210.14(b) requires that any amendment to the complaint after institution of an investigation avoid prejudice to the parties and the public interest. 19 C.F.R. § 210.14(b). Typically, the public interest is served by adjudicating all related matters in a single investigation. Joining AmTran as a respondent in this Investigation would simplify the discovery process by avoiding the use of the third party subpoena process to obtain information from the AmTran entities. In fact, because AmTran Technologies is a Taiwanese Company, and thus outside the scope of the Commission's subpoena power, joining it as a respondent may be the only way that LGE will be able to obtain its needed discovery and the only way to ensure a complete record in this Investigation. Also, based on the evidence of AmTran's involvement in the design, manufacture and importation into the United States of the accused products, joining AmTran may also be the only way to afford LGE an opportunity for complete and effective relief should a violation of Section 337 be found. In addition, joining AmTran in this Investigation would promote

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AmTran in this Investigation would promote judicial efficiency and conserve Commission resources by alleviating the need for LGE to file a separate Section 337 complaint directed against AmTran on the very same patents and products.

Any prejudice to the AmTran entities by adding them as respondents to this Investigation at this time should be minimal. Fact discovery is not scheduled to close until April 23, 2010 and the hearing in this Investigation is not scheduled until June 2010. (*See* Order No. 6 (November 3, 2009).) While AmTran will not have the full amount of time for discovery, AmTran will be able to use the discovery taken by the other parties in this Investigation. Given the close relationship between AmTran and Vizio, the discovery taken by Vizio to date should be equally relevant and meaningful to AmTran. Additionally, Vizio and AmTran have the same counsel, Jones Day, which undoubtedly is familiar with the issues in this Investigation. The Administrative Law Judge finds, based on present record, that granting LGE's motion to amend the complaint and NOI will not unduly prejudice the rights of AmTran, the other parties presently in the Investigation or the public interest.

Nevertheless, to accommodate the inclusion of AmTran and any resulting discovery needs of the parties, the Administrative Law Judge hereby orders the parties, including AmTran, to jointly draft, to the extent necessary, a new proposed procedural schedule. The parties should bear in mind when proposing the new procedural schedule that in light of the Administrative Law Judge's responsibilities in other investigations and his current hearing calendar, the current hearing dates and target date in this Investigation cannot be moved barring exceptional circumstances. The

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parties shall file any new proposed procedural schedule by February 17, 2010.


Based on the foregoing, Motion No. 687-009 is GRANTED.

This Initial Determination, pursuant to Commission Rule 210.42(c), is hereby CERTIFIED to the Commission. Pursuant to Commission Rule 210.42(h)(3), this Initial Determination shall become the determination of the Commission within thirty (30) days after the date of service hereof unless the Commission grants a petition for review of this Initial Determination pursuant to Commission Rule 210.43, or orders on its own motion a review of the Initial Determination or certain issues therein pursuant to Commission Rule 210.44.

Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions may be made by facsimile and/or 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. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.

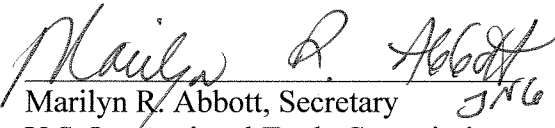

E. James Gildea
Administrative Law Judge

**IN THE MATTER OF CERTAIN VIDEO
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AND PRODUCTS CONTAINING SAME**

337-TA-687

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** has been served by hand upon, the Commission Investigative Attorney, **Jeffrey T. Hsu, Esq.**, and the following parties as indicated on January 28, 2010.


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