

PUBLIC VERSION

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.**

In the Matter of

**CERTAIN DIGITAL TELEVISIONS AND
CERTAIN PRODUCTS CONTAINING SAME
AND METHODS OF USING SAME**

**Inv. No. 337-TA-617
Enforcement Proceeding**

Order No. 25

Respondents TPV Technology, Ltd., TPV International (USA), Inc., Top Victory Electronics (Taiwan) Co., Ltd., Envision Peripherals, Inc. (“EPI”), and Top Victory Investments, Ltd. (collectively, “TPV”) move For Leave to File A Supplemental Expert Report of Phillip Green. (Motion No. 617-126). The TPV respondents seek to supplement the expert report of Green “to include information regarding the manner in which EPI is compensated for its role in the distribution of TPV-manufactured products and EPI’s financial circumstances.” Mot. at 1. The motion is denied.

TPV’s motion to supplement the expert report of Green is dated January 28, 2010. The respondents acknowledge, however, that Green’s initial expert report was served on December 23, 2009. *Id.* In accounting for this gap in time, TPV explains that “[d]uring Mr. Green’s recent deposition,^[1] the Commission’s Investigative Staff posed questions regarding Mr. Green’s analysis, including questions regarding the manner in which EPI is compensated for distributing

¹ The Green deposition took place on January 18, 2010. *See* Compl. Opp., Ex. A.

TPV-manufactured products, and EPI's own financial condition." *Id.* Thus, "[i]n light of the Staff's questions on this subject, a supplemental document production was made on January 27, 2010 of materials showing the financial arrangement through which EPI is compensated for its role in the distribution of TPV-manufactured DTVs and concerning EPI's own financial condition." *Id.*

Accordingly, TPV now offers Green's 12-page supplemental expert report, with attachments A through E. Despite the fact, however, that the hearing in this investigation will begin on March 1, 2010, the TPV respondents conclude, without explanation, that they "do not believe" that the complainants would be prejudiced. Mot. at 2.² Moreover, the respondents are willing to make Green available for a "brief" deposition on the subject of his supplemental expert report. *Id.*

The Commission Investigative Staff ("Staff") supports TPV's motion. After all, it was the Staff's line of questioning that stirred the pot. The Staff's reasoning in its support of TPV, however, is a bit curious. First, the Staff agrees with the complainants, who oppose the motion, that "there does not appear to be any reason why Mr. Green could not have presented his argument earlier in the proceeding." Staff Resp. at 2.

Second, the Staff acknowledges the troublesome timing issue presented by TPV's motion to supplement in stating, "Complainants' main reason for opposing supplementation appears to be that they would be prejudiced because pre-hearing briefs have already been filed and 'counsel for Funai are busy preparing for the rapidly approaching hearing.'" *Id.*, citing Compl. Opp. at 2.

² Interestingly, in their reply, TPV states that "the hearing is over three weeks away," as if three weeks in a section 337 proceeding is a lot of time. Reply at 1. (TPV's Motion No. 617-127 for leave to reply is granted.)

Nonetheless, the Staff is swayed in TPV's favor because[
] which is an unprecedented amount at the Commission" and because "the Staff understands that both parties will be updating their positions anyway when the Enforcement Respondents' fourth quarter 2009 financial reports become available." *Id.* While the Staff's decision to support TPV's motion might make sense as a broad policy matter, the Staff does not address the very problems which it identifies. Those problems are the untimeliness of the motion and the prejudice to complaints should the motion to supplement the Green expert report be granted.

In opposing TPV's motion, complainants Funai Electric Co., Ltd. and Funai Corporation, Inc. argue, among other things, that it is untimely and that it "is not based on any justifiable circumstances, and has resulted in unfair prejudice to Funai by raising new issues and arguments well after the time for expert reports and expert depositions has passed, and at a time when Complainants are busy preparing for trial." Compl. Opp. at 1. Complainants arguments are as persuasive as TPV's and the Staff's contrary arguments are not.

Accordingly, Motion No. 617-126 is denied.

Within seven days of the date of this document, each party shall submit to the Office of Administrative Law Judges a statement as to whether or not it seeks to have any portion of the document redacted from the public version. The parties' submissions may be made by facsimile and, or, by hard copy. Any party seeking to have a portion of this document redacted from the public version must submit to this office a copy of this document with red brackets

indicating the portion, or portions, asserted to contain confidential business information.

So Ordered.

Carl C. Charneski

Carl C. Charneski
Administrative Law Judge

Issued: February 18, 2010

**CERTAIN DIGITAL TELEVISIONS AND CERTAIN PRODUCTS CONTAINING
SAME AND METHODS OF USING SAME**

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PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER 25** has been served by hand upon the Commission Investigative Attorney, **David O. Lloyd, Esq.**, and the following parties as indicated, on MAR 10 2010.



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