

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN PRINTING AND IMAGING
DEVICES AND COMPONENTS
THEREOF**

Inv. No. 337-TA-690

**ORDER NO. 20: GRANTING-IN-PART & DENYING-IN-PART RESPONDENTS'
MOTION TO PRECLUDE COMPLAINANTS FROM RELYING
ON AN INVENTION DATE EARLIER THAN THE FILING DATE
& FROM RELYING ON LICENSING IN SUPPORT OF A
DOMESTIC INDUSTRY**

**GRANTING-IN-PART & DENYING-IN-PART RESPONDENTS'
MOTION TO PRECLUDE COMPLAINANTS FROM RELYING
ON UNTIMELY CONTENTIONS ABOUT CONCEPTION AND
REDUCTION TO PRACTICE**

(March 31, 2010)

On February 26, 2010, respondents Oki Data Corporation and Oki Data Americas, Inc. (collectively "Oki Data") filed a motion to preclude complainants Ricoh Company, Ltd., Ricoh Americas Corporation, and Ricoh Electronics, Inc. (collectively "Rico") from relying on an invention date earlier than the filing date of any of the asserted patents, and from relying on licensing in support of a domestic industry. (Motion Docket No. 690-009.) In the alternative, Oki Data requests that Ricoh be compelled to produce witnesses for deposition in the United States. On March 10, 2010, the Commission Investigative Staff ("Staff") filed a response supporting the motion in part. On March 11, 2010, Ricoh filed a response opposing the motion. On March 15, 2010, Oki Data filed a motion for leave to file a reply in support of its motion, which is hereby GRANTED. (Motion Docket No. 690-014.)

On February 26, 2010, respondents Oki Data Corporation and Oki Data Americas, Inc. (collectively “Oki Data”) also filed a motion to preclude complainants Ricoh Company, Ltd., Ricoh Americas Corporation, and Ricoh Electronics, Inc. (collectively “Rico”) from relying alleged untimely contentions regarding conception and reduction to practice. (Motion Docket No. 690-010.) On March 10, 2010, the Commission Investigative Staff (“Staff”) filed a response opposing the motion. On March 11, 2010, Ricoh filed a response opposing the motion. On March 15, 2010, Oki Data filed a motion for leave to file a reply in support of its motion, which is hereby GRANTED. (Motion Docket No. 690-014.)

I. Oki Data’s Motion No. 690-009

Oki Data’s motion addresses two separate issues – invention dates and licensing issues.

A. Invention Dates

With regard to the invention dates, Oki Data asserts that Ricoh disclosed invention dates for the five asserted patents in a November 27, 2009 interrogatory response. Oki Data claims that it relied on these dates when compiling its prior art, and that Oki Data’s experts relied on these dates in drafting their expert reports. According to Oki Data, Ricoh supplemented its interrogatory responses on February 3 and 5, 2010 to assert earlier invention dates for four of the five patents.

On February 11, 2010, Oki Data served a Rule 30(b)(6) deposition notice on Ricoh. The notice sought information regarding, *inter alia*, the facts surrounding the conception and reduction to practice of the inventions claimed in the asserted patents. On February 23, 2010, Ricoh responded to the deposition notice and identified the inventors of the asserted patents as the individuals most knowledgeable about the issues. All but one of the inventors live in Japan, and Ricoh stated that those witnesses would only be made available for deposition in Japan.

Gregory Wolff, the named inventor of U.S. Patent No. 6,209,048 (“the ‘048 patent”) resides in the U.S., and Ricoh made him available for deposition in California. Mr. Wolff’s deposition is scheduled for March 30, 2010.

Oki Data argues that because the discovery cutoff in the investigation was February 23, 2010, Ricoh’s insistence on conducting the depositions in Japan is effectively preventing Oki Data from obtaining relevant discovery. Oki Data notes that due to the strict rules in place for taking depositions in Japan, it cannot schedule a deposition until May 6, 2010 at the earliest. Oki Data thus seeks to preclude Ricoh from relying on the earlier invention dates first disclosed in Ricoh’s February 2010 supplemental interrogatory responses because Oki Data does not have the opportunity to depose the majority of the inventors prior to the hearing. Alternatively, Oki Data seeks an order compelling the Japanese inventors to appear for a deposition in the United States.

Ricoh opposes the motion. Ricoh states that on November 9, 2009, the parties conferred after the conclusion of the initial pre-hearing conference and agreed that Japanese witnesses for both parties shall be deposed in Japan. Ricoh claims that Oki Data unnecessarily delayed in seeking the depositions of the inventors. According to Ricoh, it should not be penalized due to Oki Data’s failure to seek depositions in a timely manner.

Ricoh claims that the motion is now moot, because Ricoh has stipulated that for four of the five patents, it will rely on the date of the first foreign or domestic filing as the date of conception and reduction to practice.¹ Ricoh still asserts earlier conception and reduction to practice dates for the ‘048 patent, but the inventor of the ‘048 patent is a U.S. resident and Ricoh has offered him for deposition in the U.S.

Staff supports the motion to preclude with respect to the four patents with Japanese inventors. Staff states that because of Ricoh’s stipulation, Ricoh should be precluded from

¹ These were the dates disclosed in Ricoh’s November 27, 2009 interrogatory responses.

asserting earlier invention dates for these four patents. With regard to the '048 patent, Staff states that because the inventor resides in the U.S., the stated basis for Oki Data's motion does not apply.

In its reply brief, Oki Data states that its motion is not moot with respect to the '048 patent. Oki Data argues that Ricoh's late disclosure of the invention date prejudiced Oki Data because it came after the deadline for filing the Notice of Prior Art, and after the deadline for opening expert reports. Oki Data further argues that the deadline for filing the Joint Stipulation of Contested Issues and the deadline for motions for summary determination both come before the March 30, 2010 date set for Mr. Wolff's deposition.

B. Licensing

Oki Data served a 30(b)(6) deposition notice on Ricoh on February 1, 2010 regarding topics concerning, *inter alia*, Ricoh's licensing activities. On February 11, 2010, Oki Data served deposition notices for Kenji Takiguchi, Yutaki Ebi, and Hiroshi Kobayashi, all of whom are Ricoh employees located in Japan. Oki Data claims that these individuals are involved in Ricoh's licensing activities.

On February 12, 2010, Ricoh responded to the 30(b)(6) deposition notice. Ricoh identified Mr. Takiguchi as the individual most knowledgeable about a number of the listed topics. Ricoh stated that Mr. Takiguchi would be made available for deposition in Japan. On February 24, 2010, Ricoh responded to the individual deposition notices by stating that the witnesses would be made available for deposition in Japan.

Oki Data argues that Ricoh should be precluded from relying on its licensing activities to prove a domestic industry. Alternatively, Oki Data seeks an order requiring the depositions at issue to take place in the U.S. Oki Data asserts that Ricoh's refusal to bring its employees to the

U.S. for depositions effectively prohibits Oki Data from obtaining relevant discovery related to licensing. Oki Data notes that due to the strict rules in place for taking depositions in Japan, it cannot schedule a deposition until May 6, 2010 at the earliest. Oki Data argues that because Ricoh chose to assert its patents in a U.S. forum, it should be required to produce its witnesses in the U.S. for depositions.

Ricoh opposes the motion. Ricoh argues the motion is moot because licensing is no longer an issue in the investigation. Ricoh notes that Oki Data has withdrawn its patent misuse affirmative defense related to licensing. Ricoh states that it has served notice that it is no longer relying on licensing as a basis for domestic industry under 19 U.S.C. § 1337(a)(3). Thus Ricoh concludes that its licensing activities are no longer relevant to any issue in this investigation.

In addition, Ricoh argues that Oki Data unnecessarily delayed in seeking these depositions. Ricoh claims that Oki Data has known about the individuals who are the subject of the deposition notices since before the investigation began, and there was no excuse for Oki Data to wait until February to notice the depositions of Japanese Ricoh employees.

Ricoh next argues that Oki Data's request to depose Mr. Ebi and Mr. Kobayahsi is improper because they are both high-ranking Ricoh executives who only had tangential involvement in licensing activities and no involvement in any other aspect of the case. According to Ricoh, case law demonstrates that a party is not allowed to depose a high-ranking corporate officer of another party unless it can demonstrate that the high-ranking officer possesses relevant information that is not available through other means.

Staff opposes the motion with respect to the licensing issues. According to Staff, Ricoh's withdrawal of its domestic industry allegations regarding licensing mooted Oki Data's motion.

In its reply brief, Oki Data argues that its motion is not mooted by the removal of the licensing issues from the investigation. Oki Data states that the witnesses may have other relevant information to provide. Oki Data notes that Mr. Takiguchi was identified as the person most knowledgeable on Topic No. 1 in the 30(b)(6) deposition notice.² Oki Data states that because all three Ricoh employees were noticed in their individual capacities, they may be questioned regarding topics other than licensing.

II. Oki Data's Motion No. 690-010

Oki Data seeks to preclude Ricoh from relying on conception and reduction to practice dates first asserted in Ricoh's February 3 and 5, 2010 supplemental interrogatory responses. According to Oki Data, it served an interrogatory seeking information regarding conception and reduction to practice on November 13, 2009. Ricoh responded on November 27, 2009 with conception and reduction to practice dates. Oki Data states that it relied on those conception and reduction to practice dates to compile its Notice of Prior Art (due December 30, 2009) and expert reports (due January 29, 2010).

Oki Data argues that it has been prejudiced by Ricoh's late disclosure of conception and reduction to practice dates. Oki Data asserts that this information is solely in the possession, custody, or control of Ricoh, so there is no excuse for Ricoh to withhold the dates until February 2010. Oki Data claims that Ricoh wilfully withheld the dates to prejudice Oki Data.

Ricoh opposes the motion. Ricoh argues that the motion should be denied with respect to U.S. Patent No. 6,209,048 ("the '048 patent") because Ricoh produced all documents related to conception and reduction to practice of that patent during fact discovery. Further, Ricoh argues that it supplemented its interrogatory response regarding conception and reduction to practice as soon as it realized that the previous response was incomplete or incorrect. According to Ricoh,

² Topic No. 1 relates to the corporate and organizational structure of Ricoh.

timely production of documents and interrogatory responses cannot serve as the basis for evidentiary preclusion.

Ricoh argues that there is no prejudice to Oki Data. Ricoh has made Gregory Wolff, the inventor of the '048 patent, available for deposition in California, and that deposition is scheduled for March 30, 2010. Oki Data questioned Ricoh's expert witness at his deposition regarding the conception of the '048 patent. Ricoh states that it asked Oki Data's expert about the '048 conception at his deposition, and the expert expressed no opinion on the matter. Ricoh argues that, since both expert depositions took place more than one month after Ricoh asserted the earlier conception and reduction to practice dates in its supplemental response, Oki Data has had ample opportunity to depose the experts on this issue.

Ricoh further argues that Oki Data was not prejudiced due to Ricoh's assertion of the earlier conception and reduction to practice dates after the deadline for serving prior art notices. Ricoh claims that Oki Data had every incentive to search for prior art dated more than one year prior to the patent's filing date so that it could rely on 35 U.S.C. § 102(b). Ricoh notes that 43 of the 86 total references listed in Oki Data's prior art notice as prior art to the '048 patent pre-date the January 1995 conception date now claimed by Ricoh. According to Ricoh, this undermines Oki Data's argument that it would have conducted its prior art search differently had it been aware of the earlier asserted conception date.

Regarding U.S. Patent Nos. 5,764,866, 6,388,771, 6,212,343, and 5,863,690, Ricoh claims that Oki Data's motion is moot. Ricoh recently stated that for these patents, it will rely on the conception and reduction to practice dates originally disclosed in its November 27, 2009 interrogatory response.

Staff opposes the motion. Staff asserts that the motion is moot with respect to all of the asserted patents except for the '048 patent.

III. Analysis

A. The '048 Patent

I find that Ricoh's February 3 and 5, 2010 supplemental interrogatory responses asserting earlier conception and reduction to practice dates for the '048 patent were not proper under the Commission Rules. In Ricoh's original November 27, 2009 interrogatory response, it stated that the inventions claimed in the '048 patent were conceived and reduced to practice no later than February 9, 1996, which is the earliest filing date listed on the face of the patent. (Ex. B to Oki Data Mot. 690-010.) In a February 3, 2010 supplemental response, Ricoh stated that the inventions claimed in the '048 patent were conceived prior to December 1995. (Ex. J to Oki Data Mot. 690-010.) In a February 5, 2010 supplemental response, Ricoh states that the inventions claimed in the '048 patent were conceived and reduced to practice no later than on or before January 6, 1995. (Ex. K to Oki Data Mot. 690-010.)

Commission Rule 210.27(c) governs supplementation of discovery responses. It states, *inter alia*:

A party who has responded to a request for discovery with a response is under a duty to supplement or correct the response to include ***information thereafter acquired*** if ordered by the administrative law judge or the Commission or in the following circumstances: A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

19 CFR § 210.27(c)(1) (emphasis added).

Ricoh states that after it provided its initial interrogatory response, it realized the response was materially incomplete or incorrect. Specifically, Ricoh realized that the prosecution history

for the '048 patent contains a declaration by Mr. Wolff filed with the Patent Office pursuant to 37 CFR § 1.131. In the declaration, Mr. Wolff states that the invention disclosed in the '048 patent was conceived prior to December 1995. (Ex. F to Oki Data Mot. 690-010.) The declaration attaches a corroborating document, but the dates on the document were redacted. (Ex. G to Oki Data Mot. 690-010.) Mr. Wolff's declaration lead to Ricoh supplementing its response on February 3, 2010 to state that the '048 patent was conceived prior to December 1995.

The corroborating document attached to Mr. Wolff's declaration was Mr. Wolff's invention disclosure form that he submitted while working at Ricoh's California Research Center. (Ex. 3 to Ricoh Resp.) Ricoh located an unredacted version of the invention disclosure form and produced it on February 5, 2010. (Exs. 2-3 to Ricoh Resp.) Also on February 5, 2010, Ricoh supplemented its interrogatory response to state that the '048 patent was conceived and reduced to practice no later than on or before January 6, 1995. This supplementation was caused by the fact that the unredacted invention disclosure form lists January 6, 1995 as the date that Mr. Wolff first thought of the invention. (Ex. 3 to Ricoh Resp.)

There is no assertion made by Ricoh that the documents on which it relies to assert the earlier conception and reduction to practice dates were first acquired after Ricoh's original November 27, 2009 interrogatory response. The documents upon which Ricoh relies are (1) a declaration by Mr. Wolff that was part of in the '048 prosecution history; and (2) an internal Ricoh invention disclosure form from 1995. Thus, I find that Ricoh was in possession of both documents prior to its November 27, 2009 interrogatory response.

I find that Ricoh's February 3 and 5, 2010 supplementations are not proper under Commission Rule 210.27(c)(1) because the purpose of the updated responses was not "to

supplement or correct the response to include information *thereafter acquired*[.]” (emphasis added.) *See Certain Electronic Devices, Including Handheld Wireless Communications Devices*, Inv. Nos. 337-TA-667, 337-TA-673, Order No. 34C (Aug. 28, 2009) (holding that a supplemental expert report was not a proper supplementation under Commission Rule 210.27(c) because the information contained in the report was known to the party prior to the expert report deadline). Rather, this is a situation in which Ricoh was in possession of information that it did not reveal in its discovery responses, and Ricoh now seeks to use that information to its own advantage by establishing earlier conception and reduction to practice dates. Such a result is contrary to Commission Rule 210.27(c)(1) and to both the letter and spirit of the rules of discovery in general.

B. The Other Asserted Patents

I find that Oki Data’s motions are moot with respect to U.S. Patent Nos. 5,764,866, 6,388,771, 6,212,343, and 5,863,690. Ricoh has recently stipulated that for these patents, it will rely on the dates disclosed in its November 27, 2009 interrogatory response. Ricoh shall be bound by that stipulation.

C. Japanese Ricoh Employees

I find that Oki Data’s motion is moot with respect to its request to preclude Ricoh from relying on licensing in support of a domestic industry. Ricoh has stated that it is no longer relying on licensing as a basis for domestic industry under 19 U.S.C. § 1337(a)(3). (Ex. 4 to Ricoh Resp. to Mot. No. 690-009.) Ricoh shall be bound by this assertion.

Alternatively, Oki Data seeks an order requiring Ricoh employees to travel from Japan to the U.S. for depositions. I find that it would be improper to require the Japanese Ricoh employees to travel to the U.S. for depositions. “It is...well established under section 337

practice that the usual place of examination of a deponent, ***including complainants***, is the place in which the deponent works or resides.” *Certain Aramid Fiber Honeycomb, Unexpanded Block or Slice Precursors of Such Aramid Fiber Honeycomb, & Carved or Contoured Blocks or Bonded Assemblies of Such Aramid Fiber Honeycomb*, Inv. No. 337-TA-305, Order No. 29 (Apr. 6, 1990) (emphasis added); *see also Certain Foam Masking Tape*, Inv. No. 337-TA-528, Order No. 23 (Apr. 12, 2005) (explaining that it is “the normal practice [in Section 337 investigations] to take depositions at a location that is most convenient for the witness, ***regardless of whether that deponent is a party, complainant, or respondent***.”) (emphasis added); *Certain Mobile Telephone Handsets Wireless Communication Devices, & Components Thereof*, Inv. No. 337-TA-578, Order No. 11 (Oct. 18, 2006) (“[T]he generally accepted practice in Section 337 investigations is to have depositions taken at a location that is convenient for the witness unless there is a showing of hardship or unusual circumstances.”) I find that Oki Data has not made a showing of hardship or unusual circumstances that justifies deviating from the normal practice in 337 investigations.

Oki Data cites to a number of district court decisions for the proposition that when a plaintiff voluntarily chooses the forum, the plaintiff’s witnesses should be required to appear in that forum for depositions. *See, e.g., Prozina Shipping Co. v. Thirty-Four Autos.*, 179 F.R.D. 41, 48 (D. Mass. 1998) (explaining that “[h]aving chosen to bring actions in United States fora, [the plaintiff] cannot now argue that it would be too burdensome for it to appear for discovery here.”) While this may be the common practice in the district courts, it runs counter to the common practice in Section 337 investigations that, absent a showing of hardship or unusual

circumstances, a complainant's witness shall be deposed at the location most convenient for the witness.³

In addition, I find that Oki Data's deposition requests, even though served prior to the close of fact discovery, are untimely pursuant to Ground Rule 4.4.5. Ground Rule 4.4.5 addresses the timing of discovery and provides:

All discovery requests, including without limitation requests for admissions, must be initiated in sufficient time prior to the fact discovery cutoff and completion date so that the responses will be due prior to that date within the time periods set forth above. Discovery requests by any party that would require responses after the fact discovery cutoff and completion date must be approved in advance by the Administrative Law Judge upon a showing of compelling circumstances.

(emphasis added.) Oki Data served the 30(b)(6) deposition notice on February 1, 2010 and the individual deposition notices for the three Ricoh employees on February 11, 2010.

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The license negotiations demonstrate that the parties are familiar with one another.

Therefore, I find that Oki Data knew or should have known that when it served its February 1, 2010 30(b)(6) deposition notice on topics such as the corporate structure of Ricoh, the identity of Ricoh's accused products, and Ricoh's licensing activities, Ricoh would identify people located in Japan as the individuals most knowledgeable regarding the topics. (See Ex. J

³ I note that one of the cases cited by Oki Data holds that when a plaintiff's employee is not designated to testify on behalf of the plaintiff and is not a director, officer, or high-level representative, the employee should be deposed near his or her residence or principal place of work. *Archer Daniels Midland Co. v. Aon Risk. Servs., Inc. of Minnesota*, 187 F.R.D. 578, 587-588 (D. Minn. 1999).

to Oki Data Mot.) Similarly, Oki Data knew or should have known that Messrs. Takiguchi, Ebi, and Kobayashi were located in Japan.⁴ By serving deposition notices for Japanese witnesses at most 22 days before the close of fact discovery, it is clear that Oki Data failed to initiate discovery “in sufficient time prior to the fact discovery cutoff” due to the “strict rules” Oki Data cites as being in place for taking depositions in Japan.

Under the Commission Rules, depositions may begin following the publication of the Notice of Investigation in the Federal Register. 19 CFR § 210.28(a). The Notice of Investigation for this case was published on October 26, 2009. 74 *Fed. Reg.* 55065 (Oct. 26, 2009.) Thus, Oki Data was able to take depositions during the period between October 26, 2009 and February 23, 2010, when fact discovery closed. Oki Data fails to explain why it waited until February to serve a 30(b)(6) notice for topic 1, and the individual deposition notices at issue here. Oki Data’s history in license negotiations with Ricoh demonstrates that Oki Data knew the identities of many of the Ricoh executives that may be in possession of information that is relevant or reasonably calculated to lead to the discovery of admissible evidence. Both the 30(b)(6) deposition notice and the individual deposition notices could have been served at the beginning of the discovery period to ensure that the depositions were held in Japan prior to the conclusion of fact discovery. Oki Data has failed to show any justification for its substantial delay in serving those deposition notices. Based upon the foregoing, I find that the deposition notices at issue are untimely and violate Ground Rule 4.4.5.

Further, Oki Data fails to show that two of the individual witnesses are in the possession of information that is relevant or reasonably calculated to lead to the discovery of admissible evidence. It is undisputed that the licensing issues are no longer relevant due to Oki Data’s

⁴ During the December 3, 2009 hearing on Ricoh’s disqualification motion, both Mr. Takiguchi and Mr. Ebi were identified as Japanese Ricoh employees involved in licensing activities. (Dec. 3, 2009 Hearing Tr. at 100:5-101:7, 107:7-11.)

withdrawal of its patent misuse defense and Ricoh's assertion that it no longer will rely on licensing to prove a domestic industry. In arguing that it still needs to conduct these depositions, Oki Data merely states that "these witnesses may have other relevant testimony to offer." (Oki Data Reply at 3.) Even if I was inclined to order these Japanese residents to travel to the U.S. for depositions, which I am not, I would require a showing that the information sought from the witnesses was relevant or reasonably calculated to lead to the discovery of admissible evidence before ordering such depositions. Oki Data has failed to make that showing, and that failure presents an additional reason for denying Oki Data's motion.

Ricoh also argues that the depositions of Mr. Ebi and Mr. Kobayashi are improper because both men are high-ranking Ricoh executives. According to Ricoh, case law holds that high-ranking executives should not be subject to depositions (commonly referred to as "apex" depositions) unless it is shown that the information they possess is not available through other means.

"As stated, the apex deposition rule is intended to protect busy, high-level executives who lack unique or personal knowledge." *Minter v. Wells Fargo Bank, N.A.*, 258 F.R.D. 118, 126 (D. Md. 2009). A case cited by Ricoh provides the following explanation:

Virtually every court that has addressed deposition notices directed at an official at the highest level or "apex" of corporate management has observed that such discovery creates a tremendous potential for abuse or harassment. *See, e.g., Mulvey v. Chrysler Corp.*, 106 F.R.D. 364 (D.C.R.I.1985). Where a high-level decision maker "removed from the daily subjects of the litigation" has no unique personal knowledge of the facts at issue, a deposition of the official is improper. *Baine v. General Motors Corp.*, 141 F.R.D. 332, 334 (M.D.Ala.1991); *see also, First United Methodist Church of San Jose, v. Atlantic Mutual Insurance Co.*, 1995 WL 566026 (N.D.Cal.1995); *Salter v. Upjohn Co.*, 593 F.2d 649 (5th Cir.1979). This is especially so where the information sought in the deposition can be obtained through less intrusive discovery methods (such as interrogatories) or from depositions of lower-level employees with more direct knowledge of the facts at issue. (*See, e.g., Salter*, 593 F.2d at 651.)

Celerity, Inc. v. Ultra Clean Holding, Inc., 2007 WL 205067, at *3 (N.D. Cal. Jan. 25, 2007); *see also Abarca v. Merck & Co.*, 2009 WL 2390583, at *3-4 (E.D. Cal. Aug. 3, 2009) (stating that when determining whether to allow the deposition of a high-ranking executive, it is appropriate to consider (1) whether the executive has unique, non-cumulative knowledge of the facts at issue and (2) whether there are less intrusive methods for obtaining the discovery).

Ricoh states that Mr. Ebi is a Vice President and Mr. Kobayashi is a Senior Vice President. According to Ricoh, both men are high-ranking executives who had only tangential involvement in licensing activities and no involvement in any other aspect of the case. Oki Data has not offered any rebuttal to these assertions, nor has Oki Data shown that Mr. Ebi and Mr. Kobayashi possess information that cannot be obtained through less intrusive means. Based on the foregoing, I find that Oki Data shall not be permitted to depose Mr. Ebi and Mr. Kobayashi.

D. Ground Rules 4.1.1 & 4.1

Ricoh asserts that Motion No. 690-009 violates Ground Rule 4.1.1. Specifically, Ricoh states that “[a]lthough the parties met and conferred on these issues and reached impasse regarding the relief requested in this motion, Respondents did not include this dispute in a Discovery Committee Report as required by Ground Rule 4.1.1.” (Ricoh Resp. at 10.)

Ricoh asserts that Motion No. 690-010 violates Ground Rule 4.1.1 and Ground Rule 4.1. Regarding Ground Rule 4.1.1, Ricoh makes the same argument that Oki Data failed to include the dispute in a Discovery Committee Report. Regarding Ground Rule 4.1, Ricoh asserts that Oki Data failed to meet and confer regarding the issues in the motion. Staff also states that Oki Data failed to properly meet and confer.

In its reply brief, Oki Data argues that its motions are not procedurally deficient. Oki Data states that the parties met and conferred via both phone and email regarding these issues.

While Oki Data acknowledges that it never included these issues in a formal Discovery Committee Report, it argues that that is not sufficient justification to deny the motion.

Ground Rule 4.1.1 provides:

Commencing with the first full week after these Ground Rules are issued, a discovery conference committee (the "Discovery Committee") consisting of the lead counsel of each party and the Commission Investigative Staff Attorney shall convene at least once every two weeks during the discovery phase of this investigation, either in person or by telephone, to resolve discovery disputes. The Discovery Committee shall confer in good faith to resolve every outstanding discovery dispute in a timely manner within the deadlines set forth in the Procedural Schedule. Within ten calendar days after the end of each calendar month during the discovery phase, the Discovery Committee shall report in writing to the Administrative Law Judge all disputes that were resolved during the preceding month and all disputes on which there is an impasse as of the end of that month. ***No motion to compel discovery may be filed unless the subject matter of the motion has first been brought to the Discovery Committee and the Committee has reached an impasse in resolving the matter.***

(emphasis added.)

I find that Oki Data's motions do not violate Ground Rule 4.1.1. The rule prohibits the filing of motions to compel discovery if an impasse has not been reached on the subject matter at the Discovery Committee. The purpose of this rule is to ensure that, prior to filing a motion to compel, the parties adequately confer regarding the dispute and all reach an agreement that the dispute cannot be resolved informally. Even though the rule requires the filing of a Discovery Committee Report, there is no requirement that the impasse must be listed in the report before a motion may be filed.

I find that Oki Data's Motion No. 690-010 does not violate Ground Rule 4.1. Oki Data states in its reply brief that the parties met and conferred by telephone during several Discovery Committee calls and by email regarding the issues raised in the motion. Based on this representation, I find that Oki Data engaged in an intensive good faith effort to resolve the dispute before filing its motion.

PUBLIC

ORDER

Motion Nos. 690-009 and 690-010 are hereby GRANTED-IN-PART & DENIED-IN-PART. Ricoh is precluded from relying on its February 3 and 5, 2010 supplemental responses to Oki Data's Interrogatory No. 5. Motion Nos. 690-009 and 690-010 are otherwise DENIED.

Within seven (7) days of the date of this Order, 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.



Robert K. Rogers, Jr.
Administrative Law Judge

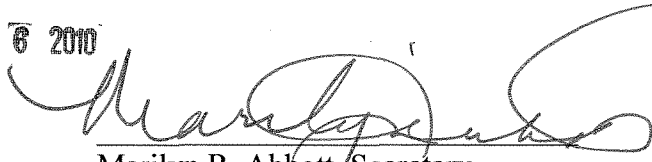
**CERTAIN PRINTING AND IMAGING
DEVICES AND COMPONENTS THEREOF**

Inv. No. 337-TA-690

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** was served upon **Juan S. Cockburn, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on

APR 16 2010



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
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