

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN FLASH MEMORY CHIPS AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-664

ORDER NO. 52: DENYING COMPLAINANTS' MOTION TO COMPEL

(March 29, 2010)

On March 8, 2010, Complainants Spansion, Inc. and Spansion LLC (collectively, "Spansion") filed a motion (664-060) for an order compelling Respondents Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung International, Inc., Samsung Semiconductor, Inc., and Samsung Telecommunications America, LLC (collectively, "Samsung") to produce the following: [1] cross-sectional images (*e.g.*, "SEMs" and "TEMs") taken during each relevant stage of fabrication of all relevant device versions for all Accused Chips; [2] complete responses to Complainants' Interrogatory Nos. 31 and 130; [3] certain specific process flows and recipes that are responsive to Spansion's Request for Production Nos. 38-71, 83, and 84; [4] complete responses to Complainants' Interrogatory Nos. 25 and 32; [5] production of testing documents identified by Samsung during a corporate deposition and requested in Spansion's Requests for Production Nos. 72, 76, and 78-82; [6] a complete response to Complainants' Interrogatory No. 40; [7] a complete response to Complainants' Interrogatory No. 61; and [8] a knowledgeable 30(b)(6) witness on the topics of 32 nm technologies, 3-bit 42 nm NAND Flash technologies, and 27 nm technologies. On March 19, 2010, Samsung opposed said motion. On March 22, 2010, the Commission Investigative Staff ("the Staff") notified the

undersigned that the Staff would not be filing a response to the motion. (See 3/22/10 Email from B. Moore to I. Kushner.) On March 24, 2010, Spansion withdrew all portions of its motion, except for the portion seeking an order compelling production of SEM and TEM images. (See 3/24/10 Ltr. from J. Telep to M. Abbott.)

Spansion seeks to compel the production of SEMs and TEMs taken during each relevant stage of fabrication for all relevant device versions of the Accused Chips, which are responsive to at least Requests for Production Nos. 35, 37, 38, 65-71, 88, 219, 220, 225, 226, and 227. Spansion states that although Samsung has claimed that “at least some” of the requested documents have been produced, “the materials produced are not complete and/or do not provide all the information Spansion has been requesting.” (Spansion Mem. at 9.) In particular, Spansion asserts that “Samsung has produced SEM or TEM images of the STI profiles at both of the relevant fabrication stages only for some of the 42 nm and 51 nm process flows,” but that “Samsung has not produced SEM and/or TEM images for either of the relevant fabrication stages with respect to the following 42 nm and 51 nm process flows” (*Id.* at 10.) Spansion further asserts that “Samsung has not produced certain SEM and/or TEM images for the relevant processing steps for the ‘639 patent.” (*Id.* at 11.) Spansion believes that Samsung should be able to produce some, if not all, of these images, especially since semi-conductor fabricators, like Samsung, typically create and maintain these types of images.

In opposition, Samsung argues that Spansion’s request for additional SEM and TEM images should be denied because the images Spansion seeks [

] Samsung states that it has repeatedly explained to

Spansion that:

[

]

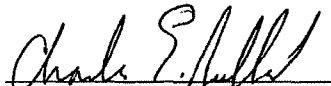
(Opp. at 4.) Samsung argues that because it has produced hundreds of images relating to dozens of products and representative of each accused technology category, Samsung has complied with its discovery obligations and as such, Spansion's motion should be denied. Having reviewed the pleadings and arguments contained therein, the undersigned is not persuaded by Spansion's arguments. Spansion's motion appears to be predicated on its belief that Samsung's production is incomplete. (*See* Mot. at 3; *see also* Spansion Mem. at 10 ("To date, Samsung's production *appears* to be incomplete.") (emphasis added).) Spansion has proffered no evidence to suggest Samsung has purposefully withheld documents. As the undersigned has previously stated, conclusory allegations premised upon speculation is insufficient to compel judicial action. Thus, in light of Samsung's representation that it has, *inter alia*, produced a complete set of SEMs and TEMs for the 51 nm, 42 nm, and 35 nm products, as well as photos showing the fabrication steps in the products as relevant to the '639 patent, Spansion's motion (664-060) is hereby denied.

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' submission may be made by facsimile and/or hard copy by the aforementioned date.

¹ Samsung represents that it has produced relevant SEM and TEM images for the KFDX process flow.

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.

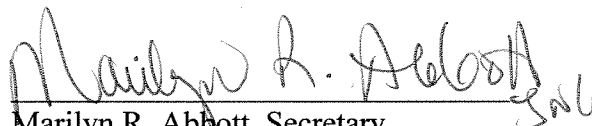


Charles E. Bullock
Administrative Law Judge

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CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER NO. 52** has been served upon, **Bryan F. Moore, Esq.**, Commission Investigative Attorney, and the following parties via first class mail and air mail where necessary on APR 07 2010, 2010.



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