

**PUBLIC VERSION**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

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

**Inv. No. 337-TA-687**

**ORDER NO. 26: DENYING RESPONDENTS' MOTION *IN LIMINE***

(June 8, 2010)

On May 19, 2010, Respondents Vizio, Inc., AmTran Technology Co., Ltd. and AmTran Logistics, Inc. filed a motion *in limine* to preclude Complainant LG Electronics, Inc. ("LG") from (i) offering expert testimony relating to alleged infringement under the doctrine of equivalents; (ii) offering evidence relating to accused televisions other than the three specific models analyzed by LG and its experts, including any expert testimony that the examined products are representative of any other products; (iii) offering into evidence designated deposition transcript testimony from transcripts that LG has designated in their entirety, from LG-controlled witnesses, or from witnesses that Respondents will be bringing to the hearing to provide live testimony; and (iv) offering into evidence interrogatory responses. (Motion Docket No. 687-025.) On May 27, 2010, LG opposed Respondents' motion. On May 27, 2010, the Commission Investigative Staff ("Staff") opposed Respondents' motion with respect to categories (i) and (ii) and supported Respondents' motion in whole or in part with respect to categories (iii) and (iv).

**Doctrine of Equivalents**

Respondents argue that LG should be precluded from offering expert testimony regarding

## PUBLIC VERSION

alleged infringement under the doctrine of equivalents because LG's experts, Drs. Delp and Stevenson, "did not provide substantive analysis" to assess equivalence. (Mot. Mem. at 4.)

Respondents argue that under the Ground Rules, experts are not permitted to exceed the scope of their reports and deposition testimony. (*Id.* at 7.) They further suggest that testimony by LG's experts on this topic would be unreliable under *Daubert*. (*Id.*)

LG argues that its experts' reports "include extensive discussion" of the doctrine of equivalents, and that Respondents had "ample deposition time with each witness" that could have been used to explore the theories disclosed in the reports. (Opp. at 1.) LG further counters that its experts used relevant and reliable methodology in reaching their opinions. (*Id.* at 6.)

Staff argues that LG's expert witnesses disclosed the extent of their opinions with respect to the doctrine of equivalents, and Staff and Respondents had an opportunity to explore these opinions during deposition. (Staff Resp. at 2.) Staff feels that Respondents' concerns are "directed to the weight, not the admissibility, of the supporting evidence." (*Id.* at 3.)

The Administrative Law Judge finds LG and Staff's arguments persuasive. Respondents' motion with respect to the doctrine of equivalents is DENIED. However, Respondents (and Staff) will have an opportunity to object at the hearing, should LG's experts exceed the scope of their expert reports and deposition testimony pursuant to Ground Rule 9.5.6.

### **Product Models**

According to Respondents, LG's experts have failed to explain to which "Infringement Group" non-representative products belong, what basis LG's experts had for categorizing the "Infringement Groups," how the representative products operated similarly in different accused televisions, and how the representative products operated similarly to any non-representative

## PUBLIC VERSION

products. (Mot. Mem. at 19.)

LG argues that its experts each ordered their infringement analysis into four groupings of accused products based on the “System On Chip” used by the products, and then identified a single representative product in each group. (Opp. at 8-9.) LG says both of its experts made it clear “that the analysis of each representative product applied to each and every member of the group.” (*Id.* at 9.) LG further points out that each grouping is confirmed by Respondents’ own discovery responses. (*Id.*)

Staff argues that whether LG’s designated representative products are representative of the accused products “is an issue that should be determined based on the weight of the evidence.” (Staff Resp. at 5.)

The Administrative Law Judge finds that this portion of Respondents’ motion should be DENIED. Respondents have not demonstrated that LG has failed to explain its system of representative products such that all evidence relating to accused televisions other than three models should be precluded prior to the hearing.

### **Deposition Designations**

Respondents argue that LG has “no legitimate reason” to designate entire deposition transcripts, that deposition transcripts of LG-controlled witnesses should not be designated in lieu of live testimony, and that deposition designations for Respondents’ witnesses who will be testifying at the hearing would be inappropriate for any purpose other than impeachment. (Mot. Mem. at 20-22.)

LG’s main arguments are that Respondents *agreed* that certain of the deposition transcripts at issue here, such as those of witnesses from third party MediaTek and Vizio’s corporate

## PUBLIC VERSION

representatives, should be admitted into evidence as joint exhibits, and points out that Respondents have themselves designated large portions of depositions of several of the witnesses. (Opp. at 12-13.) LG is of the opinion that it may make counter-designations in response to Respondents' deposition designations under Commission Rule 210.28(h)(4), and that the rule does not restrict how much of the deposition is designated if those designations are "relevant and necessary to complete the record." (*Id.* at 14-15.) Further, LG argues that Respondents do not claim that the deposition designations are irrelevant or prejudicial. (*Id.* at 12-13.) LG points out that Respondents requested that depositions of seven witnesses be excluded when those people were never deposed. (*Id.* at 15.)

Staff argues that introducing entire deposition transcripts would needlessly increase the volume of the record, and further objects to the use of deposition transcripts for LG witnesses who will testify at the hearing. (Staff Resp. at 6.) Staff does not object to the use of deposition transcripts if the deponent offered testimony as a corporate witness or if the witness is not testifying live at trial. (*Id.*)

The Commission's Rules provide that depositions may be used as evidence as follows:

- (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;
- (2) The deposition of a party may be used by an adverse party for any purpose;
- (3) The deposition of a witness, whether or not a party, may be used by any party for any purposes if the administrative law judge finds—
  - (i) That the witness is dead; or
  - (ii) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or
  - (iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or
  - (iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
  - (v) Upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the

## PUBLIC VERSION

importance of presenting the oral testimony of witnesses at a hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part that ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Commission Rule 210.28(h). Respondents have chosen to designate portions of testimony from various depositions of LG witnesses. According to Rule 210.28(h)(4), LG is within its rights to counter-designate deposition testimony in response to Respondents' designations. This rule is designed, *inter alia*, to prevent a party from citing to limited portions of a transcript, such that testimony may be taken out of context. To the extent that Respondents have opened the door in this manner, their motion is DENIED at this time. Should Respondents choose to remove some designations, it is expected that LG will remove its respective counter-designations. Furthermore, it is not yet clear which, if any, of these depositions Respondents will seek to have entered into evidence. LG does note that it affirmatively designated portions of the depositions of its witnesses Kevin Gaughan, Charles Pint, and Arun Kumar. Rule 210.28(h)(4) states that "any party may introduce any other parts" of a deposition after part of a deposition is offered into evidence by a party. Therefore, should Respondents offer these depositions into evidence, and the Administrative Law Judge determines that they should be admitted, those portions affirmatively designated by LG will be admitted as well.

With respect to deposition designations for certain witnesses who are outside the United States, it is not yet clear from the briefing whether these witnesses will be providing live testimony at the hearing. If they are not, Rule 210.28(h)(3), noted above, will apply. Therefore a ruling with respect to these depositions would be premature and Respondents' motion with respect to these depositions is DENIED.

## PUBLIC VERSION

Finally, with respect to LG's designations of testimony of Respondents' witnesses, Rule 210.28(h)(2) states that "the deposition of a party may be used by an adverse party for any purpose." Thus LG may use the depositions of Respondents' corporate witnesses for any purpose, even if they will testify at the hearing. The Administrative Law Judge declines to make a blanket ruling with respect to third party witnesses at this time.

As further grounds for denial, the Administrative Law Judge finds that Respondents do not satisfactorily explain why they have reversed their position, when initially they had agreed to list certain depositions as joint exhibits. It should be noted, however, that denial of this section (iii) of Respondents' motion should not be construed as a finding that the deposition designations at issue should or will be admitted into evidence. Furthermore, it should be noted that regardless of the volume of deposition testimony that may ultimately be admitted into evidence, it is the parties' responsibility to specifically cite to those portions that may have significance in their proposed and rebuttal findings of fact and in the post-hearing briefing.

### **Interrogatories**

Citing to no law in support of their four-sentence argument, Respondents assert that "there is no place for interrogatory responses in evidence." (Mot. Mem. at 23.)

LG argues that it is "ITC practice" to admit interrogatories into evidence with a sponsoring witness. (Opp. at 19.) Here, LG says that its witness, John Taylor, will sponsor LG's interrogatory responses and that Respondents' corporate witnesses and some of LG's experts will be used to sponsor some of Respondents' interrogatory responses. (*Id.*) LG additionally notes that admission of interrogatory responses will facilitate the presentation of evidence, particularly in light of the time constraints at the hearing.

**PUBLIC VERSION**

Staff argues that interrogatories “reflect counsel’s interpretation of the evidence.” (Staff Resp. at 7.)

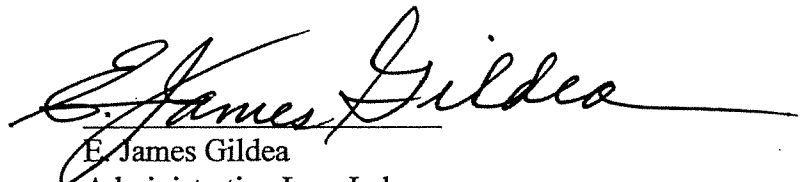
The Administrative Law Judge declines to make a blanket ruling with respect to admissibility of interrogatory responses at this time. Such a determination would more appropriately be made on a case by case basis, as there may be situations, such as the introduction of a list of products via a sponsoring witness, where admission of all or a portion of a particular interrogatory response would be appropriate.

Based on the above findings, the Administrative Law Judge finds that Respondents’ motion *in limine* (Motion Docket No. 687-025) should be 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’ 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


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DISPLAYS, COMPONENTS THEREOF,  
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**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

**JUN 21 2010**

  
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