

**PUBLIC VERSION**

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

**In the Matter of**

**CERTAIN SEMICONDUCTOR  
INTEGRATED CIRCUITS USING  
TUNGSTEN METALLIZATION AND  
PRODUCTS CONTAINING SAME**

**Inv. No. 337-TA-648**

**Order 109: Denying Complainants' Motion *In Limine* To Exclude The  
Expert Report And Testimony Of Dr. Herbert H. Sawin**

Complainants LSI Corporation and Agere Systems Inc. (collectively, "LSI") move *in limine* for an order excluding the rebuttal expert report and testimony of respondent MagnaChip Semiconductor, Ltd.'s ("MagnaChip") expert, Dr. Herbert H. Sawin. (Motion No. 648-148). Complainants seek to exclude those parts of Dr. Sawin's rebuttal expert report and testimony asserting non-infringement of U.S. Patent No. 5,227,335. Both MagnaChip and the Commission Investigative Staff oppose the motion. For the reasons that follow, the motion is denied.

Complainants contend that the three opinions offered by Dr. Sawin in his rebuttal report regarding non-infringement rely on "uncorroborated testing results" provided by MagnaChip's attorneys, "allegedly performed by MagnaChip." Mot. at 1.<sup>1</sup> In this regard, LSI asserts that

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<sup>1</sup> The testing referenced in the body of the report includes transmission electron microscopy (TEM) images and electron energy loss spectroscopy (EELS) data. Exhibits attached to the report also include TEM images, EELS analysis, and x-ray energy dispersive spectrometry (EDS). Mot. at 3 n.1

Dr. Sawin's expert report and testimony cannot be relied upon because he had "no involvement in the alleged testing, and cannot verify the procedures or samples tested." *Id.* To support this assertion, the complainants cite to Dr. Sawin's deposition testimony. Mot. at 6-16. LSI argues, therefore, that Dr. Sawin's opinions "should be excluded under Fed. R. Evid. 702 as based on unreliable principles and methods." Mot. at 2.

In opposition to the motion, MagnaChip argues that Dr. Sawin's opinions are the product of reliable principles and methods, and that this methodology is widely accepted. Opp. at 1-6. Respondent also cites FRE 702 and FRE 703 for the proposition that an expert need not have personal knowledge of the testing upon which he relies. Opp. at 6.

On balance, LSI has failed to show that the expert report and testimony of Dr. Sawin should be excluded. The issue raised by LSI is one of weight to be accorded to Dr. Sawin's testimony, rather than whether this expert witness should be allowed to testify in the first place.

Accordingly, Motion No. 648-148 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.



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Carl C. Charneski  
Administrative Law Judge

Issued: July 14, 2009

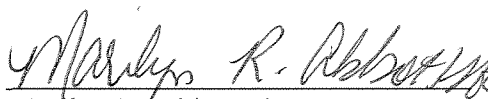
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**PUBLIC CERTIFICATE OF SERVICE**

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** has been served upon the Commission Investigative Attorney, Ret Snotherly, Esq., and the following parties as indicated, on

JUL 2 2010



Marilyn R. Abbott, Secretary  
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