

**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 No. 87: Granting Respondent Grace's Motion To  
Compel Discovery Responses From Complainants**

Respondent Grace Semiconductor Manufacturing Corporation ("Grace") filed a motion to compel discovery responses from complainants LSI Corporation and Agere Systems Inc. (collectively, "LSI"). (Motion No. 648-118). LSI opposes the motion.

At issue are the sufficiency of LSI responses to Grace's Request for Admission Nos. 28-31, 40-43, 48-51 and 52-59.<sup>1</sup> The requests are addressed by the parties in two categories, discussed below.

***Category I (Request Nos. 28-31, 40-43, and 48-51)***

Grace seeks to have LSI admit "without condition or limitation" that LSI does not seek an exclusion order or other remedy in this investigation against Grace with respect to products made by Grace for [

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<sup>1</sup> Copies of the requests and LSI's responses thereto are attached to Grace's motion as Exs. 1-3.

.] Grace argues that although LSI admits that [ ] are licensed under the only patent asserted in this investigation, *i.e.*, United States Patent No. 5,227,335 (“the ‘335 patent”), LSI will not provide the kind of admission that Grace seeks. Rather, LSI will only admit that it will not seek a remedy to the extent that such products are “licensed.” Grace argues that such a response is evasive in view of the admission that [ ] are licensed. *See* Mot. at 2-3, 5-8.

LSI argues that the requests for admission are overly broad and seek an admission with respect to “any products” manufactured by Grace for the aforementioned licensees. Thus, LSI further argues, it must qualify its answers to provide an accurate reflection of its position. LSI submits, therefore, that “[b]ecause it is plausible that there are products, other than those manufactured under the patent-in-suit, that Grace manufactures for these entities, an unqualified admission would be inaccurate.” *Opp.* at 2, 5.

As seen in the example (Request No. 28) relied upon in LSI’s opposition, the requests at issue are limited to any relief that LSI will seek “in this Investigation.” *See* LSI *Opp.* at 2 (quoting Mot. Ex. 1). LSI has asserted only the ‘335 patent here. Thus, because the requests at issue seek admissions with respect only to this investigation, they are necessarily limited to the ‘335 patent. With that limitation in mind, LSI must answer whether it seeks relief in this investigation with respect to any products made by Grace for the aforementioned licensees.

***Category II (Request Nos. 52-59)***

Grace seeks admissions from LSI that it has no evidence that Grace maintains an inventory of accused products in the United States, has no evidence of an agreement with a third party to maintain such an inventory, and has no evidence of an agreement with a third party to

distribute products in the United States. *See* Mot. at 8-9. LSI argues that the information needed to answer these requests is designated as Grace confidential business information. Thus, LSI argues, it cannot answer the requests because although its counsel has access to confidential information, it does not. *See* LSI Opp. at 6-7.

These requests seek admissions only that LSI has no evidence that Grace has domestic inventories of accused products, inventory agreements or distribution agreements. *See* Mot. at 8-9. There is a disagreement between Grace and LSI concerning the question of whether answers to requests for admission should reflect only the actual knowledge of the client (which would exclude confidential business information known only to the client's counsel), or whether a party's answers must reflect the actual knowledge of the client as well as confidential information known only to counsel. However, a resolution of that legal question is not necessary to resolve the issue presented by the pending motion. Even LSI acknowledges that in answering a request for admission, a client must make a reasonable inquiry of counsel. *See* LSI Opp. at 7 ("LSI need only make a reasonable inquiry to its counsel when answering Grace's requests for admission.")


In this instance, LSI need only inquire as to the existence of evidence. Such an inquiry is reasonable, and would not require that counsel divulge confidential information to the client. The requests for admission do not require LSI to analyze the content or sufficiency of any evidence. Thus, LSI (after reasonable inquiry of counsel) is capable of admitting or denying whether it has evidence of domestic inventories, inventory agreements or distribution agreements relating to Grace, and must do so in response to the requests at issue.

Accordingly, Grace's Motion No. 648-118 is granted. LSI shall supplement its responses

to the requests for admission in accordance with the above rulings no later than June 5, 2009.

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  
Administrative Law Judge

Issued: June 2, 2009

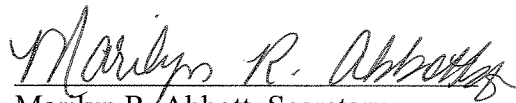
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**PUBLIC CERTIFICATE OF SERVICE**

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 2000**



Marilyn R. Abbott, Secretary  
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