

**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. 90: Granting NSC's Motion To Reopen Discovery  
For Limited Purposes And Denying Motion To Extend The  
Procedural Schedule And Target Date For Completion Of The  
Investigation And Motion For Discovery Sanctions**

Respondent National Semiconductor Corporation ("NSC") filed a motion styled "Motion to Re-Open Discovery for Limited Purposes and Extend the Procedural Schedule and Target Date for Completion of the Investigation Based on Complainants' Discovery Misconduct *And* Motion for Discovery Sanctions *And* Motion for Shortened Response Time." (Motion No. 648-129). Respondents Microchip Technology Inc. and Dongbu HiTek Semiconductor Business join in the motion.

The motion is opposed by complainants LSI Corporation and Agere Systems Inc. ("Agere").<sup>1</sup> The Commission Investigative Staff supports the motion in part, *i.e.*, to the extent that NSC seeks to reopen discovery.

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<sup>1</sup> NSC's motion for leave to reply to complainants' opposition is granted. (Motion No. 648-138).

NSC's motion was prompted by its discovery of the notebooks (variously called "development notebooks" or "inventor notebooks" in the parties' filings) of Virendra Rana, one of two named inventors on the patent-in-suit, *i.e.*, United States Patent No. 5,226,335 ("the '335 patent"). The notebooks were discovered by NSC counsel on May 11, 2009, at the Chicago offices of the law firm of Kirkland & Ellis LLP ("K&E"), pursuant to a subpoena signed on February 11, 2009. *See* Mot. at 1, 5; Jou Decl. (attached to NSC Reply), ¶¶ 1-9.

K&E represented Agere in prior litigation involving the '335 patent, and thus it appears that no party was surprised that K&E once had the notebooks, and retained them. *See* Mot. at 6-7; Opp. at 1-3. Complainants argue that, as they previously informed NSC, they are not entitled to see the entire, unredacted K&E files from prior litigation because portions were designated as confidential by prior litigants. Thus, complainants argue, they were prevented from going into the files and conducting a thorough inspection for themselves, and instead had to rely on K&E to conduct searches. *See* Opp. at 6-7.

Given the discovery of the aforementioned notebooks, NSC's motion (Motion No. 648-129) is granted to the extent that it may further depose Dr. Rana no later than June 19, 2009. In the event that NSC believes that additional discovery is necessitated by Dr. Rana's continued deposition, it may move for such discovery no later than 2 days after the completion of the deposition. NSC's motion is denied to the extent that it seeks the extension of the procedural schedule and target date in this investigation, as well as discovery sanctions against complainant Agere.

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  
Carl C. Charneski  
Administrative Law Judge

Issued: June 4, 2009

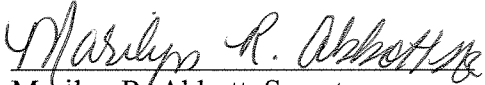
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**PUBLIC CERTIFICATE OF SERVICE**

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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