

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN INTEGRATED CIRCUITS,
CHIPSETS, AND PRODUCTS
CONTAINING SAME INCLUDING
TELEVISIONS, MEDIA PLAYERS, AND
CAMERAS

Inv. No. 337-TA-709

Order No. 13: Denying Respondents' Motion Nos. 709-22 And 709-23 For Stay

On July 16, 2010, pursuant to the Commission rule 210.15, respondents Panasonic Corporation, Panasonic Corporation of North America, and Panasonic Semiconductor Discrete Devices Co., Ltd., (Panasonic) Funai Electric Co., Ltd., Funai Corporation, Inc., JVC Kenwood Holdings, Inc., Victor Company of Japan Limited, JVC Americans Corp., Best Buy Co., Inc., B & H Foto & Electronics Corp., Huppins' Hi-Fi Photo & Video, Inc., Buy.com Inc., Liberty Media Corporation, QVC, Inc., Crutchfield Corporation, Wal-Mart Stores, Inc., and Computer Nerds International, Inc. (respondents) moved for a stay of the investigation pending the Commission's review of Order No. 10: Initial Determination Granting Complainant's Motion to Amend Complaint and Notice of Investigation. (Motion Docket No. 709-22.)

On July 16, 2010, pursuant to the Commission's rule 210.15, respondents also moved for a stay of the investigation pending adjudication of respondents' Motion No. 709-21 for Leave to File an Application for an Interlocutory Appeal. (Motion Docket No. 709-23.)

The staff, in a filing dated July 26, 2010, opposed each of Motion Nos. 709-22 and 709-23. It was argued, *inter alia*, that the stay requests appear to be little more than attempts at delay by respondents "in the face of a series of unfavorable rulings because Respondents, know or can determine, the non-Panasonic chips that Freescale believes to be infringing," the staff noting for

example that respondents are free to avail themselves of all the discovery mechanisms provided for in Commission rules 210.27 et. seq. (staff response at 10).

Complainant Freescale Series Conductor, Inc. (Freescale), in responses dated July 26, 2010 opposed the pending motions.

No other party responded to Motion Nos. 709-22 and 709-23.

Regarding respondents Motion No. 709-21, Order No. 12, which issued on July 28, 2010 has denied said motion. Thus, Motion No. 709-23 is moot and hence is denied.

In issue in Motion No. 709-22 is whether this investigation should be stayed pending Commission review of Order No. 10 which issued on July 8, 2010 and granted complainant's Motion No. 709-5 to amend the complaint and notice of investigation. As the Commission should complete an investigation in an expedient manner, a stay or suspension should only be granted when there is good cause. See Certain Authentication Systems, Including Software and Handheld Electronic Devices, Inv. 337-TA-697, Order No. 11 at 4 (Authentication Systems) ("the parties and Commission have a strong interest in swift resolution of section 337 investigations"). In authorizing the Commission to investigate alleged violations, Congress requires the Commission "to conclude any such investigation at the earliest practicable time." 19 U.S.C. § 1337(b)(1). The administrative law judge's authority to suspend an investigation, based on another proceeding, is grounded in the Commission's rules. See 210.15, and 210.23. However the Commission's discussion in adopting the current version of those rules makes clear that there must be good cause for such a suspension. See 59 Fed. Reg. 67622, 67625 (Aug. 1, 1994) (discussing the targeted concerns of section 210.23 and its limits).

Several factors are considered to determine whether a stay is appropriate, which factors

include:

1. The Stage of Investigation (whether discovery has begun and a trial date has been set)
2. The Issues in Question and Trial of the Case (whether the stay will bring clarity to the issues)
3. The Risk of Undue Prejudice or Clear Tactical Advantage to Any Party
4. The Efficient Use of Commission Resources

See Authentication Systems, Order No. 11 at 2; Minimized Chip IV, Order No. 18 at 5;

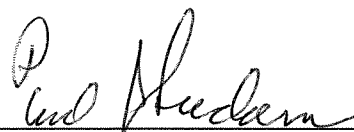
Convergent Devices, Order No. 6 at 8–9. The administrative law judge finds that in this investigation each and every one of said factors weighs against granting a stay.

Like Authentication Systems, discovery in this investigation is already well under way and a procedural calendar is already set including a hearing date for February 2–3 and 7–9, 2010. Thus discovery in this case began on March 29, 2010 and has been substantially advanced since that date. Panasonic alone has issued close to five-hundred interrogatories to which Freescale has already responded. Both sides have engaged in document production and depositions, although, to date, no Panasonic witnesses have been deposed, in part because of a requirement in Japan where the witnesses reside. However, Freescale has secured acceptable locations in Japan to depose the Panasonic witnesses in August 2010, and respondents have agreed to the scheduled dates. In addition respondents have not shown that the question on review will simplify any issues in this investigation enough to support a stay. Unlike Convergent Devices and Minimized Chip IV, the issue on review is much narrower and less significant than for example the validity of the patents in issue. Thus respondents seek review of Order No. 10, which granted Freescale leave to amend the complaint and notice of investigation to correct typographical errors and add a dependent claim justified by documents produced by Panasonic during discovery. At most, Commission review of Order No. 10 could change a subset of the discovery that is already

proceeding. Likewise, any argument that the stay is necessary to clarify the scope of the investigation in order for respondents to prepare is undercut by the fact that this administrative law judge has issued repeated Orders during the investigation consistently interpreting the scope and respondents' responsibilities. Moreover, the prejudice to Freescale should a stay be granted appears to be both significant and specifically identifiable. Because of the unique procedural requirements for conducting depositions in Japan, a delay at this stage could interfere with Freescale's discovery efforts and create a substantial challenge to correct. In addition, issuing a stay could add costs to the investigation by extending the time of the investigation.

Respondents argued that the investigation should be stayed to "ensure that non-respondents receive an opportunity to intervene" (supporting motions at 5). However any non-respondent may move to intervene at any time, regardless of whether the investigation is or is not stayed. See Commission rule 210.19.

Based on the foregoing Motion Nos. 703-22 and 703-23 are denied.



Paul J. Lickern
Chief Administrative Law Judge


Issued: July 28, 2010

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337-TA-709

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Order** has been served by hand upon the Commission Investigative Attorney Benjamin Levi, Esq., and the following parties as indicated, on July 29, 2010.


Marilyn R. Abbott, Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Complainant:

Freescale Semiconductor, Inc.

Alan D. Albright, Esq.

BRACEWELL & GUILIANI LLP

111 Congress Avenue, Suite 2300

Austin, TX 78701-4061

P-512-472-7800

F-512-479-3920

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

**For Respondents Panasonic Corporation; Panasonic
Semiconductor Discrete Devices Co. Ltd; Panasonic
Corporation of North America; Funai Electric Co., Ltd;
Funai Corporation, Inc.; JVC Kenwood Holdings, Inc.;
Victor Company of Japan Limited; & JVC Americas Corp.;
Best Buy Co., Inc; B & H Foto & Electronics Corp; Huppins
Hi-fi Photo & Video, Inc.; Buy.com Inc.; Liberty Media
Corporation; Qvc. Inc .; Crutchfield Corporation; Computer
Nerds International, Inc. :**

Jack Q. Lever, Esq.

WHITE & CASE LLP

701 13th Street NW

Washington, DC 20005

P-202-626-3600

F-202-639-0355

- Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

For Respondent Wal-Mart Stores, Inc.:

Janine A. Carlan, Esq.
ARENT FOX LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
P-202-715-8506
F-202-857-6395

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

PUBLIC MAILING LIST

Heather Hall
LEXIS-NEXIS
9443 Springboro Pike
Miamisburg, OH 45342

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____

Kenneth Clair
Thomson West
1100 Thirteen Street, NW, Suite 200
Washington, DC 20005

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: _____