

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN CERAMIC CAPACITORS AND
PRODUCTS CONTAINING SAME

Inv. No. 337-TA-692

**ORDER NO. 52 DENYING COMPLAINANTS' MOTION *IN LIMINE* TO DEEM AS
ESTABLISHED CERTAIN FACTS RELATED TO THE
DIELECTRIC COMPOSITIONS OF RESPONDENTS' ACCUSED
CAPACITOR PRODUCTS**

(July 20, 2010)

On July 1, 2010, Complainants, Murata Manufacturing Co., Ltd. and Murata Electronics North America, Inc. (collectively, "Murata"), filed a motion *in limine* to deem as established certain facts related to the dielectric compositions of the accused capacitor products. (Motion Docket No. 692-047.) On July 12, 2010, Respondents, Samsung Electro-Mechanics Co., Ltd. and Samsung Electro-Mechanics America, Inc. (collectively "Samsung"), filed an opposition to the present motion. On July 12, 2010, the Commission Investigative Staff ("Staff") filed its response also opposing the motion.

Murata argues that during discovery Samsung made certain factual representations in its sworn interrogatory statements regarding the compositions of its accused MLCCs. (Mot. Mem. at 1.) However, Murata argues that upon testing some of Samsung's accused MLCCs it discovered that the dielectric materials used to make the MLCCs did not match the materials disclosed by Samsung in its interrogatory responses. (*Id.* at 2.) Murata asserts that after being confronted with these inaccuracies, Samsung admitted that certain of the information it provided was incorrect. (*Id.*) Murata further asserts that on May 13, 2010, Samsung provided a new table

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listing “current compositions” for various accused Samsung MLCCs, but provided no explanation how or why the information that Samsung had provided in March in its interrogatory responses was inaccurate or whether Samsung had made any changes to its compositions. (*Id.* at 3.) Murata argues that because Samsung’s sworn interrogatory responses show the same MLCCs being made with different dielectrics at different times and because Samsung has failed to explain the inconsistent information it provided, Samsung should be bound by the statements it made in discovery and that those MLCCs should be deemed to have been manufactured using both sets of information. (*Id.*) Murata argues that to find otherwise would permit Samsung “to gain an unfair tactical advantage.” (*Id.* at 8.)

Samsung argues that it complied with Commission Rule 210.27(c) and that Murata’s present motion should therefore be denied. (*Opp.* at 2.) In particular, Samsung argues that upon learning of the errors in its product-composition table, it promptly provided correct information. (*Id.* at 1.) Samsung further argues that the corrected information was provided to Murata during the discovery period and that Murata had a full and complete opportunity to conduct discovery related to the compositions. (*Id.* at 2.) Samsung asserts that although it provided the corrected information before the fact discovery cutoff, Murata never complained about the adequacy of the corrected information or sought any additional information regarding the corrected table until the filing of its present motion. (*Id.*) Samsung argues that Murata has not shown that it has suffered any prejudice. (*Id.* at 11.)

The Staff argues that Murata’s motion should be denied because when Samsung learned that its interrogatory responses were incorrect it promptly complied with its duty under the Commission’s Rules and supplemented its previous responses. (*Staff Resp.* at 8-9.) Also, the

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Staff argues that though Murata asserts that Samsung obtained an “unfair tactical advantage by way of continually shifting disclosures,” it is not clear that Murata in fact suffered any harm. (*Id.* at 8.) In particular, the Staff notes that Murata was in fact able to test the compositions using the corrected information and submit a supplemental expert report on this testing prior to close of discovery. (*Id.*)

The Administrative Law Judge has reviewed the parties’ memoranda and exhibits in support and opposition to the present motion. For the reasons discussed in detail below, Murata’s motion *in limine* to deem as established certain facts related to the dielectric compositions of Samsung’s accused capacitor products is hereby DENIED.

On January 20, 2010, Samsung provided Murata samples of each of approximately 600 MLCCs that Samsung manufactures and sells. (Proposed RX-1154C.) On March 14, 2010, Samsung provided Murata with the starting ingredients used in Samsung’s dielectric compositions, including the amounts of each starting ingredient and the Bates numbers for the documents containing such information. (Proposed RX-1127C.) On April 20, 2010, Samsung provided Murata a product-composition table that identified the dielectric compositions used to make all of the { } capacitors manufactured by Samsung. (Proposed CX-667; *see also* proposed CX-665.)

The evidence indicates that Samsung first became aware of the discrepancies in its product-composition table after receiving the expert report of Ian Burn on April 30, 2010. (Proposed RX-1229C.) In the expert report, Dr. Burns reported that for two of the samples he tested, the results did not match the compositions indicated in the product-composition table. (*Id.* at ¶¶ 111, 161.) On May 4, 2010, Samsung informed Murata of the correct dielectric

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compositions, { } used to make the two MLCCs flagged in Dr. Burn's expert report. (Opp., Ex. 3.) On May 7, 2010, Samsung identified for Murata six of the MLCC samples produced on January 20, 2010, that are made using the { } composition and four of the MLCCs made using the { } composition. (*Id.*, Ex. 4.) On May 13, 2010, with two weeks still remaining in the fact discovery period, Samsung provided Murata with a corrected product-composition table. (Proposed RX-1253C.) On May 24, 2010, Murata's expert, Dr. Burn, submitted a supplemental expert report that included the results of testing he did using the corrected composition information provided by Samsung. (Proposed RX-1261C.) In fact, Dr. Burn acknowledged in his supplemental expert report that Samsung provided corrected information to Murata regarding which Samsung MLCCs used the { } and { } compositions. (*Id.* at ¶ 3.)


Commission Rule 210.27(c) provides that a party is under a duty to supplement its discovery responses if "the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." 19 C.F.R. § 210.27(c). As discussed above, upon learning of the errors in its product-composition table, Samsung promptly identified for Murata the correct dielectric compositions and provided soon thereafter a corrected product-composition table. The evidence shows that the corrected-product composition table was provided to Murata during the discovery period and that based on the corrected information Murata's expert Dr. Burn was able to perform additional testing of Samsung's accused MLCCs and submit a supplemental expert report. Thus, the Administrative Law Judge finds that Samsung has complied with Commission Rule 210.27(c) and Murata has failed to show any

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undue harm or prejudice.

Accordingly, Murata's motion *in limine* to deem as established certain facts related to the dielectric compositions of Samsung's accused capacitor products is hereby DENIED.¹


SO ORDERED.


E. James Gildea
Administrative Law Judge

¹ In denying the present motion, the Administrative Law Judge is not commenting on the propriety of the motion in the first instance. Although Murata couches its present motion as a motion *in limine*, the motion does not seek to preclude a party from introducing certain evidence as would be typical of such a motion. Instead, it appears from Murata's memoranda that the motion is really a motion for discovery sanctions. (See Mot. Mem. at 8.)

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** has been served by hand upon, the Commission Investigative Attorney, **Aarti Shah, Esq.**, and the following parties as indicated on **JUL 29 2010**.


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**IN THE MATTER OF CERTAIN CERAMIC
CAPACITORS AND PRODUCTS CONTAINING
SAME**

337-TA-692

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