

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN GAMING AND
ENTERTAINMENT CONSOLES,
RELATED SOFTWARE, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-752

Order No. 33

During the evidentiary hearing, respondent Microsoft Corp. renewed its request to strike portions of the witness statement (containing the direct testimony) of Dr. Vijay K. Madiseti concerning U.S. Patent No. 6,069,896. Dr. Madiseti testified on behalf of complainants Motorola Mobility, Inc. and General Instrument Corporation (collectively, "Motorola"). The administrative law judge heard arguments from the parties, and requested further briefing, particularly in view of the fact that the Madiseti witness statement had been the subject of a Motorola motion *in limine*, and a subsequent ruling contained in Order No 32.


Microsoft argues that the disputed portions of Dr. Madiseti's testimony amount to new theories not disclosed in his expert report, and that their untimely disclosure prejudices Microsoft. As discussed in Microsoft's brief, the testimony at issue is found in Question and Response Nos. 196-202, 245-246, 280, 365, 368, 373-377, 381-382 and 386. The testimony relates to a range of issues in this investigation, including Motorola's infringement allegations, and the domestic industry requirement.

Motorola counters that Microsoft's objections to the Madiseti testimony were already rejected in Order No. 32, and that the testimony at issue is, in any event, supported by Dr.

Madisetti's expert report, especially in view of the explanations given during Madisetti's subsequent deposition. It is further argued that the three and one-half months that elapsed between the witness statement and the hearing could have been used to cure any alleged prejudice. It is argued that at this point it is Motorola that would be prejudiced if, at such a late stage in the investigation, large portions of expert witness testimony were to be stricken.

Having reviewed Order No. 32 and its underlying motion (Motion No. 752-18), and having considered the arguments of the parties, including the aforementioned supplemental briefing, the administrative law judge has determined not to strike the portions of the Madisetti witness statement at issue. The motion underlying Order No. 32 requested broad relief concerning the Madisetti witness statement, based on largely unsubstantiated allegations that portions of the witness statement are not supported by the expert report. *See* Motion No. 752-18 at 1-2, 5-6. Microsoft's current arguments provide no support to overrule Order No. 32. Moreover, it appeared that Microsoft cross-examined Dr. Madisetti effectively during the hearing. Additionally, Motorola's argument is well taken that in view of the more than three months that elapsed between the Madisetti witness statement and the evidentiary hearing, it is Motorola that could be prejudiced if key direct testimony of an expert were stricken from the record.

So ordered.



David P. Shaw
Administrative Law Judge

Issued: January 30, 2012

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PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER NO. 33** has been served upon the following parties as indicated on _____.

JAN 31 2012



James R. Holbein, Secretary.
U.S. International Trade Commission
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CERTIFICATE OF SERVICE - PAGE TWO

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