

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN WINDSHIELD WIPERS AND
COMPONENTS THEREOF**

Inv. 337-TA-902

**ORDER NO. 11: DENYING COMPLAINANT TRICO PRODUCTS
CORPORATION'S MOTION TO COMPEL RESPONDENT
FEDERAL-MOGUL CORPORATION AND FEDERAL-MOGUL
S.A.'S TO PRODUCE DOCUMENTS**

(May 19, 2014)

On March 18, 2014, Complainant Trico Products Corporation ("Trico") moved (Motion No. 902-005) to compel Respondents Federal-Mogul Corporation and Federal-Mogul SA (collectively, "Federal-Mogul") to conduct a search of its European based employees and produce documents responsive to Trico's discovery requests propounded during this Investigation.

On March 28, 2014, Federal-Mogul opposed the motion.

The Commission Investigative Staff ("Staff") filed a response on March 28, 2014. The Staff noted that the parties were in the process of reaching an agreement on representative accused products that would render the motion moot. Thus, in the Staff's view, the motion to compel should be denied as moot, but without prejudice to refile should the current negotiations fail to resolve the outstanding issues. However, as of the date of this order, the parties have not reached an agreement.

Trico contends that despite repeated attempts to work things out in a cooperative fashion, Federal-Mogul refuses to produce responsive documents that are plainly relevant to this

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investigation and/or states that it did produce them, even when such statements are contrary to the testimony of Federal-Mogul's own witnesses. Trico's contention is based on the deposition testimony of five of seven witnesses from Federal-Mogul's Belgium employees. (Mot. at 4.) Specifically, Trico states that four of Federal-Mogul's witnesses were not even asked to collect documents while one of the witnesses stated that he had put a limited set of test results he had been asked to collect on a USB stick. (Mot. at 4-5.) Thus, Trico's contention is based on the premise that Federal-Mogul did not make an attempt to collect and turn over responsive documents, but that Federal-Mogul wants to use its documents from Investigation 337-TA-881¹ ("881 Investigation") to satisfy Trico's discovery request in this investigation.

Trico additionally contends that Federal-Mogul's products were not at issue in the 881 Investigation, other than for domestic industry, and, therefore, Federal-Mogul did not produce detailed information relating to the components at issue in this Investigation. Specifically, Trico explains that the 881 Investigation concerned the spoiler of the wiper blade while this Investigation deals with the flexor (also known as splines) and the connecting devices on the wiper blade. (Mot. at 4.)

Trico contends that it is not enough for Federal-Mogul simply to cull through the documents it identified in the 881 Investigation and reproduce those it thinks relevant. The flexor and the connector at issue in this case go well beyond the spoiler which was at issue in the 881 Investigation. A new document search, for the universe of documents related to the connector and the flexor, is necessary. Trico argues that if Federal-Mogul's employees were asked in this Investigation to produce documents related to invention, conception and reduction to practice of Federal-Mogul's spoiler design in the early 2000s, it is disingenuous to suggest that

¹ In Investigation 337-TA-881, Federal-Mogul initiated the investigation against Trico. The 881 Investigation also deals with wiper blades.

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the collection from the 881 Investigation would have swept up documents related to the invention, conception and reduction to practice of the connectors and flexors, and more crucially of the flexors and connectors as they are currently found on Federal-Mogul's U.S. products sold today but designed in Aubange, Belgium. (Mot. at 9.)

While Trico relies on deposition snippets from four Federal-Mogul custodians located in Aubange, Belgium who said that they did not search for documents, Federal-Mogul states that it produced over 50,000 substantive documents in this investigation. (Opp. at 1.) Federal-Mogul counters that these four individuals have attested to the broad search performed in the 881 Investigation, and that they have conducted an additional search for documents since their depositions in Aubange, but have not located any additional documents. (Opp. at 1.) Additionally, Federal-Mogul states that two other employees, Xavier Boland and Rene Masson, were also deposed in Belgium. These individuals attested that, in addition to the document collection for the 881 Investigation, they conducted an additional search for documents as part of this Investigation. (Opp. at 1, FN1 citing the following: Ex.1, Deposition of Rene Masson ("Masson Dep.") at 19:6-23; *see also* Ex. 2, Declaration of Rene Masson ("Masson Decl."); Ex. 3, Declaration of Xavier Boland ("Boland Decl.")).

Federal-Mogul contends that there are more components at issue in the 881 Investigation than just the spoiler, namely the flexor and connector at issue in this investigation. (Opp. at 5.) In the 881 Investigation, Federal-Mogul is asserting that all fourteen claims of U.S. Patent No. 8,347,449 (the "'449 Patent") are infringed by certain flat blade windshield wipers imported and sold by Trico. Specifically, Federal-Mogul contends that its flat beam blade at issue practices the '449 Patent, and Trico's accused windshield wipers include flat blade windshield wipers with

two biased flexors that physically carry the wiper element, and a single biased flexor that physically carries the wiper element. (Opp. at 4-5.)

Federal-Mogul then states that Mr. Boland and others testified about the collection and production of engineering documents kept in binders, known only as “TAL,” for the 881 Investigation. (Opp. at 6.) Additionally, Federal-Mogul adds that the “TAL” binders were collected and produced in this Investigation, and were physically present during the Belgium depositions. Federal-Mogul states that all of the deponents subject to Trico’s discovery previously had their emails collected and searched for all documents related to its wiper blade, which is the same wiper blade that is at issue in this Investigation and these documents include relevant information about flexors and connectors as part of the 881 Investigation. (Opp. at 7, FN 5 ref March 13, 2014 Letter to the Court.)

Accordingly, the ALJ **DENIES** Trico’s motion to compel. (Motion No. 902-005.) Trico’s motion is a broad request to basically restart and redo discovery. Trico’s arguments hinge on the use of segments of deposition testimony by selected Federal-Mogul’s witnesses (while ignoring the testimony of others) as well as an apparent mischaracterization of the relevance of the documents produced in the 881 Investigation.

Federal-Mogul pointed out the testimony and declarations of Xavier Boland² and Rene Masson³ that showed that, in addition to the documents collected for the 881 Investigation, these individuals conducted an additional search for documents as part of this Investigation. (Opp. at 1, FN1 citing the following: Ex.1, Deposition of Rene Masson (“Masson Dep.”) at 19:6-23; *see also* Ex. 2, Declaration of Rene Masson (“Masson Decl.”); Ex. 3, Declaration of Xavier Boland (“Boland Decl.”)). The ALJ finds the testimony and declarations credible.

² Mr. Xavier Boland is Federal-Mogul’s Global R&D Product Engineer. (Opp. Ex. 3.)

³ Mr. Rene Masson is Federal-Mogul’s Director of Engineering and R&D for Global Product Design. (Opp. at 3.)

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Federal-Mogul avers that its flat beam blade at issue practices the '449 Patent and includes not only the spoiler, but also the flexor and connector at issue in this Investigation. As such, the documents produced for the 881 Investigation and the additional documents produced for this Investigation reasonably cover the flexor and connector at issue.

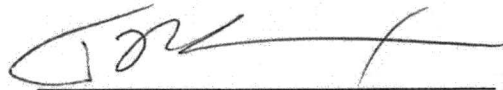
The ALJ finds Trico's lack of specificity within their motion points to a broad and late attempt to recast the discovery net. Trico contends that Federal-Mogul "produced a mere trickle of documents" (Mot. at 2); however, Trico's contention does not include any details of this "trickle." On the other hand, Federal-Mogul states that it produced over 50,000 documents in this Investigation, of which 13,670 are from custodians in Aubange, Belgium, including the custodians mentioned in the Trico motion. Federal-Mogul points out that these individuals account for more than half of the total number of documents produced by Federal-Mogul's employees located in Aubange, Belgium. (Opp. at 11.) The ALJ finds that Federal-Mogul's detailed explanation of the steps it has taken to fulfill its discovery obligation is sufficient. This is especially true in light of the fact that the products at issue in this Investigation and the 881 Investigation are nearly identical.

Accordingly, Trico's motion (Motion No. 902-005) is hereby **DENIED**.

Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. Any party seeking to have any portion of this document deleted from the public version thereof shall also submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions may be made by facsimile and/or hard copy by the

aforementioned date. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED

A handwritten signature in black ink, appearing to read 'T. Essex', is written over a horizontal line.


Theodore R. Essex
Administrative Law Judge

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AND COMPONENTS THEREOF**

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER 11** has been served by hand upon the Commission Investigative Attorney, Monisha Deka, Esq., and the following parties as indicated, on **June 3**, 2014.



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