

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN RUBBER RESINS AND
PROCESSES FOR MANUFACTURING
SAME**

Inv. No. 337-TA-849

**ORDER NO. 37: GRANTING-IN-PART AND DENYING-IN-PART
COMPLAINANT'S MOTION TO COMPEL DISCOVERY THAT
RESPONDENTS ARE IMPROPERLY WITHHOLDING**

(March 8, 2013)

On November 21, 2012, complainant SI Group, Inc. ("SI Group") filed a motion to compel Respondents to provide the depositions of Mr. Qijun Pu and Mr. C.Y. Lai, and to provide the following discovery: (1) Request for Production Nos. 49, 50, 58, 59, 60, 63, 64, 175, 176, and 189, including all documents that relate to Respondents' supply or potential supply of phenolic resin products to any U.S. customer (including both end users and distributors); (2) Request For Production Nos. 100, 101, 161, 162, 166, 178, 179, 183, 184 and 197, including all documents that relate to current and/or any previous Chinese litigation between SI Group and Sino Legend as well as investigations by the Shanghai Municipal Public Security Bureau, the Public Safety Bureau, the Environment Protection Bureau, and the Shanghai Science & Technology Consulting Service Center; (3) Interrogatory Nos. 4 and 7 and Request for Production Nos. 15-18, 38-45, 153, 233, including all documents containing or relating to experimental and developmental work performed by Mr. Qijun Pu; Interrogatory No. 16 and Request for Production Nos. 47-52, 71, 207, 216-221, including all documents concerning

phenolic resin products, raw materials and intermediates capable of being manufactured, and current or planned manufacturing capacity, at { } and (5) Request for Production Nos. 9-12, 15-18, 34, and 38-45, including all documents concerning the acquisition of information related to, development, or conception of SL-2101, SL-2201, SL-3018, SL-3019, SL-3020, and SL-3080 and their manufacturing processes. (Motion Docket No. 849-015.) On December 3, 2012, Respondents filed a response opposing SI Group's motion. On December 3, 2012, the Commission Investigative Staff ("Staff") filed a response supporting in part, and opposing in part, SI Group's motion.

Pursuant to Ground Rule 3.2, SI Group certifies that it has made reasonable, good faith efforts to address the parties' disputes on multiple occasions including letters between the parties without resolution. SI Group says the parties are at an impasse, and Respondents indicated they would oppose this motion. SI Group says it contacted Staff regarding this motion, and Staff indicated that it would take a position on the motion after reviewing the papers¹.

I. Parties' Positions:

On January 11, 2013, SI Group sent a letter to me, on behalf of all parties, to provide notice of a compromise that had been reached with respect to the subject matter of three pending motions to compel in this Investigation: Complainant's Motion Docket No. 849-013, Complainant's Motion Docket No. 849-015, and Respondents' Motion Docket No. 849-016. SI Group represented that the parties agreed to withdraw from consideration all issues in these

¹ SI Group filed this motion on November 21, 2012 before the parties received my Ground Rules on November 26, 2012. My Ground Rules require that all motions include a certification that at least two business days prior to filing the motion, the moving party made reasonable, good faith efforts to contact the other parties to resolve the matter and notified all other parties, and shall state, if known, the position of the other parties. *See* G.R. 3.2. My Ground Rules further require that any motion to compel discovery shall detail the efforts made to resolve the underlying discovery dispute. A mere conclusory certification of a good faith effort will not suffice. *See* G.R. 3.5. My Ground Rules also require that no motion to compel discovery may be filed unless the subject matter of the motion has first been brought to the Discovery Committee and the Committee has reached an impasse in resolving the matter. *See* G.R. 4.1.

motions, except for the following issues: (1) Complainant's request for discovery in relation to Mr. Qijun Pu, which SI Groups says is addressed in Section I of Complainant's Memorandum in Support of Motion No. 849-015, Section I.A and I.B of Respondents' Opposition, and Sections II and III.A of Staff's Response; and (2) Complainant's request for discovery relating to reinforcing resins, which SI Group says is addressed in Section VI of Complainant's Memorandum in Support of Motion No. 849-015, Section I.G of Respondents' Opposition, and Section III.E of Staff's Response, to the extent each of those passages relates to the products SP-6701, SP-6700, SL-2201, and SL-2101, and the deposition of Mr. Quanhai Yang.

Based on SI Group's representations, SI Group currently requests that I compel Respondents to provide the depositions of Mr. Qijun Pu and the re-deposition of Mr. Quanhai Yang, and to provide discovery on: (1) Request for Production Nos. 15-18, 38-45, 153, and 233, including all documents containing or relating to experimental and developmental work performed by Mr. Qijun Pu; and (2) Request for Production Nos. 9-12, 15-18, 34, and 38-45, including all documents concerning the acquisition of information related to the development or conception of products SL-2101 and SL-2201, and their manufacturing processes.

SI Group avers that it has been seeking discovery regarding Mr. Pu's alleged developmental activities since the beginning of this Investigation. (Citing Mot. Ex. A at 3-4 and Ex. B at 19.) SI Group argues that Respondents have heavily relied on the alleged developmental work performed by Mr. Pu but have not made Mr. Pu available for depositions and have withheld numerous documents concerning Mr. Pu's alleged developmental work. SI Group contends that Respondents' have made Mr. Pu's work a "centerpiece of their conception and development story in their supplemental interrogatory responses." (Citing Mot. Ex. C at 11-16.) SI Group says that, given Respondents' substantial reliance on Mr. Pu's experimental work,

it served a notice for Mr. Pu's deposition on October 31, 2012. SI Group says that Respondents claim that Mr. Pu is generally not available for a deposition because he is retired and not able to travel. (Citing Mot. Ex. F at 2-3.)

SI Group avers that Mr. Xie's deposition calls into question Mr. Pu's purported unavailability for deposition. SI Group quotes Mr. Xie's (general manager of Sino Legend ZJG) deposition testimony that {

} SI Group argues that Mr. Xie's testimony casts serious doubt on Respondents' claims that Mr. Pu is generally not available for deposition and provides little support for the contention that Mr. Pu's health would prevent him from having his deposition taken.

SI Group contends that granting a motion to compel a deposition is particularly appropriate when the deponent has "unique personal knowledge." (Citing *Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices and Tablet Computers*, Inv. No. 337-TA-794, Order No. 34 (Feb. 24, 2012)). SI Group argues that other depositions further confirm that Mr. Pu has "unique personal knowledge" that is highly relevant to the asserted trade secrets. SI Group says that Mr. Quanhai Yang testified that { } (one of the asserted trade secrets) used in Sino Legend's SL-1801 came not from SI Group, but from {

} (Citing Mot. Ex. H at 26:8-10.) SI Group argues that Respondents' supplemental interrogatory response cites a conclusory table purporting to identify { } without providing any experimental work connected with the numbers appearing in this table. (Citing Ex. C at 30-31.)

SI Group says that Mr. Pu's { } appears in an economic (not technical) "award winning" report, but that Respondents have not produced the materials submitted in the application for the award. SI Group also states that Respondents have produced only the table of contents, but not the contents of the report. (Citing Mot. Ex. J.) SI Group continues that Respondents also have not produced the supporting materials that Mr. Pu relied on in preparing the report, including experiment records and/or data.

SI Group argues that Respondents also rely on Mr. Pu for various other allegations of independent development and prior art. (Citing Respondents' Supplemental Objections and Responses to SI Group's Fourth Set of Interrogatories, at 33-34; Sino Legend ZJG Supplemental Objections and Responses to SI Group's Eighth Set of Interrogatories, at 4-6².) SI Group requests that I order Respondents to produce Mr. Pu for deposition immediately and order the production of all documents concerning Mr. Pu's experimental work within five days of my order. Alternatively, SI Group requests that I preclude Respondents from relying on Mr. Pu's work as evidence of prior use or independent development, or I should impose an adverse inference against Respondents "for what Mr. Pu's testimony would have been and documents concerning Mr. Pu's work."

SI Group avers that Respondents' products SL-1801 and SL-1802 are equivalent to SI Group's product SP-1068. SI Group argues that Respondents should be ordered to provide discovery on the development records of other Sino Legend products, besides SL-1801 and SL-1802, which appear to have been copied from SI Group at the same exact time, and during the same laboratory and plant trials as SP-1068, because it supports the conclusion that Sino Legend

² SI Group did not cite to exhibit numbers for Respondents' Supplemental Objections and Responses to SI Group's Fourth Set of Interrogatories or Sino Legend ZJG Supplemental Objections and Responses to SI Group's Eighth Set of Interrogatories in their motion. Although SI Group attached many Exhibits A through Y to their motion, my Ground Rules require that SI Group provide an appendix of exhibits. See Ground Rule 3.1.

copied SI Group's process for making SP-1068. SI Group avers that "evidence of the same parameters for manufacturing other SI Group products to make equivalent Sino Legend products would be probative evidence that possession of identical manufacturing process information for SP-1068 to make the product commercialized as SL-1801 was due to copying and not some other reason." SI Group continues, "Simply stated, if the manufacturing parameters for multiple SI Group products match the manufacturing parameters for equivalent products commercialized by Sino Legend, it is more likely that the manufacturing parameters for SL-1801 were copied from SI Group."

SI Group argues that "documentary evidence" indicates that Sino Legend copied the process parameters for making SI Group's tall oil reinforcing resin SP-6701 during the same laboratory and pilot trials as Sino Legend copied SI Group's process parameters for making SP-1068. SI Group says that at depositions, however, Respondents' witnesses refused and/or were instructed not to answer questions about the SP-6701 product. SI Group contends that because the questions are relevant, instructions by Respondents' counsel not to answer based on his subjective view of relevance were improper. SI Group says that during Mr. Quanhai Yang's deposition, it explained its rationale relating to the relevance of the discovery during the depositions so that opposing counsel would have an opportunity to reverse his instruction not to answer and allow the witness to testify. SI Group asserts that the witnesses continued to refuse to answer and counsel continued to instruct the witness not to answer.

SI Group requests that I order Respondents to reproduce Mr. Yang for deposition to address this issue, and order Respondents to provide full and complete discovery in response to Request for Production Nos. 9-12, 15-18, 34, 38-45, and 144, including all documents concerning the acquisition of information related to the development or conception of SL-2201

and SL-2101, immediately. Alternatively, SI Group requests that Respondents should be precluded from rebutting evidence that the manufacturing parameters for SL-2101 and SL-2201 are identical to, and were copied from, the manufacturing parameters of SP-6701 and SP-6700, respectively, and that I impose an adverse inference against Respondents that the manufacturing parameters for SL-2101 and SL-2201 were copied from the manufacturing parameters for SP-6701 and SP-6700, respectively.

Respondents oppose SI Group's motion to compel discovery and argue that it should be denied because the discovery SI Group seeks: (a) exceeds the scope of discovery that Respondents can provide; (b) is cumulative to, or duplicative of, other discovery already produced by Respondents, or discovery that Respondents have already agreed to produce, and/or; (c) relates to information that SI Group can ascertain on its own and that Respondents are in no better position to provide.

Respondents aver that SI Group's motion to compel Respondents to provide Mr. Qijun Pu's deposition should be denied because of Mr. Pu's advanced age of 72 years and poor health. Respondents submit that Mr. Pu cannot undergo the travel that a deposition would require. Respondents say that Mr. Pu is not in good enough health to travel to Hong Kong or sit for a deposition. (Citing *Trebbly v. Goodyear Tire & Rubber Co.*, 129 F.R.D. 468 (S.D.N.Y. 1990); *Gocolay v. New Mexico Federal Sav. & Loan Ass'n*, 968 F.2d 1017, 1021-22 (10th Cir. 1992).)

Respondents aver that Mr. Pu works from his home, and only on an as-needed basis. Respondents say that although Mr. Pu is available by phone to answer questions from Sino Legend, he has not "regularly" worked on the premises for at least several months (before SI Group filed its motion to compel). (Citing Respondents Opp. Ex. C at 34:18-35:1.) Respondents say that Mr. Xie either misspoke or was mistranslated during his deposition when he was

recoded as saying that {

} Pointing to the Errata for Mr. Xie's deposition transcript,

Respondents say {

} Respondents aver that Mr. Pu has been diagnosed with hypertension and cardiomegaly (i.e. an enlarged heart), and was advised by his doctor to "avoid fatigue, exhausting traveling, emotional excitement, and excessive pressure." (Citing Respondents Opp. Ex. B.) Respondents say that they have no wish to assume the risk to Mr. Pu's health associated with air travel or sitting for a deposition.

Respondents do not dispute that Mr. Pu has some relevant information and admit that {

} Respondents say, however, that information {

} has already been available to SI Group from other witnesses, primarily from Mr. Yunfeng Fan and Mr. Quanhai Yang, who were already deposed by SI Group.

Respondents further admit that {

} Respondents argue, however, that {

} Respondents aver that {

} Respondents argue that information about Mr. Pu's underlying research is not probative of any issue in the case. Respondents aver

that, in view of the cumulativeness and irrelevance of the evidence sought, there is no basis to impose burdens on Mr. Pu's health and no basis for SI Group to claim it was denied relevant information.

Respondents continue that they are not at liberty to disclose the details of the underlying research that Mr. Pu performed at the Beijing Institute, either through testimony or through documents. Respondents say that the testimony on underlying research that SI Group seeks from Mr. Pu is subject to a verbal order of a Chinese court (in a concurrent proceeding in China between the parties) forbidding its disclosure on the ground that it concerns Chinese national secrets. Respondents say that Mr. Pu's work in the 1990s {

}

Respondents argue that SI Group is not entitled to any adverse inference because they have not violated any Order with respect to Mr. Pu's deposition. Respondents further contend that SI Group's motion does not articulate what adverse inference could be drawn about Mr. Pu's early-1990s research. Respondents assert that it does not matter what specific research Mr. Pu performed {

}

Regarding documents concerning Mr. Pu's research, Respondents say that the documents sought by SI Group's motion are subject to a Chinese court order. Respondents maintain that the Chinese court in the separate trade secret misappropriation civil action in China ordered that {

} Respondents state that {

}

{

} Respondents say that they have already produced publications by Mr. Pu that reported the public results of his work. (Citing Respondents Opp. Exs. E and F.) Respondents say the Chinese court's treatment of the documents at issue, which are located in China, should be given deference.

Respondents continue that SI Group is not prejudiced by Respondents' inability to produce {

}

Respondents say they only rely on the fact that { }

Respondents assert that { } is immaterial.

Respondents argue that the relevant point is that { } existed long before the alleged period of misappropriation. Respondents argue that I should deny SI Group's motion to compel the production of additional documents relating to Mr. Pu's experimental work.

Respondents assert that they have already produced documents concerning Mr. Pu's work *while he was employed by any Respondent*. Respondents say that SI Group's motion does not complain about Mr. Pu's development documents during this period of time. Respondents again assert that adverse inferences are inappropriate because Respondents have not disobeyed any Order. Respondents say that precluding Respondents' reliance on { } would be grossly disproportionate to the requested discovery, because SI Group already knows of { } through documents that Respondents have already produced, the year when it was reported, and how it was used by Sino Legend ZJG.

Respondents aver that in depositions, SI Group questioned Mr. Yang and Mr. Fan extensively on { }

Regarding Request for Production Nos. 9-12, 15-18, 34, and 38-45, Respondents argue that Sino Legend products SL-2101 and SL-2210 are outside the scope of this Investigation and have not even allegedly been imported. Respondents aver that SI Group seeks an inference that these products embody misappropriated technology, when it has not even initiated an investigation on those products. Respondents emphasize that SI Group has not identified a single claimed trade secret relating to them in its pleadings or discovery responses. Respondents argue that SI Group attempts to justify its motion with what amounts to a “character evidence” theory, but that type of argument is expressly prohibited by the Federal Rules of Evidence. Respondents assert that SI Group’s requested relief cannot possibly lead to the discovery of admissible evidence, and would open up a whole new range of accused products, for which SI Group has provided no pleadings and no discovery responses after the last day of fact discovery. Respondents contend that they would be extraordinarily prejudiced by SI Group’s requested relief.

Respondents say that SI Group claims in its motion that “documentary evidence indicates that Sino Legend copied the process parameters for SI Group’s tall oil reinforcing resin SP-6701 . . .” (Citing Mot. at 23.) Respondents point out that SI Group does not identify any of the supposed “documentary evidence” in support of its assertion that Sino Legend’s SL-2101 or SL-2201 products are made with the same processes as SI Group products SP-6701 or SP-6700. Respondents argue that SI Group tries to blur the distinction between the process of making a product and the characteristics of the final product itself, suggesting that an attempt to make a product that meets the same technical criteria as a competitor’s is somehow identical to stealing

the competitor's process for making that product. Respondents argue that there is no evidence that Respondents copied any process parameters for making SP-6701, even if they were trying to make a final product that met some of the same technical requirements.

Respondents further argue that SI Group's SP-6701 product is not at issue in this Investigation. Respondents highlight that SP-6701 is not mentioned anywhere in SI Group's Complaint; in SI Group's list of alleged trade secrets in response to Interrogatory No. 6; in SI Group's answer to Interrogatory No. 10 seeking SI Group's contentions as to misappropriation and use of trade secrets; or in SI Group's list of products embodying the alleged trade secrets in response to Interrogatory No. 14. (Citing Mot. Exs. D, X, and W.) Respondents also argue that SI Group does not state any basis for claiming that SL-2101 or tall oil reinforcing resin, a different category of chemical from those accused in the Complaint, is within the scope of this Investigation. Respondents note that the scope of this Investigation is limited to "certain rubber resins and processes for manufacturing same." Respondents say that SI Group's Complaint specifies which "certain" rubber resins are at issue, namely SL-1801, SL-1802, SL-1805, and SL-7015. (Citing Complaint, ¶ 114.) Respondents aver that this Investigation does not encompass all rubber resins produced by Respondents or SI Group. Respondents argue that this Investigation does not cover rubber resins for which SI Group has not identified a single alleged trade secret. Respondents also highlight that neither the Notice of Investigation nor the Complaint mentions SL-2101 or SL-2201 as an accused product. Because SI Group did not identify any alleged trade secret regarding the process for those products, Respondents aver that there is simply no basis for drawing an adverse inference related to an irrelevant product.

Respondents continue that SI Group's purported justification for the products outside the scope of this Investigation is that it would show a "pattern of conduct." Respondents assert that

SI Group's theory of relevance for products outside those identified in the Complaint amounts to a "character evidence" theory, which is expressly prohibited by Federal Rule of Evidence 404. Respondents contend that, even if it were assumed, contrary to fact, that Respondents copied the SL-6701 confidential process parameters, that would not be admissible to show that any confidential processes parameters for making the *accused* products were copied. Respondents argue that, although discovery requests may encompass more information than is ultimately admissible, the requests cannot be overly burdensome and must be reasonably calculated to the discovery of admissible evidence. Respondents contend that SI Group's motion requests discovery that cannot possibly lead to the discovery of admissible evidence.

Staff partially supports the relevant sections of SI Group's motion. Staff supports SI Group's motion to the extent it seeks to compel the deposition of Mr. Qijun Pu and the related production of documents and responses to interrogatories regarding Mr. Pu's experimental and development work. Staff believes it was improper for Respondents and corporate witness Mr. Yang to refuse to answer questions relating to SL-2101. Staff also believes Respondents should be ordered to comply with Request for Production Nos. 9-12, 15-18, and 38-45 regarding the development or conception of "other" Sino Legend products and their manufacturing processes. Staff does not support the production of documents in response to for Production No. 34. Staff also does not support the entry of adverse inferences.

Staff submits that the scope of discovery in a Section 337 investigation is broad. (Citing *Certain Cold Cathode Fluorescent Lamp Inverter Circuits and Products Containing the Same*, Inv. No. 337-TA-666, Order No. 16 at 8-9 (Aug. 4, 2009).) Staff also submits that a party seeking to compel discovery has the initial burden of showing that the requested documents are relevant. (Citing *Certain Wind and Solar-Powered Light Posts and Street Lamps*, Inv. No. 337-

TA-736, Order No. 8 (April 13, 2011) .) Staff asserts, however, that once the relevance of the requested information has been established, “the burden of proving that an issue is beyond discovery rests squarely with the party resisting discovery.” (Citing *Certain Encapsulated Integrated Circuit Devices and Products Containing Same*, Inv. No. 337-TA-501, Order No. 50 at 3 (May 18, 2004).) In Staff’s view, SI Group has established the relevance of each specific category of documents or information being sought from deponents.

Regarding the deposition of Mr. Qijan Pu, Staff avers that Respondents have relied heavily on the alleged developmental work performed by Mr. Pu in their interrogatory responses. (Citing Mot. Ex. C at 11-16.) Staff believes that SI Group should have the opportunity to question Mr. Pu about documents produced from his files, and about the applicability of his prior work as it allegedly relates to the conception and development of any accused Sino Legend product. (Citing SI Group Interrogatory Nos. 4 and 7 and Request for Production Nos. 15-18, 38-45, 153, 233.) Staff says that Mr. Pu was employed by Sino Legend, and he may be located near Shanghai in mainland China. (Citing Mot. Ex. F at 2-3.) Staff highlights the deposition testimony of Mr. Corey Xie, general manager of Sino Legend ZJG, to refute Respondents’ claim that Mr. Pu is not available for a deposition due to his retirement and poor health. (Citing Mot. Ex. H at 34:11-35:6.) In view of Mr. Xie’s deposition testimony and other witnesses’ testimony regarding the relevance of Mr. Pu’s “unique personal knowledge” of the accused Sino Legend products, Staff believes that Respondents should be ordered to make Mr. Pu available for a deposition, as well as to produce all requested documents concerning Mr. Pu’s developmental work to the extent not already produced, including {

} (Citing *Certain Electronic Devices, Including Wireless Communications Devices, Portable Music and Data Processing Devices and Tablet Computers*,

Inv. No. 337-TA-794, Order No. 34 (Feb. 24, 2012).) Alternatively, Staff maintains that Respondents should be ordered to explain why Mr. Pu cannot be made available for deposition.

Staff argues that the manner in which Respondents acquired the information related to the development or conception of the requested Sino Legend products and their manufacturing processes is relevant to trade secret misappropriation. (Citing Request for Production Nos. 9-12, 15-18, 34, and 38-45.) Staff states that SI Group asserts relevance for any copying of the manufacturing parameters of SI Group's products, such as SP-6701, to make corresponding commercialized Sino Legend products such as SL-2101. (Citing Mot. at 23.) Staff says that during a deposition, Respondents' corporate witness Mr. Quanhai Yang, "refused and/or [was] instructed not to answer questions" on Sino Legend products other than SL-1801 and SL-1802, such as SL-2101, which is allegedly equivalent to SI Group's tall oil reinforcing resin SP-6701. Staff states that SI Group alleges that SL-2101 appears "to have been copied from SI Group at the same exact time, during the same laboratory and plant trials, as SP-1068." (Citing Mot. at 22-23.) Staff asserts that Complainant's Requests for Production at issue are relevant to understand the extent to which Respondents may have obtained and then relied on any SI Group information in developing not only the Sino Legend products SL-1801 and SL-1802 allegedly imported into the U.S., but also in developing any other Sino Legend products not yet known to Complainant.

Staff's position is that it was improper for Respondent and corporate witness Mr. Yang to refuse to answer questions relating to SL-2101, where Respondents' counsel subsequently instructed Mr. Yang not to answer. (Citing Mot. Ex. H at 45:3-46:13, 49:11-51:14, 127:2-17.) Staff proposes narrowing the scope of information that SI Group may continue to request, to information that relates to any SI Group product, but not any third party product. For example,

Staff contends that SI Group's request for further discovery into Sino Legend product SL-3020, which Complainant alleges is a "copycat" of third party Indspec's B-20-S resin, would fall outside that narrower scope. Staff avers that the scope of information can be adequately narrowed by denying SI Group's motion with respect to Request for Production No. 34, which seeks "All Documents relating to any claims that Respondents misappropriated or infringed intellectual property owned or controlled by any third party (other than SI Group) relating to phenolic resins. (Citing Mot. Ex. B at 21.) Thus, in Staff's view, Respondents should be ordered to comply with Request for Production Nos. 9-12, 15-18, and 38-45, but not Request for Production No. 34.

Staff says that SI Group requests that Respondents be precluded from offering any evidence not already produced, with adverse inferences raised for each set of documents that have not been produced in violation of Order No. 7. (Citing Mot. 2-5.) Staff explains that Order No. 7 denied Respondents' motion for a protective order, and that it was not an order that compelled Respondents to provide further responses to specifically identified discovery requests. Staff further explains that Order No. 7 only included a general statement that "... the undersigned hereby orders Respondents to provide responses to said discovery within five days of the date of this order." In Staff's view, Respondents should be ordered to finalize their discovery to Complainant, with a later accounting to determine if Respondents have fully complied. Staff believes it is premature to grant SI Group sanctions against Respondents based on the general statement in Order No. 7.

II. Analysis:

A. The Deposition of Mr. Qijun Pu and Request for Production Nos. 15-18, 38-45, 153, and 233

I find that Respondents must provide the deposition of Mr. Qijun Pu within one week of this Order. SI Group has requested discovery regarding Mr. Pu's alleged developmental activities since the beginning of this Investigation. For example, SI Group's Request for Production No. 16, dated June 28, 2012, seeks:

All documents relating to work consulted or relied upon in the development of all Identified Sino Legend Products and Identified Sino Legend Processes including, but not limited to, ***Dr. Qijun Pu***.

(Mot. Ex. B at 19. (emphasis added)) SI Group's Interrogatory No. 4, also dated June 28, 2012, seeks:

For each phenolic resin identified in response to Interrogatory No. 3 imported into the United States, manufactured, sold, or distributed by any Respondent, for any Respondent, or on any Respondent's behalf at any time from January 1, 2006 until April 30, 2010, describe the ***complete history of such phenolic resin at any time***, whether or not after April 30, 2010, including but not limited to the earliest attempt to manufacture the product on a trial scale; the earliest date the product was successfully manufactured on a trial scale and the amount manufactured; the earliest attempt to manufacture the product on a commercial scale; the earliest date the product was successfully manufactured on a commercial scale and the amount manufactured; the beginning and any end date that the product was marketed, advertised or offered for sale; the beginning and any end date that the product was sold; who it was sold or delivered to; and any changes made to the phenolic resin (including but not limited to the chemical formulation and technical specifications).

(Mot. Ex. A at 3-4. (emphasis added)) SI Group served a notice for Mr. Pu's deposition on October 31, 2012.

The timing and substance of Mr. Pu's research and development work is a core dispute in this Investigation. Respondents have relied heavily on the alleged developmental work

performed by Mr. Pu for their independent development story. For example, in its Second Supplemental Response No. 4, Respondents stated:

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(Mot. Ex. C at 11-16.) Respondents admit that Mr. Pu has relevant information and that he played a role “in the earliest stages of Respondents’ development of the accused PTOP-based tackifiers in the mid-2000s.” (Respondents Opp. at 4.) Respondents say “It is also true that {

} (Respondents

Opp. at 5.)

Commission Rule 210.37 provides that “[r]elevant, material, and reliable evidence shall be admitted.” 19 CFR § 210.37(b). I find that because Mr. Pu has relevant and material information, SI Group should have the opportunity to question Mr. Pu about, *inter alia*, the contents of his notebook, RX-0304C, and his reports, CX-1146C: {

} CX-0670C: {

} and RX-0332C:

{

} (*Id.*)

Although Respondents have provided a “Certificate of Diagnosis” that Mr. Pu was diagnosed with hypertension and cardiomegaly, and that the recommended treatment by his physician was to “pay attention to rest and avoid fatigue, exhausting traveling, emotion excitement, and excessive pressure,” Respondents’ argument is unpersuasive that these facts prevent the taking of Mr. Pu’s deposition. (Respondents Opp. Ex. B.) In *Trebbby*, the court granted a motion to quash plaintiff’s notice of deposition because the potential witness was *hospitalized* with a serious heart condition. *Trebbby v. Goodyear Tire & Rubber Co.*, 129 F.R.D. 468, 469 (S.D.N.Y. 1990). The court also allowed plaintiffs to serve a new deposition notice if the witness was released from the hospital and his attending physician indicated that the taking of his testimony would not be detrimental to his health. (*Id.*) Here, Respondents have not provided documentation from Mr. Pu’s physician specifying that the taking of his testimony would be detrimental to his health.

Furthermore, Mr. Corey Xie, general manager of Sino Legend ZJG, testified that {

{

}

{ } Mr. Xie's testimony casts doubt on Respondents' claim that Mr. Pu is generally not available for deposition.

I also find Respondents' argument unpersuasive that they are not at liberty to disclose {

} either through testimony or through documents.

Respondents say that {

} The Protective

Order (Order No. 1) in this Investigation protects the confidentiality of any classified information.

SI Group contends that Respondents still have not produced materials {

} SI Group also

asserts that Respondents have not produced {

} SI Group further alleges that Respondents have not produced

{ } including experiment

records and/or data. (Mot. at 5.) SI Group avers that Respondents' supplemental interrogatory

response cites a conclusory table purporting to identify { } without providing any

experimental work connected with the numbers appearing in the table. (*Id.*)

{

} Respondents say they have also produced publications by Mr. Pu that reported the public results of his work, and a letter that provides a general summary of his work. (Respondents Opp. Exs. E and F.) Respondents also say they have also produced documents concerning Mr. Pu's work while he was employed by any Respondent. (Respondents Opp. at 8 n.2.)

Respondents must provide the deposition of Mr. Qijun Pu in Hong Kong⁴ within 7 calendar days of this Order and produce any documents relating to Mr. Pu's experimental and developmental work that Respondents have not already produced⁵ within five calendar days of this Order in response to Request for Production Nos. 15-18, 38-45, 153, and 233. 19 C.F.R. § 210.27(b). I will not permit a party to rely on evidence at the hearing that has not been timely produced during discovery. This prevents trial by ambush, and ensures that the hearing is conducted in a fair manner. If Respondents attempt to introduce evidence in the hearing that was not timely produced prior to the close of fact discovery, or that violates this Order, SI Group retains the right to object to the admission of that evidence and testimony based upon that evidence⁶.

B. The Deposition of Mr. Quanhai Yang, and Request for Production Nos. 9-12, 15-18, 34, and 38-45

I find that Respondents are not required to provide the deposition of Mr. Quanhai Yang or respond to SI Group's Request for Production Nos. 9-12, 15-18, 34, and 38-45 regarding any Sino Legend products other than SL-1801 (including SL-1801LFP⁷), SL-1802, SL-1805, and SL-7015 because they are outside the scope of this Investigation. SI Group has specified that the rubber resins and processes for manufacturing the same at issue in this Investigation are SL-1801, SL-1802, SL-1805, and SL-7015. (Amended Complaint (December 18, 2012) at ¶¶ 114, 119.) In its Amended Complaint, SI Group specifies that Sino Legend's SL-1801 tackifier was made from {

} and that on information and belief, Sino Legend misappropriated SI

⁴ Respondents say that "It is undisputed that depositions are not permitted to be taken in mainland China, where Mr. Pu lives, and that the closest allowable location is Hong Kong." (Respondents Opp. at 3.)

⁵ SI Group says that Respondents produced 1,109 pages of documents on the day of the filing deadline for motion to compel, which was after the fact discovery cutoff. SI Group says it did not have the opportunity to thoroughly review the new production before the filing deadline. (Mot. at 5 n.1.)

⁶ Information relating to Mr. Pu's research and development may be the proper subject of a motion *in limine*.

⁷ See Order No. 36.

Group trade secrets through hiring Mr. Xu to develop SL-1801 and a “portfolio of additional resins corresponding to SI Group rubber resins, including SL-1802, SL-7015, and SL-1805.”

(*Id.*) SI Group also did not mention SL-6701 in its list of trade secrets in response to Interrogatory No. 6; in its answer to Interrogatory No. 10 seeking SI Group’s contentions as to misappropriation and use of trade secrets; or in SI Group’s list of products embodying the alleged trade secrets in response to Interrogatory No. 14. (Mot. Exs. D, X, W.) SI Group did not state any basis for claiming that a tall oil reinforcing resin, such as SL-2101, which appears to be a different category of chemical from rubber tackifier resins, is within the scope of this Investigation.

SI Group is unpersuasive when it argues that “evidence of the same parameters for manufacturing other SI Group products to make equivalent Sino Legend products would be probative evidence that possession of identical manufacturing process information for SP-1068 to make the product commercialized as SL-1801 was due to copying and not some other reason.” SI Group is also wide of the mark when it contends that the use of the same process parameters for other products makes it “more likely that the manufacturing parameters for SL-1801 were copied from SI Group.” (Mot. at 25-26.) SI Group has not identified any “documentary evidence” indicating that the Sino Legend copied the process parameters for making SI Group’s tall oil reinforcing resin SP-6701 during the same laboratory and pilot trials as Sino Legend allegedly copied SI Group’s process parameters for making SP-1068. Because the information SI Group seeks is not relevant and material, I deny SI Group’s motion to compel Respondents to produce documents concerning the acquisition of information related the development or conception of SL-2210 and SL-2101⁸. 19 C.F.R. § 210.37(b).

⁸ The information is also not likely to lead to the discovery of admissible evidence, and discovery closed in November 2012. See 19 C.F.R. § 210.27(b).

ORDER

Motion No. 849-015 is hereby GRANTED-IN-PART and DENIED-IN-PART.


Respondents shall provide the deposition of Mr. Qijun Pu in Hong Kong⁹ within 7 calendar days of this Order and produce any documents relating to Mr. Pu's experimental and developmental work that Respondents have not already produced¹⁰ within five calendar days of this Order in response to Request for Production Nos. 15-18, 38-45, 153, and 233.

The motion is otherwise DENIED.

Within seven (7) days of the date of this Order, 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. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.



Robert K. Rogers, Jr.
Administrative Law Judge

⁹ Respondents say that "It is undisputed that depositions are not permitted to be taken in mainland China, where Mr. Pu lives, and that the closest allowable location is Hong Kong." (Respondents Opp. at 3.)

¹⁰ SI Group says that Respondents produced 1,109 pages of documents on the day of the filing deadline for motion to compel, which was after the fact discovery cutoff. SI Group says it did not have the opportunity to thoroughly review the new production before the filing deadline. (Mot. at 5 n.1.)

**CERTAIN RUBBER RESINS AND PROCESSES FOR
MANUFACTURING SAME**

337-TA-849

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, John Shin, Esq., and the following parties as indicated, on **SEP 20 2013**



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
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On Behalf of Complainant SI Group, Inc.:

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For Respondents Sino Legend (Zhangjiagang) Chemical Co., Ltd.; Sino Legend Holding Group, Inc.; Sino Legend Holding Group Limited and Hong Kong Sino Legend Group, Ltd. (collectively "Sino Legend"); Red Avenue Chemical Corp. of America and Red Avenue Chemical Co. Ltd.; Red Avenue Group (collectively "Red Avenue"); Precision Measurement International LLC; Shanghai Lunsai International Trading Company; Thomas R. Crumlish, Jr.; Ning Zhang; Quanhai Yang:

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