

PUBLIC VERSION

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. 27: Denying Motion In Limine Of Respondents

In a filing dated November 4, 2010, respondents,¹ pursuant to Commission rule 210.15 and ground rule 3, moved in limine for an order precluding complainant Freescale Semiconductor Inc. (Freescale) from presenting any evidence regarding Freescale's use of "institutional knowledge" in designing or manufacturing any product Freescale relies upon to satisfy its domestic industry requirement for the U.S. Patent No. 7,199,306 ('306 Patent) because (1) Freescale only introduced information regarding the use of this alleged "institutional knowledge" after the close of fact discovery and (2) respondents are prejudiced since they are unable to adequately defend against these new positions that are addressed in complainant's recent expert reports. (Motion Docket No. 709-47.)

Complainant Freescale, in a filing dated November 15, 2010, argued that Motion No. 709-47 should be denied on the ground that Motion No. 709-47 is merely a desperate attempt to

¹ The filing identified the following counsel involved with the motion: Counsel for Panasonic Corporation, Panasonic Corporation of North America, Victor Company of Japan Limited, JVC Americas Corp., Best Buy.com, LLC, Best Buy Purchasing, LLC, Best Buy Stores, L.P., B & H Foto & Electronics Corp., Buy.com Inc., Liberty Media Corporation, QVC, Inc., Crutchfield Corporation, and Computer Nerds International, Inc.

prevent Freescale from using facts that respondent knew during discovery, yet could not develop to support its own case and that excluding such argument and evidence would severely prejudice Freescale in the unlikely event that respondents' intent requirement for claim 1 of the '306 patent is adopted..

The Commission Investigative Staff (staff), in a filing dated November 15, 2010, argued that respondents have not established that Freescale withheld any information and that, accordingly, the Motion in limine to exclude evidence and arguments relating to "institutional knowledge" should be denied and that to the extent that respondents point to allegedly inconsistent responses to deposition questions in support of their Motion (see, e.g., Supporting Br. at 8-9), the staff submits that any alleged inconsistency in a witness's testimony goes to his credibility.²

No other party responded to Motion No. 709-47.

Respondents' Motion No. 709-47 is premised on Freescale's alleged failure to disclose "institutional knowledge" in its responses to Panasonic's Interrogatory Nos. 479-481. (See Supporting Br. at 4 & n.5 (citing Freescale's responses to Interrogatory Nos. 479-481); see also id. at 6-7 & nn. 16-22 (same).) Panasonic's Interrogatory Nos. 479-481 all seek information directed to "the process" regarding Freescale's assembly of BGA substrate products including its "criteria" to determine or select the thickness of BGA substrates, the number of layers to be used in a substrate, and the overall length and width of a printed circuit board. (See Motion, Exhibit 3 at 5-6.) These interrogatories, however, do not call for the identification of, for example, how

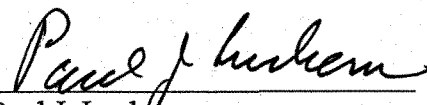
² The attorney adviser on November 12, 2010, informed counsel for respondents and the staff that motions in limine should be treated as motions with a six-business-day deadline for responses until closer to the hearing dates, at which point a party would need to call the attorney adviser to alert him that further discussion with the administrative law judge may be needed.

those "criteria" are selected. As the staff argued, respondents' reliance (see Supporting Br. at 5) on Certain Display Controllers and Products Containing the Same, Inv. No. 337-TA-491, Order No. 24 (Oct. 10, 2003), is misplaced because that case is distinguished on its facts and respondents' reliance (see Supporting Br. at 4-5) on Certain Printing and Imaging Devices and Components Thereof, Inv. No. 337-TA-690, Order No. 24 (Apr. 21, 2010), is not only distinguished on its facts but is also inapposite because that decision did not even rule on the issue of whether to exclude evidence.

In addition, with respect to respondents' apparent argument that the specific label "institutional knowledge" was not used in Freescale's prior discovery responses and deposition testimony, reference is made to testimony of Dr. Leo Higgins referenced at pages 2, 3, and 4 of complainant Freescale's opposition and the Higgins deposition and declaration referenced at page 5 of said opposition.

Based on the foregoing, Motion No. 709-47 is denied.

This order will be made public unless a bracketed confidential version is received no later than the close of business on December 3, 2010.


Paul J. Luckem
Chief Administrative Law Judge

Issued: November 23, 2010

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MEDIA PLAYERS, AND CAMERAS**

337-TA-709

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **Public Version Order** has been served by hand upon the Office of Unfair Import Investigations, and the following parties as indicated, on

July 28, 2011



James R. Holbein, Secretary
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