

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN ELECTRONIC DEVICES,
INCLUDING WIRELESS COMMUNICATION
DEVICES, TABLET COMPUTERS, MEDIA
PLAYERS, AND TELEVISIONS, AND
COMPONENTS THEREOF**

Inv. No. 337-TA-862

Order No. 61

Respondents Samsung Electronics America, Inc.; Samsung Telecommunications America LLC; and Samsung Electronics Co., Ltd. (collectively, “Samsung”) filed a motion to strike portions of the initial expert report of Dr. Vijay Madisetti submitted by complainants Ericsson, Inc. and Telefonaktiebolaget LM Ericsson (collectively, “Ericsson”). Motion Docket No. 862-94. Ericsson opposes the pending motion. The Commission Investigative Staff indicated via an email that it is not participating on issues pertaining to United States Patent No. 6,029,052 (“the ‘052 Patent”).¹

Samsung argues that the initial expert report of Dr. Vijay Madisetti adds “new infringement contentions that implicate *an entirely different technology*, namely WiFi technology, with respect to the ‘052 Patent, further expanding the number of accused products and components at issue in this already unwieldy case.” Mem. at 2 (emphasis in original). Samsung argues that “Ericsson attempts to add *26 additional accused products* that were never at issue with respect to the ‘052 Patent and *33 additional infringement theories* for existing

¹ Samsung filed a related motion for leave to file a reply. Motion Docket No. 862-104. Ericsson filed an opposition to this motion. The motion for leave is granted.

accused products—thus increasing the size of this already unwieldy case when its efforts should be focused on crystallizing the truly disputed issues for the court as the hearing draws near.” *Id.* at 3 (emphasis in original). It is argued that “Ericsson should not be permitted to wait until the eleventh hour to ambush Samsung with infringement theories that could have been disclosed well before the opening expert reports.” *Id.* at 4.

Ericsson argues that the pending motion should be denied for numerous reasons. Ericsson argues that it has already timely supplemented its interrogatory responses to include the information regarding the four chips at issue that Samsung complains was not initially disclosed, and thus Samsung’s motion is moot. Opp’n at 4-6. Ericsson argues that Samsung has not suffered any prejudice inasmuch as Samsung’s rebuttal expert report fully addresses the Madisetti report, and provides non-infringement assertions for the four chips at-issue. *Id.* at 12-14. Ericsson contends that Samsung did not disclose many of the products as to which it now seeks to preclude Ericsson from demonstrating infringement until May 28, 2013, over a month after the deadline to provide this information and long after the deadline for Ericsson to serve its initial contention interrogatory responses. *Id.* at 6-7. Ericsson argues that the four chips at issue do not present new infringement theories. *Id.* at 7-8. Ericsson argues that it would suffer severe prejudice if the undersigned grants Samsung’s motion, resulting in the exclusion of a significant portion of Ericsson’s infringement case. *Id.* at 14-15. Lastly, Ericsson argues that Samsung’s own contention interrogatory responses suffer from the same issues Samsung complains of, and that if the pending motion is granted, the parties will be forced into several more rounds of briefing motions to strike portions of expert reports. Opp’n to Reply at 7.

Based on the arguments and evidence submitted by the parties, it is determined that the motion to strike should be denied. It has not been shown that Ericsson failed to provide

contention interrogatory responses in a timely manner, according to the amended procedural schedule. Further, in the event that Samsung did suffer prejudice, it appears to have been cured, inasmuch as Samsung served the Rebuttal Expert Report of Dr. Steven Goldberg (“Goldberg Rebuttal Report”) on July 5, 2013. *See* Opp’n Ex. 11. The Goldberg Rebuttal Report purports to rebut the opinions expressed in the Madisetti report, including those opinions directed to the four chips at issue. *See* Opp’n Ex. 11, ¶¶ 306, 307, 308, 309, 492, 529, 531, 532, 534, 570, 572, 589, 591, 602.

Motion No. 862-94 is denied.



David P. Shaw
Administrative Law Judge

Issued: August 27, 2013

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **Order No. 61** has been served by hand upon the Commission Investigative Attorney, **Lisa Kattan, Esq.**, and the following parties as indicated, on AUG 28 2013.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
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