

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)

CERTAIN ADJUSTABLE KEYBOARD)
SUPPORT SYSTEMS AND)
COMPONENTS THEREOF)

Investigation No. 337-TA-670

Order No. 15: Denying Motion No. 670-6 To Quash Subpoenas
Ad Testificandum and Duces Tecum To Timm

On August 14, 2009, third party Derek Timm (Timm) filed a motion to quash the Subpoena Ad Testificandum To Third Party Derek Timm and the Subpoena Duces Tecum to Third Party Derek Timm (the Subpoenas) which issued on August 5, 2009 on behalf of complainant Humanscale Corporation (Humanscale) and were received by Timm on August 6, 2009. (Motion Docket No. 670-6.)

Complainant, in a response dated August 24, 2009, argued that Motion No. 670-6 should be denied. On August 25, 2009, complainant filed three exhibits referenced in said response, but that were omitted from the original submission, and represented that “[a]ll parties, however, were timely served yesterday with the complete Opposition, including exhibits.”

No other party responded to Motion No. 670-6.

Third party Tim, in support of Motion No. 670-6, argued that complainant “had an opportunity to seek the requested discovery from not only an alternative source, but a more appropriate source” viz. Mr. Randy Hudson (Hudson) who is a CompX employee; that the Subpoenas are procedurally and substantively defective; that the requested information as to the Pinnacle Workrite arm (Pinnacle Arm) is irrelevant as the Pinnacle Arm “is unlikely to ever form a Rule 11 basis for being accused of infringing any claim of Ex Parte Reexamination Certificate 5,292,097 C1...”; that complainant cannot show “any need to obtain the discovery from Mr.

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Timm”; and that Timm would face undue hardship if the Subpoenas are enforced. (Motion at 1-4.)

Complainant argued, in opposition, that Timm is a designer of an accused product at issue, viz., the “Pinnacle Workrite arm”; that Motion No. 670-6 “provides no viable reason why Humanscale should be precluded from obtaining such information and documents from Mr. Timm”; and that Motion No. 670-6 is a “misguided attempt to circumvent the subpoenas by offering his own opinion on whether the Pinnacle Workrite arm infringes Humanscale’s patent at issue.” (Opposition at 1-2.)

In determining whether a court should take the step of quashing a subpoena, the following three factors have been weighed: (1) the relevance of the discovery sought; (2) the need of the requesting party; and (3) the potential hardship to the party responding to the subpoena. Certain Display Controllers and Products Containing Same, Inv. No. 337-TA-491, Order No. 17, 2003 WL 22273570 at *2 (Sept. 26,2003).

With respect to relevance, at issue in this investigation is, inter alia, the alleged infringement of certain claims of U.S. Patent No. 5,292,097 by certain accused products, including the Pinnacle Arm. Complainant represents that Timm designed said Pinnacle Arm, a representation that Timm does not deny. (See Motion at 1 (“[Timm] understands that Humanscale was first provided discovery listing him along with a CompX employee as a designer of the Pinnacle Workrite arm... on March 30, 2009.”) The administrative law judge finds that discovery regarding a potentially infringing product may lead to admissible evidence. Moreover, a designer of a potentially infringing product is uniquely able to provide certain discovery, even if co-designers exist. In addition, the administrative law judge finds that the non-

infringement arguments provided by Timm in Motion No. 670-6, in the context of a motion to quash, merely highlight that there is, indeed, an issue which needs to be further developed. Thus, the administrative law judge finds the discovery sought is highly relevant to the investigation.


With respect to the need of the requesting party, as has been found, supra, Timm is a designer of an allegedly accused product, and thus his personal knowledge of the product at issue cannot be obtained from any other source. Moreover, complainant has alleged difficulties in locating Hudson, who complainant admits “was also involved in the design of the Pinnacle [Arm]” and who may no longer be an employee of respondents. (Compare Motion at 2 (alleging complainant never sought the deposition of “CompX employee Randy Hudson”) with Opposition at 5 (“Mr. Hudson is no longer Respondents’ employee.”).) Thus, the administrative law judge finds that complainant has need of the discovery sought.

Regarding the potential hardship to Timm, the “Matters On Which Examination Is Requested” in the Subpoena Ad Testificandum and the “Documents And Things Requested” in the Subpoena Duces Tecum each list topics related to the Pinnacle Arm. Thus, the discovery is inherently limited in both scope and time. As to the work Timm will have to perform to “locate, review, and produce all of his documents and things...,” there is no indication in Motion No. 670-6 as to the number of pages of documents involved. Moreover, compliance with any subpoena would involve performing a similar document review, and Timm does not point out in Motion No. 670-6 any special hardship with respect to his situation. Also, if Timm requires assistance in complying with the Subpoenas, he may request such aid from complainant, such as reimbursement for reasonable costs, etc.

Based on the foregoing, Motion No. 670-6 is denied. Hence, Timm is ordered to (1)

produce for inspection and copying documents and things regarding the subject matters set forth in Schedule A of the Subpoena Duces Tecum in issue at the offices of Adduci, Mastriani & Schaumberg, LLP, 1200 Seventeenth Street, NW, Washington, DC 20036 on or before the close of business on Wednesday, September 30, 2009 or at a date and time mutually agreed to by Timm and complainant; and (2) appear and testify regarding the subject matters set forth in Schedule A of the Subpoena Ad Testificandum in issue on or before October 2, 2009, or at a date, time and place mutually agreeable to Timm and complainant.

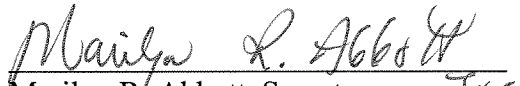
The administrative law judge is requesting this order be served via overnight mail.


Paul J. Luckern
Chief Administrative Law Judge

Issued: September 22, 2009

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Order** has been served by hand upon the Commission Investigative Attorney, Heidi E. Strain, Esq., and the following parties as indicated, on September 23, 2009.


Marilyn R. Abbott, Secretary *JRC*
U.S. International Trade Commission
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CERTAIN ADJUSTABLE KEYBOARD SUPPORT SYSTEMS
AND COMPONENTS THEREOF

Inv. No. 337-TA-670

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(PARTIES NEED NOT SERVE COPIES ON LEXIS OR WEST PUBLISHING)

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)

CERTAIN LIGHT EMITTING DIODE)
CHIPS, LASER DIODE CHIPS AND)
PRODUCTS CONTAINING SAME)

Investigation No. 337-TA-674

Order No. 14: Initial Determination Granting Motion No. 674-18 To Terminate The
Investigation As To Respondent Tyntek Based On A Proposed Consent
Order And Consent Order Stipulation

On July 1, 2009, respondent Tyntek Corporation (Tyntek) moved, pursuant to
Commission rule 210.21(c)(1)(ii), for an order terminating this investigation based upon an
attached Consent Order Stipulation and a proposed Consent Order (Exhibit A).¹ (Motion Docket
No. 674-18.)²

The staff, in a response dated July 13, 2009, argued that Motion No. 674-18 should be
granted.

No other party responded to Motion No. 674-18.

Commission rule 210.21(c)(1)(ii) expressly states that motions to terminate an
investigation may be filed unilaterally by one or more respondents. In view of said rule,
respondents have been terminated from investigations based on unilateral consent orders. See,
e.g., Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same,

¹ Exhibit B to the pending motion is identified as a "2003-2008 Customer List" (See first
page of said exhibit).

² Tyntek was named as a respondent in the notice of investigation dated March 31, 2009.

Inv. No. 337-TA-650, Order Nos. 5 and 6 (July 29, 2008 and August 27, 2008, respectively) (Coaxial Cables); Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same (III), Inv. No. 337-TA-630, Order No. 35 (September 22, 2008) (Chip Packages); Certain Self-Cleaning Litter Boxes and Components Thereof, Inv. No. 337-TA-625, Order No. 50 (August 25, 2008); Certain Spa Cover Lift Frames, Inv. No. 337-TA-639, Order No. 8 (September 26, 2008) (Spa Covers). Said Commission rule also requires that a motion include a public version of any motion for entry of a consent order that contains confidential business information. The instant motion complies with all of the requirements of this rule. Thus Tyntek has filed a public version of the motion. Also there are no agreements between the parties concerning the subject matter of the litigation (Motion at 3).

The motion to terminate the investigation as to Tyntek is based upon a “Consent Order Stipulation” signed by its president, Mr. Deng.³ In accordance with Commission rule 210.21(c)(1)(ii), the motion contains a copy of a Consent Order Stipulation and a proposed Consent Order. The administrative law judge finds that said Stipulation and proposed Consent Order comply with the requirements of Commission Rule 210.21(c)(3)(i). Thus the Stipulation and Consent Order state that the Commission has in rem jurisdiction over Tyntek’s accused products and personal jurisdiction over it. (Stipulation, ¶ 3; Consent Order, ¶ 2.) Tyntek also waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order. (Stipulation, ¶ 5; Consent Order at 4, ¶ 4.) Tyntek further agrees to cooperate with and will not seek to impede by litigation or other means the Commission’s efforts to gather

³ The staff noted that this information was provided in an electronic mail missive from Tekcore’s counsel on July 8, 2009.

information under Subpart I of the Commission's Rules of Practice and Procedure. (Stipulation, ¶ 6; Consent Order at 4, ¶ 3.) Said Stipulation also states that the enforcement, modification, or revocation of the Consent Order will be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure. (Stipulation, ¶ 7; Consent Order at 2, ¶ 6.)

The Stipulation and the proposed Consent Order state that the Consent Order shall not apply to any intellectual property right that has been adjudged invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and unreviewable. (Stipulation, ¶ 8; Consent Order at 4, ¶ 6; see Rule 210.21(c)(3)(i)(B)(1).) Tyntek further agrees that it will not seek to challenge the validity or enforceability of the claims at issue in this investigation in any administrative or judicial proceeding to enforce the Consent Order. (Stipulation, ¶ 9; Consent Order at 3, ¶ 8, at 4, ¶ 4; see Rule 210.21(c)(3)(i)(B)(2).)

The Stipulation and proposed Consent Order further include a statement that the Consent Order Stipulation and Consent Order do not constitute an admission that an unfair act has been committed and that the Consent Order is not a finding by the Commission that a violation of Section 337 by Tyntek has occurred. (Stipulation, ¶¶ 10-11; Consent Order at 3, ¶¶ 9-10, at 4, ¶ 8; see Rule 210.21(c)(3)(i)(c).)

The proposed Consent Order and Stipulation also provide that Tyntek will not sell for importation, or import into the United States, or knowingly aid and abet, encourage, participate in, or induce importation into the United States short-wavelength light emitting diode chips, laser diode chips or products containing same that infringe claims 10, 12, 13, or 16 of U.S. Patent No. 5,252,499 (the '499 patent) until the expiration of or a judicial finding of invalidity and/or

unenforceability of the '499 patent or until Tyntek's products are found to be not infringing or until Tyntek's products are licensed. (Stipulation, ¶ 4; Consent Order at 2, ¶ 3, at 3, ¶ 1.)

In ruling on a motion to terminate based on a consent order stipulation and consent order, Commission rule 210.50(b)(2) provides:

. . . the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

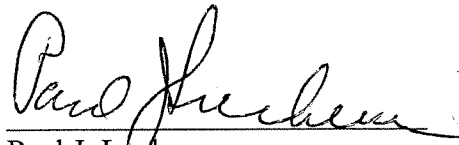
The administrative law judge knows of no reason why termination of this investigation on the basis of the Consent Order Stipulation and proposed Consent Order would be contrary to the public interest. The public interest favors settlement to avoid needless litigation and to conserve public and private resources. Certain Compact Disc and DVD Holders, Inv. No. 337-TA-482, Order No. 11, Initial Determination Terminating the Investigation as to Respondents Finest and Ponica at 3 (March 7, 2003); Certain Gel-Filled Wrist Rests and Products Containing Same, Inv. No. 337-TA-456, Order No. 16, Initial Determination Terminating the Investigation as to Respondent Allsop on the Basis of a Consent Order at 5 (May 21, 2002); Certain Enhanced DRAM Devices Containing Embedded Cache Memory Registers, Components Thereof, and Products Containing Same, Inv. No. 337-TA-421, Order No. 8, Initial Determination Terminating the Investigation on the Basis of Settlement and License Agreements at 4 (December 20, 1999). Indeed, the Administrative Procedure Act indicates that agencies should consider termination of disputes by the involved parties where "the public interest permit[s]." 5 U.S.C. §554(c)(1). Finally, the public interest favors the recognition of presumptively valid

patents and their exclusive rights. Certain Recombinantly Produced Hepatitis B Vaccines and Products Containing Same, Inv. No. 337-TA-408, Order No. 8, (Unreviewed) Initial Determination Terminating the Investigation Based on Settlement (August 17, 1998).

Based on the foregoing, Motion No. 674-18 is granted.

This initial determination, pursuant to Commission rule 210.42(c), is hereby CERTIFIED to the Commission. Pursuant to Commission rule 210.42(h)(3), this initial determination shall become the determination of the Commission within thirty (30) days after the date of service hereof unless the Commission grants a petition for review of this initial determination pursuant to Commission rule 210.43, or orders on its own motion a review of the initial determination or certain issues therein pursuant to Commission rule 210.44.

This order will be made public unless a bracketed confidential version is received no later than the close of business on September 8, 2009.


Paul J. Luckern
Chief Administrative Law Judge

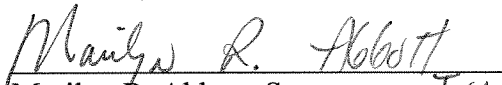
Issued: August 25, 2009

CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
CHIPS AND PRODUCTS CONTAINING SAME

Inv. No. 337-TA-674

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Public Version Order** has been served by hand upon the Commission Investigative Attorney, Juan Cockburn, Esq., and the following parties as indicated, on September 23, 2009.


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CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
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Inv. No. 337-TA-674

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CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
CHIPS AND PRODUCTS CONTAINING SAME

Inv. No. 337-TA-674

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CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
CHIPS AND PRODUCTS CONTAINING SAME

Inv. No. 337-TA-674

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CHIPS AND PRODUCTS CONTAINING SAME

Inv. No. 337-TA-674

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PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)	
)	
CERTAIN LIGHT EMITTING DIODE)	Investigation No. 337-TA-674
CHIPS, LASER DIODE CHIPS AND)	
PRODUCTS CONTAINING SAME)	

Order No. 15: Initial Determination Terminating Respondent Tekcore
From The Investigation

On July 2, 2009, respondent Tekcore Co., Ltd. (Tekcore) moved, pursuant to Rule 210.21(c)(1)(ii), for an order terminating this investigation as to it¹ based upon a unilateral Consent Order Stipulation and a proposed Consent Order.² (Motion Docket No. 674-19.)

The staff in a response dated July 13, 2009 supported Motion No. 674-19.

No other party responded to Motion No. 674-19.

Commission rule 210.21(c)(1)(ii) provides that a motion for termination based upon a consent order “may be filed by one or more respondents, and may be filed jointly with other parties in the investigation.” According to the comments to the Commission Rules adopted in 1994, although participation of the complainant in a consent order stipulation may be desired, it is not a requirement. 57 Fed. Reg. 52830, 52838 (Nov. 5, 1992). One purpose of the new Commission Rules was to “streamline the consent order process by eliminating the requirement

¹ Tekcore was named as a respondent in the notice of investigation which issued on March 31, 2009.

² Exhibit A to the pending motion is the proposed consent order while Exhibit B is a customer list.

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that the complainant and the Commission Investigative attorney must participate in the filing of a motion to terminate an investigation on the basis of a consent order.” Id.; see Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing the Same, ITC Inv. No. 337-TA-413, Order No. 25 (Jan. 13, 1999) (granting unilateral motion by respondents to terminate investigation based on upon entry of consent order). See also Certain Short-Wavelength Light Emitting Diodes, Laser Diodes and Products Containing Same, Inv. No. 337-TA-640, Order No. 71 (May 4, 2009); Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same, Inv. No. 337-TA-650, Order Nos. 5 and 6 (July 29, 2008 and August 27, 2008, respectively) (Coaxial Cables); Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same (III), Inv. No. 337-TA-630, Order No. 35 (September 22, 2008) (Chip Packages); Certain Self-Cleaning Litter Boxes and Components Thereof, Inv. No. 337-TA-625, Order No. 50 (August 25, 2008); Certain Spa Cover nLift Frames, Inv. No. 337-TA-639, Order No. 8 (September 26, 2008) (Spa Covers). In addition Commission rule 210.21(c)(1)(ii) requires that the motion include a public version of any motion for entry of a consent order that contains confidential business information. The administrative law judge finds that the instant motion complies with all of the requirements of this rule. Thus Tekcore has filed a public version of the motion.

The motion to terminate the investigation as to Tekcore is based upon a “Consent Order Stipulation” signed by its President, Mr. Lu.³ In accordance with Commission Rule 210.21(c)(1)(ii), the motion contains a copy of the Stipulation and a proposed Consent Order.

³ The staff noted that this information was provided in an electronic mail missive from Tekcore’s counsel on July 8, 2009.

The administrative law judge further finds that the Stipulation and proposed Consent Order comply with the requirements of Commission Rule 210.21(c)(3)(i). Thus the Stipulation and Consent Order state that the Commission has in rem jurisdiction over Tekcore's accused products and personal jurisdiction over it. (Stipulation, ¶ 3; Consent Order, ¶ 2.) Tekcore waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order. (Stipulation, ¶ 5; Consent Order at 4, ¶ 4.) Tekcore agrees to cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of the Commission's Rules of Practice and Procedure. (Stipulation, ¶ 6; Consent Order at 4, ¶ 3.) The Stipulation states that the enforcement, modification, or revocation of the Consent Order will be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure. (Stipulation, ¶ 7; Consent Order at 2, ¶ 6.)

The Stipulation and the proposed Consent Order further state that the Consent Order shall not apply to any intellectual property right that has been adjudged invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and unreviewable. (Stipulation, ¶ 8; Consent Order at 4, ¶ 6; see Rule 210.21(c)(3)(i)(B)(1).) Tekcore agrees that it will not seek to challenge the validity or enforceability of the claims at issue in this investigation in any administrative or judicial proceeding to enforce the Consent Order. (Stipulation, ¶ 9; Consent Order at 3, ¶ 8, at 4, ¶ 4; see Rule 210.21(c)(3)(i)(B)(2).)

The Stipulation and proposed Consent Order include a statement that the Consent Order Stipulation and Consent Order do not constitute an admission that an unfair act has been committed and that the Consent Order is not a finding by the Commission that a violation of

Section 337 by Tekcore has occurred. (Stipulation, ¶¶ 10-11; Consent Order at 3, ¶¶ 9-10, at 4, ¶ 8; see Rule 210.21(c)(3)(i)(c).)

The stipulation and proposed consent order further provide that Tekcore will not sell for importation, or import into the United States, or knowingly aid and abet, encourage, participate in, or induce importation into the United States short-wavelength light emitting diode chips, laser diode chips or products containing same that infringe claims 10, 12, 13, or 16 of U.S. Patent No. 5,252,499 (the '499 patent) until the expiration of or a judicial finding of invalidity and/or unenforceability of the '499 patent or until Tekcore's products are found to be not infringing or until Tekcore's products are licensed. (Stipulation, ¶ 4; Consent Order at 2, ¶ 3, at 3, ¶ 1.)

In ruling on a motion to terminate based on a stipulation and a proposed consent order, Commission rule 210.50(b)(2) provides:

... the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.


The administrative staff law judge knows of no reason why termination of this investigation on the basis of the Stipulation and proposed Consent Order would be contrary to the public interest. The public interest favors settlement to avoid needless litigation and to conserve public and private resources. Certain Compact Disc and DVD Holders, Inv. No. 337-TA-482, Order No. 11, Initial Determination Terminating the Investigation as to Respondents Finest and Ponica at 3 (March 7, 2003); Certain Gel-Filled Wrist Rests and Products Containing Same, Inv. No. 337-TA-456, Order No. 16, Initial Determination Terminating the Investigation as to Respondent

Allsop on the Basis of a Consent Order at 5 (May 21, 2002); Certain Enhanced DRAM Devices Containing Embedded Cache Memory Registers, Components Thereof, and Products Containing Same, Inv. No. 337-TA-421, Order No. 8, Initial Determination Terminating the Investigation on the Basis of Settlement and License Agreements at 4 (December 20, 1999). Indeed, the Administrative Procedure Act indicates that agencies should consider termination of disputes by the involved parties where “the public interest permit[s].” 5 U.S.C. §554(c)(1). Finally, the public interest favors the recognition of presumptively valid patents and their exclusive rights. Certain Recombinantly Produced Hepatitis B Vaccines and Products Containing Same, Inv. No. 337-TA-408, Order No. 8, (Unreviewed) Initial Determination Terminating the Investigation Based on Settlement (August 17, 1998).

Based on the foregoing, Motion No. 674-19 is granted.

This initial determination, pursuant to Commission rule 210.42(c), is hereby CERTIFIED to the Commission. Pursuant to Commission rule 210.42(h)(3), this initial determination shall become the determination of the Commission within thirty (30) days after the date of service hereof unless the Commission grants a petition for review of this initial determination pursuant to Commission rule 210.43, or orders on its own motion a review of the initial determination or certain issues therein pursuant to Commission rule 210.44.

This order will be made public unless a bracketed confidential version is received no later than September 8, 2009.



Paul J. Luckern
Chief Administrative Law Judge

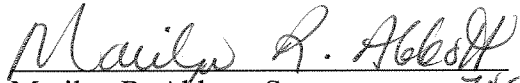
Issued: August 25, 2009

CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
CHIPS AND PRODUCTS CONTAINING SAME

Inv. No. 337-TA-674

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Public Version Order** has been served by hand upon the Commission Investigative Attorney, Juan Cockburn, Esq., and the following parties as indicated, on September 23, 2009.


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CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
CHIPS AND PRODUCTS CONTAINING SAME

Inv. No. 337-TA-674

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CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
CHIPS AND PRODUCTS CONTAINING SAME

Inv. No. 337-TA-674

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CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
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Inv. No. 337-TA-674

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CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
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Inv. No. 337-TA-674

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PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of)	
)	
CERTAIN LIGHT EMITTING DIODE)	Investigation No. 337-TA-674
CHIPS, LASER DIODE CHIPS AND)	
PRODUCTS CONTAINING SAME)	
)	

Order No. 16: Initial Determination Terminating Respondent Arima From The Investigation

On July 14, 2009, respondent Arima Optoelectronics Corp. (Arima) moved, pursuant to Commission rule 210.21(c)(1)(ii), for an order terminating this investigation as to it based upon an attached unilateral Consent Order Stipulation and proposed Consent Order.^{1 2} (Motion Docket No. 674-21.)

The staff, in a response dated July 24, 2009, argued that Motion No. 674-21 should be granted.

Complainant, in a response dated July 24, 2009, requested that if Arima be terminated from the investigation based on its Consent Order, Arima should be required to (i) waive any and all defenses with respect to the validity, enforceability, and infringement in an enforcement proceeding based on the importation, sale for importation, or sale after importation of Arima accused products

¹ This order is captioned under Investigation No. 337-TA-674 in view of Order No. 5 which issued on May 19, 2009. See fn. 2 of said Order No. 5. Order No. 4, which issued on May 19, 2009, consolidated Investigation Nos. 337-TA-640 and 337-TA-674. Arima was named as a respondent in Order No. 33 which issued on September 25, 2008 in the 640 investigation.

² Order No. 16, which issued on June 18, 2008, in the 640 investigation denied requests by complainant and settling respondents to withhold terms of settlement agreements from counsel of non-settling respondents who have subscribed to the protective order.

by it directly or by any respondent found in violation of section 337, and (ii) consent to a cease and desist order.

Commission rule 210.21(c)(1)(ii) provides that a motion for termination based upon a consent order "may be filed by one or more respondents, and may be filed jointly with other parties in the investigation." According to the comments to the Commission rules adopted in 1994, although participation of the complainant in a consent order stipulation may be desired, it is not a requirement. 57 Fed. Reg. 52830, 52838 (Nov. 5, 1992). One purpose of the new Commission rules was to "streamline the consent order process by eliminating the requirement that the complainant and the Commission Investigative attorney must participate in the filing of a motion to terminate an investigation on the basis of a consent order." Id.; see Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing the Same, ITC Inv. No. 337-TA-413, Order No. 25 (Jan. 13, 1999) (granting unilateral motion by respondents to terminate investigation based on upon entry of consent order). See also Certain Short-Wavelength Light Emitting Diodes, Laser Diodes and Products Containing Same, Inv. No. 337-TA-640, Order No. 71 (May 4, 2009); Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same, Inv. No. 337-TA-650, Order Nos. 5 and 6 (July 29, 2008 and August 27, 2008, respectively) (Coaxial Cables); Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same (III), Inv. No. 337-TA-630, Order No. 35 (September 22, 2008) (Chip Packages); Certain Self-Cleaning Litter Boxes and Components Thereof, Inv. No. 337-TA-625, Order No. 50 (August 25, 2008); Certain Spa Cover nLift Frames, Inv. No. 337-TA-639, Order No. 8 (September 26, 2008) (Spa Covers). When in compliance with the Commission's rules, a respondent's unilateral motion to terminate based on a consent order has

been granted even over a complainant's objections. See, e.g., Coaxial Cables, Order No. 5 at 1; Chip Packages, Order No. 35 at 5; Spa Covers, Order No. 8 at 3-4.

The motion to terminate the investigation as to Arima is based upon a "Consent Order Stipulation" signed by its president, Mr. Kuo. In accordance with Commission rule 210.21(c)(1)(ii), the motion contains a copy of the Stipulation and a proposed Consent Order. The administrative law judge finds that the Stipulation and proposed Consent Order comply with the requirements of Commission rule 210.21(c)(3)(i). Thus the Stipulation and Consent Order state that the Commission has in rem jurisdiction over Arima's accused products and personal jurisdiction over it. (Stipulation, ¶ 3; Consent Order, ¶ 2.) Arima also waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order. (Stipulation, ¶ 5; Consent Order at 4, ¶ 4.) Arima further agrees to cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of the Commission's Rules of Practice and Procedure. (Stipulation, ¶ 6; Consent Order at 4, ¶ 3.) The Stipulation states that the enforcement, modification, or revocation of the Consent Order will be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure. (Stipulation, ¶ 7; Consent Order at 2, ¶ 6.)

The Stipulation and the proposed Consent Order also states that the Consent Order shall not apply to any intellectual property right that has been adjudged invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and unreviewable. (Stipulation, ¶ 8; Consent Order at 4, ¶ 6; see Commission rule 210.21(c)(3)(i)(B)(1).) Arima further agrees that it will not seek to challenge the validity or enforceability of the patent claims at issue in this investigation in any

administrative or judicial proceeding to enforce the Consent Order. (Stipulation, ¶ 9; Consent Order at 3, ¶ 8, at 4, ¶ 4; see Commission rule 210.21(c)(3)(i)(B)(2).)

The Stipulation and proposed Consent Order include a statement that the Consent Order Stipulation and Consent Order do not constitute an admission that an unfair act has been committed and that the Consent Order is not a finding by the Commission that a violation of Section 337 by Arima has occurred. (Stipulation, ¶¶ 10-11; Consent Order at 3, ¶¶ 9-10, at 4, ¶ 8; see Rule 210.21(c)(3)(i)(C).)

The stipulation and proposed consent order the further provide that Arima will not sell for importation, or import into the United States, or knowingly aid and abet, encourage, participate in, or induce importation into the United States, light emitting diode chips, laser diode chips or products containing same or short wavelength light emitting diodes, laser diodes, or products containing same, that infringe claims 10, 12, 13, or 16 of U.S. Patent No. 5,252,499 (the '499 patent) until the expiration of or a judicial finding of invalidity and/or unenforceability of the '499 patent or until Arima's products are found to be not infringing or until Arima's products are licensed. (Stipulation, ¶ 4; Consent Order at 2, ¶ 3, at 3, ¶ 1.)

In ruling on a motion to terminate based on a stipulation and a proposed consent order, Commission rule 210.50(b)(2) provides:

... the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

The administrative staff law judge knows of no reason why termination of this investigation on

the basis of the Stipulation and proposed Consent Order would be contrary to the public interest. The public interest favors settlement to avoid needless litigation and to conserve public and private resources. Certain Compact Disc and DVD Holders, Inv. No. 337-TA-482, Order No. 11, Initial Determination Terminating the Investigation as to Respondents Finest and Ponica at 3 (March 7, 2003); Certain Gel-Filled Wrist Rests and Products Containing Same, Inv. No. 337-TA-456, Order No. 16, Initial Determination Terminating the Investigation as to Respondent Allsop on the Basis of a Consent Order at 5 (May 21, 2002); Certain Enhanced DRAM Devices Containing Embedded Cache Memory Registers, Components Thereof, and Products Containing Same, Inv. No. 337-TA-421, Order No. 8, Initial Determination Terminating the Investigation on the Basis of Settlement and License Agreements at 4 (December 20, 1999). Indeed, the Administrative Procedure Act indicates that agencies should consider termination of disputes by the involved parties where “the public interest permit[s].” 5 U.S.C. §554(c)(1). Finally, the public interest favors the recognition of presumptively valid patents and their exclusive rights. Certain Recombinantly Produced Hepatitis B Vaccines and Products Containing Same, Inv. No. 337-TA-408, Order No. 8, (Unreviewed) Initial Determination Terminating the Investigation Based on Settlement (August 17, 1998).

Complainant, in support of its opposition, argued {

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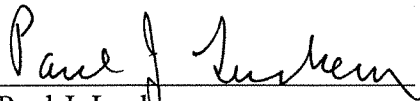
Complainant however has not argued that respondent Arima has not complied with Commission rules which relate to termination based upon a consent order. To the contrary the administrative law judge has found that respondent Arima has complied with said rules. The administrative law judge finds nothing in the Commission rules in granting a motion to terminate a respondent from an investigation based upon an unilateral Consent Order Stipulation and proposed Consent Order which provides for the conditions which complainant argued should be imposed.

Based on the foregoing, Motion No. 674-21 is granted.

This initial determination, pursuant to Commission rule 210.42(c), is hereby CERTIFIED to the Commission. Pursuant to Commission rule 210.42(h)(3), this initial determination shall

become the determination of the Commission within thirty (30) days after the date of service hereof unless the Commission grants a petition for review of this initial determination pursuant to Commission rule 210.43, or orders on its own motion a review of the initial determination or certain issues therein pursuant to Commission rule 210.44.

This order will be made public unless a confidential bracketed version is received no later than the close of business on September 8, 2009.


Paul J. Luckern
Chief Administrative Law Judge

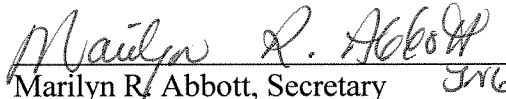
Issued: August 25, 2009

CERTAIN LIGHT EMITTING DIODE CHIPS, LASER DIODE
CHIPS AND PRODUCTS CONTAINING SAME

Inv. No. 337-TA-674

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Public Version Order** has been served by hand upon the Commission Investigative Attorney, Juan Cockburn, Esq., and the following parties as indicated, on September 23, 2009.


Marilyn R. Abbott, Secretary *JR*
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