

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN SEMICONDUCTOR DEVICES
HAVING LAYERED DUMMY FILL,
ELECTRONIC DEVICES, AND
COMPONENTS THEREOF**

Investigation No. 337-TA-1342

ORDER REMANDING THE INVESTIGATION

The Commission instituted this investigation on November 29, 2022, based on a complaint filed by Bell Semiconductor, LLC of Bethlehem, Pennsylvania (“Complainant”). 87 Fed. Reg. 73330-31 (Nov. 29, 2022). The complaint, as supplemented, alleged a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices having layered dummy fill, electronic devices, and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,396,760. *Id.* The notice of investigation named fifteen respondents. *Id.* The Office of Unfair Import Investigations (“OUII”) was also named as a party to the investigation. *Id.*

Twelve of the named respondents have been terminated from the investigation. Order No. 12 (Jan. 11, 2023), *unreviewed by* Comm’n Notice (Feb. 8, 2023), Order No. 20 (Mar. 14, 2023), *unreviewed by* Comm’n Notice (Apr. 3, 2023), and Order No. 21 (Mar. 28, 2023) *unreviewed by* Comm’n Notice (Apr. 21, 2023). The three remaining respondents are Omnivision Technologies, Inc., Skyworks Solutions, Inc., and Arlo Technologies, Inc. (the “Respondents”).

On May 8, 2023, Complainant filed a motion to terminate the investigation in its entirety as to the Respondents based on the withdrawal of its allegations (the “Motion”). In the Motion, Complainant noted the existence of an agreement with non-party Siemens Industry Software, Inc. (“Siemens”) that “fully resolves [Complainant]’s infringement allegations in this Investigation as to Respondents.” Motion at 3 n.1. On May 16, 2023, OUII filed a response in support of the motion. On May 18, 2023, Respondents filed a response to the motion supporting the termination of the investigation but arguing that: (1) Complainant should be required to file a copy of its agreement with Siemens; and (2) the record should contain certain allegations regarding Complainant’s conduct in the investigation.¹ On May 24, 2023, Complainant filed a reply brief addressing Respondents’ arguments.

On June 9, 2023, the presiding Chief Administrative Law Judge (“CALJ”) granted the Motion as an initial determination (“ID”) (Order No. 23) and terminated the investigation. Despite Complainant’s failure to file a copy of its settlement agreement with Siemens, the ID found that the Motion complied with the requirements of Commission Rule 210.21(a)(1), reading the rule to only require the submission of agreements “between the parties.” Order No. 23 at 2-3. The ID thus found that termination of the investigation was warranted and suspended the procedural schedule pending Commission review. *Id.* at 4. No party filed a petition for review of Order No. 23.

For the reasons discussed below, the Commission has determined on its own initiative to review Order No. 23, and on review, to vacate the ID withdrawing the complaint as to the three remaining respondents and terminating the investigation and to remand for further proceedings.

¹ These other allegations were not addressed in the ID. *See* Order No. 23 at 3.

Commission Rule 210.21(a)(1) provides for termination of an investigation by withdrawal of the complaint and requires that “if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion.” 19 C.F.R. § 210.21(a)(1). This language requires Complainant to file a copy of “any agreements concerning the subject matter of the investigation,” including the settlement agreement with non-party Siemens. Because Complainant failed to comply with this rule, termination of the investigation should not have been granted.

Requiring the filing of “any agreements concerning the subject matter of the investigation” under Commission Rule 210.21(a)(1) is consistent with the Commission’s stated reasons for adding this language to the rule in 2007. *See* 72 Fed. Reg. 72280, 72286 (Dec. 20, 2007). In its 2007 proposed rulemaking, the Commission asserted “a public policy interest in reviewing settlement agreements that form the basis for termination of an investigation” and stated a principle that “[t]he Commission’s consideration of the public interest should not be dependent upon a party’s choice to designate the termination as one based on withdrawal of the complaint or as one based on a settlement agreement.” *Id.* at 72286.

In *Certain Mobile Handset Devices and Related Touch Keyboard Software*, the presiding CALJ read Commission Rule 210.21(a)(1) to require the filing of “any agreements concerning the subject matter of the investigation,” explicitly finding that the rule “is not limited to agreements between the parties.” Inv. No. 337-TA-864, Order No. 14 (Jul. 30, 2013).² In

² The parties subsequently complied with the order by filing copies of the relevant settlement agreement, and the respondent was terminated from the investigation pursuant to Commission Rule 210.21(a)(1). *Certain Mobile Handset Devices and Related Touch Keyboard Software*, Inv. No. 337-TA-864, Order No. 16 (Aug. 20, 2013), *unreviewed by* Comm’n Notice (Sept. 16, 2013).

Certain Active Matrix OLED Display Devices and Components Thereof (“*Active Matrix OLED Display Devices*”), the Commission made a similar determination with respect to the “any supplemental agreements” language of Commission Rule 210.21(b)(1). Inv. No. 337-TA-1243, Comm’n Notice (Sept. 16, 2021). In that investigation, the presiding ALJ had excused the parties’ failure to file a properly redacted public version of a supplemental agreement between complainant and a non-party to a settlement agreement, reading Commission Rule 210.21(b)(1) to only require the filing of agreements “between the parties.” *Active Matrix OLED Display Devices*, Order No. 17 at 2 n.1 (Aug. 20, 2021). The Commission reviewed and remanded that determination to require the filing of a properly redacted copy of the supplemental agreement and/or an adequate justification for complainant’s redactions of the supplemental agreement, finding that Commission Rule 210.21(b)(1) requires the filing of “any supplemental agreements,” not merely agreements “between the parties.” *Active Matrix OLED Display Devices*, Comm’n Notice at 2-3.

Upon consideration of the matter, the Commission hereby ORDERS that:

1. Order No. 23 is vacated and the investigation is remanded to the Chief ALJ to assign a presiding ALJ for further proceedings consistent with the Commission’s determination. In particular, if the Complainant seeks to terminate the investigation pursuant to Commission Rule 210.21(a)(1) based on complaint withdrawal, it must file a copy of its agreement with non-party Siemens both in confidential and in redacted form.
2. The procedural schedule shall remain suspended unless otherwise ordered by the assigned ALJ.
3. Notice of this Order shall be served on the parties to the investigation.

By order of the Commission.

A handwritten signature in black ink, appearing to read 'Lisa R. Barton', written in a cursive style.

Lisa R. Barton
Secretary to the Commission

Issued: July 11, 2023