

**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

RECEIVED  
OFFICE OF THE SECRETARY  
U.S. INTERNATIONAL TRADE COMMISSION  
MAY 14 11 56 AM '09

Order No. 8: Initial Determination Granting Motion No. 674-7 To Terminate The Investigation As To Respondent Xiamen Sanan Based On Consent Order Stipulation And Proposed Consent Order

On May 11, 2009, respondent Xiamen Sanan Optoelectronics Technology Co., Ltd., (Xiamen Sanan) moved, pursuant to Commission rule 210.21(c)(ii), for an order terminating this investigation based upon an attached unilateral Consent Order Stipulation and proposed Consent Order. (Motion Docket No. 674-7.)

The staff, in a response dated May 21, 2009, argued that Motion No. 674-7 should be granted.

Complainant, in a response dated May 20, 2009, argued that respondent Xiamen Sanan be terminated from the investigation based on a revised proposed consent order submitted with complainant's response.

On May 28, 2009, respondent Xiamen Sanan moved to file an attached reply to complainant's response on the ground that said response contains "misstatements of fact and law and that Xiamen Sanan's list of customers included a typographical error which requires consent. (Motion Docket No. 674-12.) It was represented that the staff does not oppose said motion.

Commission rule 210.21(c)(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, 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). When in compliance with the Commission's rules, respondents' unilateral motions to terminate based on a consent order have 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 Xiamen Sanan is based upon a "Consent Order Stipulation" signed by the "Director of the CEO offices." In accordance with Commission rule 210.21(c)(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 administrative law judge finds that the Stipulation and Consent Order state that the Commission has in rem jurisdiction over Xiamen Sanan's accused products and personal jurisdiction over it. (Stipulation, ¶ 3; Consent Order, ¶ 2.) Xiamen Sanan waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order. (Stipulation, ¶ 5; Consent Order ¶ 2.) Xiamen Sanan

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 ¶ 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 6, ¶ 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, ¶ 7; see Commission rule 210.21(c)(3)(i)(B)(1). Xiamen Sanan 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, ¶ 4; see Commission rule 210.21(c)(3)(i)(B)(2).

The Stipulation and proposed Consent Order also 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 Xiamen Sanan has occurred. (Stipulation, ¶¶ 10-11; Consent Order, ¶¶ 9-10; see Commission rule 210.21(c)(3)(i)(c.)

Referring to substantive terms of the proposed Consent Order, said order provides that Xiamen Sanan 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 diodes, laser diodes or products containing same that infringe claims 10, 12, 13, or 16 of U.S. Patent No. 5,252,499 in issue (the '499 patent) until the expiration of or a judicial finding of invalidity and/or unenforceability of the '499 patent or until Xiamen Sanan's products are found to be not infringing or until Xiamen Sanan's products are licensed. (Stipulation, ¶ 4; Consent Order, ¶ 3.)

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).

Complainant, in its opposition, requested that the consent order stipulation and consent order should have a “common, quarterly reporting provision” which would insure compliance with the Consent Order. Respondent Xiamen Sanan however has stipulated that it will not sell for importation, import, or sell after importation in the United States light emitting diode chips, laser diode chips, or products containing same for the duration of the patent-in-issue, which will currently expire in October 2010. Respondent Xiamen Sanan in its reply further represented that it inaccurately identified{ } as one of its customers; that{ } is instead a supplier to Xiamen Sanan (Exhibit A to reply); that as shown in Exhibit A,{ }<sup>1</sup> that Xiamen Sanan does have a customer with the similar name of{ } which is located in Taiwan (Exhibit B to reply); that Xiamen Sanan generally tracks its customer’s name in Chinese, so it was unaware that it had identified the incorrect entity on its list of customers; and that in any event, Xiamen Sanan has not and does not import products into the United States and that, Xiamen Sanan agrees to abide by the terms of the Stipulated Consent Order attached to Motion No. 674-7, which affords complainant the same

---


<sup>1</sup> Respondent Xiamen Sanan represented that the precise quantity and value of the products sold has been redacted as irrelevant and that no other information has been redacted from the original document.

relief it would receive from the Commission. Moreover, the statute and Commission rules would control the investigation on issuance of the Consent Order by the Commission. Hence, complainant's request for a revised proposed consent order is denied. See Order No. 71 which issued in Inv. No. 337-TA-640 on May 4, 2009 and which denied a request by complainant for a reporting provision. (Non-review May 21, 2009).

Based on the foregoing, Motion No. 674-7 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.

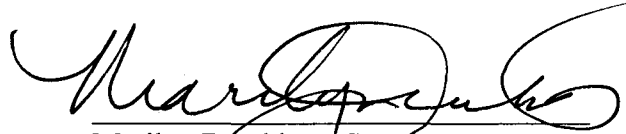
This order will be made public unless a bracketed confidential version is received no later than the close of business on July 10, 2009.

  
Paul J. Luckern  
Chief Administrative Law Judge

Issued: June 19, 2009

**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 July 15, 2009.



Marilyn R. Abbott, Secretary  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**COUNSEL FOR COMPLAINANT GERTRUDE  
NEUMARK ROTHSCHILD:**

Albert L. Jacobs, Jr., Esq.  
**ALBERT JACOBS LLP**  
900 Third Avenue, Suite 502  
New York, NY 10022  
P-212-508-7528  
F-212-508-7541

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**FOR RESPONDENT CHI MEI LIGHTING  
TECHNOLOGY CORPORATION:**

Jeffrey R. Whieldon, Esq.  
**FISH & RICHARDSON, P.C.**  
1425 K Street, NW, 11<sup>th</sup> Floor  
Washington, DC 20005  
P-202-783-5070  
F-202-783-2331

Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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

Inv. No. 337-TA-674

**FOR RESPONDENT VISUAL PHOTONICS EPITAXY  
CO., LTD.:**

Bryan G. Harrison, Esq.  
**MORRIS, MANNING & MARTIN, LLP**  
1600 Atlanta Financial Center  
3343 Peachtree Road, NE  
Atlanta, Georgia 30326  
P-404-233-7000  
F-404-365-9532

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**FOR RESPONDENT PIONEER CORPORATION:**

Eric J. Fues, Esq.  
**FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP**  
901 New York Avenue, NW  
Washington, DC 20001  
P-202-408-4000  
F-202-408-4400

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**FOR RESPONDENT SONY ERICSSON MOBILE  
COMMUNICATIONS AB:**

Kent R. Stevens, Esq.  
**CADWALADER, WICKERSHAM & TAFT LLP**  
700 Sixth Street, NW  
Washington, DC 20001  
P-202-862-2200  
F-202-862-2400

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**FOR RESPONDENT TOSHIBA CORPORATION:**

Ronald L. Yin, Esq.  
**DLA PIPER US LLP**  
2000 University Drive  
East Palo Alto, CA 94303

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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

Inv. No. 337-TA-674

**FOR RESPONDENT ARIMA OPTOELECTRONICS  
CORPORATION:**

Elizabeth A. Niemeyer, Esq.  
**FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP**  
901 New York Avenue, NW  
Washington, DC 20001  
P-202-408-4000  
F-202-408-4400

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**FOR RESPONDENT PANASONIC CORPORATION:**

Steven J. Routh, Esq.  
**ORRICK, HERRINGTON & SUTCLIFFE LLP**  
Columbia Center  
1152 15<sup>th</sup> Street, NW  
Washington, DC 20005-1706  
P-202-339-8400  
F-202-339-8500

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**FOR RESPONDENT TYNTEK CORPORATION;  
TEKCORE CORPORATION & XIAMEN SANAN  
OPTOELECTRONICS TECHNOLOGY:**

Elizabeth A. Niemeyer, Esq.  
**FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP**  
901 New York Avenue, NW  
Washington, DC 20001  
P-202-408-4000  
F-202-408-4400

- Via Hand Delivery  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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

Inv. No. 337-TA-674

**FOR RESPONDENT DALIAN LUMEI  
OPTOELECTRONICS CORPORATION:**

Jean C. Edwards, Esq.  
**AKERMAN SENTERFITT**  
8100 Boone Boulevard  
Suite 700  
Vienna, VA 22182-2683  
P-703-790-8750  
F-703-394-1399

- ~~Via Hand Delivery~~  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

**RESPONDENTS:**

Toyolite Technologies Corporation  
6F-2, No. 8 Ruiguang Road  
NeiHu, Taipei  
Taiwan

- ~~Via Hand Delivery~~  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

UniLite Corporation  
No. 165, Shan Ying Road  
Kwei Shan, Toayuan  
Hsien, Taiwan

- ~~Via Hand Delivery~~  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

Formosa Epitaxy Incorporation  
No. 99, Lung Yang 1 Road  
Lung Tan Hsiang  
Taoyuan 325,  
Taiwan

- ~~Via Hand Delivery~~  
 Via Overnight Mail  
 Via First Class Mail  
 Other: \_\_\_\_\_

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

Inv. No. 337-TA-674

**PUBLIC MAILING LIST**

Heather Hall  
LEXIS-NEXIS  
9443 Springboro Pike  
Miamisburg, OH 45342

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_

Kenneth Clair  
Thomson West  
1100 Thirteen Street, NW, Suite 200  
Washington, DC 20005

- Via Hand Delivery
- Via Overnight Mail
- Via First Class Mail
- Other: \_\_\_\_\_