

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN LIGHT-EMITTING DIODES
AND PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-785

ORDER NO. 23: DENYING SAMSUNG LED CO., LTD., SAMSUNG ELECTRONICS CO., LTD AND SAMSUNG ELECTRONICS AMERICA, INC.'S MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL NOTICE OF PRIOR ART

(April 4, 2012)

On February 23, 2012, Respondents Samsung LED Co., Ltd., Samsung LED America, Inc., and Samsung Electronics America, Inc. (collectively "Samsung") filed a motion for leave to file a Supplemental Notice of Prior Art. (Motion Docket No. 785-026.) On March 5, 2012, Complainant OSRAM AG ("OSRAM") filed an opposition to the motion.

Samsung argues that it should be permitted to add the article authored by Tadao Miura titled *High-intensity White Backlighting for LCD of Car Audios* ("Miura reference"), which was published in *Electric Engineering* in July 1996 to its Notice of Prior Art. Samsung argues good cause exists to permit this limited supplementation to its February 6 Notice of Prior Art and that there would be no prejudice to OSRAM if Samsung's motion is granted.

Samsung argues it provided prompt notice to OSRAM once it identified the Miura reference and produced a copy of the reference on February 12, 2012. Samsung argues it made diligent efforts to locate and identify prior art in advance of the February 6 deadline, provided timely notice of the prior art it identified, and incorporated by reference the prior art identified in the LG's Notice of Prior Art. Samsung argues that the Miura reference is relevant to the Luminescence Conversion Patents and will further assist the Commission in determining

whether the asserted claims are valid. Samsung argues that OSRAM is not prejudiced by the motion because it seeks to add one article and OSRAM has sufficient time for fact discovery and expert reports.

OSRAM contends that Samsung failed to meet its burden to show good cause. OSRAM argues it would be prejudiced if Samsung added the Miura reference. In particular, OSRAM argues Samsung's motion is part of a pattern of discovery delay that has prejudiced OSRAM's ability to evaluate the prior art, respond to Samsung's invalidity contentions, and prepare its case for trial. Additionally, OSRAM argues that Samsung fails to set forth specific facts establishing it could not have found the publicly available Miura reference. Specifically, OSRAM contends that this article was listed on the face of seven patents central to Samsung's inequitable conduct allegations. Additionally, OSRAM argues all of the Luminescence Conversion Patents cite the same Japanese Priority applications leading to these seven patents.

Having reviewed the parties' motion papers in support and in opposition to the present motion, I find for the reasons discussed in detail below that the Samsung's motion for leave to submit its supplemental notice of prior art should be DENIED.

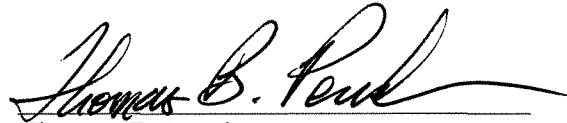
"The Notice of Prior Art may be amended or supplemented only upon written motion showing good cause." Ground Rule 7 (Feb. 12, 2012). "Note that good cause will not be found absent a showing that the requesting party has taken active steps and made a good faith effort to meet the deadline for which the extension is sought. Also note that lack of prejudice does not equate to good cause." Ground Rule 1.10.1 (Feb. 12, 2012).

Samsung fails to show good cause for supplementing its Notice of Prior Art. Samsung argues that it made diligent efforts to locate and identify prior art in advance of the February 6 deadline. (Mot. Mem. at 3.) However, Samsung fails to provide evidence that it took active

steps and made a good faith effort to meet the deadline. Instead, Samsung simply contends it was not able to find the reference before the deadline. (*Id.*) However, the record does not support this contention. In particular, OSRAM contends the Miura reference is cited on the face of at least seven related U.S. Patents central to Samsung's inequitable conduct allegations. (OSRAM Opp. at 6.) Therefore, the record shows that Samsung should have been able to identify the Miura reference before the deadline. Therefore, Samsung fails to provide sufficient evidence showing good cause to supplement its Notice of Prior Art.

Samsung's motion for leave to supplement the Notice of Prior Art is hereby DENIED.

SO ORDERED.


Thomas B. Pender
Administrative Law Judge

CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER NO. 23** has been served upon, **The Office of Unfair Import Investigations** and the following parties via first class mail and air mail where necessary on April 5, **2012**.



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**IN THE MATTER OF CERTAIN LIGHT-EMITTING DIODES
AND PRODUCTS CONTAINING SAME**

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