

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN ACTIVE MATRIX  
ORGANIC LIGHT-EMITTING DIODE  
DISPLAY PANELS AND MODULES  
FOR MOBILE DEVICES, AND  
COMPONENTS THEREOF

Inv. No. 337-TA-1351

**ORDER NO. 38: DENYING COMPLAINANT’S MOTION TO AMEND ORDER NO. 35**

(December 7, 2023)

On October 20, 2023, Complainant Samsung Display Co., Ltd. (“Complainant”) moved to strike portions of the invalidity expert reports of Dr. Daniel Foty and Dr. P. Morgan Pattison. I granted-in-part the motion. Order No. 35 (Nov. 16, 2023). On November 20, 2023, Complainant moved (1351-016) to amend Order No. 35. Respondent Mianyang BOE Optoelectronics Co., Ltd (“Mianyang BOE”) opposed the motion. *See* EDIS Doc. ID 809576 (“Opp.”). The Commission Investigative Staff (“Staff”) also opposed the motion. EDIS Doc. ID 809574 (“Staff Resp.”).

On December 4, 2023, Complainant moved (1351-019) for leave to file a reply to their motion. EDIS Doc. ID 809697. On December 5, 2023, Mianyang BOE opposed the motion. EDIS Doc. ID 809803. Complainant’s motion (1351-019) is hereby DENIED.

Complainant seeks to amend Section III of Order No. 35 to additionally strike paragraphs 669-688 of the invalidity expert report of Dr. Foty. Mot. at 1. According to Complainant, the motion “is necessitated by a typographical error in Complainant’s Motion to Strike Portions of Respondents’ Invalidity Expert Reports . . . that formed the basis of Order No. 35.” *Id.* Complainant explains that it did not identify paragraphs 669-688 in its motion, but that these

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paragraphs contain Dr. Foty's opinions concerning objective indicia of nonobviousness, which I agreed should be struck. *Id.*; *see also* Order No. 35 at 9 (explaining that Dr. Foty's opinions with respect to secondary considerations were not disclosed during discovery). Complainant argues that the order should be amended to strike these additional paragraphs. *Id.* at 2.

Mianyang BOE disagrees that Complainant's motion contained a typographical error. Opp. at 1. Mianyang BOE notes that Complainant limited its challenge to paragraphs 662-668 during its meet and confers and never sought to strike paragraphs 669-688. *Id.* at 1-2. Mianyang BOE further asserts that it "is prejudiced by the timing of Complainant's motion," as it has already "prepared and served witness statements that relied upon those previously unchallenged paragraphs." *Id.* at 2.

Staff likewise opposes Complainant's motion. Staff Resp. at 1. Staff explains that Complainant "is not seeking reconsideration of Order No. 35 and has not identified any basis that would justify reconsideration of Order No. 35." *Id.* at 2. Instead, Staff notes that Complainant "is seeking to amend a motion after the motion has been ruled on." *Id.* Staff is unaware of any Commission rule or legal authority that would allow Complainant to do so. *Id.*

Ground Rule 5.1 requires that parties meet and confer regarding the relief sought in a motion. There is no evidence in the record to establish that Complainant met this requirement with respect to paragraphs 669-688. Complainant does not identify any exchange with Respondents with respect to these paragraphs. *See generally* Mot. Indeed, the record suggests that Complainant did not inform Respondents that it sought to strike these paragraphs. In its initial exchange regarding the expert reports, Complainant identified only paragraphs 662-668 as paragraphs it would seek to strike. *See* Mot. Ex. 22 to Complainant's Motion to Strike (EDIS Doc. No. 808945) at 4. According to Mianyang BOE, Complainant likewise failed to identify these paragraphs during

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the meet and confer process. Opp. at 1-2. Complainant has therefore not established that Mianyang BOE had an opportunity to address whether these particular paragraphs should be struck. Accordingly, I decline to strike paragraphs 669-688 of the invalidity expert report of Dr. Foty.

Within seven days of the date of this document, the parties shall submit to the Office of the Administrative Law Judges a joint statement as to whether they seek to have any portion of this document deleted from the public version. If the parties do seek to have portions of this document deleted from the public version, they must submit to this office a copy of this document with red brackets indicating the portion or portions asserted to contain confidential business information. The submission should be emailed by the aforementioned date and need not be filed with the Commission Secretary.

**SO ORDERED.**



Bryan F. Moore  
Administrative Law Judge