

PUBLIC VERSION

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. 43: INITIAL DETERMINATION GRANTING JOINT MOTION TO TERMINATE AS TO RESPONDENTS MOBILESENTRIX AND MOBILE DEFENDERS ON THE BASIS OF CONSENT ORDER STIPULATION AND PROPOSED CONSENT ORDER AND TO LIMIT SERVICE OF BINDING SETTLEMENT TERM SHEET

(December 20, 2023)

On November 16, 2023, Complainant Samsung Display Co., Ltd. (“Complainant”) and Respondents Apt-Ability LLC d/b/a MobileSentry and Mobile Defenders, LLC (collectively, “MobileSentry”) moved (1351-015) to terminate the investigation as to MobileSentry based on a consent order stipulation, proposed consent order, and a binding settlement term sheet. EDIS Doc. ID 808821 (“Mot.”). Complainant and MobileSentry (hereinafter, “Moving Parties”) filed a revised public version of the motion on November 24, 2023. *See* EDIS Doc. ID 809203.

On November 27, 2023, Respondent Mianyang BOE Optoelectronics Co., Ltd (“Mianyang BOE”) opposed the motion. *See* EDIS Doc. ID 809829. The Commission Investigative Staff (“Staff”) also opposed the motion. EDIS Doc. ID 809895 (“Staff Resp.”). In Order No. 40, I directed the Moving Parties to confer regarding the redactions to the Binding Settlement Term Sheet. *Id.* at 1. I also gave the Moving Parties the opportunity to address Staff’s concerns regarding the Consent Order Stipulation and Proposed Consent Order. *Id.*

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The Moving Parties filed a joint submission on December 13, 2023. EDIS Doc. ID. 810325 (“Joint Submission”). In this submission, they explained that “Complainant served a confidential version of the binding settlement term sheet with fewer redactions on all parties.” Joint Submission at 1. The Moving Parties also filed declarations regarding their redactions, as well as revised versions of the consent order stipulation and proposed consent order. *Id.* at 2. After receiving the Joint Submission, Mianyang BOE stated that it “no longer opposes the joint motion to terminate.” EDIS Doc. ID 810535. Staff also filed a response, noting that the Consent Order Stipulation and Proposed Consent Order identify claims that are no longer in this Investigation, but stating that it otherwise does not oppose the motion to terminate. EDIS Doc. ID 810538 at 2 (“Staff Supp. Resp.”).¹

In accordance with Commission Rule 210.21(c)(1)(ii), MobileSentry has entered into a Consent Order Stipulation and a Proposed Consent Order, attached hereto as Exhibits 1 and 2. Commission Rule 210.21(c)(3) sets forth certain requirements for the contents of a consent order stipulation. *See* 19 C.F.R. § 210.21(c)(3). The Consent Order Stipulation submitted by the Moving Parties complies with the requirements of Commission Rule 210.21(c)(3). *See* Ex. 1; *see also* Staff Resp. at 3-5; Staff Supp. Resp. Specifically, MobileSentry agrees that upon entry of the Consent Order:

[MobileSentry] shall not sell for importation, import, or sell after importation the Accused Products, unless licensed by Complainant, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation except under express consent or license from Complainant.

¹ I understand Staff’s concern regarding the terminated claims. These claims were terminated after the moving parties filed their motion to terminate. *See* Order No. 39 (Dec. 7, 2023). It is therefore understandable that these claim terms remain in the agreed-upon documents. It is not unexpected that some claims will later be terminated that are included in previously agreed-upon consent orders and consent order stipulations.

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Upon entry of the Consent Order, [MobileSentry] will dispose of and will not sell or use within the United States or otherwise transfer (other than exportation out of the customs territory of the United States) any existing domestic inventories of the Accused Products except under the consent or license from Complainant.

Consent Order Stip. at ¶¶ 3-4. Pursuant to Commission Rule 210.21(c)(3)(i), MobileSentry also agrees to:

- (1) admit all jurisdictional facts;
- (2) waive all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order;
- (3) cooperate with and not seek to impede by litigation or other means the Commission's efforts to gather information under Subpart I of 19 C.F.R. Part 210; and
- (4) enforcement, modification, or revocation of the Consent Order will be carried out pursuant to Subpart I of 19 C.F.R. Part 210, incorporating by reference the Commission's rules of Practice and Procedure.

Id. at ¶¶ 1, 5-7

Because this is an intellectual property-based investigation and in accordance with Commission Rule 210.21(c)(3)(ii), the Consent Order Stipulation also states:

- (1) If the Asserted Claims of the Asserted Patents have expired or are held invalid or unenforceable by a court or agency of competent jurisdiction, or if the Accused Products² have been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, the Consent Order shall become null and void as to such expired, invalid, or unenforceable patents or as to the Accused Products;
- (2) [MobileSentry] will not seek to challenge the validity of the Asserted Patents in any administrative or judicial proceeding to enforce the Consent Order.

Id. at ¶¶ 9-10.

² The Consent Order Stipulation defines "Accused Products" as "certain AMOLED display panels and modules that are used as replacement displays for mobile devices, and components thereof" that infringe the asserted patents. Ex. 1 at 1.

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Additionally, Commission Rule 210.21(c)(4) sets forth certain requirements for the contents of the consent order. *See* 19 C.F.R. § 210.21(c)(4). The Proposed Consent Order submitted by the Moving Parties complies with the requirements of Commission Rule 210.21(c)(4). *See* Ex. 2; *see also* Staff Resp. at 5-8; Staff Supp. Resp.

Complainant and MobileSentry have also entered into a Binding Settlement Term Sheet. A copy of the agreement is attached hereto as Exhibit 3. Consistent with 19 C.F.R. § 210.21(b)(1) and 19 C.F.R. § 210.21(c), Complainant and MobileSentry confirm that “there are no other agreements, written or oral, express or implied, between them relating to the subject matter of this investigation.” Mot. at 2.

In any initial determination terminating an investigation by settlement agreement or consent order, the administrative law judge is directed to consider and make appropriate findings regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the United States economy, production of like or directly competitive articles in the United States, and United States consumers. 19 C.F.R. § 210.50(b)(2). The Moving Parties assert: “Termination as to [MobileSentry] will serve the public interest, which favors the early resolution of disputes to avoid needless litigation and to conserve public and private resources, and will promote administrative economy by obviating the need for a determination as to [MobileSentry].” Mot. at 2. Staff likewise states that it “is unaware of any public interest concern weighing against termination of the MobileSentry Respondents” and agrees with the movants that termination “is in the public interest, which favors settlement to avoid needless litigation and to conserve public resources.” Staff Resp. at 8. I agree and find that termination of the investigation as to MobileSentry does not impose any undue burdens on the public health and welfare, competitive

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conditions in the United States economy, production of like or directly competitive articles in the United States, or United States consumers.

Accordingly, it is my initial determination that the motion (1351-015) to terminate the investigation as to MobileSentry is GRANTED.³ This initial determination, along with supporting documentation, is hereby certified to the Commission.

Pursuant to Commission Rule 210.42(h), this initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to Commission Rule 210.43(a), or the Commission, pursuant to Commission Rule 210.44, orders, on its own motion, a review of the initial determination or certain issues herein. 19 C.F.R. § 210.42(d).

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.

³ The Moving Parties request that service of the confidential Binding Settlement Term Sheet be limited to the settling parties and Staff. Mot. at 1-2. Staff and Mianyang BOE do not oppose this request. Staff Supp. Resp. at 2; EDIS Doc. ID 810535. Pursuant to Commission Rule 210.21(b)(1), and there being no opposition, the Moving Parties' request is GRANTED, and service of the confidential version of the agreement will be limited to the Moving Parties and Staff.

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