

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC

In The Matter Of

CERTAIN SILICON MICROPHONE
PACKAGES AND PRODUCTS
CONTAINING SAME

337-TA-825

ORDER NO. 8: REGARDING RESPONDENTS' MOTIONS IN LIMINE NO. 5
(September 18, 2012)

On September 7, 2012, Analog Devices, Inc., (ADI) Amkor Technology, Inc. (Amkor), and Avnet, Inc. (Arnvet) (collectively, "Respondents") filed Motion in Limine No. 5 (MIL 5) to Exclude Certain Testimony and Argument on the Basis of Collateral Estoppel and Judicial Estoppel offered by Complainant Knowles Electronics, LLC (Knowles). (Motion Docket No. 825-019.)

On September 13, 2012, Complainant filed its Opposition to Motion in Limine No. 5. Complainant argues Respondent's motion is: (1) moot (since it is raised in an improper appendix to its brief in violation of Ground Rule 9.2); (2) untimely (since it was not raised before it filed its brief – improperly or not); and (3) inappropriate (since it requires resolution of the merits).

After examining and analyzing the submissions of the parties, I find that MIL 5 is an inappropriate attempt to have me decide issues that can only properly be decided as a Motion for Summary Determination or in a final Initial Determination after a hearing on the merits. More specifically, Respondent is really requesting I rule that Complainant may not assert the patents at issue because of collateral estoppel/*res judicata* or judicial estoppel, both of which require significant evidentiary and legal analysis not appropriate for a motion in limine.

I also consider it likely Respondents have not correctly applied the law with respect to issue preclusion. (*See Kearns v. General Motors Corp.*, 94 F.3d 1553 (Fed. Cir. 1996) and other USITC decisions cited by Complainant.) Hence, I recommend Respondents give serious consideration to their position concerning issue preclusion.

Respondent's MIL 5 is hereby DENIED.

SO ORDERED.

A handwritten signature in black ink, reading "Thomas B. Pender", with a long horizontal flourish extending to the right.

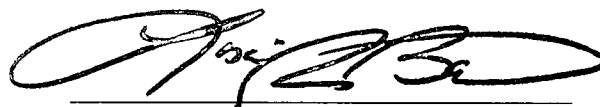
Thomas B. Pender
Administrative Law Judge

**IN THE MATTER OF CERTAIN SILICON MICROPHONE
PACKAGES AND PRODUCTS CONTAINING SAME**

337-TA-825

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO: 8** has been served upon the following parties via first class mail and air mail where necessary on September 18, 2012.



Lisa R. Barton, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, DC 20436

FOR COMPLAINANT KNOWLES ELECTRONICS LLC.:

David A. Garr, Esq.
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

**FOR RESPONDENTS ANALOG DEVICES, INC., AMKOR TECHNOLOGY, INC. &
AVNET INC.**

Steven Bauer, Esq.
PROSKAUER ROSE, LLP
One International Place
Boston, MA 02110

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

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 - 13th Street NW
Suite 200
Washington, DC 20005

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____