

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC

In The Matter Of

CERTAIN SILICON MICROPHONE
PACKAGES AND PRODUCTS
CONTAINING SAME

337-TA-825

**ORDER NO. 16: GRANTING-IN-PART AND DENYING-IN-PART COMPLAINANT'S
MOTION IN LIMINE TO EXCLUDE PORTIONS OF
RESPONDENTS' PRE-HEARING BRIEF FOR FAILIGN TO
COMPLY WITH GROUND RULE 9.2**

(September 27, 2012)

On September 7, 2012, Complainant Knowles ("Knowles") filed a motion to exclude portions of the pre-hearing brief of respondents Analog Devices, Inc., Avnet, Inc., and Amkor Technology, Inc. (collectively, "Respondents") for failing to comply with Ground Rule 9.2. (Motion Docket No. 825-015.) On September 13, 2012, Respondents filed a response stating that they oppose Knowles' motion. On September 18, 2012, Knowles filed Motion Docket No. 825-024, which is hereby DENIED, to file a reply to respond to Respondents' opposition. On September 20, 2012, Respondents filed an opposition to Knowles motion for leave to file a reply.

Knowles seeks to bar Respondents from relying upon portions of Respondents' pre-hearing brief that fail to comply with Ground Rule 9.2, and from pursuing the waived subject matter therein at the hearing in this investigation or in their post-hearing submissions. (Knowles Mot. at 1.) Specifically, Knowles argues that Respondents' brief improperly incorporated by reference arguments relating to the economic prong of the domestic industry analysis. (*Id.* at 2.) In addition, Knowles argues that Respondents improperly incorporated by reference arguments relating to anticipation and obviousness in the appendix marked Exhibit 1 of Respondents' brief. (*Id.* at 3)

Respondents argue that their brief provided “full and fair notice of each issue” that Respondents intend to advance at the hearing. (Respondents Opp. at 2.) Specifically, Respondents argue that their brief provided adequate notice of their arguments relating to the economic prong of the domestic industry requirement and set forth with particularity their contentions regarding the invalidity of the asserted claims. (*Id.* at 5, 9.) In addition, Respondents argue that Exhibit 1 contains no legal argument but is a factual compilation of citations to Respondents’ expert witness statements and the relevant prior art. (*Id.* at 7).

Having reviewed the parties’ filings both in support and opposition to the present motion, I find that Respondents have not sufficiently set forth with particularity their contentions on the issue of the domestic industry economic prong analysis within their brief. Pursuant to Ground Rule 9.2, Respondents’ contentions regarding the economic prong of the domestic industry are hereby deemed waived, except for those contentions of which the Respondents are not aware and could not have been aware in the exercise of reasonable diligence at the time of filing the pre-hearing brief. Accordingly, Respondents are barred both at the hearing and in their post-hearing submissions from advancing waived economic prong arguments. Thus, Knowles’ present motion *in limine* is GRANTED with regard to the economic prong of the domestic industry requirement.

With regard to Exhibit 1 in Respondents’ pre-hearing brief, I find such exhibit to be proper. Ground Rule 9.2 explicitly permits the attachment of up to 50 pages of “critical charts, figures, or other pertinent material” and to cite in briefs to “relevant exhibits, including witness statements.” Respondents have sufficiently given Knowles full and fair notice of each issue and argument regarding the invalidity theories Respondents will be advancing at the hearing. Accordingly, with regard to Exhibit 1, Knowles’ motion *in limine* is hereby DENIED.

For the forgoing reasons Motion Docket No. 825-015 is GRANTED-IN-PART and DENIED-IN-PART as set forth above.

SO ORDERED.

A handwritten signature in black ink, reading "Thomas B. Pender". The signature is written in a cursive style 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. 16** has been served upon the following parties via first class mail and air mail where necessary on

September 27, 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: _____