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Sent: Wednesday, July 02, 2014 3:03 PM
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Cc: StraightPathITC
Subject: Transfer of 892 Investigation document productions to EDVA actions

Counsel:

I write regarding the transfer of discovery from the 892 Investigation to the actions pending in the Eastern District of Virginia. To ease the discovery burden on the parties, Straight Path proposes that all discovery produced in the 892 Investigation by Straight Path, LG, Toshiba, and Vizio, including all CBI, be transferred to the EDVA actions. Such a transfer would avoid duplication of discovery already undertaken in the 892 Investigation, and save time and expense.

It appears that the most efficient way to transfer discovery to the district court is to have the parties stipulate that discovery from the 892 Investigation be used as discovery in the district court and have the parties retain the relevant document productions received during the 892 Investigation. See Steven Anzalone & Paul C. Goulet, *Use of International Trade Commission's Evidentiary Record in a District Court Proceeding: The Mechanism's Implication of Transfer of the Commission Record*, Vol. XIX, 337 Reporter 2, at 4 (Winter 2003); *Fuji Photo Film Co. v. Jazz Photo Corp.*, 394 F.3d 1368, 1371 (Fed. Cir. 2005) (“[I]n order to alleviate discovery burdens, both parties stipulated to the use of the record developed before the ITC.”).

Therefore, Straight Path proposes that the parties prepare and jointly file in the ITC and the district court stipulations that the parties may retain the documents and materials produced in the 892 Investigation for use in the EDVA actions (i.e., Straight Path will maintain the documents produced by LG, Toshiba, and Vizio and LG, Toshiba and Vizio will maintain the documents produced by Straight Path). Filing a stipulation in the ITC is necessary so that the parties can retain documents containing CBI for use in the district court in lieu of returning or destroying such material pursuant to Paragraph 14 of the ITC protective order. A similar stipulation should also be filed in the district court so that the ITC discovery may be used in the EDVA actions. Straight Path proposes that under the stipulations, the retained documents will receive the same level of protection specified in the ITC protective order until a protective order issues in the EDVA actions, at which point the ITC productions will receive the protections specified in the EDVA protective order. By stipulating that the parties to the EDVA actions may retain relevant document productions from the 892 Investigation, Straight Path believes the parties can streamline the discovery process and minimize any burden on the parties.

If the above procedure for transfer of discovery from the 892 Investigation is not acceptable to LG, Toshiba, and Vizio, Straight Path will assemble and return LG, Toshiba, and Vizio's ITC document production and, with your permission, destroy all other copies of LG, Toshiba, and Vizio CBI in Straight Path's possession. Straight Path will then make a request for production of the returned material as soon as discovery commences in the EDVA actions. To this end, Straight Path requests that, if LG, Toshiba, and Vizio elect to have the material produced in the 892 Investigation returned to them, LG, Toshiba, and Vizio retain the returned material as it will be the subject of a future Straight Path request for production.

Please let us know your position with respect to this proposal and when you are available for a meet and confer to discuss.

Best regards,

Nick

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