In the Matter of

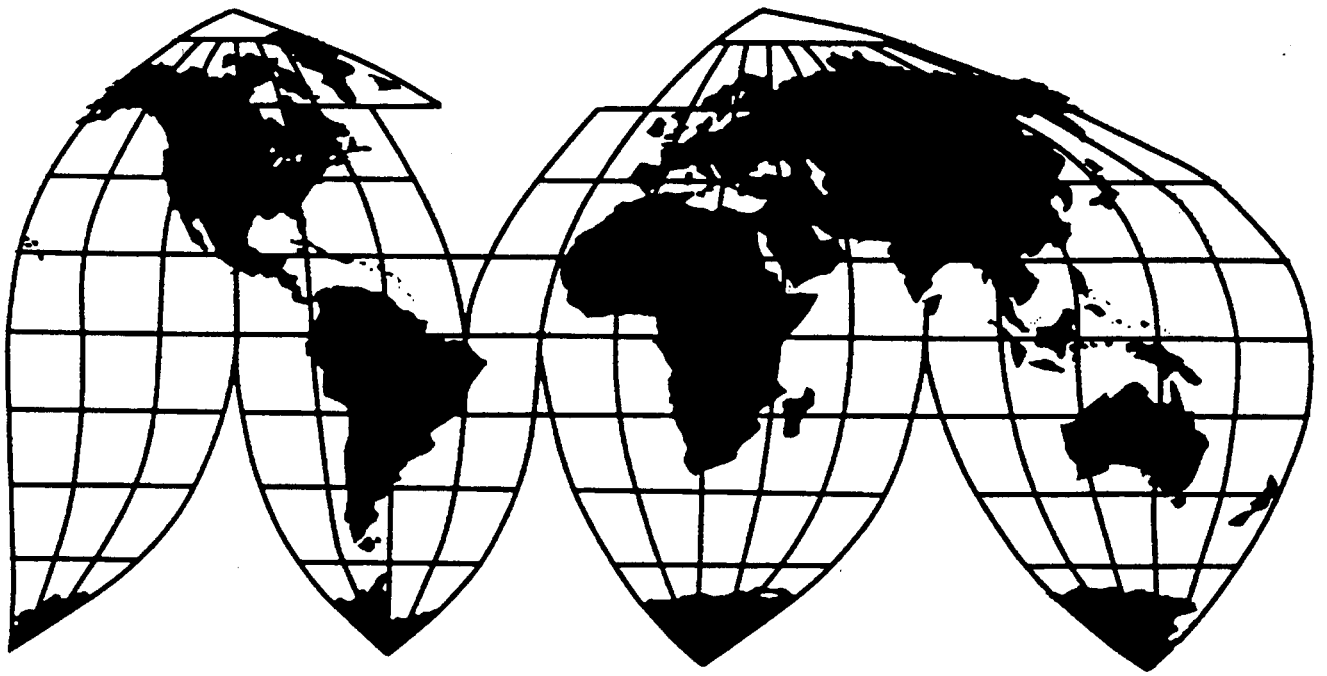
Certain Hardware Logic Emulation Systems and Components Thereof

Investigation No. 337-TA-383

SANCTIONS PROCEEDING

Publication 3154 **January 1999**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Lynn M. Bragg, Chairman
Marcia E. Miller, Vice Chairman
Carol T. Crawford
Jennifer A. Hillman
Stephen Koplan
Thelma J. Askey

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436

Certain Hardware Logic Emulation Systems and Components Thereof

Publication 3154

January 1999

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	Inv. No. 337-TA-383 Sanctions Proceeding and Bond Forfeiture/ Return Proceedings
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	

NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION TERMINATING SANCTIONS PROCEEDING AND BOND FORFEITURE/RETURN PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (Order No. 106) issued by the presiding administrative law judge terminating the sanctions proceeding and the bond forfeiture/return proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3152.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 *Fed. Reg.* 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). On July 8, 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("TEO ID") granting Quickturn's motion for temporary relief.

On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor. The Commission imposed a bond of 43 percent of entered value on respondents' importations and sales of emulation systems and components thereof during the remaining pendency of the investigation.

On September 24, 1997, the Commission determined to modify respondents' temporary relief bond in the investigation. Respondents' temporary relief bond remained at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as

defined in applicable U.S. Customs Service regulations. Respondents' temporary relief bond increased to 180 percent of the entered value of the subject imported articles if the entered value is not based on transaction value.

On July 31, 1997, the ALJ issued an initial determination ("Final ID"), finding that respondents had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), by infringing claims of all five of Quickturn's asserted patents. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

On October 2, 1997, the Commission determined not to review the Final ID, thereby finding that respondents violated section 337. On December 3, 1997, the Commission issued a limited exclusion order directed to Meta and a cease and desist order against domestic respondent Mentor. These final relief orders were referred to the President on December 4, 1997, and the 60-day Presidential review period expired on February 2, 1998, without the President taking action to disapprove them.

On July 31, 1997, the ALJ also issued Order No. 96 in the investigation finding that respondents and certain of their counsel have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Respondents petitioned for review of Order No. 96. On March 6, 1998, the Commission denied most aspects of respondents' petition and determined to adopt Order No. 96. The Commission ordered the ALJ to issue an ID within six months ruling on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission.

On February 26, 1998, Quickturn filed a motion pursuant to Commission rule 210.50(d) for forfeiture of the full amount of the bonds posted by respondents in connection with their activities during the temporary relief period and Presidential review period. On March 13, 1998, respondents filed an opposition to Quickturn's motion and a motion for return of their bonds. The Commission referred these motions to the ALJ for issuance of an ID within nine months.

While the monetary sanctions and bond forfeiture/return proceedings were pending before the ALJ, Quickturn and the respondents submitted a joint motion for determinations concerning the amount of monetary sanctions and the amount of respondents' bond forfeiture, based on a stipulation agreement between the parties. Based on this joint motion, on July 21, 1998, the ALJ issued Order No. 106, in which he approved the stipulated amounts and determined to terminate the monetary sanctions and bond forfeiture/return proceedings. None of the parties filed a petition for review of Order No. 106.

The Commission has determined not to review Order No. 106. In accordance with the stipulation agreement between the parties, the Commission will instruct the U.S. Customs Service to release respondents' bonds after the Commission has received written notification

from Quickturn that the amount stipulated for forfeiture of respondents' bonds has been paid to Quickturn.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42).

Copies of the public versions of Order No. 106 and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Donna R. Koehnke

Donna R. Koehnke
Secretary

Issued: August 21, 1998

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

DOCKET

In the Matter of	)	
	)	
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	)	Investigation No. 337-TA-383 (Sanctions Proceeding and Bond Forfeiture/Return Proceeding)

98 NOV 30 AM 10:28

Order No. 106: Initial Determination Terminating Sanctions Proceeding and Bond Forfeiture/Return Proceeding

On July 10, 1998 complainant Quickturn Design Systems, Inc. (Quickturn) and respondents Mentor Graphics Corporation and Meta Systems (Mentor) (movants) jointly moved for issuance of an initial determination concerning the precise dollar amounts related to each of the sanctions proceeding and of the bond forfeiture/return proceeding based on a "Stipulation Agreement Regarding Liquidated Damages" (Stipulation) executed by the movants and made effective as of July 9, 1998 (Exhibit A. to Motion) (Motion Docket No. 383-145).

Movants represented that on March 6, 1998, the Commission issued its order regarding Order No. 96 in which the Commission remanded this investigation to the administrative law judge for appropriate proceedings and for the issuance of an initial determination on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission, and to identify specifically those counsel liable for payment of the sanctions to be awarded; and that on April 28, 1998, the Commission referred to the administrative law judge complainant's Motion No. 383-141, filed on February 26, 1998, for forfeiture of respondents' bond posted during the temporary relief and presidential review

periods of this investigation, and respondents' Motion No. 383-142 filed on March 13, 1998, for return of those bonds. Movants argued that they wish to conserve resources by stipulating to the precise dollar amounts which the administrative law judge has been ordered to determine and accordingly have executed the Stipulation, in which they stipulate that (1) the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission shall for all purposes be found equal to $425,000.000, and (2) Quickturn's entitlement to forfeiture of the temporary relief bonds shall for all purposes be found equal to $425,000.00.[1] Hence movants requested the initial determination issue to that effect.

The staff, in a response dated July 20, 1998, argued that because the public interest favors expeditious proceedings and the conservation of resources that might otherwise be consumed in protracted sanctions proceedings,[2] and because Motion No. 383-145 including its Stipulation, will achieve the principal objectives of the sanctions and bond forfeiture proceedings, and will conserve litigant and Commission resources, it supports entry of a "recommended determination" adopting the stipulated sanction and bond forfeiture dollar

---

[1] Mentor Graphics Corporation and Meta Systems, in Motion No. 383-145, represented through counsel that no imports or other actions subject to bonding under the Commission's permanent relief orders have occurred, and thus no forfeiture amount is provided for any permanent relief bonds. (Motion No. 383-145 at 2-3 and n. 1).

[2] The staff noted that because the payment by the Mentor Graphics Corporation and Meta Systems of the stipulated sanctions to complainant is a condition precedent to their submission of any joint motion to terminate the sanctions proceedings, the Commission is assured that no further proceedings will be necessary to compel actual payment of the awarded sanctions.

values.[3] The staff represented that the underlying investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996 by Quickturn (61 Fed. Reg. 9486); that the products at issue were hardware logic emulation systems that are used in the semiconductor manufacturing industry to design and test the electronic circuits of semiconductor devices; that on July 8, 1996, the administrative law judge issued an initial determination (Order No. 34) granting the motion for temporary relief; and that on August 5, 1996, the Commission determined not to modify or vacate Order No. 34, issued a temporary limited exclusion order against respondents Mentor Graphics Corporation and Meta Systems and a temporary cease and desist order against Mentor Graphics Corporation and determined that a temporary relief bond should be 43 percent of the entered value of imported hardware logic emulation systems and components thereof.[4]

The staff that also represented that on July 31, 1997, the administrative law judge issued a final initial determination finding Mentor Graphics Corporation and Meta Systems in violation of Section 337 by infringement of all five of Quickturn's asserted patents; that on October 2, 1997, the Commission determined not to review said final initial determination;

---

[3] The staff noted that the Stipulation at Sec. 3(e) provides that no appeal will be lodged against a Commission determination adopting the stipulated sanctions and bond forfeiture dollar values although the Stipulation does not prohibit an appeal of the underlying award of monetary sanctions.

[4] The staff noted that on September 24, 1997, the Commission granted complainant's motion to modify the temporary relief bond by retaining the 43 percent bond when the entered value of the imported articles was appraised at transaction value, but increased the bond to 180 percent of the entered value when the articles are appraised at other than transaction value. Certain Hardware Logic Emulation Systems, Modification of Temporary Relief Exclusion Order, U.S.I.T.C. Pub. No. 3074 (Nov. 1997).

that on December 3, 1997, the Commission issued a permanent limited exclusion order against imported hardware logic emulation systems, and a cease and desist order directed to respondent Mentor Graphics Corporation; that on July 31, 1997, the administrative law judge also issued Order No. 96 finding that Mentor Graphics Corporation and Meta Systems had engaged in discovery abuses and abuse of process justifying the imposition of adverse inferences of fact and monetary sanctions; that on March 6, 1998, the Commission denied appeals of Order No. 96, except as to two identified motions, and remanded to the administrative law judge the issue of the precise dollar value of sanctions to be awarded to complainant; and that on April 28, 1998, the Commission also referred to the administrative law judge complainant's February 21, 1998 motion for forfeiture of bonds, and a March 13, 1998 cross motion for return of bonds.

It is argued by the staff that a primary objective of monetary sanctions for abuse of Commission discovery process is to deter future abuses and thus, in this investigation, an important goal in setting the amount of sanctions is that the dollar value of the sanctions should off-set any advantage Mentor Graphics Corporation and Meta Systems may have gained from the sanctioned discovery abuses; and that another goal is to compensate complainant for the costs it incurred in overcoming those abuses; that the fact that the dollar value of the sanctions was resolved by agreement between complainant and Mentor Graphics Corporation and Meta System indicates that the amount is appropriate, taking into consideration the parties' substantial incentive to avoid the expense of further proceedings; that while the Commission also indicated that the administrative law judge's initial determination should decide which, if any, attorneys should be liable for the payment of the sanctions to be awarded under the

parties' stipulation, none of counsel for Mentor Graphics Corporation and Meta Systems are held liable for the payment of sanctions, inasmuch as respondents Mentor Graphics Corporation and Meta Systems have assumed liability for payment of the stipulated sanctions value of $425,000.00 (Stipulation at ¶ 3(b)).[5]

The staff, under the heading "Dollar Value of Respondents' Bond Forfeiture," argued that the administrative law judge has been directed to issue, within nine months, an initial determination concerning complainant's motion for forfeiture of bonds and the cross motion for return of their bonds;[6] that the initial determination should decide whether the bonds should be forfeited, in whole or part, to complainant or returned to provider; that Motion No. 383-145 seeks a determination that complainant is entitled to forfeiture of the bond in the amount of $425,000 of Mentor Graphics Corporation and Meta Systems. (Joint Motion at 2; Stipulation at ¶ 3(c)); that the statutory purpose of requiring such bonds is to protect

---

[5] The staff noted that the assumption of the liability for payment of the sanctions award will save the Commission considerable resources in investigating and resolving the difficult issues of identifying specific individuals that would be held liable for payment if the matter was contested, and avoid the time and expense in actually assuring payment. Accordingly, the staff argued that it appears that the Commission's interest in assuring payment of its sanctions award will be met by a determination that Mentor Graphics Corporation and Meta Systems have assumed that liability. The staff further noted that while trial counsel for respondents Mentor Graphics Corporation and Meta Systems , viz., Brobeck Phleger & Harrison, LLP and all counsel from that firm who submitted a notice of appearance in the investigation, were also made parties to the remanded sanctions proceedings it does not appear they any further determinations with respect to those attorneys are necessary for disposition of this matter because the Commission will have no need to seek payment of the stipulated sanctions amount from those attorneys.

[6] Joint Motion No. 383-145 indicates that only the temporary relief bonds are at issue inasmuch as no importation or other actions subject to bond have taken place since the entry of the permanent relief orders. See n. 1 supra

complainant from any injury due to importations and sales of infringing goods during the pendency of the investigation (19 U.S.C. §1337(e)(1)); and that the stipulated forfeiture value will avoid a potentially costly and prolonged proceeding to determine the actual extent of injury complainant has sustained from importations and sales under bond, and will also obviate proceedings regarding the proper valuations of those importations and sales; and that the Stipulation provides that Mentor Graphics Corporation and Meta Systems shall directly pay the bond forfeiture amount to complainant as a condition precedent to termination of the investigation. Accordingly, the staff supported a determination that complainant is entitled to forfeiture of the bond in the amount of $425,000 (to be paid directly by respondents Mentor Graphics Corporation and Meta Systems to complainant).

In a response dated July 20, 1998 respondents Brobeck, Phleger & Harrison, Robert DeBerardine, and William L. Anthony (Brobeck) represented that Brobeck was unaware of and played no role in the negotiations that led up to Motion No. 383-145 and indeed Brobeck was (apparently inadvertently) left off the service list and was not timely served with a copy of Motion No. 383-145; that Motion No. 383-145, including the Stipulation, is entirely silent as to Brobeck; that because Brobeck has not engaged in any improper or sanctionable conduct, Brobeck does not agree that any sanctions are proper or appropriate but nevertheless understands that Mentor Graphics Corporation and Quickturn believe that ending the current sanctions and bonding proceedings would conserve the resources of the parties, the staff, and the Commission, and for that reason, Brobeck has agreed to end the current proceedings by setting an amount of the sanctions (subject to appeal regarding whether any sanctions should have been imposed at all) and the bond; that Brobeck understands that Motion No. 383-145,

including the Stipulation is not to be construed as an admission by any of the respondents (Mentor Graphics Corporation, Meta Systems, Brobeck, Phleger & Harrison, Robert DeBerardine, or William L. Anthony) that any of the respondents engaged in improper or sanctionable conduct; that with respect to the portions of Motion No. 383-145, including Stipulation, dealing with sanctions, it is Brobeck's understanding from reading said motion that Brobeck is not liable for any sanctions now or in the future; and that it is Brobeck's understanding from reading Motion No. 383-145, including the Stipulation that Mentor Graphics Corporation alone is responsible for the payment of any sanctions that may be ultimately affirmed upon appellate review.

Brobeck argued that, with respect to the portions of the Motion No. 383-145, including its Stipulation, dealing with bond issues, Brobeck is not a party to the bond proceeding and therefore has no opposition to those portions.

Complainant Quickturn and respondents Mentor Graphics Corporation and Meta Systems, as stated in their joint Motion No. 383-145, wish to conserve resources by stipulating to certain precise dollar amounts which the administrative law judge has been ordered by the Commission to determine. Brobeck, on the understanding that Mentor Graphics Corporation and Quickturn believes that ending the current sanctions and bonding proceedings would conserve the resources of the parties, the staff and the Commission, has agreed to the end of the current proceedings.

Referring to the dollar value of awarded sanctions the administrative law judge finds that

the stipulated sanctions amount of $425,000 is a substantial and appropriate sum.[7] It is apparent from the stipulation that complainant believes the amount of $425,000 is sufficient, in combination with the non-monetary sanctions, to account for those discovery abuses found in Order No. 96 and adopted by the Commission in its Order which issued on March 8, 1998.[8]

With respect to the dollar value of respondents' bond forfeiture, complainant's agreement to the stipulated bond forfeiture amount of $425,000 shows that complainant believes that amount is sufficient to protect it from any injury by any transactions of respondents Mentor Graphics Corporation and Meta Systems. On that basis the administrative law judge finds that complainant is entitled to forfeiture of the bond in the amount of $425,000 to be paid directly by respondents' Mentor Graphics Corporation and Meta Systems.

The administrative law judge further finds that termination of the two proceedings in issue based on the Stipulation would pose no threat to the public interest. Rather the public interest is favored by the private resolution of disputes because of the resultant conservation of time and resources. See Certain Telephonie Digital Added Main Line Systems, Components Thereof and Products Containing Same, Inv. No. 337-TA-400, Order No. 23 (an initial determination terminating the investigation) and Commission's notice not to review dated March 5, 1998.

---

[7] The staff noted that the stipulated monetary sanction of $425,000 is reasonably close to the $482,502 of costs and fees sought by complainant, citing Memorandum In Support of Complainant's Detailed Declarations Concerning the Precise Amount of Monetary Sanctions To be Awarded Against Respondents and Certain Ones of Their Counsel at Attachment 1 (April 21, 998).

[8] The staff, in a response dated March 28, 1998 in the sanctions proceeding, waived any claims for monetary sanctions.

Motion No. 383-145 is granted.

Movants have requested that any action on Motion No. 383-145 taken by the administrative law judge should be by initial determination. The staff however has requested that any action on Motion No. 383-145 should be by recommended determination. The Commission's order which issued March 6, 1998, in the sanctions proceeding ordered the issuance of an "initial determination" which shall be treated in the same manner as an initial determination issued pursuant to Commission rule 210.42(a)(1)(i).[9] Moreover the Commission's order, which issued April 29, 1998 in the bond forfeiture/return proceeding ordered the issuance of an initial determination which pursuant to rule 210.50(d) shall have a 45-day effective date and shall be subject to review under the provisions of rules 210.42 through 210.45.[10] Commission rules 210.42(d) and 210.42 (h)(2) also provide that the administrative law judge shall grant any motion for termination pursuant to Commission rule 210.21, by issuing an initial determination with a 30 day effective date. Accordingly in view of the Commission's orders dated March 6, 1998 and April 29, 1998 requiring issuance of initial determinations and Commission's rule 210.42(d) as well as the substance of Motion No. 383-145, and the responses to Motion No. 383-145 the administrative law judge is granting Motion No. 383-145 via an initial determination but with a 30-day effective date.

This initial determination is hereby CERTIFIED to the Commission, together with

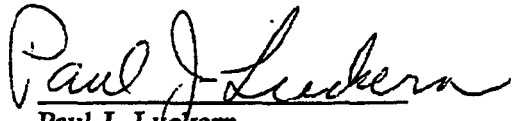
---

[9] Commission rule 210.42(a)(1)(i) relates to issues concerning violation of section 337.

[10] Commission rule 210.42(c) specifically recites that the administrative law judge shall grant a motion, for forfeiture or return of respondents' bonds pursuant to Commission rule 210.50(d), by issuing an initial determination.

supporting documentation. Pursuant to Commission rules 210.42(c) and 210.42(h)(3), this initial determination shall become the determination of the Commission within thirty (30) days after the date of service hereof unless the Commission, within 30 days after the date of such service, shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

This order will be made public unless a confidential bracketed version is received no later than the close of business on July 31, 1998.



Paul J. Luckern
Administrative Law Judge

Issued: July 21, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

DOCKET

In the Matter of	
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	Inv. No. 337-TA-383 Sanctions Proceeding

0076

RECEIVED
MAR 6 1998
OFFICE OF THE SECRETARY
U.S. INTL. TRADE COMMISSION

NOTICE OF COMMISSION DECISION REGARDING APPEALS OF ALJ ORDER NO. 96

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny appeals of ALJ Order No. 96 in the above-captioned investigation and to adopt that order with the two exceptions identified below.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3116.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 *Fed. Reg.* 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). After an 11-day evidentiary hearing, in April and May of 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("TEO ID") granting Quickturn's motion for temporary relief.

On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor. The Commission imposed a bond of 43 percent of entered value on respondents' importations and sales of emulation systems and components thereof during the remaining pendency of the investigation. The Commission set complainant's bond at $200,000.

On September 24, 1997, the Commission determined to modify respondents' temporary relief bond in the investigation. Respondents' temporary relief bond remained at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as defined in applicable U.S. Customs Service regulations. Respondents' temporary relief bond increased to 180 percent of the entered value of the subject imported articles if the

entered value does not equal transaction value as defined in applicable U.S. Customs Service regulations.

Beginning on April 7, 1997, the ALJ held a pre-hearing conference and a 14-day evidentiary hearing concerning permanent relief issues and several sanctions-related motions. Closing arguments were held on June 25 and 26, 1997. On July 31, 1997, the ALJ issued an initial determination ("Final ID"), finding that respondents had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), by infringing claims of all five of Quickturn's asserted patents. The ALJ found: (1) there has been importation and sale of the accused products; (2) Quickturn practices the patents in controversy and satisfies the domestic industry requirements of section 337; (3) the claims in issue are valid; (4) the accused products directly infringe the claims in issue; (5) components of the accused products contributorily infringe the claims in issue; and (6) respondents have induced infringement of the claims in issue. Based on these findings, the ALJ concluded there was a violation of section 337. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

On October 2, 1997, the Commission determined not to review the Final ID, thereby finding that respondents violated section 337. On December 3, 1997, the Commission issued a limited exclusion order directed to Meta and a cease and desist order against domestic respondent Mentor. The Commission set the bond for the 60-day Presidential review period at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as defined in applicable U.S. Customs Service regulations and at 180 percent of the entered value of the subject imported articles if the entered value does not equal transaction value as defined in applicable U.S. Customs Service regulations.

On July 31, 1997, the ALJ also issued Order No. 96 in the investigation finding that respondents and certain of their counsel have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission on October 2, 1997, specified the schedule for the filing of petitions appealing Order No. 96 and responses thereto. On August 13, 1997, August 14, 1997, October 2, 1997, and November 6, 1997, respondents filed petitions appealing Order No. 96. Quickturn filed a reply to respondents' petitions on November 14, 1997. The Commission investigative attorneys filed a reply to respondents' petitions on November 17, 1997.

Having examined the record in this investigation, including Order No. 96, the petitions appealing Order No. 96, and the responses thereto, the Commission determined to deny the appeals and to adopt Order No. 96 with the exception of those portions of Order No. 96 granting Motion Docket No. 383-116 and Motion Docket No. 383-124, both of which the Commission did not adopt. The Commission also determined to deny respondents' request for a hearing and their motion for leave to file a reply to Quickturn's and the Commission investigative attorneys' responses to respondents' petitions. In connection with the final disposition of this matter, the Commission has ordered the presiding administrative law judge

to issue an initial determination within six months ruling on the precise dollar amount of sanctions to be awarded pursuant to Order No. 96.

A Commission opinion in support of its determination will be issued shortly.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and sections 210.4, 210.25, 210.27, and 210.33 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.4, 210.25, 210.27, and 210.33).

Copies of the public versions of the Final ID, Order No. 96, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Donna R. Koehnke

Donna R. Koehnke
Secretary

Issued: March 6, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	Inv. No. 337-TA-383
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	Sanctions Proceeding

ORDER

On July 31, 1997, the presiding administrative law judge ("ALJ") issued Order No. 96 in the above-captioned investigation, finding that respondents Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta")(collectively "respondents") and certain of their counsel have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission on October 2, 1997, specified a schedule for the filing of petitions appealing Order No. 96 and responses thereto. On August 13, 1997, August 14, 1997, October 2, 1997, and November 6, 1997, respondents filed petitions appealing Order No. 96. Complainant, Quickturn Design Systems, Inc. ("Quickturn") filed a reply to respondents' petitions on November 14, 1997. The Commission investigative attorneys filed a reply to respondents' petitions on November 17, 1997.

Having examined the record in this investigation, including Order No. 96, the petitions appealing Order No. 96, and the responses thereto, the Commission has determined to deny all appeals of Order No. 96 and to adopt that order with the exception of those portions of Order No. 96 granting Motion Docket No. 124 and Motion Docket No. 116, both of which the Commission did not adopt. The Commission also has determined to deny respondents' request for a hearing and their motion for leave to file a reply to the responses of Quickturn and the Commission investigative attorneys to respondents' petitions.

Accordingly, it is hereby ORDERED THAT --

1. The appeals of Order No. 96 are denied and Order No. 96 is adopted by the Commission, except for those portions of Order No. 96 granting Motion Docket No. 383-116 and Motion Docket No. 383-124, both of which are not adopted by the Commission.

2. Respondents' request for a hearing regarding Order No. 96 is denied.

3. Respondents' motion for leave to file a reply to Quickturn's and the Commission investigative attorneys' responses to respondents' petitions is denied.

4. The investigation is remanded to the presiding administrative law judge, Judge Paul J. Luckern, for appropriate proceedings and the issuance of an initial

determination within six (6) months of the date of this Order.

5. The initial determination shall be treated by the Commission and the parties in the same manner as an initial determination issued pursuant to rule 210.42(a)(1)(i), 19 C.F.R. § 210.42(a)(1)(i).

6. The initial determination, which is to be consistent with Order No. 96, shall rule on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission and shall specifically identify those counsel liable for payment of the sanctions to be awarded.

7. The presiding administrative law judge may conduct a hearing, as he deems appropriate, in order to make an adequate record on the precise dollar amount of the sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission.

8. In the proceedings, it shall be the burden of Quickturn to demonstrate that the costs, including attorney's fees, to be awarded are within the scope of the sanctions imposed by those portions of Order No. 96 adopted by the Commission.

9. The following are the parties to the proceedings:

   (a) Quickturn Design Systems, Inc., 55 W. Trimble Road, San Jose, California, 95131, complainant;

   (b) Mentor Graphics Corporation, 8005 SW Boechman Road, Wilsonville, Oregon, 97070, respondent;

   (c) Meta Systems, 4 Rue Rene Razel 91400 Saclay, France, respondent;

   (d) The law firm of Brobeck, Phleger & Harrison, LLP, and all counsel from the law firm of Brobeck, Phleger & Harrison, LLP, who submitted a notice of appearance in the investigation, respondents; and

   (e) A Commission investigative attorney or attorneys to be designated by the Director, Office of Unfair Import Investigations.

10. The Secretary shall serve a copy of this Order upon each party of record in the investigation and shall publish notice of this Order in the *Federal Register*.

By order of the Commission.

Donna R. Koehnke

Donna R. Koehnke
Secretary

Issued: March 6, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of	
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	Inv. No. 337-TA-383

COMMISSION OPINION ON APPEALS OF ALJ ORDER NO. 96

I. INTRODUCTION

This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 *Fed. Reg.* 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). After an 11-day evidentiary hearing, in April and May of 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("TEO ID") granting Quickturn's motion for temporary relief. On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor.

Beginning on April 7, 1997, the ALJ held a pre-hearing conference and a 14-day evidentiary hearing concerning permanent relief issues and several sanctions-related motions ("PEO hearing"). Closing arguments were held on June 25 and 26, 1997. On July 31, 1997, the ALJ issued an initial determination ("Final ID"), finding that respondents had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), by infringing claims of all five of Quickturn's asserted patents. The ALJ found: (1) there has been importation and sale of the accused products; (2) Quickturn practices the patents in controversy and satisfies the domestic industry requirements of section 337; (3) the claims in issue are valid; (4) the accused products directly infringe the claims in issue; (4) components of the accused products contributorily infringe the claims in issue; and (5) respondents have induced infringement of the claims in issue. Based on these findings, the ALJ concluded there was a violation of section 337. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

On October 2, 1997, the Commission determined not to review the Final ID, thereby

finding that respondents violated section 337. On December 3, 1997, the Commission issued a limited exclusion order directed to Meta and a cease and desist order against domestic respondent Mentor.

On July 31, 1997, the ALJ issued an order, Order No. 96, consolidating decisions on several motions for sanctions filed by Quickturn. Specifically, as it pertains to this opinion, the ALJ ruled on three motions seeking monetary sanctions for alleged violation of ALJ orders and abuse of discovery process by respondents. The three motions are: (1) a motion for sanctions for (a) respondents' alleged abuse of discovery by withholding certain schematics for the accused imported device, (b) respondents' alleged failure to answer certain interrogatories accurately, and (c) respondents' alleged failure to conduct a reasonable inquiry into the accuracy of proffered evidence depicting the accused device (Motion Docket No. 383-117); (2) a motion for sanctions for respondents' attempted withdrawal from the permanent relief proceedings after joining issues for trial (Motion Docket No. 383-124); and (3) a motion for sanctions for respondents' assertion of allegedly frivolous non-infringement defenses based on inaccurate depictions of the accused device (Motion Docket No. 383-123). In addition, the ALJ ruled in Order No. 96 on a motion filed by Quickturn for reimbursement of its expenses incurred in connection with the delayed appearance of respondents' personnel at trial (Motion Docket No. 383-116), and a motion filed by respondents for reimbursement of expenses for those witnesses appearing at the hearing pursuant to subpoena (Motion Docket No. 383-115).[1]

Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission on October 2, 1997, specified the schedule for the filing of petitions appealing Order No. 96 and responses thereto. On August 13, 1997, August 14, 1997, October 2, 1997, and November 6, 1997, respondents filed petitions appealing Order No. 96.[2] Quickturn filed a reply to respondents' petitions on November 14, 1997. The

---

[1] In Order No. 96, the ALJ also issued evidentiary sanctions in the form of adverse findings of fact for respondents' failure to complete certain depositions. Motion Docket Nos. 383-110 and 383-114. In addition, the ALJ ruled on several motions relating to the evidentiary record in the investigation (*e.g.*, a motion *in limine*, motions regarding judicial notice). Motion Docket Nos. 383-103, 383-122, 383-127, 383-132, and 383-133.

[2] Thus, respondents filed four petitions seeking review of Order No. 96: (i) Petition Of Respondents Pursuant To 19 C.F.R. § 210.43 Requesting Commission Review Of The ALJ's Final Initial Determination And Of Certain Portions Of Order No. 96 ("Respondents' First Petition"), filed on August 13, 1997; (ii) Petition For Commission Review Of The Portion Of Order No. 96 Dealing With Non-Monetary Sanctions ("Respondents' Second Petition"), filed on August 14, 1997; (iii) Petition For Commission Review Of The Portions Of Order No. 96 Regarding Monetary Sanctions And Quickturn's Motion In Limine ("Respondents' Third Petition"), filed on October 2, 1997; and (iv) Respondents' Petition For Commission Review Of

(continued...)

Commission investigative attorneys ("IAs") filed a reply to respondents' petitions on November 17, 1997.

Having examined the record in this investigation, including Order No. 96, the petitions appealing Order No. 96, and the responses thereto, the Commission determined to deny the appeals and to adopt Order No. 96, with the exception of those portions of Order No. 96 granting Motion Docket No. 383-116 and Motion Docket No. 383-124.[3] The Commission did not adopt those portions of Order No. 96. The Commission also determined to deny respondents' request for a hearing and their motion for leave to file a reply to Quickturn's and the IAs' responses to respondents' petitions. In connection with final disposition of this matter, the Commission has ordered the presiding ALJ to issue an initial determination ("ID") within six months ruling on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission. This opinion explains the basis for the Commission's determinations respecting the two portions of Order No. 96 which it did not adopt, as well as the Commission's determinations regarding the procedural issues raised in connection with Order No. 96 and the appeals thereof.

II. Motion Docket No. 383-116

A. Factual Background

The ALJ issued subpoenas on March 26, 1997, ordering Meta's founders, Messrs. Federic Reblewski and Olivier Lepape, to appear at the PEO hearing on April 7, 1997, or at any other time agreed upon by counsel for all the parties. On March 31, 1997, respondents filed a motion to quash the subpoenas, which motion was denied in ALJ Order No. 87 on April 2, 1997. On April 4, 1997, respondents filed a motion for reconsideration of Order No. 87, which motion was briefed by the parties, argued at the PEO pre-hearing conference, and denied by the ALJ on April 7, 1997.[4] On that same date, respondents stated that they would not make either witness (*i.e.*, either Mr. Reblewski or Mr. Lepape) available pursuant to the ALJ's subpoenas.[5] Respondents subsequently took the position that neither witness was available until the week of April 21, 1997. As a result, on April 12, 1997, the PEO hearing

---

[2] (...continued)
Order No. 96 And Request For Hearing ("Respondents' Fourth Petition"), filed on November 6, 1997.

[3] Chairman Miller would not have adopted Order No. 96 with respect to one aspect of Motion Docket No. 383-117. *See* Additional and Dissenting Views of Chairman Marcia E. Miller accompanying this opinion.

[4] PEO Tr. at 68.

[5] PEO Tr. at 104-08.

was adjourned and reconvened on April 21, 1997.

On May 19, 1997, Quickturn moved for an order compelling respondents to reimburse Quickturn for expenses incurred resulting from Mr. Reblewski's and Mr. Lepape's "delayed compliance" with the ALJ's subpoenas.[6] Quickturn sought reimbursement for the transportation costs incurred by its attorneys and technical litigation team, including its expert witnesses, for the trip to and from Washington, D.C. during the delay in the PEO hearing. Quickturn argued that, under the Administrative Procedure Act ("APA"), the ALJ has the power to ensure the orderly conduct of the investigation and to compel the attendance of witnesses at any evidentiary hearing through the issuance of subpoenas.[7]

B. Order No. 96

The ALJ noted that the subpoenas in question ordered Messrs. Reblewski and Lepape to appear at the PEO hearing on April 7, 1997, and that "[n]o time other than that specified in the subpoenas was agreed upon by counsel for all the parties."[8] He then stated that respondents initially informed him that they were not going to comply with the subpoenas, but that "[s]ubsequently, Lepape did appear at the hearing for testimony subject to times convenient to Lepape and which involved adjournment of the hearing from April 12 to April 17".[9]

The ALJ found that at the PEO hearing on April 21, 1997, "Mr. Lepape testified that he had not learned of the subpoena until after April 7," although respondents' counsel had

---

[6] Motion Docket No. 383-116.

[7] Complainant Quickturn Design Systems Memorandum in Support of Motion for Reimbursement of Expenses at 11, citing 5 U.S.C. § 555(d). The APA at 5 U.S.C. § 555(d) provides:

> Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

[8] Order No. 96 at 105.

[9] *Id.* at 107-08, citing PEO Tr. at 104-108.

notice of it on March 26.[10] He also found that respondents' counsel represented that Mr. Reblewski, who did not appear until April 24, 1997, was not appearing in response to the subpoena.[11] Based on the foregoing, the ALJ found that there was not a good faith compliance with the subpoenas.[12] Accordingly, he granted Motion Docket No. 383-116 to the extent that the relief requested is not included in the relief granted with respect to Quickturn's Motion Docket No. 383-117.

C. The Parties' Comments[13]

Respondents appealed the ALJ's grant of Quickturn's Motion Docket No. 383-116, asserting that, "given the fact that Mr. Reblewski and Mr. Lepape work and reside in France, and given [Quickturn's] delay in seeking the testimony of these individuals by subpoena until just before the hearing on permanent relief," the ALJ's finding that there was not good faith compliance with the subpoenas is clearly erroneous.[14] Respondents stated that both Mr. Reblewski and Mr. Lepape "were required to travel long distances from France, on very short notice, in order to testify at the permanent relief hearing in response to the subpoenas."[15] They maintained that counsel offered to make Mr. Reblewski available on April 11, April 15-18, or the week of April 21, 1997, and that "Mr. Lepape, who is no longer employed by Meta, was made available for testimony the week of April 21, 1997."[16] They noted that all those dates were within the time originally scheduled for the PEO hearing.

Respondents argued that the ALJ's order is legally erroneous because there is no authority "that would require respondents to pay travel expenses for [Quickturn's] attorneys and experts."[17] They contended that, if a party contests an agency subpoena, the agency may invoke the powers of a U.S. district court to enforce the subpoena, and the district court may issue an order compelling the appearance of the witness within a reasonable time "under

---

[10] *Id.* at 108 (emphasis in original), citing PEO Tr. 1859.

[11] *Id.*

[12] *Id.*

[13] The IAs did not take a position on Motion Docket No. 383-116.

[14] Respondents' First Petition at 29-30.

[15] *Id.* at 29.

[16] *Id.*, citing PEO Tr. at 566.

[17] *Id.* at 30.

penalty of punishment for contempt in case of contumacious failure to comply."[18] According to respondents, an individual can be sanctioned "only if the ITC had to go to a District Court, the court ordered enforcement of the subpoena, and the individual refused to comply."[19] In this case, respondents noted, Messrs. Reblewski and Lepape both appeared before the Commission, without need for a district court enforcement action.

Finally, respondents challenged the ALJ's finding that Mr. Lepape's testimony during the week of April 21 "involved adjournment of the hearing from April 12 through April 17." They asserted that "[t]wo of those dates -- April 12 and 13 -- were weekend days, and [Quickturn] did in fact present evidence on April 12."[20] In addition, respondents' stated that counsel offered to make Mr. Reblewski available on April 15-18, "which would have resulted in a break of, at most, one or two days in the hearing."[21]

Quickturn argued that "respondents' intentional, repeated acts in flaunting [sic] the authority of the ALJ and the Commission in not responding to the subpoenas for Messrs. Reblewski and Lepape . . . was certainly a contumacious failure to comply as prohibited by [the APA]."[22] Quickturn contended that "[t]he record is clear that respondents never intended to comply with Order No. 87 and produce Messrs. Reblewski and Lepape on April 7, 1997."[23] It noted that Mr. Lepape testified on April 21, 1997, that he had not learned of the ALJ's subpoena until April 7, 1997. Quickturn also noted that the distance and time of travel for its personnel from California is approximately the same as it was for Messrs. Reblewski and Lepape from France, and that the witnesses were given at least 13 days notice of the need to appear at the PEO hearing (*i.e.*, from March 25, 1997, the date Quickturn gave notice of the subpoena request, to April 7, 1997, the subpoena response date).

Quickturn argued that "under respondents' reading of the ITC's rules with respect to the ALJ's ability to sanction contumacious non-compliance, such egregious behavior like that

---

[18] *Id.*

[19] *Id.*

[20] *Id.* at 31.

[21] *Id.*

[22] Complainant Quickturn's Opposition to Respondents' Petition for Commission Review (August 20, 1997)("Quickturn's ID Response") at 39.

[23] *Id.*

engaged in by respondents and their witnesses could never be punished."[24] According to Quickturn, Commission rule 210.33 "clearly provides the ALJ with the authority to punish parties for their similar failure to appear at a deposition in response to a subpoena."[25] In addition, Quickturn argued, under the APA, the ALJ "has the power to ensure orderly conduct of the investigation . . . and to compel the attendance of witnesses at an evidentiary hearing through the issuance of subpoenas."[26] It also asserted that "the ALJ and the Commission have the inherent authority to award such sanctions for respondents' clear defiance of the ALJ's authority."[27] Quickturn asserted that the monetary sanctions awarded by the ALJ "are appropriate in this case since the prejudice suffered from respondents' failure to comply resulted in the extra expense of bringing Quickturn's technical team to Washington, D.C."[28]

Finally, with regard to the dates that respondents offered to have Messrs. Reblewski and Lepape appear, Quickturn asserted that "the record is clear from both the transcript and underlying moving papers that such offers were plainly not sufficient, both in terms of the length of testimony needed, and the order of appearance of the two witnesses to meet the needs of Quickturn's presentation of evidence and the ALJ's receipt of that evidence."[29] Quickturn argued that it was "forced to change the order of presenting its case to accommodate two other witnesses, . . . and to reschedule one of its technical experts."[30] According to Quickturn, it is undisputed that both Messrs. Reblewski and Lepape "refused to appear in response to the subpoenas and only appeared at their convenience."[31] Based on the foregoing, Quickturn argued that it is entitled to receive from respondents the transportation costs of a second trip to Washington, D.C. by its technical litigation team.

D. Commission Determination

We conclude that the APA does not authorize the ALJ to order the reimbursement of the transportation costs incurred by Quickturn's litigation team for its second trip to Washington,

---

[24] *Id.* at 40.

[25] *Id.*

[26] *Id.*, citing 5 U.S.C. § 556(c)(5), 5 U.S.C. § 555(d).

[27] *Id.* at 40-41.

[28] *Id.* at 40.

[29] *Id.* at 41.

[30] *Id.*, citing PEO Tr. at 360.

[31] *Id.*

D.C. Specifically, 5 U.S.C. § 555(d), upon which the ALJ relied, states that if a party contests an administrative subpoena, the administrative agency may go to U.S. district court to enforce the subpoena, and the district court may issue an order compelling the appearance of the witness within a reasonable time "under penalty of punishment for contempt in case of contumacious failure to comply." Thus, under that provision, an individual may be sanctioned only by a district court in the event the individual refused to comply with a district court order enforcing an administrative subpoena. The provision in question does not provide the ALJ with independent authority to order monetary sanctions for a party's contumacious failure to comply with a subpoena. The ALJ's award of travel expenses as a sanction for respondents' failure to comply with his subpoenas therefore was not authorized by the APA. Accordingly, we have determined not to adopt the portion of Order No. 96 granting Motion Docket No. 383-116.

III. Motion Docket No. 383-124[32]

A. The Legal Framework

Rule 210.4(c) imposes upon persons making representations to the Commission and its ALJs the following duties:

> *Representations*. By presenting to the presiding administrative law judge or the Commission (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party or proposed party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances --
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceeding;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if

---

[32] Commissioner Crawford does not join this section of the opinion. Instead, she would have adopted the portion of Order No. 96 concerning Motion Docket No. 383-124.

> specifically so identified, are reasonably based on a lack of information or belief.[33]

The extent to which sanctions may be imposed for abuse of process under Commission rule 210.4 is controlled by case law surrounding Rule 11(b) of the Federal Rules of Civil Procedure.[34] The Advisory Committee Notes to the 1993 amendments to Rule 11 state that proper considerations regarding sanctions under Rule 11 include:

> whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; . . . [and] what effect it had on the litigation process in time or expense. . . .

With respect to sanctions under rule 210.4(c)(1), courts have held that under Rule 11 an "improper purpose" for discovery conduct is a purpose other than one to vindicate rights in court.[35] Whether a pleading or other paper is submitted for an "improper purpose" is determined based on an objective standard of reasonableness.[36] Thus, Commission rule 210.4(d) requires an ALJ, in ruling on a motion for sanctions, to --

> consider whether the representation or disputed portion thereof was objectively reasonable under the circumstances.[37]

---

[33] 19 C.F.R. §210.4(c).

[34] Commission rule 210.4(c) is based upon FRCP Rule 11(b). 59 Fed. Reg. 39022-25 (August 1, 1994).

[35] *See, e.g., In re Kunstler*, 914 F.2d 505, 518 (4th Cir. 1990) ("the purpose to vindicate rights in court must be central and sincere. . . . filing a motion or pleading without a sincere intent to pursue it will garner sanctions.").

[36] *Id.*

[37] Commission rule 210.4(d) also provides:

> A representation need not be frivolous in its entirety in order for the ALJ or the Commission to determine that paragraph (c) has been violated. If any portion of a representation is found to be false, frivolous, misleading, or otherwise in violation of paragraph (c), a sanction may be imposed.

Thus, sanctions can be imposed for a filing that contains both frivolous and nonfrivolous material. *See also, Patterson v. Aiken*, 841 F.2d 386, 387 (11th Cir. 1988).

The Commission has stated that for a pleading to be "objectively reasonable" --

> counsel has an independent duty to conduct a reasonable prefiling inquiry concerning the facts alleged.[38]

The Commission's rules incorporate a so-called "safe harbor" provision, which parallels a similar provision in FRCP 11(d)(1)(i). Specifically, Commission rule 210.4(d)(1) provides, in pertinent part, that a motion for sanctions under rule 210.4 --

> shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate paragraph (c). It shall be served as provided in paragraph (g) of this section, but shall not be filed with or presented to the presiding ALJ or the Commission unless, within seven days after service of the motion (or such other period as the ALJ or the Commission may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

The Commentary on Commission rule 210.4(d)(1)(i) states that:

> a movant must first serve the motion on the non-moving parties. The party or person against whom sanctions are being sought then has seven days (or such other time as the ALJ or the Commission may prescribe) to withdraw or correct the challenged paper, claim, defense, contention, allegation or denial. [footnote omitted] If withdrawal or correction does not occur within the prescribed period, the movant is then free to file the motion for sanctions.[39]

Courts have found that compliance with the safe harbor provision is a mandatory procedural prerequisite to a Rule 11 motion and that sanctions may not be granted if the movant fails to provide an allegedly offending party with an opportunity to withdraw or correct the challenged subject matter.[40]

---

[38] *Certain Self-Inflating Mattresses*, Inv. No. 337-TA-302, Recommended Determination (March 14, 1991); *Certain Concealed Cabinet Hinges and Mounting Plates*, Inv. No. 337-TA-289, Comm. Op. at 17 (June 15, 1989).

[39] 59 Fed. Reg. 39020, 39023 (August 1, 1994).

[40] *See, e.g., Elliot v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995); *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1328 (2d Cir. 1995); 2 James Wm. Moore Et. Al., Moore's Federal Practice § 11.22[1][b] (3d ed. 1997).

B. Factual Background

On March 25, 1997, respondents filed their Prehearing Statement prior to the PEO hearing. In their Prehearing Statement, respondents stated that although "the claims at issue are invalid" and none of their products infringe any of the claims in issue, they had "no need to challenge, and will not challenge," patents and claims that were not in issue in the TEO hearing. On May 19, 1997, Quickturn filed a motion for sanctions under rule 210.4 regarding what it described as respondents' "Attempted Withdrawal from the PEO Hearing," based on respondents' Prehearing Statement and their posture throughout the PEO hearing.[41] On May 20, 1997, respondents filed a motion to strike Quickturn's Motion Docket No. 383-119 because Quickturn had failed to comply with the provision of rule 210.4 requiring that persons against whom sanctions are sought be given a seven-day safe harbor period after service of a motion for sanctions in which to withdraw or correct any allegedly improper papers.[42] Quickturn withdrew Motion Docket No. 383-119 in light of respondents' motion to strike.[43]

On May 27, 1997, respondents filed a pleading entitled "Withdrawal of Material Pursuant to Rule 210.4(d)(1)(i)" in which they stated that they believed that their Prehearing Statement was "an absolutely accurate statement of respondents' position as of the time it was filed" and that it "was in full compliance with rule 210.4."[44] Nevertheless, respondents withdrew the statements from the Prehearing Statement that were challenged in Quickturn's May 19, 1997, motion for sanctions.[45] On May 29, 1997, Quickturn filed a renewed motion for sanctions in which it alleged that sanctions are warranted because respondents had filed their Prehearing Statement, which put into issue at the PEO hearing the question of whether Quickturn's patents in issue are valid but failed to submit any evidence in support of that claim.[46] Quickturn alleged that it incurred considerable expense in preparing its case for the PEO hearing in the face of respondents' position regarding validity.

C. Order No. 96

The ALJ granted Motion Docket No. 383-124 in part. Specifically, the ALJ found that respondents engaged in abuse of process in violation of rule 210.4 by asserting at the PEO trial

---

[41] Motion Docket No. 383-119.

[42] 19 C.F.R. § 210.4(d)(1)(i).

[43] *See* Order No. 90.

[44] Motion Docket No. 383-122.

[45] *Id.* at 4.

[46] Motion Docket No. 383-124.

their patent invalidity defenses, for which they bore the burden of proof, without submitting supporting evidence or argument.[47] He found that respondents' invalidity defenses were asserted at the PEO trial "without a sincere intent to pursue them, but rather were based on a tactical decision to delay and needlessly increase the cost of the investigation to Quickturn."[48] Specifically, the ALJ found that respondents "(1) continued to contest the validity and infringement of all claims in issue, with particular emphasis on claims that were in issue in the TEO hearing, (2) refused to remove the contentions during the PEO hearing, while simultaneously refusing to offer evidence (or moving to 'strike and withdraw' any evidence offered), thus forcing Quickturn to meet those contentions, and (3) despite repeated questions from the bench, requests from Quickturn's counsel, and the service of a motion for rule 210.4 sanctions, continued in their refusal to remove those contentions."[49] The ALJ noted that Commission rule 210.4(c)(3) "unambiguously requires that claims or defenses be supported by evidence."[50] He found that respondents' course of conduct was an abuse of the Commission's discovery process in violation of rule 210.4(d).

The ALJ also noted that the Advisory Committee Notes to the 1993 Amendments to Rule 11 state that:

> a litigant's obligations . . . are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit. For example, an attorney who during a pretrial conference insists on a claim or defense should be viewed as "presenting to the court" that contention and would be subject to the obligations of subdivision (b) [of FRCP 11] measured as of that time.[51]

The ALJ stated that on April 11, 1997, respondents' counsel "adamantly refused to withdraw their affirmative defenses of invalidity, stating '[o]f course we will not stipulate to infringement and validity because we don't infringe and the patents are invalid.'"[52] The ALJ considered that refusal to be a reaffirmation and later advocacy of the invalidity allegation

---

[47] Order No. 96 at 91-92.

[48] *Id.* at 100.

[49] *Id.* at 92-93 (emphasis in original).

[50] *Id.* at 99, citing Commission rule 210.4(c).

[51] *Id.* at 96 (emphasis in original).

[52] *Id.* at 96-97.

contained in respondents' answer to the complaint.[53]

The ALJ found that respondents' continued advocacy of their affirmative defense of patent invalidity was for an objectively "improper purpose" prohibited by Commission rule 210.4(c)(1). He found that respondents' continued advocacy of their invalidity defense was "taken with an admittedly tactical purpose in mind."[54] In particular, the ALJ found that respondents' intent was not to succeed in the investigation, but rather was to force Quickturn and the IAs to expend resources in order to mount a defense to respondents' contentions. The ALJ found that "[f]rom an objective standpoint, . . . the sole purpose of this course of action was to put [Quickturn] and the [IAs] to the costs of refuting respondents' defense, while attempting to delay a decision by the administrative law judge and the Commission, . . . that the patents in issue were either valid or invalid."[55] He found that respondents' invalidity defense in fact "had the inevitable (and intended) result of causing 'unnecessary delay [and] needless increase in the cost of the investigation.'"[56]

The ALJ further found that "the minimum sanction sufficient to deter repetition of such conduct or comparable conduct by others similarly situated is the payment to Quickturn of reasonable attorney's fees, and other expenses incurred, and to the [IAs] reasonable expenses required to meet respondents' invalidity defense after Friday, April 11, 1997, when respondents adamantly refused to withdraw their affirmative defenses of invalidity."[57] He found that those expenses are directly related to respondents' improper conduct in presenting and continuing to advocate an invalidity defense for a purpose other than success in this investigation.[58]

Before the ALJ, respondents argued that the safe harbor provision of Commission rule 210.4 bars Quickturn's Motion Docket No. 383-124, because respondents timely withdrew all contested material from their Prehearing Statement. The ALJ found that compliance with the safe harbor provision of Commission rule 210.4 is a prerequisite to obtaining relief under that rule. He noted, however, that on May 19, 1997, Quickturn served on respondents Motion

---

[53] *Id.* at 97.

[54] *Id.* at 96.

[55] *Id.* at 100.

[56] *Id.*

[57] *Id.* at 101 (footnotes omitted).

[58] Order No. 96 at 99-100.

Docket No. 383-119 and that Quickturn subsequently withdrew Motion Docket No. 383-119.[59] He found that between the time that Quickturn withdrew Motion Docket No. 383-119 and the time it filed its Motion Docket No. 383-124, Quickturn gave respondents the opportunity to withdraw or correct all challenged papers, claims, defenses, contentions, allegations or denials. Thus, the ALJ found that Quickturn's withdrawal of Motion Docket No. 383-119 and subsequent filing of Motion Docket No. 383-124 provided respondents with an adequate safe harbor opportunity.[60]

However, the ALJ further found that respondents' "Withdrawal of Material Pursuant to Rule 210.4(d)(1)(i)" was directed only to *certain* of the challenged subject matter at issue in Motion Docket No. 383-124. In particular, he found it undisputed that respondents withdrew the statement that the claims in issue are invalid from their Prehearing Statement. However, he found that "the substance of Motion No. 383-119 was respondents' continued insistence on challenging the infringement and validity of all patents in issue, while simultaneously refusing to offer any evidence to support that challenge."[61] He stated that "respondents have steadfastly refused to withdraw the underlying [invalidity] contention, as framed in their response to the complaint."[62] Based on the foregoing, the ALJ concluded that respondents had not utilized the safe harbor provision in that their withdrawal of certain portions of their Prehearing Statement was "insufficient to satisfy the language of Commission rule 210.4(d)(1)."[63] He therefore rejected respondents' challenge to Motion Docket No. 383-124 based on the safe harbor provision.

D. The Parties' Comments

1. Respondents' Appeal

In challenging the ALJ's imposition of sanctions pursuant to Motion Docket No. 383-124, respondents again argued that (1) that motion is procedurally barred under the safe harbor provisions of rule 210.4, and (2) since they allegedly put nothing in issue in the permanent relief phase of the investigation, they cannot be sanctioned under rule 210.4 for failing to support their position. Respondents asserted that they timely "withdrew every statement in the Prehearing Statement challenged by Quickturn in its May 19 motion" and that "[t]hese

---

[59] *Id.* at 94.

[60] *Id.*

[61] *Id.* at 95, citing Motion Docket No. 383-119 at 6-8, Motion Docket No. 383-124 at 8-9.

[62] *Id.* at 96.

[63] *Id.*

statements are the only materials challenged by Quickturn in its May 19 motion."[64] According to respondents, they "were never asked to withdraw their response to the complaint in a properly served rule 210.4 motion."[65] They therefore argued that their withdrawal of the challenged material from their Prehearing Statement "is an absolute bar to Quickturn's motion."[66] Respondents also argued that, since they cannot be sanctioned for a challenged paper unless they received a proper request to withdraw it under rule 210.4, "Order No. 96 is erroneous as a matter of law and must be reversed."[67]

Respondents also argued that the two oral statements they made during the PEO hearing "are not subject to rule 210.4."[68] In particular, respondents argued that Quickturn's May 19, 1997, motion specifically challenged only respondents' Prehearing Statement, and that Quickturn did not provide respondents with proper notice that it considered any oral statements made by them during the PEO hearing to be sanctionable. Respondents asserted that "any such statements would have been withdrawn on May 27, 1997, just as respondents withdrew all statements that were challenged by Quickturn."[69]

In addition, respondents asserted that "rule 210.4 deals with written papers, not oral statements, except in special circumstances not present here."[70] According to respondents, "[o]ral statements are not subject to rule 210.4 or Rule 11 unless they relate back to the contents of a pleading, written motion, or other paper."[71] They stated that Rule 11 "applies only to assertions contained in papers filed with or submitted to the court" and "does not cover matters arising for the first time during oral presentations to the court, when counsel may make statements that would not have been made if there had been more time for study and reflection."[72] Respondents maintained that "the only written paper challenged by Quickturn was respondents' Prehearing Statement, and the challenged portions were withdrawn on May

---

[64] Respondents' Third Petition at 34-35.

[65] *Id.* at 48 (emphasis in original).

[66] *Id.* at 47.

[67] *Id.* at 49.

[68] Respondents' Third Petition at 49-50, n.32; *see also* Respondents' Fourth Petition at 14.

[69] Respondents' Third Petition at 49.

[70] *Id.*

[71] *Id.*

[72] *Id.* at 50, citing Fed. R. Civ. P. 11, 1993 Advisory Committee Notes.

27, 1997."[73] They argued that their two oral statements covered "matters arising for the first time during oral presentations to the court" and are thus not subject to rule 210.4.

Respondents also argued that the ALJ erred in finding that their conduct caused Quickturn unnecessarily to present evidence of validity at the PEO hearing. According to respondents, "Quickturn was not required to put on a validity case" because "Quickturn's patents enjoy a presumption of validity, and respondents made absolutely clear both before and during the PEO hearing that they did not intend to present any evidence of invalidity in this forum beyond what had already been rejected by the ALJ at the April 1996 TEO hearing."[74] Respondents contended that "Quickturn did not have an obligation to rebut respondents' allegations, only their evidence, and respondents did not present any evidence of invalidity."[75] Respondents asserted that "Quickturn, had it wished, could have simply relied on the presumption of validity with respect to all five patents-in-suit."[76] They asserted that they should not be sanctioned for electing not to stipulate to the validity of Quickturn's patents and for "chos[ing] to accept a permanent exclusion order here and to challenge Quickturn's allegations in another forum."[77]

Finally, respondents argued that Order No. 96 should be reversed "because any alleged harm to Quickturn was due to its own failure to make a timely motion for sanctions."[78] According to respondents, "Quickturn could easily have filed its motion for sanctions before the PEO hearing began on April 7, 1997" which, they asserted, "would have allowed respondents to withdraw the challenged statements before the hearing began."[79]

2. Quickturn's Response

Quickturn argued that respondents' withdrawal from the permanent relief phase of the investigation was "incomplete in light of respondents' failure to withdraw or disavow their

---

[73] *Id.* at 51.

[74] *Id.* at 45-46 (emphasis in original).

[75] *Id.* at 56 (emphasis in original).

[76] *Id.* at 57.

[77] *Id.* at 45. Quickturn and respondents are engaged in a co-pending federal district court case in Oregon involving the same patents at issue in this investigation. *Mentor Graphics Corporation v. Quickturn Design Systems*, CV 96-342-RE (D. OR.).

[78] Respondents' Third Petition at 58.

[79] *Id.* at 58-59.

frivolous defenses as set forth in [their] Prehearing Statement . . . and in the underlying defenses asserted in their responses to Quickturn's complaint."[80] As a result, Quickturn asserted, respondents' defenses were at issue throughout the PEO hearing. In particular, Quickturn argued that "[t]he fact remains that respondents, regardless of what 'material' they redacted *ex post facto* from their Prehearing Statement, refused to withdraw their underlying defenses to Quickturn's complaint and accept a judgment of validity and infringement despite having no evidence whatsoever in the PEO record to support those defenses."[81] Rather, Quickturn asserted, respondents failed to comply with the safe harbor provisions of rule 210.4 by failing to withdraw completely their validity defense.

Quickturn also disputed respondents' assertion that their oral statements at the PEO hearing fall outside the scope of rule 210.4, arguing that "[t]he record is clear that respondents did in fact join issues on the validity and infringement of Quickturn's patents-in-suit at the outset of the PEO hearing."[82] Quickturn contended that respondents' underlying invalidity contention in their answer to Quickturn's complaint was *de facto* incorporated by reference in respondents' Prehearing Statement. It also contended that respondents' oral statements at the PEO hearing, to the effect that respondents would not withdraw those contentions, and their statement that they would put Quickturn to its *prima facie* proofs, constituted "later advocacy" of those contentions. Quickturn asserted that "[i]t is clear that continued oral advocacy of a defense raised in a pleading submitted to a court is subject to abuse of process sanctions."[83]

According to Quickturn, "what the record shows is sufficient participation on the part of respondents in the PEO hearing to put Quickturn through its proofs on validity and infringement, but no evidentiary basis upon which respondents can now justify that participation."[84] Quickturn contended that respondents continued to assert their underlying defenses "for *tactical* reasons," which "included, among others, maintaining reliance upon the TEO record so as to preserve respondents' pending Federal Circuit Appeal of the [Commission's] TEO ruling."[85] Quickturn asserted that "[i]t is apparent that respondents had

---

[80] Quickturn's Response at 57.

[81] *Id.* at 58.

[82] *Id.* at 59.

[83] *Id.*, citing the Committee Notes to Federal Rule 11.

[84] *Id.* at 60.

[85] *Id.* at 58 (emphasis in original).

strategic yet non-substantive reasons for continuing to rely on their defective defenses."[86]

Finally, Quickturn argued that its motion for sanctions was timely "in light of . . . the actions of respondents in springing their 'non-participation' defense on the eve of the PEO hearing."[87] Quickturn also noted that respondents initially offered certain exhibits on validity into the PEO record and subsequently moved to withdraw those exhibits only after Quickturn had expended resources preparing to meet its burden on that issue. Quickturn therefore supported the ALJ's finding that by failing either to support their invalidity assertion or to stipulate to validity, respondents violated rule 210.4(c).[88]

3. The IAs' Response

The IAs argued that Quickturn was prejudiced by respondents' continued assertion of the invalidity defense because, even though respondents offered no evidence that Quickturn was required to rebut, "the TEO evidentiary record lurked in the background of the PEO hearing as a potential basis for respondents' assertion of their patent invalidity defenses during post-trial briefing."[89] They also noted that respondents' counsel warned that if "Quickturn fails to make a *prima facie* case on any elements, we intend to address that in the post-hearing briefs." [90]

The IAs also argued that, while the safe harbor provision is a prerequisite to imposition of rule 210.4 sanctions, Quickturn's Motion Docket No. 383-124 is timely and respondents' withdrawal is incomplete and should not help them avoid sanctions for abuse of process. Finally, the IAs noted that, "even when reminded of their obligations under rule 210.4, respondents maintained the affirmative defenses set forth in their response to the complaint and in their Prehearing Statement that the patents at issue were invalid, without intending to offer any evidence in support of that defense."[91]

---

[86] *Id.*

[87] *Id.* at 58-59.

[88] *Id.* at 60, citing *Certain Concealed Cabinet Hinges and Mounting Plates*, Investigation No. 337-TA-289, Order No. 118 (September 28, 1989).

[89] IAs' Response at 31.

[90] *Id.*

[91] *Id.* at 39.

E. Commission Determination

We find that Quickturn's Motion Docket No. 383-124 is procedurally barred under the safe harbor provisions of Commission rule 210.4(d). Specifically, rule 210.4(d)(1) expressly provides that the party on whom a motion for sanctions is served must have an opportunity to withdraw, or appropriately correct "the challenged paper, claim, defense, contention, allegation, or denial. . . ."[92] As the ALJ noted, courts have found that compliance with this "safe harbor" provision is a mandatory procedural prerequisite to a motion for sanctions under Rule 11, and that sanctions may not be granted if the movant fails to comply with the "safe harbor" provision.[93] Accordingly, as the ALJ found, compliance with the "safe harbor" provision of Commission rule 210.4 is a prerequisite to obtaining relief under that rule.

We do not agree, however, with the ALJ's finding that Quickturn complied with the safe harbor provision of rule 210.4(d). Under rule 210.4(d), Quickturn was required to serve on respondents a proposed motion for sanctions that "describe[d] the specific conduct alleged to violate [rule 210.4]." In its Motion Docket No. 383-119 and the memorandum in support thereof, Quickturn sought sanctions under rule 210.4(c)(3) for respondents' failure to support with evidence the arguments and assertions regarding patent invalidity that were contained in respondents' Prehearing Statement. In contrast to its Motion Docket No. 383-124, Quickturn did not identify in Motion Docket No. 383-119 any other instances where respondents made unsupported invalidity assertions (*e.g.*, in their answer to the complaint and their statements at the PEO hearing). Thus, because rule 210.4(d)(1) requires the complaining party to provide actual notice of the "specific conduct" alleged to be sanctionable, we agree with respondents that Motion Docket No. 383-119 did not provide them notice that Quickturn would seek sanctions for any assertions of invalidity other than those contained in the Prehearing Statement.

In their Motion Docket No. 383-122, respondents expressly withdrew from their Prehearing Statement each of the defenses objected to by Quickturn in Motion Docket No. 383-119. We find that respondents complied with their obligations under the safe harbor provisions of rule 210.4, thereby precluding an award of sanctions under Motion Docket No. 383-124. Accordingly, based on the safe harbor provisions of rule 210.4, we have not adopted Order No. 96 as it concerns that motion.

---

[92] 19 C.F.R. § 210.4(d)(1).

[93] *See, e.g., Ridder v. City of Springfield*, 109 F.3d 288 (6th Cir. 1977); *Elliot v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995); *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1328 (2d Cir. 1995); 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 11.22[1][b] (3d ed. 1997).

IV. Respondents' Due Process Objections

A. The Parties' Comments

Respondents argued that they were denied due process regarding Quickturn's motions for monetary sanctions on the ground that they were not given adequate notice of Quickturn's allegations and an opportunity to be heard on those motions.[94] Specifically, respondents noted that Commission rule 210.4(d) permits the Commission to award sanctions "after notice and a reasonable opportunity to respond . . . ." Respondents also asserted that a person who may be subject to Rule 11 sanctions must be provided with particularized notice and that "Quickturn provided no notice to respondents' counsel" that it sought sanctions for their conduct.[95]

Respondents contended that they first learned of the possibility of Quickturn's filing any motions for discovery sanctions on the first day of the PEO hearing, and that "Quickturn provided no specifics regarding the allegedly sanctionable conduct."[96] Respondents also stated that they "first learned of the possibility of Quickturn's filing a motion for sanctions regarding respondents' Prehearing Statement on the fifth day of the PEO hearing."[97]

Respondents asserted that, because the hearing on Quickturn's three motions for monetary sanctions occurred before the motions were filed, they were not given a "reasonable opportunity to respond" to Quickturn's motions. They contended that "the ALJ gave Quickturn its own thirteen day hearing to present evidence regarding its unfiled motions for monetary sanctions while providing respondents with no real opportunity to respond."[98] Respondents further asserted that they were deprived of the opportunity to present evidence on their behalf and that the ALJ "held a hearing at which only Quickturn was able to participate meaningfully."[99] According to respondents, because "Quickturn alone knew the contents of the unfiled motions," only Quickturn could present appropriate evidence at the PEO hearing.[100]

Finally, respondents argued that, if the ALJ imposed sanctions on respondents' counsel

---

[94] Respondents' Fourth Petition at 6; Respondents' Third Petition at 79.

[95] Respondents' Third Petition at 84.

[96] *Id.* at 82.

[97] *Id.*

[98] *Id.*

[99] *Id.* at 82-83.

[100] *Id.* at 82.

sua sponte, such sanctions are "beyond what were noticed by Quickturn [and] are improper."[101] They argued that Commission rule 210.4 requires that, before imposing sanctions *sua sponte*, "the ALJ must direct the person subject to sanctions to show cause why it has not violated the rule," which they asserted he failed to do.[102]

Quickturn argued that respondents' due process contentions "are unsupported by the events of this investigation."[103] It asserted that "[t]he record plainly reflects that [the ALJ], in an abundance of caution, gave respondents and their attorneys ample notice of the serious allegations made against them."[104] Quickturn also contended that the ALJ "gave respondents and their counsel repeated opportunities to present their positions in response to Quickturn's serious allegations of misconduct."[105] It argued that respondents and their counsel had adequate notice of Quickturn's intentions to delve into discovery improprieties, including the failure to produce documents in a timely manner and the submission of false and misleading interrogatory answers.

Quickturn noted that it provided respondents notice of its intent to file its sanctions motion regarding Reblewski Exhibit A on March 14, 1997, when it filed a motion *in limine* to exclude that exhibit at the PEO hearing.[106] Quickturn also stated that the ALJ "advised respondents that he considered Quickturn's allegations regarding respondents' introduction of false and misleading evidence to be an extremely serious matter which would be fully addressed at the PEO hearing."[107] In particular, Quickturn noted that on March 27, 1997, the ALJ convened a telephone conference to inform the parties that he intended to "have technical

---

[101] *Id.* at 84.

[102] *Id.*, citing 19 C.F.R. § 210.4(d)(1)(ii).

[103] Quickturn's Response at 4.

[104] *Id.*

[105] *Id.*

[106] A motion *in limine*, which is filed immediately prior to an evidentiary hearing, is a motion seeking to exclude from trial anticipated prejudicial, inadmissable, and/or irrelevant evidence. *Braden v. Hendricks*, 695 P.2d 1343, 1348 (Ok. 1979). At the temporary relief hearing, respondents introduced into evidence a circuit diagram, designated as "Reblewski Exhibit A," based on Mr. Reblewski's direct testimony that the exhibit represented a high-level description of the architecture of the Meta 128 chip. Witness Statement of Frederic Reblewski at 15, RX-698, Q/A 18; Order No. 96 at 52-53. In Motion Docket No. 383-117, Quickturn's moved to exclude that exhibit and certain derivative exhibits from the PEO hearing.

[107] *Id.* at 5.

witnesses under oath [at the PEO hearing] and . . . [to] ask some questions about [the] motion [*in limine*].[108] Quickturn also contended that respondents' counsel "were notified as early as April 7, 1997, that they too were facing potential sanctions."[109]

Finally, Quickturn argued that although "a party charged with sanctionable behavior has no due process right to a hearing," respondents and their counsel were provided a hearing on each of the three sanctions motions in issue.[110] Quickturn asserted that respondents had ample opportunity to submit evidence to rebut its allegations, but "apparently chose not to do so."[111]

The IAs argued that respondents were served with and had actual notice of the motions in question. They noted that respondents filed written responses to each of the motions, and that the ALJ considered the arguments made in those responses. They argued that due process does not require an evidentiary hearing on motions for sanctions, only notice of the allegations and an opportunity to be heard.[112] The IAs asserted that "there can be no dispute that respondents were heard on the motions."[113]

In particular, with respect to Motion Docket No. 383-117, the IAs argued that "[b]ecause respondents substantively addressed the motion in issue in their responsive brief and because the ALJ expressly and extensively considered their arguments, respondents were not denied due process."[114] The IAs argued that, because the ALJ denied Motion Docket No. 383-123 on procedural grounds, and no party has contested that finding, "the due process objections concerning that decision are moot."[115] Finally, with regard to Motion Docket No. 383-124, the IAs asserted that "[r]espondents were specifically advised during the PEO hearing that failure to support their invalidity allegations could result in abuse of process proceedings, and were given the opportunity to submit any invalidity evidence they desired during that

---

[108] *Id.*, citing Transcript of Telephone Conference, dated March 27, 1997, at 6-8.

[109] *Id.*, citing PEO Tr. at 225-226.

[110] *Id.* at 7.

[111] *Id.*

[112] IA's Response at 5-7.

[113] *Id.* at 6.

[114] *Id.* at 5.

[115] *Id.* at 6.

hearing."[116] Based on the foregoing, the IAs argued that respondents were not denied due process.

B. Commission Determination

The Commission does not accept respondents' due process objections. Respondents were given ample notice of the nature and substance of the sanctions motions in question and were afforded an adequate opportunity to defend against those allegations. With respect to their notice of Quickturn's allegations, Quickturn filed on March 14, 1997, its motion *in limine* to exclude Reblewski Exhibit A from the PEO hearing. In that motion, Quickturn stated that it would "be filing a motion for sanctions in connection with respondents' handling of Reblewski Exhibit A."[117] As Quickturn pointed out, during the March 27, 1997, telephone conference, the ALJ also indicated that the substance of Quickturn's allegations would be taken up at the PEO hearing. He even expressly advised respondents that they should be prepared to address those allegations.

Moreover, during the PEO pre-hearing conference, Quickturn again advised respondents that a motion for discovery sanctions would be forthcoming.[118] On April 11, 1997, during the PEO hearing, Quickturn reiterated its intention to file a motion for sanctions with respect to Reblewski Exhibit A.[119] On April 11, 1997, respondents were specifically apprised that Quickturn would challenge under rule 210.4 their Prehearing Statement and attempted withdrawal from the PEO.[120] Thus, respondents had ample notice of the allegations on which the ALJ ruled in Order No. 96.

With regard to respondents' opportunity to be heard on those issues, as Quickturn and the IAs noted, an evidentiary hearing is not required to resolve a motion for sanctions.[121] Indeed, with respect to sanctions under Rule 11, "[s]imply giving a chance to respond to the charges through submission of a brief is usually all that due process requires."[122] It is undisputed that on June 9, 1997, respondents filed an extensive substantive opposition to

---

[116] *Id.* at 7.

[117] Quickturn's March 14, 1997, Mem. P. & A., at 30 n.5.

[118] PEO Tr. at 152-163; 196.

[119] PEO Tr. 568-69.

[120] PEO Tr. at 1236.

[121] *Jones v. Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1359 (3d Cir. 1990).

[122] *Spiller v. Ella Smithers Geriatric Center*, 919 F.2d 339, 347 (5th Cir. 1990).

Quickturn's motions. It also is clear that the ALJ considered respondents' arguments in reaching his determinations in Order No. 96.

Moreover, it is clear that respondents, in fact, were given a hearing on Quickturn's motions. Much of the PEO hearing, which lasted 13 days, was devoted to Quickturn's allegations of discovery misconduct, which formed the bases for its motions for monetary sanctions. Quickturn spent several entire days at the PEO hearing cross-examining each of the witnesses on topics directly and solely related to respondents' discovery conduct.[123] Indeed, respondents' counsel expressly noted that respondents' witnesses were testifying for the purpose of addressing the issues of false and misleading evidence raised in Quickturn's motions for monetary sanctions.[124] At that hearing, the ALJ pointedly and repeatedly invited respondents to present whatever exculpatory evidence they had to rebut Quickturn's allegations.[125] Yet, respondents refused to offer any evidence at the PEO hearing in defending against Quickturn's charges. On June 26 and 27, 1997, after the motions in question were filed, the ALJ held final arguments at which respondents were again provided a full opportunity to be heard on all sanctions issues. Based on the foregoing, the Commission determines that respondents were afforded due process in connection with Order No. 96.

V. Respondents' Request For A Hearing

A. The Parties' Comments

In their Fourth Petition, respondents stated that "[b]ecause of the complexity and seriousness of the allegations giving rise to Order No. 96, and because it appears that this will be the first interpretation and consideration of monetary sanctions under rule 210.4 by the Commission, respondents request a hearing before the Commission to allow the parties to present oral arguments."[126] Quickturn opposed respondents' request for an oral hearing on Order No. 96, because "[t]he record of respondents' misconduct is clear," and no oral hearing is necessary.[127]

The IAs argued that "[t]here has been no showing by respondents of a need for an oral

---

[123] *See, e.g.*, PEO Tr. at 2373-75; 2796-2705 (extensive questioning of both Mr. Lepape and Mr. Reblewski regarding respondents' responses to Interrogatory Nos. 77-79).

[124] PEO Tr. at 1822-1826.

[125] *See, e.g.*, PEO Hearing Tr. at 1214-1225, 1827-28; Order No. 96 at 6-8.

[126] Respondents' Fourth Petition at 2.

[127] Quickturn's Response at 1.

hearing before the Commission."[128] They asserted that Order No. 96 is comprehensive and contains extensive analysis and findings of fact, and they noted that respondents have filed four petitions for review. The IAs also stated that the ALJ "has already found that respondents' discovery and procedural abuses were motivated, at least in part, by a goal of increasing the cost of the investigation for [Quickturn]."[129] According to the IAs, "[e]ntertaining oral argument would only further increase the cost of the investigation."[130] Under those circumstances, the IAs argued that the sanctions matters should be decided by the Commission based on the existing record.

B. Commission Determination

We agree with Quickturn and the IAs that oral argument on Order No. 96 is unnecessary. We agree with the IAs that the ALJ was exhaustive in his analysis. In addition, counsel have made extensive written submissions to the Commission. Accordingly, we have ruled on the appeals of Order No. 96 based on the record before us, without further oral argument.

VI. Respondents' Motion For Leave To File A Reply

A. The Parties' Comments

On December 16, 1997, respondents filed a motion for leave to file a reply to Quickturn's and the IAs' responses to their petitions appealing Order No. 96.[131] In support of that motion, respondents argued that the allegations of misconduct in Order No. 96 warrant "the highest level of scrutiny" by the Commission and raise "important issues of first impression that should be fully briefed before any decision is made."[132] Respondents also asserted that a reply brief is necessary (1) to correct misstatements in Quickturn's response, (2) to address new legal and factual contentions contained in Quickturn's and the IA's responses, and (3) to address "a number of examples of purported misconduct that were not the subject of

---

[128] IAs' Response at 2, 43.

[129] *Id.* at 43.

[130] *Id.*

[131] Motion of Respondents Mentor and Meta for Leave to Reply to Quickturn's Opposition and to the Staff's Response to Respondents' Appeal of Order No. 96 (December 16, 1997) ("Respondents' Motion for Leave").

[132] Memorandum in Support of Motion of Respondents Mentor and Meta for Leave to Reply to Quickturn's Opposition and to the Staff's Response to Respondents' Appeal of Order No. 96 (December 16, 1997) ("Respondents' Motion for Leave") at 1.

any ruling of sanctions in Order No. 96," but which were purportedly raised in Quickturn's response.

On December 29, 1997, Quickturn filed an opposition to respondents' motion, stating that respondents "overlook the fact that all of the issues raised in Order No. 96 have been fully briefed in a manner which will allow the 'highest level of scrutiny' by the Commission."[133] Quickturn asserted that respondents have filed "over two dozen briefs in connection with Order No. 96 and its underlying motions, including four separate briefs to the Commission."[134] It contended that respondents' reply would "add[] nothing new to this record."[135] Quickturn also requested authorization to file a sur-reply in the event the Commission grants respondents motion, "to correct the record in light of the misstatements contained in respondents' reply."[136]

On December 29, 1997, the IAs' also opposed respondents' motion "[b]ecause the Commission's [rules] do not provide for such reply briefs, and because respondents' motion fails to identify any new issues that necessitate a reply."[137] The IAs noted that, pursuant to Commission rule 210.25(d), the Commission issued on October 2, 1997, an order permitting written submissions appealing Order No. 96 and responses to any such appeals. The IAs noted that neither that order nor the Commission's rules contemplate submissions in reply to the responses to petitions appealing Order No. 96. They argued that respondents assertions that Quickturn has misconstrued the record and raised new issues are wholly unsupported and do not justify granting the motion for leave to file a reply. Finally, like Quickturn, the IAs requested an opportunity to file a sur-reply in the event the Commission grants respondents' motion.

B. Commission Determination

We have denied respondents' motion for leave to file a reply. The IAs are correct that the Commission's rules authorize petitions appealing an order regarding sanctions and

---

[133] Complainant Quickturn's Opposition to Respondents' Motion for Leave to File a Reply Brief Re: Respondents' Appeal of Order No. 96 or, in the Alternative, Quickturn's Request for an Order Permitting Quickturn to File a Sur-Reply Brief (December 29, 1997) ("Quickturn's Opposition") at 1 (emphasis omitted).

[134] Quickturn's Opposition at 1 (emphasis omitted).

[135] *Id.*

[136] *Id.*

[137] Commission Investigative Staff's Response to Respondents' Motion for Leave to File a Reply Brief Concerning Respondents' Petition for Review of Order No. 96 (December 29, 1997)("IAs' Opposition") at 1.

responses thereto, but do not contemplate replies to the responses.[138] Respondents have submitted voluminous and ample documentation and argument in support of their position both before the ALJ and to the Commission. Accordingly, we have ruled on the appeals of Order No. 96 based on the record before us, without further briefing.

VII. Referral To The ALJ For Further Proceedings To Determine The Amount Of Monetary Sanctions To Be Awarded

The ALJ did not quantify the sanctions imposed in Order No. 96. Rather, he stated that, in the event the Commission sustains his award of monetary sanctions, Quickturn should be required to establish the appropriate dollar amount of monetary sanctions to be awarded by relating its attorneys' fees and costs to the specific conduct underlying the award of sanctions.

We are referring this matter to the ALJ for issuance of an ID as to the precise amount of the monetary sanctions to be imposed. The ALJ is to issue the ID within six months and is authorized to conduct an evidentiary hearing, as he deems appropriate, in order to generate an adequate record on the precise dollar amount of the sanctions to be awarded. Quickturn bears the burden of proving that the amount of its costs and attorney's fees are within the scope of the sanctions awarded by the Commission.

---

[138] *See* 19 C.F.R. § 210.25(d).

In the Matter of

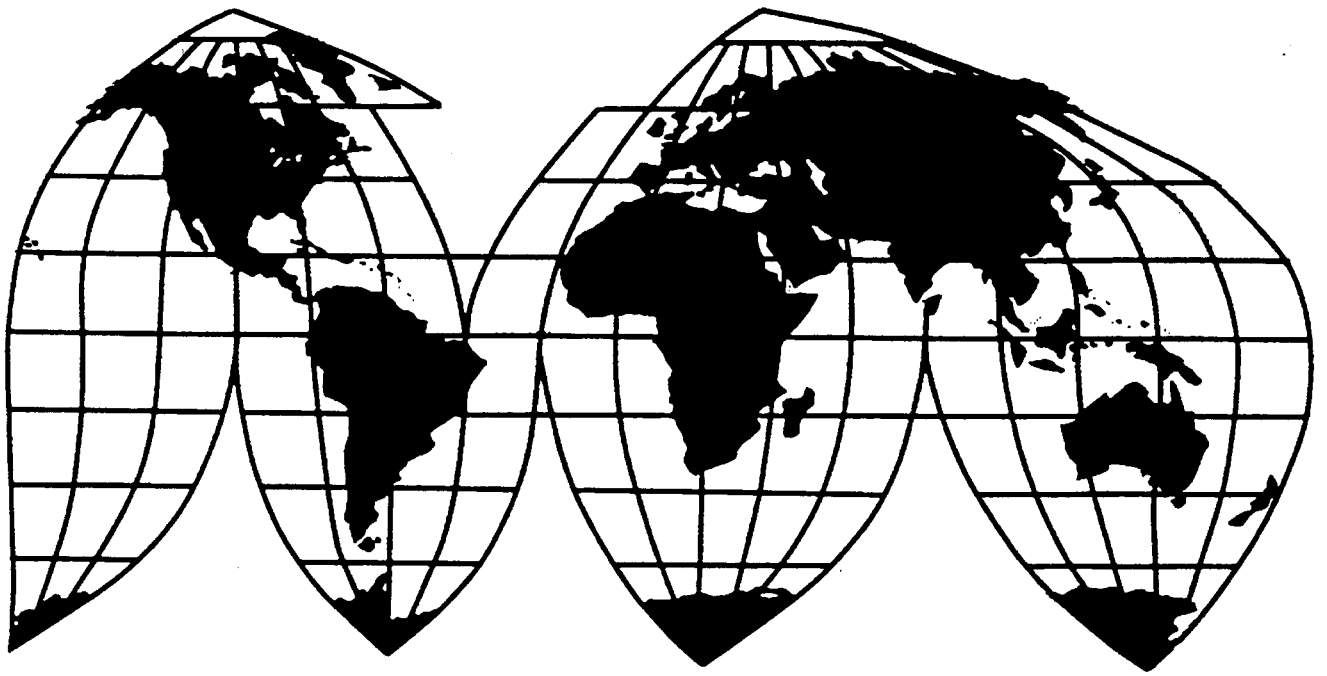
Certain Hardware Logic Emulation Systems and Components Thereof

Investigation No. 337-TA-383

SANCTIONS PROCEEDING

Publication 3154 **January 1999**

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Lynn M. Bragg, Chairman
Marcia E. Miller, Vice Chairman
Carol T. Crawford
Jennifer A. Hillman
Stephen Koplan
Thelma J. Askey

Address all communications to
Secretary to the Commission
United States International Trade Commission
Washington, DC 20436

U.S. International Trade Commission

Washington, DC 20436

Certain Hardware Logic Emulation Systems and Components Thereof

Publication 3154

January 1999

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	Inv. No. 337-TA-383 Sanctions Proceeding and Bond Forfeiture/ Return Proceedings
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	

NOTICE OF COMMISSION DETERMINATION NOT TO REVIEW AN INITIAL DETERMINATION TERMINATING SANCTIONS PROCEEDING AND BOND FORFEITURE/RETURN PROCEEDING

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (Order No. 106) issued by the presiding administrative law judge terminating the sanctions proceeding and the bond forfeiture/return proceeding in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3152.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 *Fed. Reg.* 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). On July 8, 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("TEO ID") granting Quickturn's motion for temporary relief.

On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor. The Commission imposed a bond of 43 percent of entered value on respondents' importations and sales of emulation systems and components thereof during the remaining pendency of the investigation.

On September 24, 1997, the Commission determined to modify respondents' temporary relief bond in the investigation. Respondents' temporary relief bond remained at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as

defined in applicable U.S. Customs Service regulations. Respondents' temporary relief bond increased to 180 percent of the entered value of the subject imported articles if the entered value is not based on transaction value.

On July 31, 1997, the ALJ issued an initial determination ("Final ID"), finding that respondents had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), by infringing claims of all five of Quickturn's asserted patents. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

On October 2, 1997, the Commission determined not to review the Final ID, thereby finding that respondents violated section 337. On December 3, 1997, the Commission issued a limited exclusion order directed to Meta and a cease and desist order against domestic respondent Mentor. These final relief orders were referred to the President on December 4, 1997, and the 60-day Presidential review period expired on February 2, 1998, without the President taking action to disapprove them.

On July 31, 1997, the ALJ also issued Order No. 96 in the investigation finding that respondents and certain of their counsel have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Respondents petitioned for review of Order No. 96. On March 6, 1998, the Commission denied most aspects of respondents' petition and determined to adopt Order No. 96. The Commission ordered the ALJ to issue an ID within six months ruling on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission.

On February 26, 1998, Quickturn filed a motion pursuant to Commission rule 210.50(d) for forfeiture of the full amount of the bonds posted by respondents in connection with their activities during the temporary relief period and Presidential review period. On March 13, 1998, respondents filed an opposition to Quickturn's motion and a motion for return of their bonds. The Commission referred these motions to the ALJ for issuance of an ID within nine months.

While the monetary sanctions and bond forfeiture/return proceedings were pending before the ALJ, Quickturn and the respondents submitted a joint motion for determinations concerning the amount of monetary sanctions and the amount of respondents' bond forfeiture, based on a stipulation agreement between the parties. Based on this joint motion, on July 21, 1998, the ALJ issued Order No. 106, in which he approved the stipulated amounts and determined to terminate the monetary sanctions and bond forfeiture/return proceedings. None of the parties filed a petition for review of Order No. 106.

The Commission has determined not to review Order No. 106. In accordance with the stipulation agreement between the parties, the Commission will instruct the U.S. Customs Service to release respondents' bonds after the Commission has received written notification

from Quickturn that the amount stipulated for forfeiture of respondents' bonds has been paid to Quickturn.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42).

Copies of the public versions of Order No. 106 and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Donna R. Koehnke

Donna R. Koehnke
Secretary

Issued: August 21, 1998

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

DOCKET

In the Matter of	)	
	)	
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	)	Investigation No. 337-TA-383 (Sanctions Proceeding and Bond Forfeiture/Return Proceeding)

98 NOV 30 AM 10:28

Order No. 106: Initial Determination Terminating Sanctions Proceeding and Bond Forfeiture/Return Proceeding

On July 10, 1998 complainant Quickturn Design Systems, Inc. (Quickturn) and respondents Mentor Graphics Corporation and Meta Systems (Mentor) (movants) jointly moved for issuance of an initial determination concerning the precise dollar amounts related to each of the sanctions proceeding and of the bond forfeiture/return proceeding based on a "Stipulation Agreement Regarding Liquidated Damages" (Stipulation) executed by the movants and made effective as of July 9, 1998 (Exhibit A. to Motion) (Motion Docket No. 383-145).

Movants represented that on March 6, 1998, the Commission issued its order regarding Order No. 96 in which the Commission remanded this investigation to the administrative law judge for appropriate proceedings and for the issuance of an initial determination on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission, and to identify specifically those counsel liable for payment of the sanctions to be awarded; and that on April 28, 1998, the Commission referred to the administrative law judge complainant's Motion No. 383-141, filed on February 26, 1998, for forfeiture of respondents' bond posted during the temporary relief and presidential review

periods of this investigation, and respondents' Motion No. 383-142 filed on March 13, 1998, for return of those bonds. Movants argued that they wish to conserve resources by stipulating to the precise dollar amounts which the administrative law judge has been ordered to determine and accordingly have executed the Stipulation, in which they stipulate that (1) the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission shall for all purposes be found equal to $425,000.000, and (2) Quickturn's entitlement to forfeiture of the temporary relief bonds shall for all purposes be found equal to $425,000.00.[1] Hence movants requested the initial determination issue to that effect.

The staff, in a response dated July 20, 1998, argued that because the public interest favors expeditious proceedings and the conservation of resources that might otherwise be consumed in protracted sanctions proceedings,[2] and because Motion No. 383-145 including its Stipulation, will achieve the principal objectives of the sanctions and bond forfeiture proceedings, and will conserve litigant and Commission resources, it supports entry of a "recommended determination" adopting the stipulated sanction and bond forfeiture dollar

---

[1] Mentor Graphics Corporation and Meta Systems, in Motion No. 383-145, represented through counsel that no imports or other actions subject to bonding under the Commission's permanent relief orders have occurred, and thus no forfeiture amount is provided for any permanent relief bonds. (Motion No. 383-145 at 2-3 and n. 1).

[2] The staff noted that because the payment by the Mentor Graphics Corporation and Meta Systems of the stipulated sanctions to complainant is a condition precedent to their submission of any joint motion to terminate the sanctions proceedings, the Commission is assured that no further proceedings will be necessary to compel actual payment of the awarded sanctions.

values.[3] The staff represented that the underlying investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996 by Quickturn (61 Fed. Reg. 9486); that the products at issue were hardware logic emulation systems that are used in the semiconductor manufacturing industry to design and test the electronic circuits of semiconductor devices; that on July 8, 1996, the administrative law judge issued an initial determination (Order No. 34) granting the motion for temporary relief; and that on August 5, 1996, the Commission determined not to modify or vacate Order No. 34, issued a temporary limited exclusion order against respondents Mentor Graphics Corporation and Meta Systems and a temporary cease and desist order against Mentor Graphics Corporation and determined that a temporary relief bond should be 43 percent of the entered value of imported hardware logic emulation systems and components thereof.[4]

The staff that also represented that on July 31, 1997, the administrative law judge issued a final initial determination finding Mentor Graphics Corporation and Meta Systems in violation of Section 337 by infringement of all five of Quickturn's asserted patents; that on October 2, 1997, the Commission determined not to review said final initial determination;

---

[3] The staff noted that the Stipulation at Sec. 3(e) provides that no appeal will be lodged against a Commission determination adopting the stipulated sanctions and bond forfeiture dollar values although the Stipulation does not prohibit an appeal of the underlying award of monetary sanctions.

[4] The staff noted that on September 24, 1997, the Commission granted complainant's motion to modify the temporary relief bond by retaining the 43 percent bond when the entered value of the imported articles was appraised at transaction value, but increased the bond to 180 percent of the entered value when the articles are appraised at other than transaction value. Certain Hardware Logic Emulation Systems, Modification of Temporary Relief Exclusion Order, U.S.I.T.C. Pub. No. 3074 (Nov. 1997).

that on December 3, 1997, the Commission issued a permanent limited exclusion order against imported hardware logic emulation systems, and a cease and desist order directed to respondent Mentor Graphics Corporation; that on July 31, 1997, the administrative law judge also issued Order No. 96 finding that Mentor Graphics Corporation and Meta Systems had engaged in discovery abuses and abuse of process justifying the imposition of adverse inferences of fact and monetary sanctions; that on March 6, 1998, the Commission denied appeals of Order No. 96, except as to two identified motions, and remanded to the administrative law judge the issue of the precise dollar value of sanctions to be awarded to complainant; and that on April 28, 1998, the Commission also referred to the administrative law judge complainant's February 21, 1998 motion for forfeiture of bonds, and a March 13, 1998 cross motion for return of bonds.

It is argued by the staff that a primary objective of monetary sanctions for abuse of Commission discovery process is to deter future abuses and thus, in this investigation, an important goal in setting the amount of sanctions is that the dollar value of the sanctions should off-set any advantage Mentor Graphics Corporation and Meta Systems may have gained from the sanctioned discovery abuses; and that another goal is to compensate complainant for the costs it incurred in overcoming those abuses; that the fact that the dollar value of the sanctions was resolved by agreement between complainant and Mentor Graphics Corporation and Meta System indicates that the amount is appropriate, taking into consideration the parties' substantial incentive to avoid the expense of further proceedings; that while the Commission also indicated that the administrative law judge's initial determination should decide which, if any, attorneys should be liable for the payment of the sanctions to be awarded under the

parties' stipulation, none of counsel for Mentor Graphics Corporation and Meta Systems are held liable for the payment of sanctions, inasmuch as respondents Mentor Graphics Corporation and Meta Systems have assumed liability for payment of the stipulated sanctions value of $425,000.00 (Stipulation at ¶ 3(b)).[5]

The staff, under the heading "Dollar Value of Respondents' Bond Forfeiture," argued that the administrative law judge has been directed to issue, within nine months, an initial determination concerning complainant's motion for forfeiture of bonds and the cross motion for return of their bonds;[6] that the initial determination should decide whether the bonds should be forfeited, in whole or part, to complainant or returned to provider; that Motion No. 383-145 seeks a determination that complainant is entitled to forfeiture of the bond in the amount of $425,000 of Mentor Graphics Corporation and Meta Systems. (Joint Motion at 2; Stipulation at ¶ 3(c)); that the statutory purpose of requiring such bonds is to protect

---

[5] The staff noted that the assumption of the liability for payment of the sanctions award will save the Commission considerable resources in investigating and resolving the difficult issues of identifying specific individuals that would be held liable for payment if the matter was contested, and avoid the time and expense in actually assuring payment. Accordingly, the staff argued that it appears that the Commission's interest in assuring payment of its sanctions award will be met by a determination that Mentor Graphics Corporation and Meta Systems have assumed that liability. The staff further noted that while trial counsel for respondents Mentor Graphics Corporation and Meta Systems , viz., Brobeck Phleger & Harrison, LLP and all counsel from that firm who submitted a notice of appearance in the investigation, were also made parties to the remanded sanctions proceedings it does not appear they any further determinations with respect to those attorneys are necessary for disposition of this matter because the Commission will have no need to seek payment of the stipulated sanctions amount from those attorneys.

[6] Joint Motion No. 383-145 indicates that only the temporary relief bonds are at issue inasmuch as no importation or other actions subject to bond have taken place since the entry of the permanent relief orders. See n. 1 supra

complainant from any injury due to importations and sales of infringing goods during the pendency of the investigation (19 U.S.C. §1337(e)(1)); and that the stipulated forfeiture value will avoid a potentially costly and prolonged proceeding to determine the actual extent of injury complainant has sustained from importations and sales under bond, and will also obviate proceedings regarding the proper valuations of those importations and sales; and that the Stipulation provides that Mentor Graphics Corporation and Meta Systems shall directly pay the bond forfeiture amount to complainant as a condition precedent to termination of the investigation. Accordingly, the staff supported a determination that complainant is entitled to forfeiture of the bond in the amount of $425,000 (to be paid directly by respondents Mentor Graphics Corporation and Meta Systems to complainant).

In a response dated July 20, 1998 respondents Brobeck, Phleger & Harrison, Robert DeBerardine, and William L. Anthony (Brobeck) represented that Brobeck was unaware of and played no role in the negotiations that led up to Motion No. 383-145 and indeed Brobeck was (apparently inadvertently) left off the service list and was not timely served with a copy of Motion No. 383-145; that Motion No. 383-145, including the Stipulation, is entirely silent as to Brobeck; that because Brobeck has not engaged in any improper or sanctionable conduct, Brobeck does not agree that any sanctions are proper or appropriate but nevertheless understands that Mentor Graphics Corporation and Quickturn believe that ending the current sanctions and bonding proceedings would conserve the resources of the parties, the staff, and the Commission, and for that reason, Brobeck has agreed to end the current proceedings by setting an amount of the sanctions (subject to appeal regarding whether any sanctions should have been imposed at all) and the bond; that Brobeck understands that Motion No. 383-145,

including the Stipulation is not to be construed as an admission by any of the respondents (Mentor Graphics Corporation, Meta Systems, Brobeck, Phleger & Harrison, Robert DeBerardine, or William L. Anthony) that any of the respondents engaged in improper or sanctionable conduct; that with respect to the portions of Motion No. 383-145, including Stipulation, dealing with sanctions, it is Brobeck's understanding from reading said motion that Brobeck is not liable for any sanctions now or in the future; and that it is Brobeck's understanding from reading Motion No. 383-145, including the Stipulation that Mentor Graphics Corporation alone is responsible for the payment of any sanctions that may be ultimately affirmed upon appellate review.

Brobeck argued that, with respect to the portions of the Motion No. 383-145, including its Stipulation, dealing with bond issues, Brobeck is not a party to the bond proceeding and therefore has no opposition to those portions.

Complainant Quickturn and respondents Mentor Graphics Corporation and Meta Systems, as stated in their joint Motion No. 383-145, wish to conserve resources by stipulating to certain precise dollar amounts which the administrative law judge has been ordered by the Commission to determine. Brobeck, on the understanding that Mentor Graphics Corporation and Quickturn believes that ending the current sanctions and bonding proceedings would conserve the resources of the parties, the staff and the Commission, has agreed to the end of the current proceedings.

Referring to the dollar value of awarded sanctions the administrative law judge finds that

the stipulated sanctions amount of $425,000 is a substantial and appropriate sum.[7] It is apparent from the stipulation that complainant believes the amount of $425,000 is sufficient, in combination with the non-monetary sanctions, to account for those discovery abuses found in Order No. 96 and adopted by the Commission in its Order which issued on March 8, 1998.[8]

With respect to the dollar value of respondents' bond forfeiture, complainant's agreement to the stipulated bond forfeiture amount of $425,000 shows that complainant believes that amount is sufficient to protect it from any injury by any transactions of respondents Mentor Graphics Corporation and Meta Systems. On that basis the administrative law judge finds that complainant is entitled to forfeiture of the bond in the amount of $425,000 to be paid directly by respondents' Mentor Graphics Corporation and Meta Systems.

The administrative law judge further finds that termination of the two proceedings in issue based on the Stipulation would pose no threat to the public interest. Rather the public interest is favored by the private resolution of disputes because of the resultant conservation of time and resources. See Certain Telephonie Digital Added Main Line Systems, Components Thereof and Products Containing Same, Inv. No. 337-TA-400, Order No. 23 (an initial determination terminating the investigation) and Commission's notice not to review dated March 5, 1998.

---

[7] The staff noted that the stipulated monetary sanction of $425,000 is reasonably close to the $482,502 of costs and fees sought by complainant, citing Memorandum In Support of Complainant's Detailed Declarations Concerning the Precise Amount of Monetary Sanctions To be Awarded Against Respondents and Certain Ones of Their Counsel at Attachment 1 (April 21, 998).

[8] The staff, in a response dated March 28, 1998 in the sanctions proceeding, waived any claims for monetary sanctions.

Motion No. 383-145 is granted.

Movants have requested that any action on Motion No. 383-145 taken by the administrative law judge should be by initial determination. The staff however has requested that any action on Motion No. 383-145 should be by recommended determination. The Commission's order which issued March 6, 1998, in the sanctions proceeding ordered the issuance of an "initial determination" which shall be treated in the same manner as an initial determination issued pursuant to Commission rule 210.42(a)(1)(i).[9] Moreover the Commission's order, which issued April 29, 1998 in the bond forfeiture/return proceeding ordered the issuance of an initial determination which pursuant to rule 210.50(d) shall have a 45-day effective date and shall be subject to review under the provisions of rules 210.42 through 210.45.[10] Commission rules 210.42(d) and 210.42 (h)(2) also provide that the administrative law judge shall grant any motion for termination pursuant to Commission rule 210.21, by issuing an initial determination with a 30 day effective date. Accordingly in view of the Commission's orders dated March 6, 1998 and April 29, 1998 requiring issuance of initial determinations and Commission's rule 210.42(d) as well as the substance of Motion No. 383-145, and the responses to Motion No. 383-145 the administrative law judge is granting Motion No. 383-145 via an initial determination but with a 30-day effective date.

This initial determination is hereby CERTIFIED to the Commission, together with

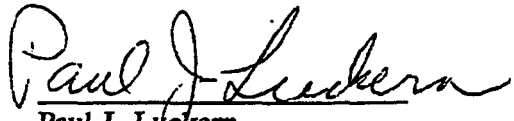
---

[9] Commission rule 210.42(a)(1)(i) relates to issues concerning violation of section 337.

[10] Commission rule 210.42(c) specifically recites that the administrative law judge shall grant a motion, for forfeiture or return of respondents' bonds pursuant to Commission rule 210.50(d), by issuing an initial determination.

supporting documentation. Pursuant to Commission rules 210.42(c) and 210.42(h)(3), this initial determination shall become the determination of the Commission within thirty (30) days after the date of service hereof unless the Commission, within 30 days after the date of such service, shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

This order will be made public unless a confidential bracketed version is received no later than the close of business on July 31, 1998.



Paul J. Luckern
Administrative Law Judge

Issued: July 21, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

DOCKET

In the Matter of	
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	Inv. No. 337-TA-383 Sanctions Proceeding

0076

RECEIVED
MAR 6 1998
OFFICE OF THE SECRETARY
U.S. INTL. TRADE COMMISSION

NOTICE OF COMMISSION DECISION REGARDING APPEALS OF ALJ ORDER NO. 96

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny appeals of ALJ Order No. 96 in the above-captioned investigation and to adopt that order with the two exceptions identified below.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3116.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 *Fed. Reg.* 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). After an 11-day evidentiary hearing, in April and May of 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("TEO ID") granting Quickturn's motion for temporary relief.

On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor. The Commission imposed a bond of 43 percent of entered value on respondents' importations and sales of emulation systems and components thereof during the remaining pendency of the investigation. The Commission set complainant's bond at $200,000.

On September 24, 1997, the Commission determined to modify respondents' temporary relief bond in the investigation. Respondents' temporary relief bond remained at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as defined in applicable U.S. Customs Service regulations. Respondents' temporary relief bond increased to 180 percent of the entered value of the subject imported articles if the

entered value does not equal transaction value as defined in applicable U.S. Customs Service regulations.

Beginning on April 7, 1997, the ALJ held a pre-hearing conference and a 14-day evidentiary hearing concerning permanent relief issues and several sanctions-related motions. Closing arguments were held on June 25 and 26, 1997. On July 31, 1997, the ALJ issued an initial determination ("Final ID"), finding that respondents had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), by infringing claims of all five of Quickturn's asserted patents. The ALJ found: (1) there has been importation and sale of the accused products; (2) Quickturn practices the patents in controversy and satisfies the domestic industry requirements of section 337; (3) the claims in issue are valid; (4) the accused products directly infringe the claims in issue; (5) components of the accused products contributorily infringe the claims in issue; and (6) respondents have induced infringement of the claims in issue. Based on these findings, the ALJ concluded there was a violation of section 337. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

On October 2, 1997, the Commission determined not to review the Final ID, thereby finding that respondents violated section 337. On December 3, 1997, the Commission issued a limited exclusion order directed to Meta and a cease and desist order against domestic respondent Mentor. The Commission set the bond for the 60-day Presidential review period at 43 percent of the entered value of the subject imported articles if the entered value equals transaction value as defined in applicable U.S. Customs Service regulations and at 180 percent of the entered value of the subject imported articles if the entered value does not equal transaction value as defined in applicable U.S. Customs Service regulations.

On July 31, 1997, the ALJ also issued Order No. 96 in the investigation finding that respondents and certain of their counsel have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission on October 2, 1997, specified the schedule for the filing of petitions appealing Order No. 96 and responses thereto. On August 13, 1997, August 14, 1997, October 2, 1997, and November 6, 1997, respondents filed petitions appealing Order No. 96. Quickturn filed a reply to respondents' petitions on November 14, 1997. The Commission investigative attorneys filed a reply to respondents' petitions on November 17, 1997.

Having examined the record in this investigation, including Order No. 96, the petitions appealing Order No. 96, and the responses thereto, the Commission determined to deny the appeals and to adopt Order No. 96 with the exception of those portions of Order No. 96 granting Motion Docket No. 383-116 and Motion Docket No. 383-124, both of which the Commission did not adopt. The Commission also determined to deny respondents' request for a hearing and their motion for leave to file a reply to Quickturn's and the Commission investigative attorneys' responses to respondents' petitions. In connection with the final disposition of this matter, the Commission has ordered the presiding administrative law judge

to issue an initial determination within six months ruling on the precise dollar amount of sanctions to be awarded pursuant to Order No. 96.

A Commission opinion in support of its determination will be issued shortly.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and sections 210.4, 210.25, 210.27, and 210.33 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.4, 210.25, 210.27, and 210.33).

Copies of the public versions of the Final ID, Order No. 96, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.

Donna R. Koehnke

Donna R. Koehnke
Secretary

Issued: March 6, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of	Inv. No. 337-TA-383
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	Sanctions Proceeding

ORDER

On July 31, 1997, the presiding administrative law judge ("ALJ") issued Order No. 96 in the above-captioned investigation, finding that respondents Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta")(collectively "respondents") and certain of their counsel have engaged in discovery abuses and abuse of process justifying the imposition of evidentiary and monetary sanctions. Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission on October 2, 1997, specified a schedule for the filing of petitions appealing Order No. 96 and responses thereto. On August 13, 1997, August 14, 1997, October 2, 1997, and November 6, 1997, respondents filed petitions appealing Order No. 96. Complainant, Quickturn Design Systems, Inc. ("Quickturn") filed a reply to respondents' petitions on November 14, 1997. The Commission investigative attorneys filed a reply to respondents' petitions on November 17, 1997.

Having examined the record in this investigation, including Order No. 96, the petitions appealing Order No. 96, and the responses thereto, the Commission has determined to deny all appeals of Order No. 96 and to adopt that order with the exception of those portions of Order No. 96 granting Motion Docket No. 124 and Motion Docket No. 116, both of which the Commission did not adopt. The Commission also has determined to deny respondents' request for a hearing and their motion for leave to file a reply to the responses of Quickturn and the Commission investigative attorneys to respondents' petitions.

Accordingly, it is hereby ORDERED THAT --

1. The appeals of Order No. 96 are denied and Order No. 96 is adopted by the Commission, except for those portions of Order No. 96 granting Motion Docket No. 383-116 and Motion Docket No. 383-124, both of which are not adopted by the Commission.

2. Respondents' request for a hearing regarding Order No. 96 is denied.

3. Respondents' motion for leave to file a reply to Quickturn's and the Commission investigative attorneys' responses to respondents' petitions is denied.

4. The investigation is remanded to the presiding administrative law judge, Judge Paul J. Luckern, for appropriate proceedings and the issuance of an initial

determination within six (6) months of the date of this Order.

5. The initial determination shall be treated by the Commission and the parties in the same manner as an initial determination issued pursuant to rule 210.42(a)(1)(i), 19 C.F.R. § 210.42(a)(1)(i).

6. The initial determination, which is to be consistent with Order No. 96, shall rule on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission and shall specifically identify those counsel liable for payment of the sanctions to be awarded.

7. The presiding administrative law judge may conduct a hearing, as he deems appropriate, in order to make an adequate record on the precise dollar amount of the sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission.

8. In the proceedings, it shall be the burden of Quickturn to demonstrate that the costs, including attorney's fees, to be awarded are within the scope of the sanctions imposed by those portions of Order No. 96 adopted by the Commission.

9. The following are the parties to the proceedings:

   (a) Quickturn Design Systems, Inc., 55 W. Trimble Road, San Jose, California, 95131, complainant;

   (b) Mentor Graphics Corporation, 8005 SW Boechman Road, Wilsonville, Oregon, 97070, respondent;

   (c) Meta Systems, 4 Rue Rene Razel 91400 Saclay, France, respondent;

   (d) The law firm of Brobeck, Phleger & Harrison, LLP, and all counsel from the law firm of Brobeck, Phleger & Harrison, LLP, who submitted a notice of appearance in the investigation, respondents; and

   (e) A Commission investigative attorney or attorneys to be designated by the Director, Office of Unfair Import Investigations.

10. The Secretary shall serve a copy of this Order upon each party of record in the investigation and shall publish notice of this Order in the *Federal Register*.

By order of the Commission.

Donna R. Koehnke

Donna R. Koehnke
Secretary

Issued: March 6, 1998

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of	
CERTAIN HARDWARE LOGIC EMULATION SYSTEMS AND COMPONENTS THEREOF	Inv. No. 337-TA-383

COMMISSION OPINION ON APPEALS OF ALJ ORDER NO. 96

I. INTRODUCTION

This patent-based section 337 investigation was instituted on March 8, 1996, based upon a complaint and motion for temporary relief filed on January 26, 1996, by Quickturn Design Systems, Inc. ("Quickturn"). 61 *Fed. Reg.* 9486 (March 8, 1996). The respondents are Mentor Graphics Corporation ("Mentor") and Meta Systems ("Meta") (collectively "respondents"). After an 11-day evidentiary hearing, in April and May of 1996, the presiding administrative law judge ("ALJ") issued an initial determination ("TEO ID") granting Quickturn's motion for temporary relief. On August 5, 1996, the Commission determined not to modify or vacate the TEO ID and issued a temporary limited exclusion order and a temporary cease and desist order against domestic respondent Mentor.

Beginning on April 7, 1997, the ALJ held a pre-hearing conference and a 14-day evidentiary hearing concerning permanent relief issues and several sanctions-related motions ("PEO hearing"). Closing arguments were held on June 25 and 26, 1997. On July 31, 1997, the ALJ issued an initial determination ("Final ID"), finding that respondents had violated section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), by infringing claims of all five of Quickturn's asserted patents. The ALJ found: (1) there has been importation and sale of the accused products; (2) Quickturn practices the patents in controversy and satisfies the domestic industry requirements of section 337; (3) the claims in issue are valid; (4) the accused products directly infringe the claims in issue; (4) components of the accused products contributorily infringe the claims in issue; and (5) respondents have induced infringement of the claims in issue. Based on these findings, the ALJ concluded there was a violation of section 337. The ALJ recommended issuance of a permanent exclusion order and a cease and desist order.

On October 2, 1997, the Commission determined not to review the Final ID, thereby

finding that respondents violated section 337. On December 3, 1997, the Commission issued a limited exclusion order directed to Meta and a cease and desist order against domestic respondent Mentor.

On July 31, 1997, the ALJ issued an order, Order No. 96, consolidating decisions on several motions for sanctions filed by Quickturn. Specifically, as it pertains to this opinion, the ALJ ruled on three motions seeking monetary sanctions for alleged violation of ALJ orders and abuse of discovery process by respondents. The three motions are: (1) a motion for sanctions for (a) respondents' alleged abuse of discovery by withholding certain schematics for the accused imported device, (b) respondents' alleged failure to answer certain interrogatories accurately, and (c) respondents' alleged failure to conduct a reasonable inquiry into the accuracy of proffered evidence depicting the accused device (Motion Docket No. 383-117); (2) a motion for sanctions for respondents' attempted withdrawal from the permanent relief proceedings after joining issues for trial (Motion Docket No. 383-124); and (3) a motion for sanctions for respondents' assertion of allegedly frivolous non-infringement defenses based on inaccurate depictions of the accused device (Motion Docket No. 383-123). In addition, the ALJ ruled in Order No. 96 on a motion filed by Quickturn for reimbursement of its expenses incurred in connection with the delayed appearance of respondents' personnel at trial (Motion Docket No. 383-116), and a motion filed by respondents for reimbursement of expenses for those witnesses appearing at the hearing pursuant to subpoena (Motion Docket No. 383-115).[1]

Pursuant to rule 210.25(d) of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.25(d), the Commission on October 2, 1997, specified the schedule for the filing of petitions appealing Order No. 96 and responses thereto. On August 13, 1997, August 14, 1997, October 2, 1997, and November 6, 1997, respondents filed petitions appealing Order No. 96.[2] Quickturn filed a reply to respondents' petitions on November 14, 1997. The

---

[1] In Order No. 96, the ALJ also issued evidentiary sanctions in the form of adverse findings of fact for respondents' failure to complete certain depositions. Motion Docket Nos. 383-110 and 383-114. In addition, the ALJ ruled on several motions relating to the evidentiary record in the investigation (*e.g.*, a motion *in limine*, motions regarding judicial notice). Motion Docket Nos. 383-103, 383-122, 383-127, 383-132, and 383-133.

[2] Thus, respondents filed four petitions seeking review of Order No. 96: (i) Petition Of Respondents Pursuant To 19 C.F.R. § 210.43 Requesting Commission Review Of The ALJ's Final Initial Determination And Of Certain Portions Of Order No. 96 ("Respondents' First Petition"), filed on August 13, 1997; (ii) Petition For Commission Review Of The Portion Of Order No. 96 Dealing With Non-Monetary Sanctions ("Respondents' Second Petition"), filed on August 14, 1997; (iii) Petition For Commission Review Of The Portions Of Order No. 96 Regarding Monetary Sanctions And Quickturn's Motion In Limine ("Respondents' Third Petition"), filed on October 2, 1997; and (iv) Respondents' Petition For Commission Review Of

(continued...)

Commission investigative attorneys ("IAs") filed a reply to respondents' petitions on November 17, 1997.

Having examined the record in this investigation, including Order No. 96, the petitions appealing Order No. 96, and the responses thereto, the Commission determined to deny the appeals and to adopt Order No. 96, with the exception of those portions of Order No. 96 granting Motion Docket No. 383-116 and Motion Docket No. 383-124.[3] The Commission did not adopt those portions of Order No. 96. The Commission also determined to deny respondents' request for a hearing and their motion for leave to file a reply to Quickturn's and the IAs' responses to respondents' petitions. In connection with final disposition of this matter, the Commission has ordered the presiding ALJ to issue an initial determination ("ID") within six months ruling on the precise dollar amount of sanctions to be awarded pursuant to those portions of Order No. 96 adopted by the Commission. This opinion explains the basis for the Commission's determinations respecting the two portions of Order No. 96 which it did not adopt, as well as the Commission's determinations regarding the procedural issues raised in connection with Order No. 96 and the appeals thereof.

II. Motion Docket No. 383-116

A. Factual Background

The ALJ issued subpoenas on March 26, 1997, ordering Meta's founders, Messrs. Federic Reblewski and Olivier Lepape, to appear at the PEO hearing on April 7, 1997, or at any other time agreed upon by counsel for all the parties. On March 31, 1997, respondents filed a motion to quash the subpoenas, which motion was denied in ALJ Order No. 87 on April 2, 1997. On April 4, 1997, respondents filed a motion for reconsideration of Order No. 87, which motion was briefed by the parties, argued at the PEO pre-hearing conference, and denied by the ALJ on April 7, 1997.[4] On that same date, respondents stated that they would not make either witness (*i.e.*, either Mr. Reblewski or Mr. Lepape) available pursuant to the ALJ's subpoenas.[5] Respondents subsequently took the position that neither witness was available until the week of April 21, 1997. As a result, on April 12, 1997, the PEO hearing

---

[2] (...continued)
Order No. 96 And Request For Hearing ("Respondents' Fourth Petition"), filed on November 6, 1997.

[3] Chairman Miller would not have adopted Order No. 96 with respect to one aspect of Motion Docket No. 383-117. *See* Additional and Dissenting Views of Chairman Marcia E. Miller accompanying this opinion.

[4] PEO Tr. at 68.

[5] PEO Tr. at 104-08.

was adjourned and reconvened on April 21, 1997.

On May 19, 1997, Quickturn moved for an order compelling respondents to reimburse Quickturn for expenses incurred resulting from Mr. Reblewski's and Mr. Lepape's "delayed compliance" with the ALJ's subpoenas.[6] Quickturn sought reimbursement for the transportation costs incurred by its attorneys and technical litigation team, including its expert witnesses, for the trip to and from Washington, D.C. during the delay in the PEO hearing. Quickturn argued that, under the Administrative Procedure Act ("APA"), the ALJ has the power to ensure the orderly conduct of the investigation and to compel the attendance of witnesses at any evidentiary hearing through the issuance of subpoenas.[7]

B. Order No. 96

The ALJ noted that the subpoenas in question ordered Messrs. Reblewski and Lepape to appear at the PEO hearing on April 7, 1997, and that "[n]o time other than that specified in the subpoenas was agreed upon by counsel for all the parties."[8] He then stated that respondents initially informed him that they were not going to comply with the subpoenas, but that "[s]ubsequently, Lepape did appear at the hearing for testimony subject to times convenient to Lepape and which involved adjournment of the hearing from April 12 to April 17".[9]

The ALJ found that at the PEO hearing on April 21, 1997, "Mr. Lepape testified that he had not learned of the subpoena until after April 7," although respondents' counsel had

---

[6] Motion Docket No. 383-116.

[7] Complainant Quickturn Design Systems Memorandum in Support of Motion for Reimbursement of Expenses at 11, citing 5 U.S.C. § 555(d). The APA at 5 U.S.C. § 555(d) provides:

> Agency subpoenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpoena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

[8] Order No. 96 at 105.

[9] *Id.* at 107-08, citing PEO Tr. at 104-108.

notice of it on March 26.[10] He also found that respondents' counsel represented that Mr. Reblewski, who did not appear until April 24, 1997, was not appearing in response to the subpoena.[11] Based on the foregoing, the ALJ found that there was not a good faith compliance with the subpoenas.[12] Accordingly, he granted Motion Docket No. 383-116 to the extent that the relief requested is not included in the relief granted with respect to Quickturn's Motion Docket No. 383-117.

C. The Parties' Comments[13]

Respondents appealed the ALJ's grant of Quickturn's Motion Docket No. 383-116, asserting that, "given the fact that Mr. Reblewski and Mr. Lepape work and reside in France, and given [Quickturn's] delay in seeking the testimony of these individuals by subpoena until just before the hearing on permanent relief," the ALJ's finding that there was not good faith compliance with the subpoenas is clearly erroneous.[14] Respondents stated that both Mr. Reblewski and Mr. Lepape "were required to travel long distances from France, on very short notice, in order to testify at the permanent relief hearing in response to the subpoenas."[15] They maintained that counsel offered to make Mr. Reblewski available on April 11, April 15-18, or the week of April 21, 1997, and that "Mr. Lepape, who is no longer employed by Meta, was made available for testimony the week of April 21, 1997."[16] They noted that all those dates were within the time originally scheduled for the PEO hearing.

Respondents argued that the ALJ's order is legally erroneous because there is no authority "that would require respondents to pay travel expenses for [Quickturn's] attorneys and experts."[17] They contended that, if a party contests an agency subpoena, the agency may invoke the powers of a U.S. district court to enforce the subpoena, and the district court may issue an order compelling the appearance of the witness within a reasonable time "under

---

[10] *Id.* at 108 (emphasis in original), citing PEO Tr. 1859.

[11] *Id.*

[12] *Id.*

[13] The IAs did not take a position on Motion Docket No. 383-116.

[14] Respondents' First Petition at 29-30.

[15] *Id.* at 29.

[16] *Id.*, citing PEO Tr. at 566.

[17] *Id.* at 30.

penalty of punishment for contempt in case of contumacious failure to comply."[18] According to respondents, an individual can be sanctioned "only if the ITC had to go to a District Court, the court ordered enforcement of the subpoena, and the individual refused to comply."[19] In this case, respondents noted, Messrs. Reblewski and Lepape both appeared before the Commission, without need for a district court enforcement action.

Finally, respondents challenged the ALJ's finding that Mr. Lepape's testimony during the week of April 21 "involved adjournment of the hearing from April 12 through April 17." They asserted that "[t]wo of those dates -- April 12 and 13 -- were weekend days, and [Quickturn] did in fact present evidence on April 12."[20] In addition, respondents' stated that counsel offered to make Mr. Reblewski available on April 15-18, "which would have resulted in a break of, at most, one or two days in the hearing."[21]

Quickturn argued that "respondents' intentional, repeated acts in flaunting [sic] the authority of the ALJ and the Commission in not responding to the subpoenas for Messrs. Reblewski and Lepape . . . was certainly a contumacious failure to comply as prohibited by [the APA]."[22] Quickturn contended that "[t]he record is clear that respondents never intended to comply with Order No. 87 and produce Messrs. Reblewski and Lepape on April 7, 1997."[23] It noted that Mr. Lepape testified on April 21, 1997, that he had not learned of the ALJ's subpoena until April 7, 1997. Quickturn also noted that the distance and time of travel for its personnel from California is approximately the same as it was for Messrs. Reblewski and Lepape from France, and that the witnesses were given at least 13 days notice of the need to appear at the PEO hearing (*i.e.*, from March 25, 1997, the date Quickturn gave notice of the subpoena request, to April 7, 1997, the subpoena response date).

Quickturn argued that "under respondents' reading of the ITC's rules with respect to the ALJ's ability to sanction contumacious non-compliance, such egregious behavior like that

---

[18] *Id.*

[19] *Id.*

[20] *Id.* at 31.

[21] *Id.*

[22] Complainant Quickturn's Opposition to Respondents' Petition for Commission Review (August 20, 1997)("Quickturn's ID Response") at 39.

[23] *Id.*

engaged in by respondents and their witnesses could never be punished."[24] According to Quickturn, Commission rule 210.33 "clearly provides the ALJ with the authority to punish parties for their similar failure to appear at a deposition in response to a subpoena."[25] In addition, Quickturn argued, under the APA, the ALJ "has the power to ensure orderly conduct of the investigation . . . and to compel the attendance of witnesses at an evidentiary hearing through the issuance of subpoenas."[26] It also asserted that "the ALJ and the Commission have the inherent authority to award such sanctions for respondents' clear defiance of the ALJ's authority."[27] Quickturn asserted that the monetary sanctions awarded by the ALJ "are appropriate in this case since the prejudice suffered from respondents' failure to comply resulted in the extra expense of bringing Quickturn's technical team to Washington, D.C."[28]

Finally, with regard to the dates that respondents offered to have Messrs. Reblewski and Lepape appear, Quickturn asserted that "the record is clear from both the transcript and underlying moving papers that such offers were plainly not sufficient, both in terms of the length of testimony needed, and the order of appearance of the two witnesses to meet the needs of Quickturn's presentation of evidence and the ALJ's receipt of that evidence."[29] Quickturn argued that it was "forced to change the order of presenting its case to accommodate two other witnesses, . . . and to reschedule one of its technical experts."[30] According to Quickturn, it is undisputed that both Messrs. Reblewski and Lepape "refused to appear in response to the subpoenas and only appeared at their convenience."[31] Based on the foregoing, Quickturn argued that it is entitled to receive from respondents the transportation costs of a second trip to Washington, D.C. by its technical litigation team.

D. Commission Determination

We conclude that the APA does not authorize the ALJ to order the reimbursement of the transportation costs incurred by Quickturn's litigation team for its second trip to Washington,

---

[24] *Id.* at 40.

[25] *Id.*

[26] *Id.*, citing 5 U.S.C. § 556(c)(5), 5 U.S.C. § 555(d).

[27] *Id.* at 40-41.

[28] *Id.* at 40.

[29] *Id.* at 41.

[30] *Id.*, citing PEO Tr. at 360.

[31] *Id.*

D.C. Specifically, 5 U.S.C. § 555(d), upon which the ALJ relied, states that if a party contests an administrative subpoena, the administrative agency may go to U.S. district court to enforce the subpoena, and the district court may issue an order compelling the appearance of the witness within a reasonable time "under penalty of punishment for contempt in case of contumacious failure to comply." Thus, under that provision, an individual may be sanctioned only by a district court in the event the individual refused to comply with a district court order enforcing an administrative subpoena. The provision in question does not provide the ALJ with independent authority to order monetary sanctions for a party's contumacious failure to comply with a subpoena. The ALJ's award of travel expenses as a sanction for respondents' failure to comply with his subpoenas therefore was not authorized by the APA. Accordingly, we have determined not to adopt the portion of Order No. 96 granting Motion Docket No. 383-116.

III. Motion Docket No. 383-124[32]

A. The Legal Framework

Rule 210.4(c) imposes upon persons making representations to the Commission and its ALJs the following duties:

> *Representations*. By presenting to the presiding administrative law judge or the Commission (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party or proposed party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances --
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceeding;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or, if

---

[32] Commissioner Crawford does not join this section of the opinion. Instead, she would have adopted the portion of Order No. 96 concerning Motion Docket No. 383-124.

> specifically so identified, are reasonably based on a lack of information or belief.[33]

The extent to which sanctions may be imposed for abuse of process under Commission rule 210.4 is controlled by case law surrounding Rule 11(b) of the Federal Rules of Civil Procedure.[34] The Advisory Committee Notes to the 1993 amendments to Rule 11 state that proper considerations regarding sanctions under Rule 11 include:

> whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; . . . [and] what effect it had on the litigation process in time or expense. . . .

With respect to sanctions under rule 210.4(c)(1), courts have held that under Rule 11 an "improper purpose" for discovery conduct is a purpose other than one to vindicate rights in court.[35] Whether a pleading or other paper is submitted for an "improper purpose" is determined based on an objective standard of reasonableness.[36] Thus, Commission rule 210.4(d) requires an ALJ, in ruling on a motion for sanctions, to --

> consider whether the representation or disputed portion thereof was objectively reasonable under the circumstances.[37]

---

[33] 19 C.F.R. §210.4(c).

[34] Commission rule 210.4(c) is based upon FRCP Rule 11(b). 59 Fed. Reg. 39022-25 (August 1, 1994).

[35] *See, e.g., In re Kunstler*, 914 F.2d 505, 518 (4th Cir. 1990) ("the purpose to vindicate rights in court must be central and sincere. . . . filing a motion or pleading without a sincere intent to pursue it will garner sanctions.").

[36] *Id.*

[37] Commission rule 210.4(d) also provides:

> A representation need not be frivolous in its entirety in order for the ALJ or the Commission to determine that paragraph (c) has been violated. If any portion of a representation is found to be false, frivolous, misleading, or otherwise in violation of paragraph (c), a sanction may be imposed.

Thus, sanctions can be imposed for a filing that contains both frivolous and nonfrivolous material. *See also, Patterson v. Aiken*, 841 F.2d 386, 387 (11th Cir. 1988).

The Commission has stated that for a pleading to be "objectively reasonable" --

> counsel has an independent duty to conduct a reasonable prefiling inquiry concerning the facts alleged.[38]

The Commission's rules incorporate a so-called "safe harbor" provision, which parallels a similar provision in FRCP 11(d)(1)(i). Specifically, Commission rule 210.4(d)(1) provides, in pertinent part, that a motion for sanctions under rule 210.4 --

> shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate paragraph (c). It shall be served as provided in paragraph (g) of this section, but shall not be filed with or presented to the presiding ALJ or the Commission unless, within seven days after service of the motion (or such other period as the ALJ or the Commission may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

The Commentary on Commission rule 210.4(d)(1)(i) states that:

> a movant must first serve the motion on the non-moving parties. The party or person against whom sanctions are being sought then has seven days (or such other time as the ALJ or the Commission may prescribe) to withdraw or correct the challenged paper, claim, defense, contention, allegation or denial. [footnote omitted] If withdrawal or correction does not occur within the prescribed period, the movant is then free to file the motion for sanctions.[39]

Courts have found that compliance with the safe harbor provision is a mandatory procedural prerequisite to a Rule 11 motion and that sanctions may not be granted if the movant fails to provide an allegedly offending party with an opportunity to withdraw or correct the challenged subject matter.[40]

---

[38] *Certain Self-Inflating Mattresses*, Inv. No. 337-TA-302, Recommended Determination (March 14, 1991); *Certain Concealed Cabinet Hinges and Mounting Plates*, Inv. No. 337-TA-289, Comm. Op. at 17 (June 15, 1989).

[39] 59 Fed. Reg. 39020, 39023 (August 1, 1994).

[40] *See, e.g., Elliot v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995); *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1328 (2d Cir. 1995); 2 James Wm. Moore Et. Al., Moore's Federal Practice § 11.22[1][b] (3d ed. 1997).

B. Factual Background

On March 25, 1997, respondents filed their Prehearing Statement prior to the PEO hearing. In their Prehearing Statement, respondents stated that although "the claims at issue are invalid" and none of their products infringe any of the claims in issue, they had "no need to challenge, and will not challenge," patents and claims that were not in issue in the TEO hearing. On May 19, 1997, Quickturn filed a motion for sanctions under rule 210.4 regarding what it described as respondents' "Attempted Withdrawal from the PEO Hearing," based on respondents' Prehearing Statement and their posture throughout the PEO hearing.[41] On May 20, 1997, respondents filed a motion to strike Quickturn's Motion Docket No. 383-119 because Quickturn had failed to comply with the provision of rule 210.4 requiring that persons against whom sanctions are sought be given a seven-day safe harbor period after service of a motion for sanctions in which to withdraw or correct any allegedly improper papers.[42] Quickturn withdrew Motion Docket No. 383-119 in light of respondents' motion to strike.[43]

On May 27, 1997, respondents filed a pleading entitled "Withdrawal of Material Pursuant to Rule 210.4(d)(1)(i)" in which they stated that they believed that their Prehearing Statement was "an absolutely accurate statement of respondents' position as of the time it was filed" and that it "was in full compliance with rule 210.4."[44] Nevertheless, respondents withdrew the statements from the Prehearing Statement that were challenged in Quickturn's May 19, 1997, motion for sanctions.[45] On May 29, 1997, Quickturn filed a renewed motion for sanctions in which it alleged that sanctions are warranted because respondents had filed their Prehearing Statement, which put into issue at the PEO hearing the question of whether Quickturn's patents in issue are valid but failed to submit any evidence in support of that claim.[46] Quickturn alleged that it incurred considerable expense in preparing its case for the PEO hearing in the face of respondents' position regarding validity.

C. Order No. 96

The ALJ granted Motion Docket No. 383-124 in part. Specifically, the ALJ found that respondents engaged in abuse of process in violation of rule 210.4 by asserting at the PEO trial

---

[41] Motion Docket No. 383-119.

[42] 19 C.F.R. § 210.4(d)(1)(i).

[43] *See* Order No. 90.

[44] Motion Docket No. 383-122.

[45] *Id.* at 4.

[46] Motion Docket No. 383-124.

their patent invalidity defenses, for which they bore the burden of proof, without submitting supporting evidence or argument.[47] He found that respondents' invalidity defenses were asserted at the PEO trial "without a sincere intent to pursue them, but rather were based on a tactical decision to delay and needlessly increase the cost of the investigation to Quickturn."[48] Specifically, the ALJ found that respondents "(1) continued to contest the validity and infringement of all claims in issue, with particular emphasis on claims that were in issue in the TEO hearing, (2) refused to remove the contentions during the PEO hearing, while simultaneously refusing to offer evidence (or moving to 'strike and withdraw' any evidence offered), thus forcing Quickturn to meet those contentions, and (3) despite repeated questions from the bench, requests from Quickturn's counsel, and the service of a motion for rule 210.4 sanctions, continued in their refusal to remove those contentions."[49] The ALJ noted that Commission rule 210.4(c)(3) "unambiguously requires that claims or defenses be supported by evidence."[50] He found that respondents' course of conduct was an abuse of the Commission's discovery process in violation of rule 210.4(d).

The ALJ also noted that the Advisory Committee Notes to the 1993 Amendments to Rule 11 state that:

> a litigant's obligations . . . are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit. For example, an attorney who during a pretrial conference insists on a claim or defense should be viewed as "presenting to the court" that contention and would be subject to the obligations of subdivision (b) [of FRCP 11] measured as of that time.[51]

The ALJ stated that on April 11, 1997, respondents' counsel "adamantly refused to withdraw their affirmative defenses of invalidity, stating '[o]f course we will not stipulate to infringement and validity because we don't infringe and the patents are invalid.'"[52] The ALJ considered that refusal to be a reaffirmation and later advocacy of the invalidity allegation

---

[47] Order No. 96 at 91-92.

[48] *Id.* at 100.

[49] *Id.* at 92-93 (emphasis in original).

[50] *Id.* at 99, citing Commission rule 210.4(c).

[51] *Id.* at 96 (emphasis in original).

[52] *Id.* at 96-97.

contained in respondents' answer to the complaint.[53]

The ALJ found that respondents' continued advocacy of their affirmative defense of patent invalidity was for an objectively "improper purpose" prohibited by Commission rule 210.4(c)(1). He found that respondents' continued advocacy of their invalidity defense was "taken with an admittedly tactical purpose in mind."[54] In particular, the ALJ found that respondents' intent was not to succeed in the investigation, but rather was to force Quickturn and the IAs to expend resources in order to mount a defense to respondents' contentions. The ALJ found that "[f]rom an objective standpoint, . . . the sole purpose of this course of action was to put [Quickturn] and the [IAs] to the costs of refuting respondents' defense, while attempting to delay a decision by the administrative law judge and the Commission, . . . that the patents in issue were either valid or invalid."[55] He found that respondents' invalidity defense in fact "had the inevitable (and intended) result of causing 'unnecessary delay [and] needless increase in the cost of the investigation.'"[56]

The ALJ further found that "the minimum sanction sufficient to deter repetition of such conduct or comparable conduct by others similarly situated is the payment to Quickturn of reasonable attorney's fees, and other expenses incurred, and to the [IAs] reasonable expenses required to meet respondents' invalidity defense after Friday, April 11, 1997, when respondents adamantly refused to withdraw their affirmative defenses of invalidity."[57] He found that those expenses are directly related to respondents' improper conduct in presenting and continuing to advocate an invalidity defense for a purpose other than success in this investigation.[58]

Before the ALJ, respondents argued that the safe harbor provision of Commission rule 210.4 bars Quickturn's Motion Docket No. 383-124, because respondents timely withdrew all contested material from their Prehearing Statement. The ALJ found that compliance with the safe harbor provision of Commission rule 210.4 is a prerequisite to obtaining relief under that rule. He noted, however, that on May 19, 1997, Quickturn served on respondents Motion

---

[53] *Id.* at 97.

[54] *Id.* at 96.

[55] *Id.* at 100.

[56] *Id.*

[57] *Id.* at 101 (footnotes omitted).

[58] Order No. 96 at 99-100.

Docket No. 383-119 and that Quickturn subsequently withdrew Motion Docket No. 383-119.[59] He found that between the time that Quickturn withdrew Motion Docket No. 383-119 and the time it filed its Motion Docket No. 383-124, Quickturn gave respondents the opportunity to withdraw or correct all challenged papers, claims, defenses, contentions, allegations or denials. Thus, the ALJ found that Quickturn's withdrawal of Motion Docket No. 383-119 and subsequent filing of Motion Docket No. 383-124 provided respondents with an adequate safe harbor opportunity.[60]

However, the ALJ further found that respondents' "Withdrawal of Material Pursuant to Rule 210.4(d)(1)(i)" was directed only to *certain* of the challenged subject matter at issue in Motion Docket No. 383-124. In particular, he found it undisputed that respondents withdrew the statement that the claims in issue are invalid from their Prehearing Statement. However, he found that "the substance of Motion No. 383-119 was respondents' continued insistence on challenging the infringement and validity of all patents in issue, while simultaneously refusing to offer any evidence to support that challenge."[61] He stated that "respondents have steadfastly refused to withdraw the underlying [invalidity] contention, as framed in their response to the complaint."[62] Based on the foregoing, the ALJ concluded that respondents had not utilized the safe harbor provision in that their withdrawal of certain portions of their Prehearing Statement was "insufficient to satisfy the language of Commission rule 210.4(d)(1)."[63] He therefore rejected respondents' challenge to Motion Docket No. 383-124 based on the safe harbor provision.

D. The Parties' Comments

1. Respondents' Appeal

In challenging the ALJ's imposition of sanctions pursuant to Motion Docket No. 383-124, respondents again argued that (1) that motion is procedurally barred under the safe harbor provisions of rule 210.4, and (2) since they allegedly put nothing in issue in the permanent relief phase of the investigation, they cannot be sanctioned under rule 210.4 for failing to support their position. Respondents asserted that they timely "withdrew every statement in the Prehearing Statement challenged by Quickturn in its May 19 motion" and that "[t]hese

---

[59] *Id.* at 94.

[60] *Id.*

[61] *Id.* at 95, citing Motion Docket No. 383-119 at 6-8, Motion Docket No. 383-124 at 8-9.

[62] *Id.* at 96.

[63] *Id.*

statements are the only materials challenged by Quickturn in its May 19 motion."[64] According to respondents, they "were never asked to withdraw their response to the complaint in a properly served rule 210.4 motion."[65] They therefore argued that their withdrawal of the challenged material from their Prehearing Statement "is an absolute bar to Quickturn's motion."[66] Respondents also argued that, since they cannot be sanctioned for a challenged paper unless they received a proper request to withdraw it under rule 210.4, "Order No. 96 is erroneous as a matter of law and must be reversed."[67]

Respondents also argued that the two oral statements they made during the PEO hearing "are not subject to rule 210.4."[68] In particular, respondents argued that Quickturn's May 19, 1997, motion specifically challenged only respondents' Prehearing Statement, and that Quickturn did not provide respondents with proper notice that it considered any oral statements made by them during the PEO hearing to be sanctionable. Respondents asserted that "any such statements would have been withdrawn on May 27, 1997, just as respondents withdrew all statements that were challenged by Quickturn."[69]

In addition, respondents asserted that "rule 210.4 deals with written papers, not oral statements, except in special circumstances not present here."[70] According to respondents, "[o]ral statements are not subject to rule 210.4 or Rule 11 unless they relate back to the contents of a pleading, written motion, or other paper."[71] They stated that Rule 11 "applies only to assertions contained in papers filed with or submitted to the court" and "does not cover matters arising for the first time during oral presentations to the court, when counsel may make statements that would not have been made if there had been more time for study and reflection."[72] Respondents maintained that "the only written paper challenged by Quickturn was respondents' Prehearing Statement, and the challenged portions were withdrawn on May

---

[64] Respondents' Third Petition at 34-35.

[65] *Id.* at 48 (emphasis in original).

[66] *Id.* at 47.

[67] *Id.* at 49.

[68] Respondents' Third Petition at 49-50, n.32; *see also* Respondents' Fourth Petition at 14.

[69] Respondents' Third Petition at 49.

[70] *Id.*

[71] *Id.*

[72] *Id.* at 50, citing Fed. R. Civ. P. 11, 1993 Advisory Committee Notes.

27, 1997."[73] They argued that their two oral statements covered "matters arising for the first time during oral presentations to the court" and are thus not subject to rule 210.4.

Respondents also argued that the ALJ erred in finding that their conduct caused Quickturn unnecessarily to present evidence of validity at the PEO hearing. According to respondents, "Quickturn was not required to put on a validity case" because "Quickturn's patents enjoy a presumption of validity, and respondents made absolutely clear both before and during the PEO hearing that they did not intend to present any evidence of invalidity in this forum beyond what had already been rejected by the ALJ at the April 1996 TEO hearing."[74] Respondents contended that "Quickturn did not have an obligation to rebut respondents' allegations, only their evidence, and respondents did not present any evidence of invalidity."[75] Respondents asserted that "Quickturn, had it wished, could have simply relied on the presumption of validity with respect to all five patents-in-suit."[76] They asserted that they should not be sanctioned for electing not to stipulate to the validity of Quickturn's patents and for "chos[ing] to accept a permanent exclusion order here and to challenge Quickturn's allegations in another forum."[77]

Finally, respondents argued that Order No. 96 should be reversed "because any alleged harm to Quickturn was due to its own failure to make a timely motion for sanctions."[78] According to respondents, "Quickturn could easily have filed its motion for sanctions before the PEO hearing began on April 7, 1997" which, they asserted, "would have allowed respondents to withdraw the challenged statements before the hearing began."[79]

2. Quickturn's Response

Quickturn argued that respondents' withdrawal from the permanent relief phase of the investigation was "incomplete in light of respondents' failure to withdraw or disavow their

---

[73] *Id.* at 51.

[74] *Id.* at 45-46 (emphasis in original).

[75] *Id.* at 56 (emphasis in original).

[76] *Id.* at 57.

[77] *Id.* at 45. Quickturn and respondents are engaged in a co-pending federal district court case in Oregon involving the same patents at issue in this investigation. *Mentor Graphics Corporation v. Quickturn Design Systems*, CV 96-342-RE (D. OR.).

[78] Respondents' Third Petition at 58.

[79] *Id.* at 58-59.

frivolous defenses as set forth in [their] Prehearing Statement . . . and in the underlying defenses asserted in their responses to Quickturn's complaint."[80] As a result, Quickturn asserted, respondents' defenses were at issue throughout the PEO hearing. In particular, Quickturn argued that "[t]he fact remains that respondents, regardless of what 'material' they redacted *ex post facto* from their Prehearing Statement, refused to withdraw their underlying defenses to Quickturn's complaint and accept a judgment of validity and infringement despite having no evidence whatsoever in the PEO record to support those defenses."[81] Rather, Quickturn asserted, respondents failed to comply with the safe harbor provisions of rule 210.4 by failing to withdraw completely their validity defense.

Quickturn also disputed respondents' assertion that their oral statements at the PEO hearing fall outside the scope of rule 210.4, arguing that "[t]he record is clear that respondents did in fact join issues on the validity and infringement of Quickturn's patents-in-suit at the outset of the PEO hearing."[82] Quickturn contended that respondents' underlying invalidity contention in their answer to Quickturn's complaint was *de facto* incorporated by reference in respondents' Prehearing Statement. It also contended that respondents' oral statements at the PEO hearing, to the effect that respondents would not withdraw those contentions, and their statement that they would put Quickturn to its *prima facie* proofs, constituted "later advocacy" of those contentions. Quickturn asserted that "[i]t is clear that continued oral advocacy of a defense raised in a pleading submitted to a court is subject to abuse of process sanctions."[83]

According to Quickturn, "what the record shows is sufficient participation on the part of respondents in the PEO hearing to put Quickturn through its proofs on validity and infringement, but no evidentiary basis upon which respondents can now justify that participation."[84] Quickturn contended that respondents continued to assert their underlying defenses "for *tactical* reasons," which "included, among others, maintaining reliance upon the TEO record so as to preserve respondents' pending Federal Circuit Appeal of the [Commission's] TEO ruling."[85] Quickturn asserted that "[i]t is apparent that respondents had

---

[80] Quickturn's Response at 57.

[81] *Id.* at 58.

[82] *Id.* at 59.

[83] *Id.*, citing the Committee Notes to Federal Rule 11.

[84] *Id.* at 60.

[85] *Id.* at 58 (emphasis in original).

strategic yet non-substantive reasons for continuing to rely on their defective defenses."[86]

Finally, Quickturn argued that its motion for sanctions was timely "in light of . . . the actions of respondents in springing their 'non-participation' defense on the eve of the PEO hearing."[87] Quickturn also noted that respondents initially offered certain exhibits on validity into the PEO record and subsequently moved to withdraw those exhibits only after Quickturn had expended resources preparing to meet its burden on that issue. Quickturn therefore supported the ALJ's finding that by failing either to support their invalidity assertion or to stipulate to validity, respondents violated rule 210.4(c).[88]

3. The IAs' Response

The IAs argued that Quickturn was prejudiced by respondents' continued assertion of the invalidity defense because, even though respondents offered no evidence that Quickturn was required to rebut, "the TEO evidentiary record lurked in the background of the PEO hearing as a potential basis for respondents' assertion of their patent invalidity defenses during post-trial briefing."[89] They also noted that respondents' counsel warned that if "Quickturn fails to make a *prima facie* case on any elements, we intend to address that in the post-hearing briefs." [90]

The IAs also argued that, while the safe harbor provision is a prerequisite to imposition of rule 210.4 sanctions, Quickturn's Motion Docket No. 383-124 is timely and respondents' withdrawal is incomplete and should not help them avoid sanctions for abuse of process. Finally, the IAs noted that, "even when reminded of their obligations under rule 210.4, respondents maintained the affirmative defenses set forth in their response to the complaint and in their Prehearing Statement that the patents at issue were invalid, without intending to offer any evidence in support of that defense."[91]

---

[86] *Id.*

[87] *Id.* at 58-59.

[88] *Id.* at 60, citing *Certain Concealed Cabinet Hinges and Mounting Plates*, Investigation No. 337-TA-289, Order No. 118 (September 28, 1989).

[89] IAs' Response at 31.

[90] *Id.*

[91] *Id.* at 39.

E. Commission Determination

We find that Quickturn's Motion Docket No. 383-124 is procedurally barred under the safe harbor provisions of Commission rule 210.4(d). Specifically, rule 210.4(d)(1) expressly provides that the party on whom a motion for sanctions is served must have an opportunity to withdraw, or appropriately correct "the challenged paper, claim, defense, contention, allegation, or denial. . . ."[92] As the ALJ noted, courts have found that compliance with this "safe harbor" provision is a mandatory procedural prerequisite to a motion for sanctions under Rule 11, and that sanctions may not be granted if the movant fails to comply with the "safe harbor" provision.[93] Accordingly, as the ALJ found, compliance with the "safe harbor" provision of Commission rule 210.4 is a prerequisite to obtaining relief under that rule.

We do not agree, however, with the ALJ's finding that Quickturn complied with the safe harbor provision of rule 210.4(d). Under rule 210.4(d), Quickturn was required to serve on respondents a proposed motion for sanctions that "describe[d] the specific conduct alleged to violate [rule 210.4]." In its Motion Docket No. 383-119 and the memorandum in support thereof, Quickturn sought sanctions under rule 210.4(c)(3) for respondents' failure to support with evidence the arguments and assertions regarding patent invalidity that were contained in respondents' Prehearing Statement. In contrast to its Motion Docket No. 383-124, Quickturn did not identify in Motion Docket No. 383-119 any other instances where respondents made unsupported invalidity assertions (*e.g.*, in their answer to the complaint and their statements at the PEO hearing). Thus, because rule 210.4(d)(1) requires the complaining party to provide actual notice of the "specific conduct" alleged to be sanctionable, we agree with respondents that Motion Docket No. 383-119 did not provide them notice that Quickturn would seek sanctions for any assertions of invalidity other than those contained in the Prehearing Statement.

In their Motion Docket No. 383-122, respondents expressly withdrew from their Prehearing Statement each of the defenses objected to by Quickturn in Motion Docket No. 383-119. We find that respondents complied with their obligations under the safe harbor provisions of rule 210.4, thereby precluding an award of sanctions under Motion Docket No. 383-124. Accordingly, based on the safe harbor provisions of rule 210.4, we have not adopted Order No. 96 as it concerns that motion.

---

[92] 19 C.F.R. § 210.4(d)(1).

[93] *See, e.g., Ridder v. City of Springfield*, 109 F.3d 288 (6th Cir. 1977); *Elliot v. Tilton*, 64 F.3d 213, 216 (5th Cir. 1995); *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1328 (2d Cir. 1995); 2 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 11.22[1][b] (3d ed. 1997).

IV. Respondents' Due Process Objections

A. The Parties' Comments

Respondents argued that they were denied due process regarding Quickturn's motions for monetary sanctions on the ground that they were not given adequate notice of Quickturn's allegations and an opportunity to be heard on those motions.[94] Specifically, respondents noted that Commission rule 210.4(d) permits the Commission to award sanctions "after notice and a reasonable opportunity to respond . . . ." Respondents also asserted that a person who may be subject to Rule 11 sanctions must be provided with particularized notice and that "Quickturn provided no notice to respondents' counsel" that it sought sanctions for their conduct.[95]

Respondents contended that they first learned of the possibility of Quickturn's filing any motions for discovery sanctions on the first day of the PEO hearing, and that "Quickturn provided no specifics regarding the allegedly sanctionable conduct."[96] Respondents also stated that they "first learned of the possibility of Quickturn's filing a motion for sanctions regarding respondents' Prehearing Statement on the fifth day of the PEO hearing."[97]

Respondents asserted that, because the hearing on Quickturn's three motions for monetary sanctions occurred before the motions were filed, they were not given a "reasonable opportunity to respond" to Quickturn's motions. They contended that "the ALJ gave Quickturn its own thirteen day hearing to present evidence regarding its unfiled motions for monetary sanctions while providing respondents with no real opportunity to respond."[98] Respondents further asserted that they were deprived of the opportunity to present evidence on their behalf and that the ALJ "held a hearing at which only Quickturn was able to participate meaningfully."[99] According to respondents, because "Quickturn alone knew the contents of the unfiled motions," only Quickturn could present appropriate evidence at the PEO hearing.[100]

Finally, respondents argued that, if the ALJ imposed sanctions on respondents' counsel

---

[94] Respondents' Fourth Petition at 6; Respondents' Third Petition at 79.

[95] Respondents' Third Petition at 84.

[96] *Id.* at 82.

[97] *Id.*

[98] *Id.*

[99] *Id.* at 82-83.

[100] *Id.* at 82.

sua sponte, such sanctions are "beyond what were noticed by Quickturn [and] are improper."[101] They argued that Commission rule 210.4 requires that, before imposing sanctions *sua sponte*, "the ALJ must direct the person subject to sanctions to show cause why it has not violated the rule," which they asserted he failed to do.[102]

Quickturn argued that respondents' due process contentions "are unsupported by the events of this investigation."[103] It asserted that "[t]he record plainly reflects that [the ALJ], in an abundance of caution, gave respondents and their attorneys ample notice of the serious allegations made against them."[104] Quickturn also contended that the ALJ "gave respondents and their counsel repeated opportunities to present their positions in response to Quickturn's serious allegations of misconduct."[105] It argued that respondents and their counsel had adequate notice of Quickturn's intentions to delve into discovery improprieties, including the failure to produce documents in a timely manner and the submission of false and misleading interrogatory answers.

Quickturn noted that it provided respondents notice of its intent to file its sanctions motion regarding Reblewski Exhibit A on March 14, 1997, when it filed a motion *in limine* to exclude that exhibit at the PEO hearing.[106] Quickturn also stated that the ALJ "advised respondents that he considered Quickturn's allegations regarding respondents' introduction of false and misleading evidence to be an extremely serious matter which would be fully addressed at the PEO hearing."[107] In particular, Quickturn noted that on March 27, 1997, the ALJ convened a telephone conference to inform the parties that he intended to "have technical

---

[101] *Id.* at 84.

[102] *Id.*, citing 19 C.F.R. § 210.4(d)(1)(ii).

[103] Quickturn's Response at 4.

[104] *Id.*

[105] *Id.*

[106] A motion *in limine*, which is filed immediately prior to an evidentiary hearing, is a motion seeking to exclude from trial anticipated prejudicial, inadmissable, and/or irrelevant evidence. *Braden v. Hendricks*, 695 P.2d 1343, 1348 (Ok. 1979). At the temporary relief hearing, respondents introduced into evidence a circuit diagram, designated as "Reblewski Exhibit A," based on Mr. Reblewski's direct testimony that the exhibit represented a high-level description of the architecture of the Meta 128 chip. Witness Statement of Frederic Reblewski at 15, RX-698, Q/A 18; Order No. 96 at 52-53. In Motion Docket No. 383-117, Quickturn's moved to exclude that exhibit and certain derivative exhibits from the PEO hearing.

[107] *Id.* at 5.

witnesses under oath [at the PEO hearing] and . . . [to] ask some questions about [the] motion [*in limine*].[108] Quickturn also contended that respondents' counsel "were notified as early as April 7, 1997, that they too were facing potential sanctions."[109]

Finally, Quickturn argued that although "a party charged with sanctionable behavior has no due process right to a hearing," respondents and their counsel were provided a hearing on each of the three sanctions motions in issue.[110] Quickturn asserted that respondents had ample opportunity to submit evidence to rebut its allegations, but "apparently chose not to do so."[111]

The IAs argued that respondents were served with and had actual notice of the motions in question. They noted that respondents filed written responses to each of the motions, and that the ALJ considered the arguments made in those responses. They argued that due process does not require an evidentiary hearing on motions for sanctions, only notice of the allegations and an opportunity to be heard.[112] The IAs asserted that "there can be no dispute that respondents were heard on the motions."[113]

In particular, with respect to Motion Docket No. 383-117, the IAs argued that "[b]ecause respondents substantively addressed the motion in issue in their responsive brief and because the ALJ expressly and extensively considered their arguments, respondents were not denied due process."[114] The IAs argued that, because the ALJ denied Motion Docket No. 383-123 on procedural grounds, and no party has contested that finding, "the due process objections concerning that decision are moot."[115] Finally, with regard to Motion Docket No. 383-124, the IAs asserted that "[r]espondents were specifically advised during the PEO hearing that failure to support their invalidity allegations could result in abuse of process proceedings, and were given the opportunity to submit any invalidity evidence they desired during that

---

[108] *Id.*, citing Transcript of Telephone Conference, dated March 27, 1997, at 6-8.

[109] *Id.*, citing PEO Tr. at 225-226.

[110] *Id.* at 7.

[111] *Id.*

[112] IA's Response at 5-7.

[113] *Id.* at 6.

[114] *Id.* at 5.

[115] *Id.* at 6.

hearing."[116] Based on the foregoing, the IAs argued that respondents were not denied due process.

B. Commission Determination

The Commission does not accept respondents' due process objections. Respondents were given ample notice of the nature and substance of the sanctions motions in question and were afforded an adequate opportunity to defend against those allegations. With respect to their notice of Quickturn's allegations, Quickturn filed on March 14, 1997, its motion *in limine* to exclude Reblewski Exhibit A from the PEO hearing. In that motion, Quickturn stated that it would "be filing a motion for sanctions in connection with respondents' handling of Reblewski Exhibit A."[117] As Quickturn pointed out, during the March 27, 1997, telephone conference, the ALJ also indicated that the substance of Quickturn's allegations would be taken up at the PEO hearing. He even expressly advised respondents that they should be prepared to address those allegations.

Moreover, during the PEO pre-hearing conference, Quickturn again advised respondents that a motion for discovery sanctions would be forthcoming.[118] On April 11, 1997, during the PEO hearing, Quickturn reiterated its intention to file a motion for sanctions with respect to Reblewski Exhibit A.[119] On April 11, 1997, respondents were specifically apprised that Quickturn would challenge under rule 210.4 their Prehearing Statement and attempted withdrawal from the PEO.[120] Thus, respondents had ample notice of the allegations on which the ALJ ruled in Order No. 96.

With regard to respondents' opportunity to be heard on those issues, as Quickturn and the IAs noted, an evidentiary hearing is not required to resolve a motion for sanctions.[121] Indeed, with respect to sanctions under Rule 11, "[s]imply giving a chance to respond to the charges through submission of a brief is usually all that due process requires."[122] It is undisputed that on June 9, 1997, respondents filed an extensive substantive opposition to

---

[116] *Id.* at 7.

[117] Quickturn's March 14, 1997, Mem. P. & A., at 30 n.5.

[118] PEO Tr. at 152-163; 196.

[119] PEO Tr. 568-69.

[120] PEO Tr. at 1236.

[121] *Jones v. Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1359 (3d Cir. 1990).

[122] *Spiller v. Ella Smithers Geriatric Center*, 919 F.2d 339, 347 (5th Cir. 1990).

Quickturn's motions. It also is clear that the ALJ considered respondents' arguments in reaching his determinations in Order No. 96.

Moreover, it is clear that respondents, in fact, were given a hearing on Quickturn's motions. Much of the PEO hearing, which lasted 13 days, was devoted to Quickturn's allegations of discovery misconduct, which formed the bases for its motions for monetary sanctions. Quickturn spent several entire days at the PEO hearing cross-examining each of the witnesses on topics directly and solely related to respondents' discovery conduct.[123] Indeed, respondents' counsel expressly noted that respondents' witnesses were testifying for the purpose of addressing the issues of false and misleading evidence raised in Quickturn's motions for monetary sanctions.[124] At that hearing, the ALJ pointedly and repeatedly invited respondents to present whatever exculpatory evidence they had to rebut Quickturn's allegations.[125] Yet, respondents refused to offer any evidence at the PEO hearing in defending against Quickturn's charges. On June 26 and 27, 1997, after the motions in question were filed, the ALJ held final arguments at which respondents were again provided a full opportunity to be heard on all sanctions issues. Based on the foregoing, the Commission determines that respondents were afforded due process in connection with Order No. 96.

V. Respondents' Request For A Hearing

A. The Parties' Comments

In their Fourth Petition, respondents stated that "[b]ecause of the complexity and seriousness of the allegations giving rise to Order No. 96, and because it appears that this will be the first interpretation and consideration of monetary sanctions under rule 210.4 by the Commission, respondents request a hearing before the Commission to allow the parties to present oral arguments."[126] Quickturn opposed respondents' request for an oral hearing on Order No. 96, because "[t]he record of respondents' misconduct is clear," and no oral hearing is necessary.[127]

The IAs argued that "[t]here has been no showing by respondents of a need for an oral

---

[123] *See, e.g.*, PEO Tr. at 2373-75; 2796-2705 (extensive questioning of both Mr. Lepape and Mr. Reblewski regarding respondents' responses to Interrogatory Nos. 77-79).

[124] PEO Tr. at 1822-1826.

[125] *See, e.g.*, PEO Hearing Tr. at 1214-1225, 1827-28; Order No. 96 at 6-8.

[126] Respondents' Fourth Petition at 2.

[127] Quickturn's Response at 1.

hearing before the Commission."[128] They asserted that Order No. 96 is comprehensive and contains extensive analysis and findings of fact, and they noted that respondents have filed four petitions for review. The IAs also stated that the ALJ "has already found that respondents' discovery and procedural abuses were motivated, at least in part, by a goal of increasing the cost of the investigation for [Quickturn]."[129] According to the IAs, "[e]ntertaining oral argument would only further increase the cost of the investigation."[130] Under those circumstances, the IAs argued that the sanctions matters should be decided by the Commission based on the existing record.

B. Commission Determination

We agree with Quickturn and the IAs that oral argument on Order No. 96 is unnecessary. We agree with the IAs that the ALJ was exhaustive in his analysis. In addition, counsel have made extensive written submissions to the Commission. Accordingly, we have ruled on the appeals of Order No. 96 based on the record before us, without further oral argument.

VI. Respondents' Motion For Leave To File A Reply

A. The Parties' Comments

On December 16, 1997, respondents filed a motion for leave to file a reply to Quickturn's and the IAs' responses to their petitions appealing Order No. 96.[131] In support of that motion, respondents argued that the allegations of misconduct in Order No. 96 warrant "the highest level of scrutiny" by the Commission and raise "important issues of first impression that should be fully briefed before any decision is made."[132] Respondents also asserted that a reply brief is necessary (1) to correct misstatements in Quickturn's response, (2) to address new legal and factual contentions contained in Quickturn's and the IA's responses, and (3) to address "a number of examples of purported misconduct that were not the subject of

---

[128] IAs' Response at 2, 43.

[129] *Id.* at 43.

[130] *Id.*

[131] Motion of Respondents Mentor and Meta for Leave to Reply to Quickturn's Opposition and to the Staff's Response to Respondents' Appeal of Order No. 96 (December 16, 1997) ("Respondents' Motion for Leave").

[132] Memorandum in Support of Motion of Respondents Mentor and Meta for Leave to Reply to Quickturn's Opposition and to the Staff's Response to Respondents' Appeal of Order No. 96 (December 16, 1997) ("Respondents' Motion for Leave") at 1.

any ruling of sanctions in Order No. 96," but which were purportedly raised in Quickturn's response.

On December 29, 1997, Quickturn filed an opposition to respondents' motion, stating that respondents "overlook the fact that all of the issues raised in Order No. 96 have been fully briefed in a manner which will allow the 'highest level of scrutiny' by the Commission."[133] Quickturn asserted that respondents have filed "over two dozen briefs in connection with Order No. 96 and its underlying motions, including four separate briefs to the Commission."[134] It contended that respondents' reply would "add[] nothing new to this record."[135] Quickturn also requested authorization to file a sur-reply in the event the Commission grants respondents motion, "to correct the record in light of the misstatements contained in respondents' reply."[136]

On December 29, 1997, the IAs' also opposed respondents' motion "[b]ecause the Commission's [rules] do not provide for such reply briefs, and because respondents' motion fails to identify any new issues that necessitate a reply."[137] The IAs noted that, pursuant to Commission rule 210.25(d), the Commission issued on October 2, 1997, an order permitting written submissions appealing Order No. 96 and responses to any such appeals. The IAs noted that neither that order nor the Commission's rules contemplate submissions in reply to the responses to petitions appealing Order No. 96. They argued that respondents assertions that Quickturn has misconstrued the record and raised new issues are wholly unsupported and do not justify granting the motion for leave to file a reply. Finally, like Quickturn, the IAs requested an opportunity to file a sur-reply in the event the Commission grants respondents' motion.

B. Commission Determination

We have denied respondents' motion for leave to file a reply. The IAs are correct that the Commission's rules authorize petitions appealing an order regarding sanctions and

---

[133] Complainant Quickturn's Opposition to Respondents' Motion for Leave to File a Reply Brief Re: Respondents' Appeal of Order No. 96 or, in the Alternative, Quickturn's Request for an Order Permitting Quickturn to File a Sur-Reply Brief (December 29, 1997) ("Quickturn's Opposition") at 1 (emphasis omitted).

[134] Quickturn's Opposition at 1 (emphasis omitted).

[135] *Id.*

[136] *Id.*

[137] Commission Investigative Staff's Response to Respondents' Motion for Leave to File a Reply Brief Concerning Respondents' Petition for Review of Order No. 96 (December 29, 1997)("IAs' Opposition") at 1.

responses thereto, but do not contemplate replies to the responses.[138] Respondents have submitted voluminous and ample documentation and argument in support of their position both before the ALJ and to the Commission. Accordingly, we have ruled on the appeals of Order No. 96 based on the record before us, without further briefing.

VII. Referral To The ALJ For Further Proceedings To Determine The Amount Of Monetary Sanctions To Be Awarded

The ALJ did not quantify the sanctions imposed in Order No. 96. Rather, he stated that, in the event the Commission sustains his award of monetary sanctions, Quickturn should be required to establish the appropriate dollar amount of monetary sanctions to be awarded by relating its attorneys' fees and costs to the specific conduct underlying the award of sanctions.

We are referring this matter to the ALJ for issuance of an ID as to the precise amount of the monetary sanctions to be imposed. The ALJ is to issue the ID within six months and is authorized to conduct an evidentiary hearing, as he deems appropriate, in order to generate an adequate record on the precise dollar amount of the sanctions to be awarded. Quickturn bears the burden of proving that the amount of its costs and attorney's fees are within the scope of the sanctions awarded by the Commission.

---

[138] *See* 19 C.F.R. § 210.25(d).