

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SIEMENS INDUSTRY SOFTWARE)
INC.,)

Plaintiff,)

) C.A. No. 22-1569-CFC

v.)

BELL SEMICONDUCTOR, LLC,)

Defendant.)

**UNOPPOSED MOTION OF THE U.S. INTERNATIONAL TRADE
COMMISSION FOR LEAVE TO INTERVENE IN SUPPORT OF
DEFENDANT, FOR THE LIMITED PURPOSE OF OPPOSING IN PART
THE MOTION FOR PRELIMINARY INJUNCTION**

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I. INTRODUCTION

On December 29, 2022, Plaintiff Siemens Industry Software Inc. (“Siemens”) filed a Motion for Preliminary Injunction for “this Court to enter the same relief” as sought in *Synopsys, Inc. v. Bell Semiconductor, LLC*, Case No. 1:22-cv-1512-CFC (D. Del.), including enjoining Defendant Bell Semiconductor, LLC (“Bell”) “from proceedings with . . . any U.S. International Trade Commission investigations in which [Bell] alleges infringement against Siemens’s [*sic*] software tools or Siemens’ customers’ use of Siemens’ software tools.” D.I. 17, at 2 (Dec. 29, 2022).

This Court has already granted the U.S. International Trade Commission’s (“the Commission” or “ITC”) motion to intervene in the *Synopsys* action. *Synopsys*, D.I. 30, Order at 1 (D. Del. Dec. 20, 2022). By this Motion, the Commission requests to intervene for the same reasons and to the same extent in this civil action. The only differences between the Commission’s motion in *Synopsys* and the motion here concern timeliness. Siemens filed its motion for preliminary injunction on December 29, 2022, and despite knowing of the Commission’s interest in the *Synopsys* action, Siemens never notified the Commission of the December 29, 2022 motion. Rather, the Commission learned of it for the first time on January 12, 2023. The Commission sought consent from the other parties promptly on January 13, 2023.

Accordingly, and pursuant to Federal Rule of Civil Procedure 24, the Commission respectfully moves to intervene for the limited purpose of opposing in part Siemens' motion for preliminary injunction. The relief Siemens seeks, as it pertains to the Commission, is unprecedented. If granted, it would impermissibly interfere with the Commission's fulfillment of its statutory obligations, in a different branch of the Government. Siemens does not cite any authority for the relief it seeks. D.I. 17 at 1-6.

Under Rule 24, the Commission is entitled to intervene as of right because the relief Siemens seeks would handcuff the Commission's ability to effectively carry out its statutory obligation to investigate unlawful importation of articles under 19 U.S.C. § 1337 in two already-pending investigations. Fed. R. Civ. P. 24(a)(2). Alternatively, under Rule 24(b), the Court should permit the Commission to intervene because it is the federal agency whose fulfillment of its statutory obligations under 19 U.S.C. § 1337 is compromised by the relief Siemens seeks. Fed. R. Civ. P. 24(b)(2).

Commission counsel has consulted with counsel for Siemens and Bell prior to filing this motion. Bell does not oppose the motion. Siemens states as follows: "Siemens does not oppose the proposed motion understanding that it would be for the same limited purpose as permitted in the Cadence/Synopsys suit."

II. BACKGROUND

A. The Commission and Its Administration of Section 337

The Commission is an independent, nonpartisan agency composed of six Commissioners appointed by the President. 19 U.S.C. § 1330(a). One seat is currently vacant. The independence of the Commission is maintained by a statutory requirement that no more than three Commissioners may be members of the same political party. *Id.* The Commission has independent litigating authority under 19 U.S.C. § 1333(g).

For more than ninety years, the Commission has been charged with investigating “unfair methods of competition and unfair acts in the importation of articles.” Tariff Act of 1922, Pub. L. No. 318, § 316, codified as reenacted and amended at 19 U.S.C. § 1337 (“section 337”). The Commission has pursued its mandate through formal adjudication under the Administrative Procedure Act since 1975. *See id.* at § 1337(c) (citing 5 U.S.C. § 554). The Commission has adjudicated over a thousand investigations alleging violations of section 337, nearly all of which were directed wholly or primarily to patent infringement. The Commission’s administrative law judges adjudicate only section 337 investigations and are recognized as experts in patent infringement and other intellectual property disputes. The Commission also relies on the Office of Unfair Import Investigations (“OUII”) to serve as an independent investigator in many section 337 investigations and to

represent the public interest. OUII is comprised of 17 investigative attorneys, who typically have technical backgrounds and extensive experience as patent litigators prior to their public service. Each Commissioner has at least one attorney advisor to assist with section 337 investigations. Another dozen attorneys serve in the Commission's Office of the General Counsel to assist in their review of the ALJs' initial determinations and to defend the Commission's determinations, ordinarily in the U.S. Court of Appeals for the Federal Circuit, 19 U.S.C. § 1337(c). All of these attorneys have technical degrees, and nearly all are registered to practice before the U.S. Patent and Trademark Office.

If the Commission finds a violation of section 337, the Commission has two remedies at its disposal. First, the Commission can issue an exclusion order, which orders U.S. Customs and Border Protection exclude infringing articles from importation. 19 U.S.C. § 1337(d). Second, the Commission can issue an order that the infringer cease and desist from further unlawful conduct concerning the imported articles. *Id.* § 1337(f). The President has veto power over the Commission's issuance of exclusion orders and cease and desist orders. *Id.* § 1337(j)(2). The Commission does not have the authority to issue retrospective relief such as damages.

Commission investigations concerning patent infringement are sometimes brought at the same time as district court patent litigation. In such instances,

Congress has indicated its preference (since 1994) that generally Commission investigations proceed first. 28 U.S.C. § 1659(a). Upon the conclusion of the Commission investigation, the Commission’s evidentiary record is transmitted to the district court and “shall be admissible in the civil action” subject to the Federal Rules of Evidence and the Federal Rules of Civil Procedure. 28 U.S.C. § 1659(b). Neither the Commission’s patent-related determinations, nor the Federal Circuit’s decisions therefrom, are issue preclusive on subsequent district court proceedings. *See, e.g., Tex. Instruments Inc. v. Cypress Semiconductor Corp.*, 90 F.3d 1558, 1568-60 (Fed. Cir. 1996). Rather, the “district court can attribute whatever persuasive value to the prior ITC decision that it considers justified.” *Id.* at 1569; *see also In re Convertible Rowing Exerciser Patent Litig.*, 721 F. Supp. 596, 602-03 (D. Del. 1989).

In contrast, even after a Commission investigation has concluded, should a district court find, for example, patent claims to be invalid, the Commission will suspend the operation of its orders as to those patent claims, and will permanently rescind its orders as to them after the appeals from the district court have concluded. *See, e.g., Certain Composite Wear Components and Products Containing Same*, Inv. No. 337-TA-644, Comm’n Op., 2011 WL 13383702, at *1, 6-8 (Feb. 10, 2011) (determining “to temporarily rescind” its remedial orders in their entirety, pending appeal, after a district court declared “the sole patent covered by the Commission’s remedial orders” to be invalid); *see also SSIH Equip. S.A. v. Int’l Trade Comm’n*,

718 F.2d 365, 370-71 (Fed. Cir. 1983) (finding “the Commission acted properly” in modifying its remedial orders to exclude two of the three patents at issue after they had been found invalid by a district court).

B. The Two Commission Investigations Siemens Seeks to Enjoin

The pending motion for preliminary injunction before this Court seeks, *inter alia*, to interfere with two ongoing Commission investigations.¹ As set forth in footnote 1, the first is the 1340 investigation. Bell filed its complaint in that investigation on October 6, 2022, and the Commission voted to institute the investigation on November 8, 2022. Notice, 87 Fed. Reg. 68,192 (Nov. 14, 2022). In the second investigation, the 1342 investigation, Bell filed its complaint with the Commission on October 14, 2022, and the Commission voted to institute that investigation on November 23, 2022. Notice, 87 Fed. Reg. 73,331 (Nov. 29, 2022). Both investigations have been assigned to presiding ALJs, and each ALJ has set deadlines for completing the ALJ stage of the investigations by the end of November 2023. The Commission’s review of the ALJs’ determinations, and issuance of a remedy (if any) is therefore scheduled to be due by the end of March 2024. It is the Commission’s understanding that discovery in both investigations has commenced.

¹ *Certain Electronic Devices, Semiconductor Devices, and Components Thereof*, Inv. No. 337-TA-1340 (U.S. Int’l Trade Comm’n) (“the 1340 investigation”); *Certain Semiconductor Devices Having Layered Dummy Fill, Electronic Devices, and Components Thereof*, Inv. No. 337-TA-1342 (U.S. Int’l Trade Comm’n) (“the 1343 investigation”).

It is the Commission's understanding that Siemens is not a respondent in the two Commission investigations with which Siemens seeks to interfere. Although the Commission allows non-parties to move to intervene in a Commission investigation, 19 C.F.R. § 210.19, applying substantially the same test as Federal Rule of Civil Procedure 24,² Siemens has apparently not availed itself of that opportunity.

Instead, Siemens filed their complaint in the present civil action on December 2, 2022 (D.I. 1), after both ITC investigations had been instituted. Siemens waited until December 29, 2022 to file the motion for preliminary injunction here (D.I. 17). Siemens never notified the Commission of the complaint or the preliminary injunction motion.

Although the injunction sought would on its face apply to Bell, and not the Commission directly, as a practical matter, it would substantially interfere with the Commission's ability to conduct those investigations, as it would stunt the participation of the very party alleging a violation of section 337. Indeed, that is the whole point of the injunction sought.

As the Commission will discuss in its opposition to the motion for preliminary injunction, if allowed to intervene, enjoining Commission proceedings may be

² See generally *Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software*, Inv. No. 337-TA-724, Comm'n Op., 2012 WL 3246515, at *36 (Dec. 11, 2011).

appropriate in order to enforce a forum-selection clause specifying fora other than the Commission for disputes. *Tex. Instruments Inc. v. Tessera, Inc.*, 231 F.3d 1325, 1330-32 (Fed. Cir. 2000). As the Northern District of California explained last year, for example, in such cases involving arbitration agreements or forum selection clauses, “injunctions are often appropriate because the parties selected the forum by contract,” this is “a matter of contract law,” and the “irreparable injury” is “being improperly deprived of a bargained-for forum and forced to submit to remedies that a party bargained to avoid.” *Intel Corp. v. Tela Innovations, Inc.*, No. 3:18-cv-02848-WHO, 2021 WL 783560, at *8 (N.D. Cal. Mar. 1, 2021). The relief Siemens now seeks is untethered to precedent and would represent a vast expansion of equitable relief, at odds even with this Court’s own precedent. *In re Convertible Rowing Exerciser Patent Litig.*, 616 F. Supp. 1134, 1144-45 (D. Del. 1985) (denying the injunction sought).

III. ARGUMENT

The Court should allow the Commission to intervene because the Commission’s interest in not having its duly conducted investigations enjoined give rise to a right to intervene under Federal Rule of Civil Procedure 24(a). Even absent that right to intervene, permissive intervention is still warranted under Rule 24(b). This Court recently granted the Commission’s motion to intervene in *Synposys*. Prior to that, this Court allowed the Commission to intervene under similar

conditions in *Convertible Rowing Exerciser Patent Litig.*, 616 F. Supp. at 1137 n.7. Approximately 15 years later, the Commission sought to intervene in a different district court to contest a similar motion for injunction, and that district court, too, allowed intervention. *Tex. Instruments Inc. v. Tessera, Inc.*, 192 F.R.D. 637, 641 (C.D. Cal. 2000).³

A. The Commission Has a Right to Intervene Under Rule 24(a)

In pertinent part, Federal Rule of Civil Procedure 24(a) states that a movant has a right to intervene “on timely motion” where the movant:

claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect the interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a) & (a)(2). Each of the requirements of Rule 24(a) is met here. *See, e.g., CogniPower LLC v. Fantasia Trading, LLC*, No. 19-2293-CFC, 2021 WL 327389 (D. Del. Feb. 1, 2021) (discussing the requirements of Rule 24(a)(2) and granting the motion to intervene).

³ Because the grant or denial of an injunction that would preclude a party from participating in a Commission investigation falls within the Federal Circuit’s exclusive appellate jurisdiction, *Tessera*, 231 F.3d at 1328, the Commission participated in the appellate proceedings arising from the Central District of California action as well. *See id.*

1. The Commission Has a Cognizable Interest

The Commission has a cognizable “interest relating to the ... transaction that is the subject of this action,” as required by Rule 24. The Commission is presently conducting two trade investigations pursuant to its statutory mandate, 19 U.S.C. § 1337(a), (b), which Siemens seeks to disrupt by the requested injunction. Thus, Siemens’ motion for a preliminary injunction necessarily implicates the Commission’s interest in enforcing the trade laws against unfair imports.

2. The Commission’s Interest Is Impaired If It Cannot Intervene

The Commission’s interests in fulfilling its statutory obligations could be significantly impaired or impeded if the preliminary injunction sought were to be granted. As noted above, the effect of enjoining Bell, the complainant in these two Commission investigations, would, for all intents and purposes, make resolution of the Commission’s investigations impracticable.

Beyond the concrete and irrefutable effect on the two present investigations, the Commission also has an important interest in protecting the integrity of its overall investigative function from further interference as raised here. Specifically, the concern is that enjoining the Defendant from participating at the Commission here will likely invite other parties in other investigations to seek similar relief from other district courts. The cumulative and resulting effect would be to undermine Congress’s preference for Commission actions to proceed ahead of, or concurrent

with, civil actions. 28 U.S.C. § 1659(a), as well as the Commission’s ability to fulfill its statutory obligations. 19 U.S.C. § 1337(a)(1) (explaining that Commission investigations and remedies “are in addition to any other provision of law”); *id.* § 1337(b)(1) (“The Commission *shall investigate* any alleged violation of this section on complaint under oath” and “*shall conclude* any such investigation and make its determination ... *at the earliest practicable time*”) (emphasis added).

3. The Commission Is Not Adequately Represented by Other Parties

The Commission also has the right to intervene because its interests are not adequately represented by the other parties. The Commission, and not any of the private litigants here, is most familiar with the Commission’s statutory obligations, as well as legal precedents concerning section 337 (including the caselaw concerning district court injunctions related thereto). Moreover, because the preliminary injunction motion also seeks to enjoin participation in numerous other civil actions in the district courts, the Commission risks having its interests lost in the context of a broader dispute, the majority of which does not implicate the Commission’s interests. Unlike Defendant, the Commission has no interest the outcome of the rules of comity among the district courts themselves, and no interest in whether this Court proceeds ahead of, or at the expense of, other district courts. Thus, the Commission, should it be allowed to intervene, will be able to focus on the effects of the sought injunction on agency interests.

4. The Commission's Motion Is Timely Filed

As noted above, Siemens did not notify the Commission of its Complaint or its motion for a preliminary injunction. The Commission first became aware of the motion for preliminary injunction on January 12, 2023, and it has not delayed in responding. *See, e.g., CogniPower*, 2021 WL 327389, at *1 (explaining that timeliness is based on the stage of the proceeding, the prejudice that delay may cause, and the reason for the delay). This motion to intervene is also timely because the proceedings in this Court are at any early stage, and briefs in response to the motion for preliminary injunction have not yet been filed. The Commission's motion to intervene and its opposition to the preliminary injunction motion will not unduly delay or prejudice adjudication of Siemens' claims.

For these reasons, the Commission has a right to intervene pursuant to Federal Rule 24(a) with respect to Siemens' request for injunctive relief to impede Commission proceedings.

B. In the Alternative, the Commission Should Be Permitted to Intervene Under Rule 24(b)

In the alternative to intervention as of right, the Commission should be permitted to intervene under Rule 24(b)(2), which states:

On timely motion, the court may permit a federal governmental officer or agency to intervene if a party's claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any

regulation, order, requirement, or agreement issued or made under the statute or executive order.

Fed. R. Civ. P. 24(b)(2). The Court must also consider “whether the invention will unduly delay or prejudice the adjudication of the original parties’ rights.” *Id.* R. 24(b)(3).

Siemens’ claim that it has the right to proceed in this Court (as opposed to the Commission), as a matter of choice of venue, is based on Siemens’ misapprehension of 19 U.S.C. § 1337, the statute administered by the Commission, and the relationship between that statute and judicial proceedings. Thus, Siemens’ claim is based on “a statute administered by the officer or agency,” per Rule 24(b)(2)(A). Likewise, because the Court cannot issue the requested relief without taking into consideration the requirements of section 337 and the Commission’s orders issued under section 337, permissive intervention would also be appropriate under Rule 24(b)(2)(B).

As discussed above in connection with intervention as of right, the Commission’s motion is timely because it is being filed shortly after Siemens moved for a preliminary injunction and before briefing in opposition to the motion for preliminary injunction has been received. The Commission’s motion to intervene and its opposition to the motion for preliminary injunction will not unduly delay or prejudice adjudication of Siemens’ claims, and in fact the parties have all impliedly agreed by their consent to intervention that no such prejudice or delay is likely. Thus,

the Commission should be permitted to intervene in this action under Rule 24(b) even if this Court were to determine that the Commission does not have the right to intervene under Rule 24(a).

IV. CONCLUSION

The Commission should be permitted to intervene, either as of right or permissively, for the limited purpose of opposing the injunctive relief sought that would interfere with Commission proceedings. A proposed order is attached to this Motion.

Respectfully submitted,

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*Attorneys for the U.S. International
Trade Commission*

Dated: January 17, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|---------------------------------------|--|----------------------|
| SIEMENS INDUSTRY SOFTWARE) INC.) | | |
| Plaintiff,) | | |
| | | C.A. No. 22-1569-CFC |
| v.) | | |
| | | |
| BELL SEMICONDUCTOR, LLC,) | | |
| Defendant.) | | |
| | | |
| | | |

[PROPOSED] ORDER

Upon consideration of the Unopposed Motion of the U.S. International Trade Commission for Leave to Intervene in Support of Defendant, for the Limited Purpose of Opposing in Part the Motion for Preliminary Injunction, and all other pertinent papers, it is hereby:

ORDERED on this _____ day of _____,
2023 that the Motion is GRANTED; and it is further

ORDERED that the U.S. International Trade Commission is to be entered as a defendant-intervenor in the above captioned action for the limited purpose of opposing-in-part Plaintiff's motion for preliminary injunction.

CHIEF UNITED STATES DISTRICT JUDGE

Certification of Counsel Regarding Font and Word Count

Counsel for the United States International Trade Commission certifies that this filing complies with the type, font, and word limitations set forth in the Court's November 10, 2022 Standing Order. The font is Times New Roman, 14-point, and the word count as provided by the word-processing system is 3051 words.

/s/ Laura D. Hatcher

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January 17, 2023