

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

JIAXING SUPER LIGHTING * August 25, 2021
ELECTRIC APPLIANCE, CO., *
LTD, ET AL *
VS. * CIVIL ACTION NO. W-20-CV-18
CH LIGHTING TECHNOLOGY CO., *
LTD, ET AL *

BEFORE THE HONORABLE ALAN D ALBRIGHT
DISCOVERY HEARING (via Zoom)

APPEARANCES:

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1 (August 25, 2021, 3:31 p.m.)

2 DEPUTY CLERK: Discovery hearing in Civil Action
3 6:20-CV-18, styled Jiaxing Super Lighting Electric Appliance,
4 Company, Limited and Obert, Incorporated, versus CH Lighting
5 Technology Company, Limited and others.

6 THE COURT: If I could have announcements from counsel,
7 please.

8 MR. BERNSTEIN: Good afternoon, Your Honor. It's Matt
9 Bernstein from Perkins Coie for the plaintiffs. I have with me
10 my colleagues, Miguel Bombach and Abigail Gardner.

11 And Mr. Bombach is going to be arguing the remaining
12 discovery dispute.

13 THE COURT: And for the defendant?

14 MR. HILL: Robert Hill, Your Honor, for defendants. And
15 I'm joined by my partner Allison Lucier, also from Holland &
16 Knight.

17 THE COURT: Very good. Give me one second. Okay.

18 I'll hear from the plaintiff with respect to the first
19 request.

20 MR. BOMBACH: Thank you, Your Honor.

21 This is Miguel Bombach on behalf of plaintiff.

22 This is an issue of fair play and DH's (sic) failure to
23 comply with deadlines, and I would like to share a PDF of a
24 timeline on my screen.

25 Are you able to see this?

1 THE COURT: I can.

2 MR. BOMBACH: Okay. I'll be very blunt. CH sandbagged
3 plaintiffs and our expert by withholding some documents that
4 they deemed to be very important.

5 And these documents are from a -- supposedly from a
6 Chinese chip supplier called Lumixess. CH had sat on them
7 since March, at least. They knew they were critical. They
8 sent them to their expert. Their expert reviewed and received
9 these documents in March.

10 Discovery closed. Our expert served his report, and then
11 these documents were produced a month later, on July 14th, and
12 defendants' expert extensively opined on them and used those
13 documents to state that plaintiffs' expert was incorrect in his
14 analysis.

15 With -- these documents are very dubious. Plaintiffs had
16 no opportunity to take any discovery. And our expert was
17 sandbagged and had no chance to opine on it in his expert
18 report.

19 And with that, where -- we request that CH's experts and
20 witnesses not be allowed to use them, these documents, during
21 the trial.

22 And I would like to move to Slide 2, which I want to
23 emphasize and confirm, these documents -- they're in these --
24 it's eight pages, LUMX 1. Their expert confirmed he had them
25 as early as March, and he doubly confirmed that absolutely had

1 them well before the fact -- the close of fact discovery.

2 And if you look at defendants -- CH's own position in
3 their charts, they admit that they had asked for these
4 documents from Lumixess months ago. They admitted that they
5 had these documents before discovery closed. They admitted
6 that they gave these documents to their expert.

7 And their excuse for not providing them to us is seemingly
8 that it's a different action. And this is just -- I don't
9 understand the excuse. It's just pure gamesmanship to sandbag
10 us.

11 And I want to get into what these documents actually show
12 and why they're super problematic. This is the main -- it's
13 eight pages. This is the main page that defendants' expert
14 opined on.

15 It's a couple seemingly -- seaming tests, pictures thrown
16 together. There's purple writing. Who wrote it, I don't know.
17 There's -- these are just random notes. What do they mean?
18 Why do they -- why were these tests performed? Who performed
19 them? Do they accurately reflect anything?

20 This document here -- these Lumixess documents have issues
21 just on their face.

22 And there's another thing I wanted to emphasize and
23 highlight for Your Honor. This document, over it, it has a
24 label "Lumixess Confidential Information - prepared for Holland
25 & Knight."

1 I don't -- sitting here today, I honestly don't know how
2 this document was created. Did -- was Holland & Knight on the
3 phone with somebody from Lumixess telling them, hey, put this
4 in, put this in, put this in? Or was a Lumixess attorney
5 creating this?

6 I honestly don't know. Does this accurately reflect
7 technical aspects of what they present for it? I don't know.

8 And it's not only me that doesn't know. Defendants'
9 expert really had no idea. Nobody really knows.

10 And I do want to briefly go back and really emphasize the
11 point that our expert was sandbagged, and it seems like a
12 purposeful sandbagging.

13 THE COURT: Counsel, you know, after the tenth time of
14 saying "sandbagged," I think that's enough.

15 MR. BOMBACH: Okay. Yes, Your Honor.

16 These documents were not produced to plaintiff.
17 Defendants had these documents. The -- on June 14th, our
18 expert served the report. On July 14th, which I believe was a
19 Wednesday, these documents were produced to defendants. On
20 Monday, July 19th, defendants provided their expert report.
21 And days later on, Thursday, plaintiffs' expert was deposed.

22 With respect to -- and I would like -- defendants allege
23 that they did not know that the document -- that the documents
24 reflect a particular chip, the LT2600. They claim that they
25 did not know that this chip was at issue, but in plaintiffs'

1 infringement contentions, on February 9th, we identified
2 several products. You can see them highlighted here, 1152S,
3 for example. There are four highlighted here.

4 In defendants' interrogatory response, they had identified
5 the LT2600 provided by Lumixess as a chip that is used in four
6 different products series. They allege that they didn't know
7 that this chip was at issue, but they knew it. They identified
8 it. They saw the products that we accused. The LT2600 is one
9 of three chips that their products use.

10 Defendants, in their chart, want to argue that they didn't
11 know -- that the LT2600 was not specifically charted. But as
12 you can see here, we have a chart -- we provided and served a
13 chart on February 9th of a variant of the LT2600, the LT2600G.
14 So plaintiffs can't claim some sort of surprise based on all
15 our contentions.

16 And I wanted to follow on, in their charts, they alleged
17 that they were unaware, that they didn't make the particular GE
18 product that we had charted, but we obtained third-party
19 discovery which identifies CH Lighting as a supplier of the
20 accused GE product.

21 Furthermore, their own sales data confirmed that they are
22 a supplier of the charted and accused GE product.

23 And I want to address a final point, and I touched on it
24 in several instances, they allege plaintiffs as trying to avoid
25 challenging the merits. But what really happened is that they

1 had provided dubious documents and they provided to -- them to
2 us after the close of fact discovery, after our expert had
3 served his report, and they're using these eight pages that our
4 expert never had the chance to review, that we never had the
5 chance to take discovery on, to criticize our expert on his own
6 analysis.

7 So they're using these dubious documents to challenge our
8 expert.

9 And with that, I have no more further, unless Your Honor
10 has questions.

11 THE COURT: I'm good.

12 A response?

13 MR. HILL: Yes, Your Honor. And I'd like to bring up my
14 own screen for a moment. All right.

15 Hopefully that's visible now.

16 Okay. So thank you, Your Honor.

17 First of all, we want to address that the documents in
18 question are not CH documents. They're Lumixess documents. CH
19 Lighting did, in fact, produce the documents that it controlled
20 or had possession of or custody of related to the LT2600
21 product. That includes LT2600 data sheets, certain
22 noninfringement analysis provided by Lumixess to CH Lighting,
23 as well as other testing provided by Lumixess to CH Lighting.

24 CH Lighting did not withhold any documents in its
25 possession, custody or control. The documents in dispute now

1 are Lumixess documents and are not those of the defendants.

2 In their initial contentions, plaintiffs did not accuse
3 any products with the LT2600 chip nor did any of the
4 representative products charted for the initial infringement
5 contentions contain that chip.

6 There's some discussion of other LT2600G variant products,
7 that's a variant. It's -- there's a question with respect to
8 the GE products. That's a side issue, but I will say this: As
9 set forth in previous responses by our predecessor firm, the
10 timing of the GE product is such that the products obtained by
11 Perkins Coie for reverse engineering were before the time of
12 sale of any relevant CH products through GE.

13 So the LT2600 chip was not specifically addressed until
14 Dr. D'Andrade's expert report on infringement. That report did
15 contain an analysis of a particular MaxLite product, which
16 included the LT2600 chip.

17 Plaintiffs' infringement contentions dealt with another
18 version of the product with a different chip, the DI08270 chip.
19 Thus, plaintiffs did not specifically analyze a product with
20 the LT2600 chip until their expert report.

21 When experts -- plaintiffs' expert report was served, CH
22 Lighting was aware of plaintiff's theories with respect to the
23 LT2600 and, furthermore, saw the analysis that Dr. D'Andrade
24 put forth with respect to that item. At this point, CH asked
25 Lumixess to produce the documents at issue, as those documents

1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and Judicial Conference of the
10 United States.

11 Certified to by me this 27th day of August 2021.

12
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