

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

) MDL No. 1917

) Case No. C-07-5944-SC

This Order Relates To:
ALL DIRECT PURCHASER ACTIONS

) ORDER ADOPTING AS MODIFIED
) ISM'S REPORT AND
) RECOMMENDATION ON DIRECT
) ACTION PLAINTIFFS' MOTION
) FOR LEAVE TO FILE AMENDED
) COMPLAINTS

I. INTRODUCTION

Now before the Court is the Direct Action Plaintiffs' ("DAPs") motion to adopt the Interim Special Master's ("ISM") Report and Recommendation on the DAPs' Motion for Leave to File Amended Complaints, which concerned whether the DAPs could add two new defendants to their complaints and include certain other factual allegations. ECF Nos. 1751 ("R&R"), 1772 ("Mot."). Putative defendants Thomson¹ and Mitsubishi² oppose the motion to adopt.

¹ Technicolor USA ((f.k.a. Thomson Consumer Electronics, Inc.) and Technicolor S.A. (f.k.a. Thomson S.A.) (collectively "Thomson").

² Mitsubishi Electric US, Inc. and Mitsubishi Digital Electronics Americas, Inc. (collectively "Mitsubishi").

1 ECF Nos. 1773 ("Thomson Obj'ns"), 1774 ("Mitsubishi Obj'ns"). The
2 matter is fully briefed, ECF No. 1782 ("Reply"), and appropriate
3 for decision without oral argument, Civ. L.R. 7-1(b). As explained
4 below, the Court GRANTS in part and DENIES in part the DAPs' motion
5 and ADOPTS the R&R as modified.

6
7 **II. BACKGROUND**

8 The parties know the facts of this case. A brief procedural
9 summary follows. The DAPs filed their complaints in November 2011.
10 They did not name Thomson or Mitsubishi as defendants in those
11 pleadings. The DAPs claim that sometime after the Indirect
12 Purchaser Plaintiffs ("IPPs") filed their own motion for leave to
13 file amended complaints in August 2012, the DAPs examined their
14 files and learned of facts that, in their estimation, merited
15 adding Thomson and Mitsubishi as defendants in the DAP complaints.
16 See ECF No. 1609 ("Mot. for Leave") at 2-6; ECF No. 1610 ("Weiss
17 Decl.") ¶¶ 2-4. They also learned of facts meriting the addition
18 of non-party Videocon Industries, Ltd. ("Videocon") as a non-party
19 co-conspirator, and the addition of non-parties Samsung³ and
20 Panasonic⁴ as defendants only in DAP Costco Wholesale Corp.'s
21 complaint. Mot. for Leave at 6-7. On March 27, 2013, the DAPs
22 filed the underlying motion for leave to file amended complaints.
23 On June 28, 2013, the ISM recommended that the Court grant the

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25 ³ Samsung SDI Co., Ltd.; Samsung SDI America, Inc.; Samsung SDI
26 Mexico S.A. de C.V.; Samsung SDI Brazil Ltda.; Shenzhen Samsung SDI
Co., Ltd; Tianjin Samsung SDI Co., Ltd.; and Samsung SDI (Malaysia)
Sdn. Bhd. (collectively "Samsung").

27 ⁴ Panasonic Corp.; Panasonic Corp. of North America; MT Picture
28 Display, Co., Ltd.; Matsushita Electronic Corp.; (Malaysia) Sdn.
Bhd.; and Panasonic Consumer Electronics Co. (collectively
"Panasonic").

1 motion and give the DAPs leave to amend their complaints on the
2 following points:

- 3 • To add Thomson and Mitsubishi as defendants;
- 4 • To add Videocon as a non-party co-conspirator;
- 5 • To add Samsung and Panasonic as defendants in the Costco
6 complaint; and
- 7 • To add additional allegations relevant to American Pipe,
8 cross-jurisdictional, and government action tolling.

9 R&R at 8-9.

10 Thomson and Mitsubishi now oppose the recommendation that the
11 DAPs be given leave to add them as defendants. Neither they nor
12 any other party opposed any of the ISM's other recommendations.

13
14 **III. LEGAL STANDARD**

15 **A. Standard of Review for the R&R**

16 The Court reviews the Special Master's factual findings for
17 clear error, his legal conclusions de novo, and his procedural
18 decisions for abuse of discretion. Fed. R. Civ. P. 53(f)(3)-(4);
19 ECF No. 302 ("Order Appointing Special Master") ¶ 18.

20 **B. Leave to Amend**

21 Federal Rule of Civil Procedure 15(a) states that a court has
22 discretion to allow a party to amend its pleading at any time, and
23 that permission to amend should be "freely given when justice so
24 requires." Permission is to be granted with "extreme liberality,"
25 and may be denied only upon grounds of undue delay, prejudice, bad
26 faith, or futility. Eminence Capital, LLC v. Aspeon, Inc., 316
27 F.3d 1048, 1051 (9th Cir. 2003) (citing Foman v. Davis, 371 U.S.
28 178, 182 (1962), for factors relevant to denial of permission to

1 amend); DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir.
2 1987) (liberal standard applies even when amendment would "add new
3 causes of actions or parties").

4
5 **IV. DISCUSSION**

6 **A. Adding Thomson and Mitsubishi as Parties**

7 Thomson contends that the Special Master erred in recommending
8 that the Court grant the DAPs leave to add Thomson as a defendant.
9 Thomson argues that at this late date in the litigation, it would
10 suffer undue prejudice because the scheduling order that was
11 current during this round of briefing would give Thomson far less
12 time than any other defendant to prepare for trial. Thomson Obj'ns
13 at 4-5. The DAPs reply that the ISM correctly concluded that, in
14 its papers and at the hearing on this motion, Thomson failed to
15 establish undue prejudice, because (1) Thomson has known about this
16 MDL's actions since at least 2008, and has participated in the case
17 since August 2012, after the IPPs sought to add it as a defendant;
18 and (2) Thomson has been a defendant in a DAP opt-out complaint
19 since March 2013 and therefore faces the same scheduling issues as
20 it would face here. See Reply at 4-10; R&R at 6-7.

21 Mitsubishi's argument that the ISM erred is essentially the
22 same as Thomson's. The difference is that Mitsubishi has never
23 been a party to any case in this MDL, nor has it been the target of
24 any government investigation. Mitsubishi contends that putting it
25 on the same tight schedule as the other parties, without the
26 benefit of its having been in some way acquainted with or a
27 participant in the litigation, as Thomson has, would subject it to
28 undue prejudice. Mitsubishi Obj'ns at 4-7. The DAPs respond that

1 Mitsubishi made similar arguments about prejudice when the IPPs
2 moved to add Mitsubishi as defendants, and this case's former
3 Special Master rejected those contentions. See Reply at 4
4 (referring to ECF No. 1453 ("IPP Mot. R&R")).

5 As the DAPs note, the ISM relied on the IPP Motion's R&R --
6 and Mitsubishi's 2011 tolling agreement with the IPPs -- in
7 concluding that Mitsubishi will have preserved relevant documents
8 and is not now in a materially different position, relative to this
9 litigation, than it was when the IPP Motion's R&R issued in
10 November 2012. On this point, the DAPs state that discovery is
11 still in its early stages, with months left to go. Reply at 7.
12 The DAPs add that expecting Mitsubishi to adhere to basic
13 litigation requirements, if it were added to the case, would not be
14 unjust, and that Mitsubishi would benefit from the other
15 defendants' hard work on this case so far. Id. at 5-6.

16 The Court finds that the ISM erred in granting the DAPs'
17 request to add Thomson and Mitsubishi as Defendants. Mitsubishi
18 has never been connected with this case in any substantial way, and
19 the Court never adopted the IPP Motion's R&R. Discovery in this
20 case has proceeded apace, and forcing Mitsubishi to enter
21 litigation now would put it at an unfair, prejudicial disadvantage.
22 The Court finds that the ISM's recommendation to grant leave to add
23 Mitsubishi as a defendant was not reasonably justifiable under the
24 circumstances. See Harman v. Apfel, 211 F.3d 1172, 1175 (9th Cir.
25 2000). The Court finds the same as to Thomson: the DAPs had ample
26 time to add Thomson to their complaints without delay or prejudice,
27 but they did not. The DAPs and the ISM overstated the extent of
28 Thomson's involvement in this matter. It has not been much greater

1 than Mitsubishi's, and to reward delay with amendment in this case
2 is not justifiable. Harman, 211 F.3d at 1175. The Court
3 recognizes that the deadlines the parties discussed in this round
4 of briefing may change, subject to the revised scheduling orders
5 the parties were told to file after the September 13 status
6 conference, but the Court does not anticipate protracting this
7 litigation for too long. Thomson and Mitsubishi's contentions
8 about the harshness of imposing this case's schedule on them
9 therefore stand.

10 The Court respectfully declines to adopt the ISM's
11 recommendation on this point and DENIES the DAPs' motion as to
12 Mitsubishi and Thomson.

13 **B. Other Amendments**

14 No party objected to the ISM's other recommendations. The
15 Court finds them well-reasoned and proper and ADOPTS them without
16 modification.

17 As for the DAPs' request to add allegations concerning
18 American Pipe, cross-jurisdictional, or government action tolling:
19 the Court declined to address those issues in its August 21, 2013
20 Order on the above-captioned Defendants' Motion to Dismiss the
21 DAPs' Complaints, ECF No. 1856 ("Aug. 21 Order"), but the Court
22 does not find that the August 21 Order mooted those tolling
23 questions. Since they are potentially relevant later, the Court
24 ADOPTS the ISM's recommendation that the DAPs be given leave to
25 amend on those points.

26 **C. Scheduling**

27 The parties are surely aware that the August 21 Order gave the
28 DAPs leave to amend their complaints on certain other grounds not

1 addressed in this Order. The DAPs should keep the August 21
2 Order's grants in mind as they file their amended complaints.

3
4 **V. CONCLUSION**

5 As explained above, the Court ADOPTS as modified the ISM's
6 Report and Recommendation on the Direct Action Plaintiffs' motion
7 for leave to file amended complaints. The DAPs may file amended
8 complaints pursuant to the ISM's recommendations, subject to the
9 modifications the Court made above. The Court respectfully
10 declines to adopt the ISM's recommendation as to the addition of
11 Thomson and Mitsubishi as new defendants. As explained above, the
12 DAPs' motion to file amended complaints adding those Defendants is
13 DENIED.

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15 IT IS SO ORDERED.

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17 Dated: September 26, 2013

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19 UNITED STATES DISTRICT JUDGE
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