

No. 70298-0-I

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

2014 JUL 29 PM 3:30

King County Superior Court No. 12-2-15842-8 SEA

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON

Plaintiff/Appellant,

v.

PHILIPS ELECTRONICS N.V., PHILIPS ELECTRONICS INDUSTRIES
(TAIWAN), LTD., PANASONIC CORPORATION, HITACHI DISPLAYS,
LTD. (N/K/A JAPAN DISPLAY INC.), HITACHI ASIA, LTD., HITACHI
ELECTRONIC DEVICES (USA), INC., LG ELECTRONICS, INC., SAMSUNG
SDI AMERICA, INC., SAMSUNG SDI CO., LTD., SAMSUNG SDI
(MALAYSIA) SDN. BHD., SAMSUNG SDI MEXICO S.A. DE C.V.,
SAMSUNG SDI BRASIL LTDA., SHENZEN SAMSUNG SDI CO., LTD.,
TIANJIN SAMSUNG SDI CO., LTD.

Defendants/Respondents.

**SUPPLEMENTAL BRIEF OF PHILIPS AND HITACHI RESPONDENTS,
ADDRESSING *STATE V. AU OPTRONICS CORP.*, NO. 69318-2-1**

John M. Taladay (*pro hac vice*)
Erik T. Koons (*pro hac vice*)
Charles M. Malaise (*pro hac vice*)
BAKER BOTTS LLP
1299 Pennsylvania Avenue, NW
Washington, DC 200004-2400
202.639.7700
202.639.7890 (fax)
E-mail: john.taladay@bakerbotts.com
E-mail: erik.koons@bakerbotts.com
E-mail: charles.malaise@bakerbotts.com

Robert D. Stewart, WSBA No. 8998
KIPLING LAW GROUP PLLC
3601 Fremont Avenue N., Suite 414
Seattle, WA 98103
206.545.0345
206.545.0350 (fax)
E-mail: stewart@kiplinglawgroup.com

*Attorneys for Defendants/Respondents
Philips Electronics N.V. (n/k/a Koninklijke
Philips N.V.) and Philips Electronics
Industries (Taiwan), Ltd. (n/k/a Philips
Taiwan Limited)*

Eliot A. Adelson (*pro hac vice*)
J. Maxwell Cooper (*pro hac vice*)
Andrew J. Wiener (*pro hac vice*)
555 California Street
San Francisco, CA 94104
415.439.1400
415.439.1500 (fax)
Email: eliot.adelson@kirkland.com
Email: max.cooper@kirkland.com
Email: andrew.wiener@kirkland.com

Molly A. Terwillinger, WSBA No. 28499
SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104
206.676.7000
206.676.7001 (fax)
E-mail: mollyt@summitlaw.com

*Attorneys for Defendants/Respondents
Hitachi Displays, Ltd. (N/K/A Japan
Display Inc.); Hitachi Electronics Devices
(USA), Inc.; and Hitachi Asia, Ltd.*

Pursuant to the Court’s notation ruling of June 12, 2014, the Philips and Hitachi Respondents jointly file this supplemental brief addressing the impact of *State v. AU Optronics Corp.*, No. 69318-2-1, 2014 Wash. App. Westlaw 1779256 (May 5, 2014). As set forth below, *AU Optronics* is wholly distinguishable from this case. While the generalized allegations of the two cases may overlap, the facts do not. This case includes no evidence whatsoever of a relationship between any of the Respondents and Washington sufficient to support jurisdiction. *AU Optronics* thus favors affirming the trial court’s dismissal for lack of personal jurisdiction.

A. *AU Optronics* Rejects the Simple Stream of Commerce Analysis Advocated by the Attorney General and Instead Requires Specific Consideration of Each Respondent’s Relationship With Washington

In *AU Optronics*, this Court rejected the Attorney General’s assertion—advanced in this case as well—that “merely placing goods into a broad stream of commerce can constitute purposeful minimum contacts to establish personal jurisdiction.” Slip Op. at 21; *see also id.* at 22. Instead, the Court required evidence demonstrating that the sale of LG Display’s panels in Washington was not “an isolated or fortuitous occurrence.” *Id.* at 23.

In finding that Washington could exercise personal jurisdiction over LG Display, the Court relied on detailed evidence in the record to conclude that “LG Display’s alleged conduct *plus* a large volume of expected and actual sales established sufficient minimum contacts for a Washington court to exercise specific jurisdiction over it.” Slip Op. at 23 (emphasis added). The Court emphasized the following specific facts:

- LG Display “sold its LCD panels to a particular global consumer electronics manufacturer that sold products containing these panels nationwide and in Washington These sales accounted for 19-25 percent of LG Display’s annual revenues.” *Id.* at 24.
- Washington purchased “in excess of 100 Million dollars of product ... includ[ing] LCD Products” from this particular global consumer electronics manufacturer. *Id.*
- “[An] original equipment manufacturer . . . entered into a master purchase agreement with LG Display Co. Ltd. in which the company agreed to obtain and maintain all necessary U.S. regulatory approval.” *Id.*
- “LG Display representatives . . . traveled to Washington numerous times for business meetings and to perform market research.” *Id.* at 26. Specifically, between 2001 and 2010, LG Display representatives traveled to Washington 13 times, while LG Display America Inc. representatives made 26 separate business trips to Washington. *Id.* at 7.

In light of these facts, this Court found a “pattern of sales of products containing LG Display’s LCD panels [that] establishes a relationship between LG Display, Washington, and this litigation, such that it is fair, in light of LG Display’s contacts with Washington, to subject LG Display to suit here.” *Id.* at 24-25.

B. In This Case the Attorney General Fails to Identify *Any* Facts to Support His Theory of Jurisdiction

In direct contrast with the detailed facts in *AU Optronics*, the record in this appeal contains no facts regarding any contacts between the Respondents and Washington.

In the joint opposition brief, Respondents explained in detail the lack of any evidence of these Respondents' substantive contacts with Washington. Respondents' Opposition Brief ("ROB") at 7-14. The Attorney General does not contest that when a defendant makes this type of positive showing rebutting a plaintiff's jurisdictional assertions, a plaintiff cannot rest on the allegations in the complaint. *See Taylor v. Portland Paramount Corp.*, 383 F.2d 634, 639 (9th Cir. 1967). Yet, the Attorney General responds to Respondents' specific factual showings merely by regurgitating his bland allegation in the Complaint that "Defendants knew and expected that products containing their price-fixed goods would be sold into Washington State." Appellant's Reply Brief at 5; *see also* Appellant's Opening Brief at 6 (same).

The Attorney General's generalized allegations are insufficient to establish jurisdiction under *AU Optronics*. In stark contrast to *AU Optronics*, here the record contains:

- No evidence that any Respondent sold its products to particular manufacturers or retailers doing business in Washington.

- No evidence that sales of Respondents' products in Washington comprised any percentage – much less a significant percentage as in *AU Optronics* – of any Respondent's annual revenues. *See* ROB at 7-14; and
- For all Philips Respondents and all but one Hitachi Respondent, no evidence that any representative went to Washington for any reason. *See id.*; CP 64.¹

Thus, the record in this case materially differs from that in *AU Optronics*: the facts here fail to show conduct or sales that establish sufficient minimum contacts between Respondents and Washington.

For these same reasons, the Attorney General's suit against Respondents violates traditional notions of fair play and substantial justice required by due process. In *AU Optronics*, significant specific evidence persuaded this Court that jurisdiction could be fairly exercised over LG Displays. Here, no such evidence exists. There is no evidence that any Respondent took any "efforts to target Washington" like those taken by LG Display in *AU Optronics*. Slip Op. at 27. There is no evidence that any Respondent "solicited Washington business" or "derived substantial profits indirectly from Washington consumers." *Id.* at 28. Nor did any Respondent take any of the steps that persuaded the Court that LG Display

¹ The one Hitachi entity whose representatives made occasional trips to Washington did so only to meet with customers regarding a non-CRT business line. These occasional and non-CRT-related visits stand in stark contrast to the nearly 40 visits to Washington, apparently concerning LCD panels, made by LG Display.

faced an acceptable burden when litigating in Washington. *See id.* (finding that LG Display did not face an unfair burden because it agreed to comply with U.S. regulatory requirements in a purchasing agreement and its representatives traveled to Washington to market LCDs).² Thus, while traditional notions of fair play and substantial justice permitted the exercise of jurisdiction over LG Display, they do not permit the exercise of jurisdiction here.³

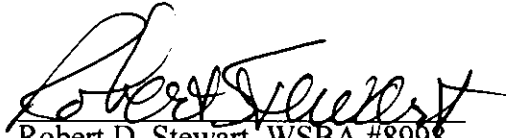
C. Conclusion

Applying *AU Optronics*' holding to this case requires dismissal for lack of personal jurisdiction. The Philips and Hitachi Respondents respectfully request that the Court affirm the trial court's dismissal.

² Furthermore, in *AU Optronics*, LG Display *admitted* to price-fixing, a fact this Court found relevant to the "arising from" requirement. But LG Display's guilty plea also goes to the fairness of requiring LG Display to defend itself in Washington. In contrast, the absence of any such plea by the Philips or Hitachi Respondents means it would be unfair to force these Respondents to come from around the world to defend themselves against the *contested* allegations in this case.

³ Nor does *AU Optronics* alter the trial court's holding that jurisdictional discovery is inappropriate. There are still no controverted facts bearing on jurisdiction that warrant discovery: the Attorney General does not dispute any of the facts on which Respondents' underlying jurisdictional motions relied. Moreover, the Attorney General has already received more than two million pages of documents in this litigation and has failed to identify any specific basis to allege that Respondents had sufficient relevant contacts with Washington. *See* ROB at 42-44.

DATED this 29th day of July, 2014.



Robert D. Stewart, WSBA #8998
KIPLING LAW GROUP PLLC
3601 Fremont Avenue N., Suite 414
Seattle, WA 98103
206.545.0345
206.545.0350 (fax)
stewart@kiplinglawgroup.com

John M. Taladay (*pro hac vice*)
Erik. T. Koons (*pro hac vice*)
Charles Malaise (*pro hac vice*)
BAKER BOTTS LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004-2400
202.639.7700
202.639.7890 (fax)
john.taladay@bakerbotts.com
erik.koons@bakerbotts.com
charles.malaise@bakerbotts.com

***Counsel for Defendants/Respondents Koninklijke Philips Electronics
N.V. (n/k/a Koninklijke Philips N.V.) and Philips Electronics Industries
(Taiwan), Ltd. (n/k/a Philips Taiwan Limited)***

Molly A. Terwilliger, WSBA No.
28449
SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104
206.676.7000
206.676.7001 (fax)
mollyt@summitlaw.com

Eliot A. Adelson (*pro hac vice*)
James Maxwell Cooper (*pro hac
vice*)
Andrew Wiener (*pro hac vice*)
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
415.439.1400
415.439.1500 (fax)
eliot.adelson@kirkland.com
max.cooper@kirkland.com
andrew.wiener@kirkland.com

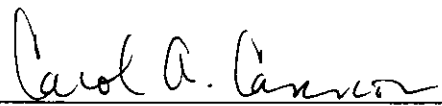
***Attorneys for Defendants/Respondents Hitachi, Ltd.; Hitachi Displays,
Ltd. (n/k/a Japan Display Inc.); Hitachi Electronic Devices (USA), Inc.;
and Hitachi Asia, Ltd.***

CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of July, 2014, I caused to be served a true and correct copy of the foregoing *Supplemental Brief of Philips and Hitachi Respondents, Addressing State v. AU Optronics Corp., No. 69318-2-1* by method indicated below and addressed to the following:

David M. Kerwin
Antitrust Division
Attorney General of Washington
800 Fifth Ave, Suite 2000
Seattle, WA 98104-3188
Telephone: (206) 464-7030
Email: Davidk3@atg.wa.gov
Counsel for Cross-Appellee State of Washington

Delivery Via:
 U.S. Mail
 Overnight Mail
 Facsimile
 Hand Delivery
 E-Service (if opted in)
 E-Mail



Carol A. Cannon
Legal Assistant