

702,98-0
No. 70928-0-I

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUL 29 PM 3:19

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

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION ONE

JUL 29 2014

THE STATE OF WASHINGTON

Plaintiff/Appellant,

v.

PHILIPS ELECTRONICS N.V., PHILIPS ELECTRONICS
INDUSTRIES (TAIWAN), LTD., PANASONIC CORPORATION,
HITACHI DISPLAYS, LTD., 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., SHENZHEN
SAMSUNG SDI CO., LTD., TIANJIN SAMSUNG SDI CO., LTD.

Defendants/Respondents.

**SUPPLEMENTAL BRIEF OF
RESPONDENT PANASONIC CORPORATION**

Timothy W. Snider, WSBA No. 39808
Aric H. Jarrett, WSBA No. 39556
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, Washington 98101-4109
(206) 624-0900

Jeffrey L. Kessler (*pro hac vice*)
Eva W. Cole (*pro hac vice*)
Molly M. Donovan (*pro hac vice*)
WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166-4193
(212) 294-6700

David L. Yohai (*pro hac vice*)
Adam C. Hemlock (*pro hac vice*)
David E. Yolcut (*pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153-0119
(212) 310-8000

Attorneys for Respondent Panasonic Corporation

Respondent Panasonic Corporation (“Panasonic Corp.”) respectfully submits this supplemental brief pursuant to the Court’s June 12, 2014 order directing the parties to address the effect, if any, of the Court’s decision in *State v. AU Optronics Corp.*, No. 69318-2-I (May 5, 2014). The decision does not affect the outcome of this appeal. Panasonic Corp.’s contacts with Washington were far less significant than those of defendants in *AU Optronics*—indeed, they were virtually nonexistent. Unlike the defendants in *AU Optronics*, Panasonic Corp. did not sell any of the products at issue (cathode ray tubes (“CRTs”) or products containing them) to Washington consumers or to the State; it never directed marketing at Washington businesses or consumers; its executives never traveled to Washington on CRT-related business; and its American subsidiaries—the entities that allegedly did have contact with Washington—consented to jurisdiction and remain in the case. If anything, *AU Optronics* shows why the exercise of personal jurisdiction over Panasonic Corp. would exceed the bounds of due process.

I. INTRODUCTION

In *AU Optronics*, this Court held that Washington courts could properly exercise specific jurisdiction over a South Korean company, LG Display Co. Ltd., and its American subsidiary, LG Display America Inc. (collectively, “LG Display”). Slip Op. at 29. In so holding, the Court

again confirmed that personal jurisdiction over a defendant will comport with due process only when (1) “purposeful ‘minimum contacts’ exist between a defendant and the forum state”; (2) the plaintiff’s injuries “arise out of or relate to” those minimum contacts; and (3) the exercise of jurisdiction over the defendant would be reasonable, *i.e.*, “consistent with notions of fair play and substantial justice.” Slip Op. at 11 (quoting *Grange Ins. Ass’n v. State*, 110 Wn. 2d 752, 758, 757 P.2d 933 (1998), and *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78, 105 S. Ct. 2174, 85 L. Ed.2d 528 (1985)). Notably, this Court rejected the “simple stream of commerce analysis” proposed by the State—that is, “merely placing good into a broad stream of commerce can constitute purposeful minimum contacts to establish personal jurisdiction”—and reaffirmed that the State must show that a defendant “purposeful[ly]” directed the challenged activities to Washington. Slip Op. at 20-21.

Nonetheless, the Court held that personal jurisdiction over LG Display was proper because the State alleged sufficient minimum contacts with Washington and the exercise of personal jurisdiction over LG Display would not be unreasonable. The Court based its holding on a factual record showing that LG Display had *substantially* more extensive contacts with Washington than Panasonic Corp. does here:

- LG Display America sold LCD panels to two Washington businesses over the course of a decade (*id.* at 6-7);
- LG Display Co. Ltd. made “pass-through” shipments of LCD panels to Washington ports (*id.* at 7);
- Representatives from LG Display Co. Ltd. made 13 business trips to Washington to meet with Microsoft executives and to perform market research (*id.* at 7);
- LG Display America representatives made 26 business trips to Washington during the relevant period (*id.* at 7-8);
- LG Display allegedly “solicited Washington business” (*id.* at 28); and
- LG Display signed purchase agreements in which it agreed to obtain U.S. regulatory approval and to abide by all U.S. regulatory requirements (*id.* at 6, 27).

Against this factual record, the Court held that personal jurisdiction over LG Display would not offend due process principles.

II. ARGUMENT

If LG Display’s contacts with Washington were “minimal,” and therefore satisfied due process, Panasonic Corp.’s are, by comparison, a nullity. Unlike the American subsidiary in *AU Optronics*, Panasonic Corp.’s subsidiaries, Panasonic Corporation of North America (“PNA”) and MT Picture Display Co., Ltd. (“MTPD”) have not contested jurisdiction, have answered the State’s complaint, and will remain in the case regardless of the outcome of this appeal. *See* Respondents’ Br. at 10-11. These subsidiaries—*not* Panasonic Corp.—are alleged to have

manufactured the CRT tubes at issue in this litigation (in the case of MTPD), and to have sold the finished products in the United States (in the case of PNA). *See id.* Washington courts cannot assert personal jurisdiction over Panasonic Corp. based on its subsidiaries' contacts with Washington. *See Holland Am. Line Inc. v. Wartsila N. Amer.*, 485 F.3d 450, 459 (9th Cir. 2007); *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001).

Moreover, unlike LG Display or its American subsidiary PNA, Panasonic Corp. did not sell any of its CRT tubes or products to Washington consumers, businesses, or the State. *See* CP 85. There are no allegations that Panasonic Corp. shipped CRT tubes or finished products to or through Washington ports. Panasonic Corp. officials did not conduct business trips or perform market research in Washington related to CRT tubes or finished products, unlike LG Display in *AU Optronics*.¹ *Id.* Furthermore, there are no allegations that Panasonic Corp. signed agreements requiring it to obtain regulatory approval from U.S. or Washington regulators or to abide by federal or state regulations.

In addition, although this Court considered LG Display's substantial volume of expected and actual sales to Washington and its

¹ For a period ending more than nine years ago, a few Panasonic Corp. employees worked on a short-term, temporary project in Washington that was entirely unrelated to the CRT business. CP 85-86; Resp'ts' Br. at 10 n.5.

consumers, *see* Slip Op. at 23-24 (noting that LG Display’s sales to one particular manufacturer that sold products to Washington accounted for 19-25 percent of its annual revenues), the record here is wholly absent of any facts or allegations that would show that the finished CRT products ultimately sold by third-parties in Washington or to the State remotely approximated the volume of activity by LG Display in *AU Optronics*.

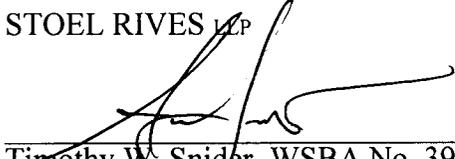
Accordingly, the State cannot meet its burden, *see AU Optronics*, Slip Op. at 9, to show that Panasonic Corp.—distinct from its subsidiaries—purposefully directed any activity (much less sufficient activity) to Washington sufficient to establish sufficient jurisdiction. Nor, given the absence of even minimal contacts, sales, business trips, or other activity cited in *AU Optronics*, would the exercise of personal jurisdiction over Panasonic Corp. be reasonable and “consistent with notions of fair play and substantial justice.” *Id.* at 11.

III. CONCLUSION

For the foregoing reasons, and those stated in Respondents’ brief, Panasonic Corp. respectfully requests that this Court affirm the trial court’s dismissal for lack of personal jurisdiction.

DATED this 29th day of July, 2014.

STOEL RIVES LLP



Timothy W. Snider, WSBA No. 39808
Aric H. Jarrett, WSBA No. 39556
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, Washington 98101-4109
Telephone: (206) 624-0900
Facsimile: (206) 386-7500
Email: twsnider@stoel.com
Email: ahjarrett@stoel.com

David L. Yohai (*pro hac vice*)
Adam C. Hemlock (*pro hac vice*)
David E. Yolcut (*pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153-0119
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: david.yohai@weil.com
Email: adam.hemlock@weil.com
Email: david.yolcut@weil.com

Jeffrey L. Kessler (*pro hac vice*)
Eva W. Cole (*pro hac vice*)
Molly M. Donovan (*pro hac vice*)
WINSTON & STRAWN LLP
200 Park Avenue
New York, New York 10166-4193
Telephone: (212) 294-6700
Facsimile: (212) 294-7400
Email: jkessler@winston.com
Email: ewcole@winston.com
Email: mmdonovan@winston.com

CERTIFICATE OF SERVICE

I certify that on July 29, 2014, I caused the **Supplemental Brief of Respondent Panasonic Corporation** to be filed with the Washington State Court of Appeals, Division I, at the following address:

Office of Clerk
Court of Appeals – Division I
One Union Square
600 University Street
Seattle, WA 98101

I further certify that a copy of the **Supplemental Brief of Respondent Panasonic Corporation** was served electronically pdf/email upon counsel listed below:

Counsel for Plaintiff:

David M. Kerwin
Antitrust Division
ATTORNEY GENERAL OF WASHINGTON
800 5th Ave., Suite 2000
Seattle, WA 98104-3188
davidk3@atg.wa.gov

Counsel for LG Electronics, Inc. and LG Electronics USA, Inc.:

David C. Lundsgaard
GRAHAM & DUNN PC
2801 Alaskan Way, Suite 300
Seattle, WA 98121-1128
dlundsgaard@grahamdunn.com

Hoon Hwang
Laura Sullivan
MUNGER TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
Hoon.Hwang@mto.com; Laura.Sullivan@mto.com

Counsel for Koninklijke Philips Electronics, N. V. a/k/a Royal Philips Electronics N.V.; and Philips Electronics North America Corporation:

Robert D. Stewart
KIPLING LAW GROUP PLLC
3601 Fremont Avenue North, Suite 414
Seattle, WA 98103
stewart@kiplinglawgroup.com

John M. Taladay
Tiffany Gelott
Charles Malaise
BAKER BOTTS L.L.P.
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2400
john.taladay@bakerbotts.com; tiffany.gelott@bakerbotts.com
charles.malaise@bakerbotts.com

Counsel for Hitachi, Ltd.; Hitachi Asia, Ltd.; Hitachi Electronic Devices (USA), Inc.; and Hitachi Displays, Ltd.:

Molly A. Terwilliger
SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104-2682
mollyt@summitlaw.com

Eliot A. Adelson
James Maxwell Cooper
Andrew Wiener
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
eliot.adelson@kirkland.com; max.cooper@kirkland.com
andrew.wiener@kirkland.com

Counsel for 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.; Shenzhen Samsung SDI Co.,
Ltd.; and Tianjin Samsung SDI Co., Ltd.:

Larry S. Gangnes
John R. Neeleman
LANE POWELL PC
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101-2338
gangnesl@lanepowell.com; neelemanj@lanepowell.com

Counsel for Chunghwa Picture Tubes, Ltd. entities, including
CPTF Optronics, and Chunghwa Picture Tubes (Malaysia):

Peter M. Vial
Malaika M. Eaton
McNAUL EBEL NAWROT &
HELGREN, PLLC
600 University Street, Suite 2700
Seattle, WA 98101
pvial@mcnaul.com; meaton@mcnaul.com

Counsel for Toshiba Corporation and Toshiba America Electronics
Components, Inc.:

Mathew L. Harrington
Bradford J. Axel
STOKES LAWRENCE, P.S.
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
MLH@stokeslaw.com; BJA@stokeslaw.com

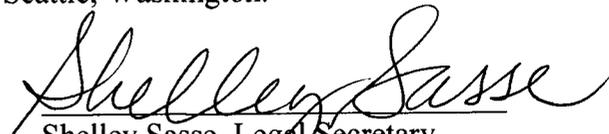
Lucius B. Lau
Dana E. Foster
WHITE & CASE LLP
701 Thirteenth Street, N.W.
Washington, DC 20005
alau@whitecase.com; defoster@whitecase.com

Counsel for MT Picture Display Co., Ltd.; Panasonic Corporation; and
Panasonic Corporation of North America:

Jeffrey L. Kessler
Eva W. Cole
Molly M. Donovan
WINSTON & STRAWN LLP
200 Park Ave
New York, NY 10166
JKessler@winston.com; EWCole@winston.com
MMDonovan@winston.com

David L. Yohai
Adam C. Hemlock
David E. Yolcut
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119
david.yohai@weil.com; adam.hemlock@weil.com;
david.yolcut@weil.com

DATED: July 29, 2014, at Seattle, Washington.


Shelley Sasse, Legal Secretary
STOEL RIVES LLP
smsasse@stoel.com