



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

October 15, 2009

John M. Burgett
202.719.4239
jburgett@wileyrein.com

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Notification; MB Docket No. 09-23

Dear Ms. Dortch:

On October 14, 2009, Richard Lewis, Senior Vice President, Research and Technology, Zenith Electronics LLC (“Zenith”), and John Taylor, Vice President, Public Affairs and Communications, LG Electronics USA, Inc. (“LG”),¹ met with the following members of the Commission’s Media Bureau: Eloise Gore, Thomas Horan, Barbara Kreisman, Brendan Murray and Jeffrey Neumann. Messrs. Lewis and Taylor were accompanied by Richard Wiley and the undersigned of Wiley Rein LLP. During the meeting, we discussed the status of LG/Zenith’s efforts to develop and implement a technical standard enabling the delivery of digital television (“DTV”) content and data to handheld and mobile devices.

We also discussed the points included in the Comments of Zenith and the Comments of Philips Electronics North America and LG filed April 27, 2009, in opposition to the Petition for Rulemaking filed by the Coalition United to Terminate Financial Abuses of the Television Transition (the “Petition”) in the above-referenced docket. We urged the Commission to dismiss or deny the Petition. In this regard, we explained that the current system for licensing patents essential to the manufacture of DTV receivers is functioning well, as evidenced by today’s highly competitive DTV receiver market and the continually decreasing DTV set prices for U.S. consumers.

We also explained that LG and Zenith are not aware of any major manufacturer that engages in unlawful tying arrangements. We emphasized that, to the extent there are any manufacturers that do not offer reasonable and non-discriminatory license terms or engage in unlawful licensing practices, aggrieved parties have recourse in the federal courts and before other agencies that, unlike the FCC, are very familiar

¹ Zenith is a separate technology development firm that is owned by LG Electronics USA, Inc.

Marlene H. Dortch

October 15, 2009

Page 2

with the complexities of patent law and reasonable royalty determinations. These other forums currently are handling matters relating to DTV patents.²

Finally, we emphasized the disingenuous nature of the Petition's claim that the "disparity" between the royalty rates for the ATSC standard and the DVB-T and ISDB standards is evidence that the rates charged by ATSC patent holders are unreasonable. As several commenters in this proceeding have noted—including neutral third parties like the American National Standards Institute and the American Bar Association's Science and Technology Law Section—one cannot assess the reasonableness of essential DTV patent licenses based on "international comparable" royalty rates because of the broad range of complex factors, including individualized material terms and conditions in intellectual property licensing agreements, that inform whether a particular patent royalty rate is indeed reasonable and nondiscriminatory.³ Moreover, as LG, Zenith and many others have explained, the inherent differences between the technology required for the ATSC standard and the DVB-T and ISDB standards renders any comparison of the royalty rates charged for such standards meaningless.

This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules. A copy of this letter has been delivered by e-mail to the parties listed below. Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,

/s/ John M. Burgett

John M. Burgett

² See, e.g., VIZIO WINS U.S. CUSTOMS RULING; VIZIO Continues To Bring TVs With Cutting-Edge Technologies To The Masses - Public Ruling Determines VIZIO Televisions Do Not Infringe upon Competitor's Patent and Can Continue to Freely Enter the U.S. (Aug. 10. 2009) available at http://www.vizio.com/news/VIZIO_WINS_U.S._CUSTOMS_RULING.

³ Despite the fact that the Declaration of Douglas Woo attached to Petitioner's Reply Comments at ¶ 8 (May 27, 2009) acknowledges that the \$2.50 MPEG-2 portfolio license is required for the DVB-T and ISDB standards, Petitioner's www.hdtvshakedown.com website (last accessed Oct. 15, 2009), which it uses to collect supporting letters from consumers, see Exh. B to Petitioner's Reply Comments, continues to assert that license fees are only \$1 in the U.K. and Japan, and \$0 in Brazil.



Marlene H. Dortch
October 15, 2009
Page 3

cc: Eloise Gore
Thomas Horan
Barbara Kreisman
Brendan Murray
Jeffrey Neumann