

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et*
al.,

Defendants.

NO. 10-2-29164-4SEA

CONSENT DECREE AGAINST
EPSON IMAGING DEVICES
CORPORATION

I. JUDGMENT SUMMARY

- A. Plaintiff: State of Washington
- B. Defendants: Epson Imaging Devices Corporation
Epson Electronics America, Inc.
- C. Settlement Amount: \$2,700,000 (Two million seven hundred thousand dollars)
- D. Attorneys for Plaintiff: Jonathan Mark, Sr. AAG
Bill Clark, Senior Counsel
David Kerwin, AAG
Stephen Fairchild, AAG
- E. Attorneys for Defendants: Stephen Freccero
Angelo Calfo
Tyler Farmer

II. INTRODUCTION

A. Plaintiff, State of Washington, filed its Complaint on August 11, 2010 and a First Amended Complaint on August 16, 2010, against Defendants Epson Imaging Devices Corporation ("EID") and Epson Electronics America (collectively "the Epson Defendants").

1 B. Plaintiff and EID have engaged in extended arms-length negotiations regarding
2 possible resolution of the allegations in Plaintiff's Complaint. Plaintiff and EID have now
3 agreed on a basis for the settlement of the matters alleged in the Complaint filed in this matter,
4 and to the entry of this Consent Decree without trial or adjudication of any issue of fact or law.

5 C. The Epson Defendants do not admit the allegations in the Complaint. Neither
6 the Complaint nor anything in this Consent Decree constitutes evidence or an admission by the
7 Epson Defendants regarding the existence or non-existence of any issue, fact, or violation of
8 any law alleged by Plaintiff.

9 D. EID recognizes and states that this Consent Decree is entered into voluntarily
10 and that no promises or threats have been made by the Washington State Attorney General's
11 Office or any member, officer, agent, or representative thereof to induce EID to enter into this
12 Consent Decree.

13 E. The Epson Defendants waive any right they may have to appeal from the
14 Consent Decree and from any Order adopting it, provided that no substantive changes are
15 made to the Consent Decree after it has been presented to the Court.

16 F. The Epson Defendants agree that they will not oppose the entry of the Consent
17 Decree on the grounds that it fails to comply with Rule 65(d) of the Rules of Civil Procedure or
18 any rule of procedure, and hereby waive any objections based thereon.

19 G. The parties agree that this Consent Decree, represents the entire agreement of
20 the parties.

21 H. The parties agree and represent that any persons signing this Consent Decree are
22 authorized to execute this Consent Decree on behalf of the parties they represent.

23 I. For purposes of this document, a signature page sent via fax or electronic mail
24 shall be treated the same as an original signature, and signatures may be affixed through
25 counterparts.
26

1 J. This Consent Decree shall not benefit any third party other than the Releasees
2 and it shall not be construed to provide any rights to third parties other than the Releasees.

3 K. The parties have read and understand this Consent Decree and enter into it
4 voluntarily, having been advised by undersigned counsel of the meaning and effect of each
5 provision of this Consent Decree.

6 NOW, THEREFORE, there being no just reason for delaying the resolution of the
7 allegations contained in Plaintiff's Complaint, and prior to the taking of any testimony, and
8 without trial or adjudication of any issue of any fact or law herein, the parties agree, and it is
9 hereby ORDERED, ADJUDGED, AND DECREED, as follows:

10 III. JURISDICTION AND VENUE

11 The Court has jurisdiction to enter and enforce this Consent Decree. Venue is proper in
12 this Court. The Attorney General has authority to bring this action under RCW 19.86, The
13 Unfair Business Practices – Consumer Protection Act. Venue is proper in King County
14 Superior Court.

15 IV. DEFINITIONS

16 A. "Action" means the action pending at King County Superior Court, docket no.
17 10-2-29164-4 SEA, and its appellate proceedings.

18 B. "Attorney General" and "Plaintiff" mean the Attorney General of the State of
19 Washington.

20 C. "Co-Conspirator" means persons, companies, and entities other than the Epson
21 Defendants that Plaintiff asserts contracted, conspired, or agreed with the Epson Defendants
22 and any of the defendants in restraint of trade or commerce in the manufacture or sale of LCD
23 panels, including without limitation, Chunghwa Picture Tubes, Ltd., 1127 Heping Rd., Bade
24 City, Taoyuan, Taiwan, 334 R.O.C.; CMO Japan Co., Ltd., f/k/a International Display
25 Technology, Ltd., a subsidiary of Chi Mei Corporation, with its principal place of business
26 located at Nansei Yaesu Bldg. 4F, 2-2-10 Yaesu, Chuo-Ku, Tokyo 104-0028, Japan; HannStar

1 Display Corporation, No. 480, Rueiguang Road, 12th Floor, Neihu Chiu, Taipei 114, Taiwan
2 and its wholly owned subsidiary, HannSpree, a Delaware corporation having a principle place
3 of business at 14450 Myford Road, Suite 100, Irvine, CA 92606; Hydix Technologies Co.,
4 Ltd., f/k/a BOE Hydix Technology Co., Ltd., with its principal place of business located at San
5 136-1, Ami-ri, Bubal-eub, Icheon-si, Gyeonggi-do 467-866, South Korea.

6 D. "Complaint" means any and all complaints filed in this Action.

7 E. "Consumer" mean persons as defined in RCW 19.86.010(1).

8 F. "Effective Date" means the date on which this Consent Decree is entered by the
9 Court.

10 G. "LCD panel" shall refer to liquid crystal display panels including thin film
11 transistor liquid crystal display panels ("TFT-LCD panels").

12 H. "LCD products" shall refer to LCD panels and products containing LCD panels.

13 I. "MDL" means *In Re TFT-LCD (Flat Panel) Antitrust Litigation*, United States
14 District Court, Northern District of California (San Francisco), Master File No. C07-1827-SI,
15 MDL No. 1827.

16 J. "Released Claims" means any claim or claims that arise out of or relate to the
17 Relevant Conduct prior to the Effective Date under RCW 19.86.030, or federal, or Washington
18 statutory or common law regulating competition, unfair competition, unfair practices, price
19 discrimination, unitary pricing, consumer protection, restitution, fraud protection, common law
20 unjust enrichment, racketeering, civil conspiracy, or trade practice law, including, without
21 limitation, any and all claims, demands, actions, judgments, suits, liabilities, expenses
22 (including attorneys' fees and interest), penalties, or causes of action that Releasors ever had,
23 now have, or hereafter could bring, against the Releasees (or any of them), whether in law, in
24 equity, or otherwise, based on, arising out of or relating to the Relevant Conduct, including but
25 not limited to Washington's *parens patriae* claims.
26

1 K. "Releasees" refers to EID, Epson Electronics America, Inc., and Seiko Epson
2 Corporation, wherever located, and to all of their respective past and present, direct and
3 indirect, parent companies, subsidiaries, joint ventures, and Affiliates (where "Affiliates" is
4 defined as any other entity that is now or was previously owned by or an owner of EID, Epson
5 Electronics America, Inc., and Seiko Epson Corporation, where "owned" and "owner" mean
6 holding directly or indirectly 50% or greater equity or beneficial interest); and each and all of
7 the past, present and former principals, partners, officers, directors, supervisors, employees,
8 representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the
9 foregoing, and any predecessors or successors of any of the foregoing. "Releasees" does not
10 include any defendant named in the Complaint as of the Execution Date other than the Epson
11 Defendants.

12 L. "Releasers" shall refer to the State of Washington on its own behalf (including
13 its agencies and the Attorney General) and as *parens patriae* on behalf of persons residing in
14 the State as described in the Complaint.

15 M. "Relevant Conduct" means the Epson Defendants' alleged participation in an
16 unlawful conspiracy to raise, fix, maintain, or stabilize the price of LCD products at artificially
17 high levels, to maintain the production of LCD products at artificially low levels, or other
18 anticompetitive conduct regarding LCD products including the conduct alleged in the
19 Complaint.

20 N. "Relevant Period" means the period beginning January 1, 1998 and continuing
21 through December 31, 2006.

22 V. CERTIFICATION

23 A. EID hereby certifies to the Attorney General that it does not manufacture or sell
24 TFT-LCD Panels.

25 B. In the event that EID manufactures or sells TFT-LCD Panels within five (5)
26 years from the Effective Date of this Consent Decree:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 1. Within thirty days, EID shall send a copy of this Consent Decree to its officers, directors, and sales managers with responsibility for LCD panel sales to or in the United States and direct them to comply with its terms.
- 2. EID shall certify that it has established an antitrust compliance program, and shall establish, if not already established, maintain, and update a program or programs for the purpose of compliance with federal and state antitrust laws, including the Sherman Act and RCW 19.86.030. Such program or programs shall provide relevant compliance education to all such persons regarding the legal standards impose by the antitrust laws, the remedies that might be applied in the event of violations, and their obligations in the event that they observe violations of the antitrust laws.
- 3. On an annual basis, until 5 (five) years after the Effective Date, EID shall certify in writing to the Attorney General that it is fully compliant with the provisions in this Consent Decree.
- 4. Such reports shall be in writing and each such report shall set forth in detail the manner and form in which they intend to comply, are complying, and have complied with the terms of this Consent Decree.

C. Nothing in this provision or Consent Decree shall be interpreted as limiting in any way the Epson Defendants' obligation to comply to the fullest extent with federal and state antitrust laws.

VI. MONETARY RELIEF

A. Within 60 days of the Effective Date, EID shall pay to the State of Washington two million seven hundred thousand (\$2,700,000) in United States dollars, as payment for relief allowed the Attorney General under RCW 19.86.080 and .090 (the "Settlement Fund"). EID shall pay the amount set forth above by wire transfer to the State of Washington, or to such other recipient as the Plaintiff shall designate, who shall hold such funds for the benefit of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

for each document and including all preexisting, non-work product translations of documents in the Epson Defendants' possession that were produced to the grand jury, to the extent such documents and translations are not privileged or protected under the work product doctrine and are not subject to any order by a court prohibiting or preventing the production of such materials.

2. All documents (including deposition transcripts and exhibits) provided by the Epson Defendants to any plaintiff to the MDL, whether provided voluntarily or pursuant to a subpoena, compulsory process, or a court or administrative order, as reasonably requested and to the extent allowed by the protective order in the MDL.
3. Nothing in this Consent Decree shall be construed or interpreted to be inconsistent with any continuing obligations that the Epson Defendants may have to the United States Department of Justice, or with any court order in this Action or the MDL.
4. EID shall provide assistance to the Attorney General by responding to reasonable inquiries made to its counsel from the Attorney General regarding any discovery materials produced, including reasonable assistance in response to specific translation inquiries about the Epson Defendants' documents, as reasonably requested by the Attorney General, which may include, but is not limited to, examining documents or making inquiries of current employees. EID shall use its best efforts to provide affidavits on behalf of officers, employees or agents as necessary for the purpose of authenticating specific business records of the Epson Defendants, as reasonably required by the Attorney General.

1 B. Neither the Epson Defendants nor the Plaintiff shall file motions against the
2 other in the Action during the pendency of the Consent Decree, except for the purpose of
3 seeking entry of this Consent Decree or enforcing its terms.

4 C. Plaintiff and EID shall use their best efforts to effectuate this Consent Decree,
5 including cooperating in seeking any court approvals.

6 D. Plaintiff and EID agree that they will not disclose the terms of this Consent
7 Decree publicly or to any person, other than as permitted by the parties or required by law,
8 until it has been filed in Court.

9 E. The provisions in this cooperation section shall remain in effect until the
10 conclusion of the Attorney General's Action.

11 VIII. APPLICABILITY

12 A. The provisions of this Consent Decree shall apply to EID, its successors and
13 assigns, its subsidiaries, directors, officers, managers, agents, and employees.

14 B. This Consent Decree does not settle or compromise any claim by the Attorney
15 General against any person or entity other than the Releasees. All rights against such other
16 persons or entities are specifically reserved by the Plaintiff. The parties intend that joint and
17 several liability against defendants other than the Epson Defendants shall include sales of LCD
18 panels by the Epson Defendants.

19 C. On the Effective Date, the Attorney General and EID shall be bound by the
20 terms of this Consent Decree.

21 D. This Consent Decree shall be governed by and interpreted according to the
22 substantive laws of the State of Washington.

23 E. Except in a proceeding to enforce this Consent Decree, pursuant to RCW
24 19.86.130, neither this Consent decree (including without limitation statements in part III
25 above) nor any and all negotiations, documents, and discussions associated with them, shall be
26 deemed or construed to be an admission by EID or the Releasees of truth of any of the claims

1 or allegations contained in the Complaint, or evidence of any violation of any statute or law or
2 of any liability or wrongdoing whatsoever by EID or the Releasees regarding the claims or
3 allegations contained in the Complaint, or to be an admission by EID or the Releasees of the
4 truth of any of the claims or allegations contained in the Complaint or any other pleading filed
5 by Washington in any action whatsoever to prove the truth of the matters alleged in the
6 Complaint.

7 **IX. RELEASE**

8 A. Upon the Effective Date and in consideration of payment of the Settlement
9 Fund and for other valuable consideration, the Releasees shall be completely released,
10 acquitted, and forever discharged to the fullest extent permitted by law from the Released
11 Claims.

12 B. This release includes only the Released Claims and does not include any claims
13 other than the Released Claims, including without limitation any claims arising out of product
14 liability, personal injury, warranty, or breach of contract claims (other than a breach of contract
15 premised on anticompetitive conduct, the Relevant Conduct, or any of the allegations alleged
16 in the Action), in the ordinary course of business, or any other claims not covered by the
17 Released Claims.

18 C. This Consent Decree shall not affect whatever rights the Releasors, or any of
19 them, may have (i) to seek damages or other relief from any other person or entity other than
20 Releasees with respect to any direct or indirect purchases of LCD products; or (ii) to
21 participate in or benefit from, where appropriate, any relief or other recovery as part of a
22 settlement or judgment arising from the class action brought on behalf of direct purchasers of
23 LCD products in the MDL or any action filed by a direct purchaser who timely requested
24 exclusion from the class in the MDL.

1 D. Releasors shall look solely to the Settlement Fund for settlement and
2 satisfaction against the Releasees of all Released Claims, and shall have no other recovery
3 against EID or any other Releasees for the Released Claims.

4 E. This Consent Decree shall be construed and interpreted to effectuate the intent
5 of the parties, which is to provide, through this Consent Decree, for a complete resolution of
6 the Released Claims with respect to each and all of the Releasees as provided in this Consent
7 Decree.

8 **X. NOTICE REQUIREMENTS**

9 A. Where this Consent Decree requires either party to provide notice to the other,
10 such notice shall be in writing, and such notice shall be provided by electronic mail or letter by
11 overnight delivery to the undersigned counsel for the party to whom notice is being provided:

12 To the Plaintiff:

13 Jonathan A. Mark, Senior AAG
14 Antitrust Division
15 Washington State Attorney General
16 800 Fifth Avenue Suite 2000, MS TB14
17 Seattle, WA 98104
18 (206) 389-2848
19 JonathanM2@atg.wa.gov

17 To EID:

18 Stephen P. Freccero
19 Morrison & Foerster LLP
20 425 Market Street
21 San Francisco, CA 94105
22 (415) 268-6998
23 sfreccero@mof.com

21 With a copy to:

22 Yutaka Sahara
23 Legal Affairs Department
24 Seiko Epson Corporation
25 3-3-5 Owa, Suwa-shi
26 Nagano-ken 392-8502 Japan
Sahara.Yutaka@exc.epson.co.jp

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

XI. COMPLIANCE AND ENFORCEMENT

A. Under no circumstances shall this Consent Decree or the name of the State of Washington, Office of the Attorney General, or any of their employees be used by any of the Epson Defendants as an endorsement or approval of the Epson Defendants' acts, practices, or conduct of business.

B. A violation of any of the terms of this Consent Decree shall, if proven, constitute a violation of an injunction for which civil penalties of up to \$25,000 per violation may be sought by the Attorney General pursuant to RCW 19.86.140.

C. In the event that the Plaintiff reasonably believes a breach of this Consent Decree has occurred, and for the purpose of determining or securing compliance with this Consent Decree, the Plaintiff shall provide written notice to counsel for EID on its behalf. EID shall have thirty (30) days from receipt of such notice in which to cure the alleged breach to the Plaintiff's satisfaction. If the Plaintiff is not satisfied that cure has occurred, subject to any legally recognized privilege, the Plaintiff may issue a Civil Investigative Demand pursuant to RCW 19.86.110(4)(c) requiring EID to:

1. Produce documents, and/or
2. Subject to reasonable convenience of EID, and without restraint or interference from them, to interview directors, officers, employees, and agents of EID, who may have counsel present, regarding any such matters.
3. Counsel for EID shall accept service of any such CID without objection.

D. If the Attorney General successfully brings an action to enforce the provisions of this Consent Decree, EID shall reimburse the Attorney General for all reasonable costs and attorneys' fees associated with bringing such enforcement action.

XII. RETENTION OF JURISDICTION

Jurisdiction is retained by the King County Superior Court for the purpose of enabling any of the parties to this Consent Decree to apply to it at any time for such further orders and

1 | directions as may be necessary or appropriate for the construction, implementation, or
2 | modification of any of the provisions of this Consent Decree, for the enforcement of
3 | compliance herewith, and for sanctions for any violations hereof.

4 | **XIII. EXPIRATION OF CONSENT DECREE**

5 | This Consent Decree shall expire five (5) years from the date it is executed. Such
6 | expiration shall in no way affect the validity of the Releasers' release of claims.

7 | **XIV. CONFIDENTIALITY**

8 | A. Materials produced by EID under this Consent Decree shall be treated in
9 | accordance with RCW 19.86.110 and any protective order in this Action. To the extent that
10 | any document to be produced pursuant to this Consent Decree is subject to a protective order in
11 | any relevant matter, such production will be subject to the provisions of such protective order.

12 | B. If at the time information or documents are furnished by EID to the Plaintiff and
13 | EID represents and identifies in writing the portions of any such information or documents for
14 | which a claim of protection may be asserted under Rule 26(c)(7) of the Superior Court Civil
15 | Rules and EID marks each pertinent page of such documents, "Confidential" or "Subject to
16 | claim of protection under Rule 26(c)(7) of the Superior Court Civil Rules" and describes why
17 | such documents are privileged, then the Plaintiff shall give ten (10) days' notice to EID prior to
18 | divulging such material in any legal proceeding.

19 | **XV. APPROVAL AND JUDGMENT**

20 | This Consent Decree may be executed in counterparts by the Attorney General and
21 | EID, and a facsimile signature shall be deemed an original signature for purposes of executing
22 | this Consent Decree. This Consent Decree is approved and hereby entered pursuant to RCW
23 | 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice with
24 | respect to the Epson Defendants.

25 | It is so ORDERED this _____ day of _____ 2015
26 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE SEAN O'DONNELL

ROBERT W. FERGUSON
Attorney General

DARWIN ROBERTS
Deputy Attorney General



JONATHAN A. MARK, WSBA No. 38051
WILLIAM G. CLARK, WSBA No. 9234
DAVID KERWIN, WSBA No. 35162
STEPHEN FAIRCHILD, WSBA No. 41214
Attorneys for Plaintiff
Office of the Attorney General
Antitrust Division
800 Fifth Ave., Ste. 2000,
Seattle, WA 98104
206.389.3806

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Agreed to, Approved for Entry, and
Notice of Presentation Waived;

Dated: April 30, 2015

Haruo Oike
Officer/Director of Epson Imaging Devices
Corporation

Dated: _____

Counsel for the Epson Defendants
Stephen P. Freccero
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482

Dated: _____

Counsel for the Epson Defendants
Angelo J. Calfo
Tyler L. Farmer
Calfo Harrigan Leyh & Eakes LLP
999 Third Avenue, Suite 4400
Seattle, Washington 98104

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Agreed to, Approved for Entry, and
Notice of Presentation Waived:

Dated: _____

*Officer/Director of Epson Imaging Devices
Corporation*

Dated: 4/29/15

Counsel for the Epson Defendants
Stephen P. Freccero
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105-2482

Dated: 4/29/15

Counsel for the Epson Defendants
Angelo J. Calfo
Tyler L. Farmer
Calfo Harrigan Leyh & Eakes LLP
999 Third Avenue, Suite 4400
Seattle, Washington 98104