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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

AU OPTRONICS CORPORATION;  
AU OPTRONICS CORPORATION AMERICA;  
HSUAN BIN CHEN, aka H.B. CHEN;  
HUI HSIUNG, aka KUMA;  
LAI-JUH CHEN, aka L.J. CHEN;  
SHIU LUNG LEUNG, aka CHAO-LUNG  
LIANG and STEVEN LEUNG;  
BORLONG BAI, aka RICHARD BAI;  
TSANNRONG LEE, aka TSAN-JUNG LEE and  
HUBERT LEE;  
CHENG YUAN LIN, aka C.Y. LIN;  
WEN JUN CHENG, aka TONY CHENG; and  
DUK MO KOO,

Defendants.

No. CR-09-0110 SI

THE UNITED STATES' OPPOSITION  
TO DEFENDANT H.B. CHEN'S AND  
DEFENDANTS AUO AND AUOA'S  
PROPOSED INSTRUCTIONS ON  
LEFFLER TESTIMONY; PROPOSED  
ALTERNATIVE INSTRUCTION

Date: February 9, 2012  
Time: 8:30 a.m.  
Court: Hon. Susan Illston  
Place: Courtroom 10, 19th Floor

1 The government opposes defendant H.B. Chen's proposed instruction on Dr. Leffler's  
2 testimony and defendants AUO and AUOA's proposed instruction on Dr. Leffler's testimony.  
3 These proposed instructions seek to strictly limit all of Dr. Leffler's testimony to the question of  
4 gain or loss under 18 U.S.C. §3571(d). However, there is significant overlap between the gain or  
5 loss issue and the issue of liability. One of defendants' central liability defenses, as revealed in  
6 their opening statements and during the cross examination of the witnesses, is that the crystal  
7 meeting prices were not implemented and that the economic data is inconsistent with cartel  
8 activity. Dr. Leffler's testimony will be relevant to those issues, in addition to its relevance to  
9 the 18 U.S.C. §3571(d) gain or loss issue. The government indicated in its witness list that Dr.  
10 Leffler was expected to testify to both the gross pecuniary gain derived from the conspiracy and  
11 the structure and characteristics of the TFT-LCD industry. In addition, the jury has already been  
12 instructed about this testimony at that outset of the case (Tr. at 298:8-299:6). If the Court is  
13 inclined to give any interim instruction in conjunction with Dr. Leffler's testimony, the  
14 government proposes the following:

15 "As I instructed you at the beginning of the case, the government does not have to prove  
16 that anyone derived monetary or economic gain from the alleged conspiracy, or that the  
17 conspiracy caused any monetary or economic harm in order for you to find defendants  
18 guilty of the offense. However, you are about to hear economic evidence which includes  
19 testimony about the gain derived from the conspiracy. While portions of this testimony  
20 are admissible against all of the defendants, the testimony regarding the amount of the  
21 gain from the conspiracy is admissible only against the corporate defendants AUO and  
22 AUOA for a limited purpose. Specifically, testimony regarding the amount of the gain  
23 may be considered by you only if you find AUO or AUOA guilty of the charged  
24 conspiracy."

25 Dated: February 9, 2012

Respectfully submitted,

26 /s/ Peter K. Huston  
27 Peter K. Huston  
28 Antitrust Division  
U.S. Department of Justice