UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of **CERTAIN INK CARTRIDGES AND COMPONENTS THEREOF I**	**Inv. No. 337-TA-1451**

ORDER NO. 7: ISSUING REPLACEMENT GROUND RULES

(August 1, 2025)

Effective immediately, the attached Ground Rules replace the original Ground Rules and shall control the remainder of this investigation.

SO ORDERED.

Bryan F. Moore
Administrative Law Judge

GROUND RULES FOR SECTION 337 INVESTIGATIONS

These Ground Rules supplement the Commission's Rules of Practice and Procedure, 19 C.F.R. Parts 201 and 210 ("Commission Rules"), in order to aid Administrative Law Judge Bryan F. Moore in the orderly conduct of the section 337 investigation pursuant to the Administrative Procedure Act, 5 U.S.C. § 556(c).

In case of any conflict between these Ground Rules and any subsequent order issued by the Administrative Law Judge or the Commission in this investigation, the subsequent order shall control.

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GROUND RULES

1 Filings and Submissions.

1.1 Definitions.

As used in these Ground Rules, "file" refers to filing with the Office of the Secretary of the Commission using the Commission's Electronic Document Information System (EDIS), in accordance with Commission Rule 210.4(f).

As used in these Ground Rules, "submit" refers to providing an item to the Administrative Law Judge without using EDIS.

1.2 Format of Filings and Submissions.

All motions, briefs, notices, and reports filed or submitted to the Administrative Law Judge shall be on 8.5" x 11" pages, at least 12-point Times New Roman font, double spaced, with 1-inch margins. Footnotes shall be at least 12-point font, single spaced.

1.3 Filing Requirement.

All pleadings, motions, briefs, notices, and other documents directed to the Administrative Law Judge shall be filed with the Office of the Secretary of the Commission in accordance with Commission Rule 210.4(f) unless otherwise specifically provided for in these Ground Rules or by order of the Administrative Law Judge.

All PDF-format filings must be PDF version 1.5 or higher.

1.3.1 Public Version Required.

If a document is filed that contains confidential business information as defined in 19 C.F.R. § 201.6(a), the party that filed the document must file a public version of the document within five business days from the date of filing. For those investigations where the Office of Unfair Import Investigations (hereinafter, "Commission Investigative Attorney") is a party, the Commission Investigative Attorney shall have ten business days to file a public version of the document. When redacting confidential business information, a high level of care shall be exercised to ensure that information that does not meet the Commission's definition of confidential business information is not redacted.

For motions and related documents, the public version of the motion or related document shall also include the Motion Docket Number assigned to the original motion by the Office of the Secretary of the Commission in either the title or the first paragraph of the public version. Motion Docket Numbers may be obtained online through EDIS.

1.4 Service.

Whenever practicable, service of all documents filed with the Office of the Secretary of the Commission or submitted to the Administrative Law Judge shall be by email addressed to all parties, including the Commission Investigative Attorney. Otherwise, service shall be as specified in Commission Rules 210.4(i), 210.7, 210.16, or as agreed by the parties.

1.5 Confidentiality.

A protective order shall be entered in each investigation. Parties shall mark filings and submissions as required by the protective order. No cover letter or other document shall be stapled or otherwise attached to a filing or other submission so as to obscure the confidential marking on the top page.

When making claims of confidentiality, parties are expected to follow the definition of confidential business information found in Commission Rule 201.6(a).

When a document is filed confidentially, a public version of the document must be filed within the timelines specified in Ground Rule 1.3.1.

If an exhibit to a motion is not capable of redaction, this must be clearly indicated on the exhibit cover sheet. In addition, the party shall file a declaration justifying why the entire document must remain confidential.

If the Administrative Law Judge issues a confidential order or initial determination, the parties must jointly submit within seven (7) days of the order a single proposed public version of that order with any proposed redactions indicated in red. If the parties submit excessive redactions, they may be required to provide declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in 19 C.F.R. § 201.6(a). The proposed redactions should be made electronically, in a single PDF file of the issued order or initial determination, using the "Redact Tool" within Adobe Acrobat. The proposed redactions should be submitted as "marked" but not yet "applied." If the parties do not have any redactions to the order, they should so state. The proposed redactions or statement of no redactions should be submitted via email to Moore337@usitc.gov and not filed on EDIS.

1.5.1 Disclosure of Confidential Business Information

Paragraph 12 of the Protective Order requires that any unauthorized disclosure of confidential business information must be brought to the attention of the Administrative Law Judge. Any submissions pursuant to this paragraph shall be in the form of a letter addressed to the Administrative Law Judge and submitted in accordance with the procedure set forth in Ground Rule 1.9.2. **Parties should not file any documents pertaining to the unauthorized disclosure of confidential business information on EDIS.** Copies of these documents will be filed on EDIS by the Office of Administrative Law Judges but will be inaccessible to the public and viewable

only by certain ITC staff.

If further submissions (including correspondence, motions, and motion responses) relating to the unauthorized disclosure of confidential business information are necessary, such documents shall likewise by submitted to the Administrative Law Judge in accordance with the procedure set forth in Ground Rule 1.9.2 and shall not be filed on EDIS by any party.

1.6 Word Limits

Certain Ground Rules provide word limits. Any brief that is word-count limited by a Ground Rule must include a certificate by the attorney, or by an unrepresented party, that the brief complies with the word limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief and must appear immediately before the signature block. The word count must include footnotes. However, the word count need not include the following: captions, any table of contents or authorities, words in figures, the word count certificate, the signature block, and the certificate of service.

1.7 Citation of Cases.

The official case reporter citation must be included for any published decision or order that is cited in a party's briefs or pleadings. Additionally, the docket number and the full date of the disposition must be included in the citation of any unreported decision or order that is referenced by the parties. Further, every party must cite to the specific page(s) of the cited decision or order that includes the holding for which the authority is cited.

1.8 Coordination of Briefs Among Interested Parties.

When there is more than one complainant and/or respondent in an investigation, complainants and/or respondents shall respectively coordinate their efforts and file a single brief.

1.9 Courtesy Copies.

1.9.1 Documents Requiring a Courtesy Copy.

Courtesy copies are required for all documents filed on EDIS except protective order undertakings.

1.9.2 Procedure.

On the same day that any document is filed or submitted, the filer or submitter shall submit a courtesy copy of the filing or submission in Microsoft Word format and a courtesy copy of the filing as a single PDF document including all attachments (with exhibits bookmarked) via the cloud-based content management platform Box. For any motion, the filer shall create a folder on Box for all the filer's courtesy copies related to the motion. The folder should have a descriptive

title. The folder for a response to a motion should have the motion number in the title. When all courtesy copies of the filing have been submitted, the filer should email Moore337@usitc.gov[1] with notice that the upload is complete. Documents submitted according to this procedure should not be compressed or password protected. Access to Box will be provided upon request to Moore337@usitc.gov. Courtesy copies should not be submitted via FTP sites.

1.9.3 Hyperlinked Courtesy Copies

Certain filings require additional hyperlinked courtesy copies submitted to Box as indicated in the Ground Rules listed below:

- Summary Determination Motions and Responses – see Ground Rules 5.4.2
- Claim Construction Briefing – see Ground Rule 7.2
- Chart required for oppositions to Motion to Strike – see Ground Rule 9.1
- Post-Hearing Briefing – see Ground Rule 14

The Commission Investigative Attorney is not required to submit hyperlinked courtesy copies of any filing.

1.10 Patent Prosecution Bars

Any party bringing a motion for a protective order addendum containing provisions for a proposed patent prosecution bar must demonstrate that: (1) the information triggering the bar is confidential, relevant to patent prosecution, and of the kind that may pose a heightened risk of inadvertent disclosure; (2) particular patent prosecution attorney(s) having access to the information are involved in competitive decision making; and (3) the risk of inadvertent disclosure by such person(s) outweighs the burden a prosecution bar would impose on them. *See, e.g.*, *Certain Consumer Electronics, Including Mobile Phones & Tablets*, Inv. No. 337-TA-839, Order No. 28 at 4 (Jan. 7, 2013); *see also In re Deutsche Bank Trust Co. Americas*, 605 F.3d 1373 (Fed. Cir. 2010).

2 Time.

Time shall be computed as stated in Commission Rules 201.14, 201.16(d), and 210.6.

When computing the due date for a response to a motion under Commission Rule 210.15(c), the first day shall be the first business day following the date that the motion was filed

[1] Questions or general correspondence should not be submitted to the email address Moore337@usitc.gov. Questions or correspondence sent to this mailbox will not be answered. *See* Ground Rule 16.

with the Office of the Secretary of the Commission, no matter the method of service of the motion. If the last day for making a submission falls on a day on which weather or other conditions have made the Office of the Secretary of the Commission inaccessible, the period shall run until the end of the next business day on which the Office of the Secretary of the Commission is accessible.

2.1 Request for Extension of Time

Any request for an extension of time must be made by written motion **two days before** the due date. Motions filed after this date may not be ruled on prior to the expiration of the deadline and may be denied for failure to abide by this rule. If the motion is opposed, the moving party must demonstrate good cause for the extension of time.

If a deadline requires only that a document or item be served on the parties (and not filed on EDIS or submitted to the Administrative Law Judge), the parties may modify the deadline without seeking judicial approval, provided that all parties and the Commission Investigative Attorney agree to the new date.

3 Preliminary Conference.

By separate order, the Administrative Law Judge will instruct the parties to appear at a preliminary conference, in person or via videoconference. If by videoconference, connection information will be provided to the parties in a separate communication. The Commission will provide a court reporter who will transcribe this conference and the transcript will be made available on EDIS.

By noon on the last business day prior to the preliminary conference, the parties shall jointly submit proposed dates for the procedural schedule below. At the conference, the parties should be prepared to discuss the following:

A. formulating and simplifying the issues, and eliminating frivolous claims or defenses;

B. amending the pleadings if necessary or desirable;

C. obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

D. avoiding unnecessary proof and cumulative evidence;

E. controlling and scheduling discovery, including discovery involving non-parties;

F. identifying witnesses (including the possibility of remote witnesses) and documents, and setting dates for further conferences if necessary;

G. contentions interrogatories and responses thereto;

H. any questions regarding these ground rules;

I. settlement and mediation;

J. disposing of pending motions;

K. the NEXT Advocate Program (*see* Ground Rule 15);

L. adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, including the possible consolidation or severance of proceedings; and

M. facilitating in other ways the just, speedy, and inexpensive disposition of the action.

4 Procedural Schedule.

The Administrative Law Judge will promulgate a procedural schedule for the investigation. Once ordered, modifications of the procedural schedule by any party shall be made by written motion showing good cause, except for events listed in italics. Per Ground Rule 2.1, the parties may modify the deadlines in italics without seeking judicial approval, provided that all parties and the Commission Investigative Attorney agree to the new date. Deadlines marked with an asterisk only apply if it is determined that a *Markman* hearing shall be held. The event and deadline dates in the procedural schedule will generally adhere to the following chronological order, although parties may suggest other procedures as they deem necessary for the efficient and orderly disposition of the investigation:

Preliminary conference
*Exchange list of claim terms to be construed**
*Exchange proposed constructions for all terms on all lists**
File identification of expert witnesses, including their expertise and curriculum vitae
Complainant files list of products it plans to rely upon to satisfy the domestic industry requirement
*Exchange of initial expert reports on claim construction issues**
*Exchange of rebuttal expert reports on claim construction issues**

*Meet and confer to discuss and limit number of disputed claim terms**
File opening claim construction briefs*
File responsive claim construction briefs*
Markman claim construction hearing*
File proposed claim construction chart incorporating any revisions to date*[2]
File notice of prior art
Deadline for responses to contention interrogatories on issues for which the responding party bears the burden of proof, and on public interest (if applicable)
Deadline for responses to contention interrogatories on issues for which the responding party does not bear the burden of proof
Fact Discovery cutoff and completion
Deadline to submit letters regarding fact discovery disputes
File joint statement identifying accused products
Exchange initial expert reports
File tentative list of witnesses a party will call to testify at the hearing, with an identification of each witness' relationship to the party
Exchange rebuttal expert reports
Expert discovery cutoff and completion
Deadline to submit letters regarding expert discovery disputes
Motions to Strike (see Ground Rule 9.1)
One-day mediation session[3]

[2] This document should be filed after the *Markman* hearing to address any modifications to the proposed construction(s) that are reached at the hearing itself.

[3] For any questions regarding the mediation program, the parties should refer to the Revised

Submit joint report on mediation
Deadline for filing summary determination motion
Exchange of exhibit lists among the parties
Complainant and respondent serve proposed direct exhibits (including witness statements) and identify physical exhibits
Commission Investigative Attorney serves proposed direct exhibits (including witness statements) and identifies physical exhibits
File joint stipulation regarding representative accused products and representative domestic industry products
Serve proposed rebuttal exhibits (including witness statements) and identify rebuttal physical exhibits
Complainant and respondent file pre-hearing statements and briefs
Exchange objections to witness statements
File joint list of unopposed exhibits
Deadline for motions *in limine* and high priority objections statement
File requests for receipt of evidence without a sponsoring witness
Commission Investigative Attorney files pre-hearing statement and brief
Submit witness statements (and exhibits cited therein) to Box
Deadline for responses to motions *in limine* and high priority objections statement[4]
File responses to requests for receipt of evidence without a sponsoring witness
Final pre-hearing conference

Users' Manual for Commission Mediation Program, available at http://www.usitc.gov.

[4] Responses to motions *in limine* and high priority objections must be submitted no later than ten days prior to the pre-hearing conference. If this deadline falls on a Friday, responses must be filed by noon.

Hearing
File identification of undisputed claim limitations (*see* Ground Rule 14.1)
File final exhibit list
Complainant and respondent file post-hearing initial briefs with the Secretary and submit final exhibits with the Administrative Law Judge
Staff files post-hearing initial brief
Complainant and respondent file post-hearing responsive briefs
Staff files post-hearing responsive brief
Initial Determination due
Target date for completion of investigation

5 Motions.

5.1 Obligation to Confer.

All motions shall include a certification that the moving party has made reasonable, good-faith efforts to resolve the matter with the other parties prior to filing the motion and shall state, if known, the position of the other parties on such motion. The certification shall be placed at the beginning of the motion.

5.2 Page Limitations.

Motions (other than motions for summary determination) shall not exceed fifteen pages (excluding exhibits). Likewise, responses to such motions shall not exceed fifteen pages. A separate memorandum is not necessary for motions and counts towards the page limit, if one is submitted.

5.3 Numbering Responses to Motions.

All responses to motions shall include the Motion Docket Number assigned to the motion by the Office of the Secretary of the Commission in either the title or the first paragraph of any such response. Motion Docket Numbers may be obtained online through EDIS.

5.4 Rules for Certain Motions.

5.4.1 Discovery-Related Motions.

5.4.1.1 Videoconference Requirement.

All discovery disputes will be addressed in a videoconference with the Administrative Law Judge. Prior to filing *any* motion related to a discovery dispute, the party that seeks to file such a motion must discharge its obligation to meet and confer under Ground Rule 5.1. If, after discharging its obligation under that rule, any discovery disputes persist, that party shall submit a letter explaining the dispute. The letter shall be submitted by e-mail to Moore337@usitc.gov (and a copy should be uploaded to Box) and shall be no more than two single-spaced pages. Any party submitting a responsive letter must do so no later than one (1) business day following submission of the initial letter by the intended movant. Any responsive letter should be submitted by e-mail to the address above and shall address all issues in no more than two single-spaced pages. After receiving these submissions, the parties will be notified of the date for the videoconference and provided with connection information. The Commission Investigative Attorney does not waive their right to address the discovery dispute by declining to submit a responsive letter. The Commission will provide a court reporter who will transcribe this conference and the transcript will be made available on EDIS.

Leave to file a discovery-related motion will be granted, if at all, only after the intended movant has complied with the procedure provided herein.

This subsection does not apply to third-party discovery disputes.

5.4.1.2 Contents of Discovery-Related Motions.

Any discovery-related motion must have appended to it the pertinent parts of the discovery request and all objections and answers thereto. If a party serves supplemental responses after the filing of a motion to compel, that party must provide a detailed accounting of what supplemental responses were provided, or where documents are produced, a detailed accounting of what additional documents were produced. If any portion of a discovery-related motion becomes moot prior to the issuance of an order, the moving party shall file a Notice identifying which portion(s) of its motion are moot. If a party intends to withdraw its motion, it shall file a Notice of Withdrawal. No motion stops discovery, except a timely motion to quash a subpoena suspends any obligation to comply with the subpoena until the motion has been decided.

5.4.2 Motions for Summary Determination and Responses Thereto.

5.4.2.1 Motion.

No more than one motion for summary determination may be filed by a party without leave from the Administrative Law Judge. The parties should not attempt to circumvent this rule by addressing more than one issue in the motion. If a motion for summary determination is undisputed, it does not count towards the limit on motions for summary determination. A motion for summary determination is limited to 10,000 words, as counted in Ground Rule 1.6.

5.4.2.2 Response.

A response to a motion for summary determination is limited to 10,000 words, as counted in Ground Rule 1.6.

5.4.2.3 Courtesy Copies.

In addition to the courtesy copy of the motion or response required by Ground Rule 1.9, a hyperlinked PDF courtesy copy of the motion or response must be submitted by the respective filing party via Box within five business days from the date of filing the last response to the motion. Citations to any patents, exhibits, and legal authorities must be hyperlinked to PDF versions of the evidence or authority cited. The courtesy copy should not be compressed or password protected. Access to Box will be provided in accordance with the procedures in Ground Rule 1.9.2. The hyperlinked courtesy materials should not be filed on EDIS.

5.5 Effect of Filing Unopposed Motions to Terminate.

Upon the filing of an unopposed motion to terminate the investigation under Commission Rule 210.21, all deadlines are automatically stayed as to the party or parties seeking termination from the investigation unless otherwise ordered by the Administrative Law Judge or the Commission. No separate motion to stay is necessary.

6 Discovery.

6.1 Resolution of Disputes; Coordinated Discovery.

All parties shall make reasonable efforts to resolve among themselves disputes arising during discovery. Parties with similar interests must coordinate and consolidate depositions and all other discovery.

6.2 Discovery Committee.

Commencing with the first full week after these Ground Rules are issued, a discovery conference committee (the "Discovery Committee") consisting of counsel for each party and the Commission Investigative Attorney (if applicable) shall convene at least once every two weeks

during the discovery phase of this investigation to resolve discovery disputes. The Discovery Committee shall confer in good faith to resolve every outstanding discovery dispute in a timely manner within the deadlines set forth in the procedural schedule.

6.3 Service of Discovery Requests and Responses.

Discovery requests and responses thereto shall be served upon all parties, including the Commission Investigative Attorney (if applicable), but shall not be served on the Administrative Law Judge unless they are pertinent to a motion. Discovery documents need not be served on the Office of the Secretary of the Commission unless they are appended to motions.

6.4 Timing of Discovery Requests, Responses and Objections.

6.4.1 Depositions; Notice.

In addition to the requirements of Commission Rule 210.28(c), unless otherwise ordered, any party desiring to take a deposition shall give notice in writing to every other party of not less than ten (10) days if the deposition is to be taken of a person located in the United States, or of not less than fifteen (15) business days if the deposition is to be taken of a person located outside the United States.

6.4.2 Interrogatories; Deadline for Responses and Objections.

As provided in Commission Rule 210.29(b), unless otherwise ordered, the party upon whom interrogatories have been served shall serve a copy of the answers, and any objections, within ten (10) days after the service of the interrogatories. This rule does not apply with respect to responses to contention interrogatories. Rather, responses to contention interrogatories must be served by the dates set forth in the procedural schedule.

6.4.3 Contention Interrogatories.

A party may not introduce evidence at the hearing that is outside of the scope of its responses to contention interrogatories.

Conclusory statements in responses to contention interrogatories are insufficient. For example, if a party simply states: “There is also infringement under the doctrine of equivalents,” the party is prohibited from later introducing evidence regarding the details of such infringement. Likewise, an expert will not be permitted to later testify regarding an obviousness combination if the party did not disclose the exact obviousness combination in its contentions.

Amendment or supplementation of responses to contention interrogatories after the deadline may be made only with leave of the Administrative Law Judge and shall be entered only upon a showing of good cause.

6.4.4 Requests for Production of Documents or Things or for Entry Upon Land; Deadline for Responses and Objections.

As provided in Commission Rule 210.30(b)(2) with respect to a request for the production of documents or things, or to permit entry upon land, unless otherwise ordered, the party upon whom a request has been served shall serve a written response within ten (10) days after the service of the request.

6.4.5 Request for Admission; Period for Service; Deadline for Responses and Objections.

Unless otherwise ordered, a request for admission may be served at any time twenty (20) days after the date of service of the Complaint and Notice of Investigation. Unless otherwise ordered, a party upon whom a request for admission has been served shall serve an answer or objection within ten (10) days after the service of the request. Requests for admission that are not timely answered may be deemed admitted.

6.4.6 Discovery Related to Redesign Products.

If a respondent desires to obtain a determination regarding a redesigned product or a non-accused product, the respondent must produce all relevant discovery 30 days prior to the close of fact discovery.

6.4.7 Discovery Cutoff and Completion.

All discovery requests, including without limitation requests for admissions, must be initiated in sufficient time prior to the fact discovery cutoff and completion date so that the responses will be due prior to that date within the time periods set forth above. Discovery requests by any party that would require responses after the fact discovery cutoff and completion date must be approved in advance by the Administrative Law Judge upon a showing of good cause.

Unless otherwise agreed to by the parties or for good cause, any documents produced after the fact or expert discovery deadline cannot be admitted into evidence or otherwise used at the hearing.

6.5 Subpoenas.

6.5.1 Issuance and Service.

Pursuant to Commission Rule 210.32, an application for a subpoena may be made *ex parte* to the Administrative Law Judge. The application shall be in a PDF format with the proposed subpoena attached, and one (1) copy thereof shall be submitted in an editable format readable by Microsoft Word to Moore337@usitc.gov. The application shall set forth with specificity the relevancy of the information sought and the reasonableness of the scope of the inquiry. In addition, the subpoena should set forth a time limit for a motion to quash of not less than ten (10) days after

receipt of the subpoena and should also state that the subpoena will be served by overnight delivery, if not sooner. Any dates in a subpoena set for appearance of a deponent or production of documents should take into account the date set for the filing of any motions to quash. Neither a subpoena application nor a subpoena shall contain confidential business information. A copy of the issued subpoena, protective order, and the application shall be served by the applicant upon the subpoenaed party and all other parties to the investigation on the next business day, at the latest, after the subpoena is issued. All parties including the subpoenaed party shall be notified on that day about the contents of the subpoena. One (1) copy of the issued subpoena, the application, and the proof of service to the subpoenaed party shall be submitted to the Administrative Law Judge at Moore337@usitc.gov but should not be filed with the Office of the Secretary of the Commission. Samples of subpoenas are attached in Appendix A hereto.

6.5.2 Motion to Quash Subpoena; Deadline.

In addition to the requirements of Commission Rule 210.32(d), any motion to limit or quash a subpoena shall be filed within ten (10) days after receipt thereof, or within such other time as the Administrative Law Judge may allow. A motion to quash shall have a copy of the subpoena at issue attached, and a copy of the subpoena shall be included in the courtesy copies required under Ground Rule 1.9. Filing of any motion to quash an issued subpoena automatically stays such subpoena pending disposition of the motion.

6.5.3 Subpoenas *Ad Testificandum* for Hearings.

Applications for subpoenas *ad testificandum* to appear at the hearing must be submitted fourteen (14) days prior to the start of the hearing.

6.5.4 Withdrawing A Subpoena.

A party that has obtained a subpoena may withdraw the subpoena by serving written notice of withdrawal to all parties and non-parties (including the Administrative Law Judge) that were provided notice of the subpoena. The notice of withdrawal need not be filed with the Office of the Secretary of the Commission.

6.6 Bates Numbering.

If documents produced by any supplier in response to a document request are furnished to the requester as copies of original documents, every page of every such document shall be numbered sequentially by a unique number (commonly known as a "Bates number"). The Bates number shall appear stamped on the lower right-hand corner of the page.

6.7 Translations.

All documents produced in response to a document request shall be the original or true complete copies of originals. If an English translation of any document produced exists, the English translation shall be produced. If any of the parties dispute the translation provided by the

producing party, then the translation must be certified by a qualified and neutral translator upon whom counsel can agree.

6.8 Privileged Matter.

In order to expedite discovery, the following procedure shall be followed with respect to those documents for which counsel claims privilege (attorney-client privilege or work product protection).

6.8.1 Privileged Document List.

If production of any document is withheld on the basis of a claim of privilege, each withheld document must be separately identified via a privileged document list.[5] The privileged document list shall be supplied, unless otherwise ordered, within ten (10) days after objections based on privilege to the underlying document requests are due. The privileged document list must identify each document separately, specifying for each document at least the following: (1) the date; (2) the author(s)/sender(s); (3) the recipient(s), including copy recipient(s); and (4) the general subject matter of the document. The sender(s) and recipient(s) shall be identified by position and entity (corporation or firm, *etc.*) with which they are employed or associated. If the author/sender or recipient is an attorney or foreign patent agent, he or she shall be so identified. The type of privilege claimed must also be stated, together with certification that all elements of the claimed privilege have been met and not waived with respect to each document.

Where only part of a document or communication is privileged/protected, the unprivileged/unprotected portion should be disclosed if otherwise discoverable and within the scope of the discovery request. Emails and attachments shall be treated as separate documents. Additionally, the parties are encouraged to confer and reach agreement regarding how to assert privilege/protection claims with respect to email "chains" or "strings."

6.8.2 Motion to Compel Production of Privileged Matter.

Any party seeking production of allegedly privileged documents shall file an appropriate motion only after examining the privileged document list. In opposing any such motion, a party must demonstrate that each element of the applicable privilege(s) has been met. This may be done through the submission of affidavits or other appropriate evidence. Blanket assertions of privilege are insufficient.

The Administrative Law Judge is aware that parties often agree among themselves that production of a privilege log is not necessary. If such an agreement is in force, the Administrative Law Judge may deny any motions involving privileged documents on that basis.

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[5] *See Duplan Corp. v. Deering Millikin, Inc.*, 397 F. Supp. 1146, 184 U.S.P.Q. 775 (D.S.C. 1974).

7 Claim Construction.

7.1 Terms Requiring Construction.

By the date ordered in the procedural schedule, each party shall exchange a list of claim terms which that party contends should be construed by the Administrative Law Judge. The list shall include identification of any preamble language that the party contends is limiting, any claim term which the party contends is indefinite, and any claim term that the party construes as invoking means-plus-function language under 35 U.S.C. § 112 ¶ 6 / (f).

Each party shall serve proposed constructions for all terms the parties have exchanged by the date ordered on the procedural schedule. At the date provided in the procedural schedule, the parties shall confer for the purpose of narrowing claim construction disputes. When filing opening claim construction briefs, the parties are limited to a maximum of ten (10) terms. Any additional disputed terms will be addressed in the initial determination.

Any party who fails to set forth a specific proposed construction or who relies on the plain and ordinary meaning of the patent language at issue (without elaboration) may not subsequently elaborate or rely on a different proposed construction absent advance approval from the Administrative Law Judge.[6]

7.2 Claim Construction Briefing.

By the date ordered on the procedural schedule, each party shall serve an opening claim construction brief addressing the disputed terms. The opening brief shall be no more than 10,000 words as calculated under Ground Rule 1.6. By the date ordered on the procedural schedule, each party shall serve a responsive claim construction brief of no more than 5,000 words.

The opening claim construction brief for each party should identify the party's position on the level of ordinary skill in the art.[7]

In addition to the courtesy copy of each claim construction brief required by Ground Rule 1.9, each party that filed a claim construction brief must submit a hyperlinked PDF courtesy copy of the brief and all exhibits thereto via Box within five business days from the date of filing of the last responsive brief. Citations to any patents, exhibits, and legal authorities must be hyperlinked

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[6] The Administrative Law Judge takes no position here as to the merits of proposing the plain and ordinary meaning (as understood by one of skill in the art) of a disputed term, which may be quite reasonable under the circumstances. *See*, *e.g.*, *Phillips v. AWHCorp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). What is of concern is when a party makes a tactical decision to shift to a new, detailed disclosure after seeing what the other side has to offer.

[7] It will be the default that a higher level of education may substitute for a lesser amount of experience and vice versa. If any party does not believe this would be appropriate, they should present such arguments in their opening brief.

to PDF versions of the evidence or authority cited. Access to Box will be provided in accordance with the procedures in Ground Rule 1.9.2. The hyperlinked courtesy materials should not be filed on EDIS.

7.3 Claim Construction Hearing Exhibits.

If a claim construction hearing is ordered and a party intends to present demonstrative or other exhibits at that hearing, that party shall submit all exhibits via Box by noon on the last business day before the hearing. Access to Box will be provided in accordance with the procedures in Ground Rule 1.9.2.

7.4 Proposed Claim Construction Chart.

On the date set forth in the procedural schedule, the parties shall file a claim construction chart incorporating any revisions to date. The chart should identify any constructions that have changed since the parties filed their *Markman* briefs.

7.5 Level of Skill in the Art

The claim construction order will set forth the definition of level of ordinary skill in the art. If either party intends to argue that an expert does not meet the level of skill, the party must raise this issue via a discovery letter within thirty days of the issuance of the claim construction order.

8 Notice of Prior Art.

Parties must file on or before the date set in the procedural schedule, notices of any alleged prior art consisting of the following information:

- For alleged prior art patents: the country, number, title, date, and patentee name(s);
- For alleged prior art printed publications: the title, author, date, and relevant page numbers;
- For alleged prior sales or offers for sale: the brand name and model name or number of the article, the date and location of the offer or sale, and the name and address of any corroborating witnesses;
- For alleged prior inventors: the name and address of the alleged inventor and of any corroborating witnesses.

Absent good cause, only prior art timely identified according to the procedural schedule may be introduced into evidence at the hearing.

9 Expert Witnesses and Reports.

On or before the dates set forth in the procedural schedule, a party shall disclose to other parties the identity of any person who is retained or employed to provide expert testimony at the hearing and shall provide to the other parties a written report prepared and signed by the witness. The report shall not be filed with the Office of the Secretary of the Commission. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The parties shall supplement these disclosures as needed in the manner provided in Commission Rule 210.27(f).

An expert's report is limited to the scope of the party's disclosures in its responses to contention interrogatories.

9.1 Motions to Strike Expert Disclosures

In the event a party's expert proffers an opinion, through report or deposition testimony, that the opposing party believes conflicts with or goes beyond the scope of contention interrogatory responses and is improper, the opposing party should promptly file a motion to strike to maintain clarity of the record. The opposing party should not wait until pre-hearing procedures, motions *in limine*, or high priority objections. Moving or objecting at that delayed time will be looked upon unfavorably.

The motion to strike should include a copy of the relevant expert report as an exhibit. The portions that the moving party seeks to strike should be highlighted.

Any opposition to a motion to strike should include a chart as an exhibit that identifies the paragraph(s) in the expert report and the relevant discloses in the party's responses to contention interrogatories. One business day after the opposition is filed, the party must submit a hyperlinked PDF courtesy copy of the chart via Box. The hyperlinked courtesy copy should not be filed on EDIS.

10 Narrowing Issues, Mediation, Settlement.

Due to the time limitations imposed by section 337, counsel shall attempt to resolve, by stipulation or negotiated agreement, any procedural problems encountered, including those relating to discovery and submission of evidence. Continuing good faith communication among all counsel is expected.

For the one-day mediation session required in the procedural schedule, the parties shall submit to the Administrative Law Judge a joint report about the mediation by the time designated

in the procedural schedule. The report shall not be filed with the Office of the Secretary of the Commission.

All parties shall certify in their pre-hearing statements that they negotiated in good faith to settle the remaining issues.

11 Pre-hearing Submissions.

11.1 Pre-hearing Statement.

Each party who desires to participate in the hearing in this investigation must file, by the date set forth in the procedural schedule, a pre-hearing statement containing the following information:

(a) The names of all known witnesses, their addresses, whether they are fact or expert witnesses, and a brief outline of the testimony of each witness. In the case of expert witnesses, a copy of the expert's curriculum vitae shall accompany this submission.

(b) A list of all exhibits which the parties will seek to introduce at the hearing.

(c) Any stipulations on which the parties have agreed.

(d) A proposed agenda for the pre-hearing conference.

(e) Estimated date and approximate length for appearance of each witness. The parties shall confer on estimated dates and approximate length prior to submission of their pre-hearing statements.

(f) Certification regarding good faith efforts to settle the investigation.

11.2 Pre-hearing Brief.

By the date set forth in the procedural schedule, each party shall file a pre-hearing brief. The pre-hearing brief shall be prefaced with a table of contents and a table of authorities. The pre-hearing brief shall set forth a party's contentions on every issue the party intends to address at hearing, no matter which party has the burden on the issue. The pre-hearing brief shall include specific citations to legal authorities and record evidence. Absent leave from the Administrative Law Judge and for good cause, the pre-hearing brief shall not exceed 60,000 words.

Any contentions not set forth in detail in the pre-hearing brief shall be deemed abandoned or withdrawn, except for contentions of which a party is not aware and could not be aware in the exercise of reasonable diligence at the time of filing the pre-hearing brief.

Defenses of patent invalidity under 35 U.S.C. § 103 raised in a pre-hearing brief must address the factors of *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), separately for

each unique combination of prior references relied upon. Obviousness arguments that use "and/or" nomenclature to combine references are not preserved.

11.3 High Priority Objections Statement

The high priority objections included in the party's statement are limited to the party's objections to witness statements. No party shall include more than five objections in its statement. The parties should not attempt to circumvent this limitation by including numerous subsections in their objections. The statement should include the argument in support of the objection and should not exceed 10 pages. The parties must confer before filing objections, and the statement of high priority objections shall include a certification pursuant to Ground Rule 5.1.

High priority objections shall attach the witness statement that is the subject of the objection as an exhibit. The moving party should highlight the disputed portions of the witness statement. Any high priority objection that does not attach the highlighted witness statement will not be considered.

11.4 Motions *in Limine.*

Unless otherwise permitted by the Administrative Law Judge, each side shall be limited to a maximum of five (5) motions *in limine*. The parties should not attempt to circumvent this limitation by including numerous subsections in a motion *in limine*. Each motion is limited to ten pages. The moving party must provide a substantive discussion of each piece of evidence that it seeks to strike and should not simply include a chart or list without explanation. Each motion *in limine* should conclude with a statement specifically identifying all evidence it seeks to exclude. The parties must confer before filing motions *in limine*, and each motion shall include a certification pursuant to Ground Rule 5.1.

All motions *in limine* shall include a copy of the evidence at issue as an attachment to the motion. If a party seeks to preclude portions of a witness statement, the party should highlight the portions of the witness statement in dispute. Any motion *in limine* that does not attach a highlighted copy of the evidence at issue when the motion is filed may be denied.

Any opposition to a motion *in limine* to exclude evidence on the basis that testimony is outside the scope of expert reports should include a chart as an exhibit that identifies the paragraph(s) in the witness statement and the relevant discloses in the expert report.

12 Exhibits.

12.1 Form and Marking.

12.1.1 Inclusion on Exhibit List.

A party may not introduce a document into evidence at the hearing that is not included on the exhibit list, including for impeachment. Additionally, absent agreement from the parties or

good cause, any document received after the close of fact or expert discovery will not be admissible at the evidentiary hearing and should not be included on the exhibit list. The parties may, by mutual agreement, add exhibits to the exhibit list up until the final exhibit list is filed per Ground Rule 12.6.1.

12.1.2 One Document Per Exhibit.

In general, each exhibit shall consist of no more than one document. In limited instances it may be appropriate to group certain documents together as one exhibit, such as a group of invoices.

12.1.3 Labeling Exhibits.

Document exhibits shall be uniquely marked serially commencing with the four-digit number "0001" and preceded by the prefix "CX" for complainant's exhibits, "RX" for respondent's exhibits, "SX" for the Commission Investigative Attorney's exhibits, and "JX" for any joint exhibits (*e.g.*, CX-0001, CX-0002, *etc.*). The parties shall not "reserve" numbers but instead shall assign all numbers in consecutive sequence. No document should have two different exhibit labels, and no two documents should have the same exhibit label.

Each exhibit shall be marked by placing a label bearing the exhibit's number (*e.g.*, CX-0003C or RX-0005) in the upper right portion of the exhibit's first page.

Each exhibit must have sequential Bates numbers in accordance with Ground Rule 6.6 above.

12.1.4 Physical Exhibits.

Physical exhibits shall be numbered in a separate series commencing the four-digit number "0001" preceded by the prefixes "CPX", "RPX", "SPX" and "JPX", for complainant, respondent, the Commission Investigative Attorney, and joint exhibits, respectively (*e.g.*, CPX-0004).

12.1.5 Demonstrative Exhibits.

Demonstrative exhibits shall be numbered in a separate series commencing with the four-digit number "0001" preceded by the prefixes "CDX", "RDX", and "SDX", for complainant, respondent, and the Commission Investigative Attorney, respectively.

12.1.6 Confidential Exhibits.

If any portion of an exhibit—demonstrative or otherwise—contains confidential business information, the entire exhibit shall be treated as confidential and a "C" shall be placed after the exhibit number (*e.g.*, CX-0003C). If an exhibit is marked with a "C" designation, no other exhibit shall use the same number without the "C" designation. Exhibits containing confidential business information shall also include confidentiality markings required by the Protective Order.

For certain lengthy exhibits of which only portions are confidential, the parties may be asked to submit a public version of the exhibit.

12.1.7 Foreign Language Exhibits.

No foreign language exhibits will be received into evidence unless a translation thereof is provided at the time set in the procedural schedule for the exchange of proposed exhibits. The translation shall be included as part of the foreign language exhibit.

12.2 Sponsoring Witness

Each exhibit that is offered into evidence shall have a "sponsoring witness." One of the purposes of having a sponsoring witness associated with an exhibit is to establish a foundation for the exhibit and to prevent exhibits from coming into the record without context. A witness must testify substantively regarding an exhibit to satisfy this rule. Merely identifying the exhibit or stating that he/she reviewed the exhibit to form his/her opinion is not sufficient.

Sponsoring witness testimony may be in the form of deposition testimony, rather than live testimony, if all the parties are in agreement.

Except in an investigation in which there is no participating respondent, if a party believes evidence to be non-controversial and to be appropriate for receipt in evidence without a sponsoring witness, that party may present with each such exhibit on or before the due date set forth in the procedural schedule: (1) an affidavit or declaration that the declarant prepared or someone under the declarant's direction prepared the exhibit; (2) a request that the exhibit be received in evidence without a witness at the hearing; and (3) a statement of grounds for receiving the exhibit in evidence without a witness at the hearing. Any party who wishes to cross-examine the declarant may object in writing within three (3) days of service of the affidavit or declaration and request, specifying whom the party intends to examine.

12.3 Pre-Hearing Disclosure.

12.3.1 Content of Exhibit Lists.

Every exhibit list required under these rules shall consist of a table enumerating all exhibits serially by exhibit number and identifying each exhibit by a descriptive title, a brief statement of the purpose for which the exhibit is being offered in evidence, the name of the sponsoring witness, and the status of receipt of the exhibit into evidence. In the case of joint exhibits, every exhibit list shall identify such exhibits, and the parties shall meet and confer before submitting the lists to agree upon a common descriptive title, statement of purpose, and sponsoring witnesses that shall appear on every list for each joint exhibit. In any exhibit list submitted prior to the offer of any exhibit into evidence, the entry in the column for the status of receipt shall be left blank. In any exhibit list submitted after the exhibit is offered into evidence or withdrawn, the entry in that

column shall show the date of admission into evidence or rejection of the exhibit or shall indicate its withdrawal.

Exhibit lists shall include public and confidential exhibits, and shall list all exhibits together in numerical order, *e.g.*, CX-0001, CX-0002, CX-0003C, CX-0004, CX-0005C, *etc.*

No exhibit list shall disclose confidential information; all exhibit lists shall be public documents.

12.3.2 Exchange of Proposed Exhibit Lists.

Proposed exhibit lists shall be served by the date ordered on the procedural schedule. The list shall include a Bates number and other sufficient information to identify the exhibit with certainty. After the service of proposed exhibit lists, the parties shall confer and consolidate any duplicative exhibits appearing on proposed exhibit lists.

12.3.3 Exchange of Proposed Exhibits.

Copies of proposed exhibits shall be served on all parties on the date ordered in the procedural schedule. Proposed physical exhibits need not be served but shall be identified in the proposed exhibit list. Proposed physical exhibits must be made available for inspection on the date established for the submission and service of proposed exhibits. Proposed exhibits shall not be submitted to the Administrative Law Judge or filed with the Office of the Secretary of the Commission.

12.3.4 Exchange of Demonstrative Exhibits.

Demonstrative exhibits must be exchanged by 9:00 p.m. the evening before the day on which the demonstrative exhibit will be used or at a time otherwise agreed to by all parties. Demonstrative exhibits may, however, be created by a witness during examination through, for example, asking the witness to draw a picture or annotate an exhibit. Such exhibits need not be exchanged in advance.

12.4 Use in Hearing.

12.4.1 Authenticity.

All documents that appear to be regular on their face shall be deemed authentic, unless it is shown by particularized evidence that the document is a forgery or is not what it purports to be.

12.4.2 Exhibits Not in Dispute

By the date specified in the procedural schedule, the parties shall jointly file a list of exhibits to which no party has an objection. The list should indicate which party is offering the exhibit.

12.4.3 Witness Exhibits.

Prior to commencing the examination or cross-examination of a witness, counsel shall provide the witness and other counsel with all exhibits to be used in the examination of the witness. The parties shall separately agree in advance on when and how exhibits are provided to other counsel and the witness (*e.g.,* physical binders or electronic files). The parties do not need to provide paper copies to the Administrative Law Judge or his staff.

Prior to commencing cross-examination of a witness, counsel shall submit the exhibits for each witness to the Administrative Law Judge electronically via Box. The exhibits shall be organized in folders by witness name and each folder shall include a table of exhibits listing the exhibit number and an informative title.

12.5 Admission of Exhibits into Evidence.

The parties are responsible during the course of the hearing for composing a final list of admitted exhibits by the conclusion of the hearing. The parties are advised to confer at each hearing break about the exhibits discussed during the previous segment of testimony. Before the commencement of each day of the hearing, the parties shall jointly email a list of the exhibits to be admitted from the previous day's hearing, if any, to Moore337@usitc.gov, as well as to the court reporter.

12.6 Final Exhibit List and Final Exhibits.

12.6.1 Final Exhibit List.

The final exhibit list shall be jointly filed by the parties with the Office of the Secretary of the Commission within five days after the conclusion of the hearing. The final exhibit list shall reflect the status of all exhibits, including those admitted and those rejected during the hearing. Any exhibit that is not labeled as admitted on the final exhibit list will not be considered part of the record to be certified to the Commission when the final initial determination issues.

On the same day that the parties file the final exhibit list with the Office of the Secretary, the parties shall submit a courtesy copy of the final exhibit list in a sortable native spreadsheet format to the Administrative Law Judge via Box.

12.6.2 Final Exhibits Must Be Submitted to the Administrative Law Judge.

On the same day that initial post-hearing briefs are due, the parties shall jointly submit all admitted exhibits and all demonstrative exhibits used at the hearing to the office of the Administrative Law Judge using the Box platform. The admitted exhibits and demonstrative exhibits should not be submitted directly to Docket Services or filed on EDIS. The Administrative Law Judge will transmit the admitted and demonstrative exhibits to Docket Services for posting on EDIS.

12.6.3 Format for Submitting Final Exhibits.

All admitted physical exhibits shall have exhibit labels attached and shall be submitted pursuant to the procedure outlined in Ground Rule 13.10.1.

All admitted document exhibits and all demonstrative exhibits used at the hearing must be submitted in electronic format whenever possible. All PDF-format exhibits shall be PDF version 1.5 or higher. Admitted document exhibits and demonstrative exhibits shall be submitted to the office of the Administrative Law Judge via Box.

The procedure for formatting and organizing admitted exhibits for submission is set forth in the EDIS 3 User Guide on Submitting Electronic Media, found at http://www.usitc.gov/docket_services/documents/EDIS3UserGuide-CDSubmission.pdf.[8]

The standard exhibit categories are listed below, along with the naming convention of the category:

Category	Public Exhibit Convention	Confidential Exhibit Convention (ending in C)
Complainant's Exhibit	CX-[four-digit number]	CX-[four-digit number]C
Complainant's Demonstrative Exhibit	CDX-[four-digit number]	CDX-[four-digit number]C
Complainant's Physical Exhibit (includes native format files)	CPX-[four-digit number]	CPX-[four-digit number]C
Respondent's Exhibit	RX-[four-digit number]	RX-[four-digit number]C

[8] Although the parties will not submit final exhibits on physical media, the exhibits will ultimately be uploaded to EDIS and must conform with EDIS requirements such as the 25 MB file size limitation. Exhibits larger than 25 MB must be broken into multiple files, none of which exceed 25 MB.

Respondent's Demonstrative Exhibit	RDX-[four-digit number]	RDX-[four-digit number]C
Respondent's physical Exhibit (includes native format files)	RPX-[four-digit number]	RPX-[four-digit number]C
Joint Exhibit	JX-[four-digit number]	JX-[four-digit number]C
Joint Demonstrative Exhibit	JDX-[four-digit number]	JDX-[four-digit number]C
Joint Physical Exhibit (includes native format files)	JPX-[four-digit number]	JPX-[four-digit number]C
Staff Exhibit	SX-[four-digit number]	SX-[four-digit number]C
Staff Demonstrative Exhibit	SDX-[four-digit number]	SDX-[four-digit number]C
Staff Physical Exhibit (includes native format files)	SPX-[four-digit number]	SPX-[four-digit number]C

Each submitted electronic file folder may only have exhibits of the same category within it. No folder need be submitted for a category that has no admitted exhibits. All folders containing nonconfidential exhibits shall be collected into a folder with "Public" in the label and all folders containing confidential exhibits should collected into a folder with "Confidential" in the label.

All source code exhibits, video exhibits, and native file exhibits shall be submitted in separate folders, organized according to file type (*e.g.*, source code in one folder, videos in another folder, and Excel files in a third folder).

A Table of Contents file which lists the names of all files within a folder should be created and included in every folder.

13 Hearing Procedure.

13.1 Hearing Hours.

Normal hearing hours are 9:00 a.m. to 4:30 p.m. with a one-hour lunch recess, beginning each day at approximately 12:30 p.m. Fifteen-minute breaks will also occur at approximately 10:45 a.m. and 3:00 p.m. each day.

13.2 Webex Procedures.

This Rule applies to any hearings or conferences that are conducted virtually.

13.2.1 Naming Conventions.

To aid in the identification of hearing participants, any person attending a hearing must edit their participant name in WebEx to conform to the following format:

[C/R/S] [party affiliation] Attendee Name

For example, if Sally Smith attends on behalf of complainant ACME Corp., her display name would read: "[C][Acme] Sally Smith." If the participant is signed on to the Protective Order (or otherwise covered by it), they must include a "[PO]" in their display name (*e.g.*, "[PO][S] John Brown").

13.2.2 Monitors for Confidential Business Information

Complainant(s) and respondent(s) must appoint monitors to ensure that unauthorized persons are not present during CBI sessions. As in a conventional courtroom, if anyone believes that an unauthorized individual is in attendance (for example, based on a review of the list of participants on the video platform), they should draw attention to that fact by making a statement on the record.

13.3 Hearing Decorum.

13.3.1 Audible Devices; Food and Beverages.

All audible sounds from mobile phones, tablets, and computers shall be silenced during the hearing. No food, gum, or beverages other than water will be permitted in the courtroom during the hearing.

13.3.2 Photos or Video Recording.

No photo taking, video recording, or audio recording is permitted in online hearings or in the courtroom except by a court reporter authorized by the Commission.

13.4 Opening Statements.

If a party presents an opening statement, the statement will be included in the total hearing time allotted to that party.

13.5 Material to Be Received into Evidence.

Only factual material and expert opinion shall be received into evidence. Legal argument shall be presented in the briefs.

13.6 Demonstrative Exhibits

If a demonstrative exhibit is created during the hearing, the creating party must retain a

copy of the document (either a hard copy or by taking a screenshot of the demonstrative), label it appropriately, and submit it to the Administrative Law Judge with other demonstrative exhibits in accordance with Ground Rule 12.6.2.

13.7 Examination of Witnesses.

13.7.1 Direct Witness Testimony.

All direct witness testimony, with the exception of adverse witnesses, shall be made by witness statements in lieu of live testimony. The Commission Investigative Attorney may, however, ask the witness supplemental direct testimony on the witness stand. Witness statements shall be marked and offered into evidence as exhibits, and witnesses shall be available for cross-examination on the witness stand unless waived. Witnesses will not read their prepared testimony into the record.

13.7.1.1 Format of Witness Statements.

A witness statement shall be in the form of numbered questions from counsel, with each question followed by the witness's own answer to that question, and with the final question from counsel asking the witness whether or not the witness statement contains the witness's answers to the questions from counsel, followed by the witness's answer to this question and the witness's signature. The witness statement shall be assigned an exhibit number and each question shall be numbered consecutively. The text of the questions and answers in the witness statements may be single spaced, provided that at least double spacing is used between questions and answers, and at least a 12-point font is used.

The questions shall be in the form of a direct examination and the answers shall be in the form of verbal testimony, although the witness statement may be organized (*e.g.*, headings, table of contents, and bulleted or numbered lists) to facilitate an understanding of the issues and may include illustrative excerpts from admissible exhibits. For evidentiary support, witness statements shall cite to exhibit numbers that will be introduced at the hearing. A witness statement must contain the entirety of the witness's direct testimony. Attachments or incorporation of other documents by reference is not allowed.

Witness statements may not be withdrawn, in whole or in part, without leave. Witness statements may not be amended, unless as instructed by the Administrative Law Judge. For example, after ruling on a motion *in limine*, the Administrative Law Judge may require a party to amend its witness statements to remove stricken evidence. Parties may, however, agree to correct typographical or clerical errors in a witness' testimony. If all parties agree to the corrections, the party introducing the witness statement should prepare a corrected version of the statement with the word "Corrected" in the title of the document. If any party opposes the changes, counsel should raise this issue at the pre-hearing conference.

13.7.1.2 Page Limits for Witness Statements

Absent leave from the Administrative Law Judge and for good cause, the total word count of the witness statements offered by the complainants (collectively) may not exceed 225,000 words. Similarly, absent leave from the Administrative Law Judge for good cause, the respondents (collectively) may not offer witness statements totaling more than 225,000 words. Tables of contents and certified translations are not counted toward the page limits.

13.7.1.3 Language of Witness Statements.

A witness statement shall be in the language of the witness, and a foreign language witness statement shall be accompanied by a certified English translation thereof.

13.7.1.4 Review of Witness Statements

Except upon a timely written motion and for good cause shown, fact witnesses shall not review the witness statements of other witnesses. Subject to restrictions imposed by any protective order entered in an investigation, this rule does not apply to exclude a party who is a natural person or an officer or employee of a party designated as the party's representative by its attorney.

13.7.1.5 Submission of Witness Statements

On the date set forth in the procedural schedule, the parties shall submit the witness statements and the exhibits cited therein to the Administrative Law Judge electronically via Box. The exhibits shall be organized in folders by the witness's name. Access to Box will be provided in accordance with the procedures in Ground Rule 1.9.2.

13.7.1.6 Deposition Testimony in Lieu of Witness Statements.

Absent an agreement among the parties, deposition testimony can only be admitted as evidence if it falls within one of the exceptions set forth in Commission Rule 210.28(h) or is being used for impeachment purposes. An expert witness can generally discuss deposition testimony of other witnesses, but an expert cannot directly quote deposition testimony.

13.7.2 Scope of Cross-examination.

All live direct testimony will be subject to cross-examination. Cross-examination will be limited to the scope of the direct examination.

13.7.3 Scope of Redirect and Re-cross Examination.

Redirect examination will be limited to matters brought out on cross-examination.

13.7.4 Coordination of Respondents' Cross-Examination.

Parties with allied interests shall coordinate cross-examination through one attorney as far as practicable to avoid duplicative testimony.

13.7.5 Order of Witnesses.

The parties are expected to coordinate order of witnesses and allot appropriate time for examination of each of the witnesses within the total time allotted for the hearing.

13.7.6 Scope of Expert Witness Testimony.

An expert's testimony at the hearing shall be limited in accordance with the scope of the expert's report(s) and deposition testimony.

13.7.7 Use of Interpreters.

If an interpreter will be used at the hearing, the parties are responsible for obtaining one qualified, neutral interpreter upon whom counsel can agree. It is suggested that the interpreter be chosen from a list of approved interpreters, such as may be kept by various federal district courts or federal agencies. Interpreters will be sworn.

13.7.8 Conferring with Witness during a Break in Testimony.

Counsel shall not confer with a witness about the witness's testimony or about any hearing evidence during a break in the witness's testimony.

13.7.9 Sequestration of Witnesses.

Sequestration of fact witnesses is not required but may be requested by the parties. Such requests should be made at the pre-hearing conference.

13.6.10 Use of Video Impeachment

If a party intends to use video deposition to impeach a witness, the party must provide notice by 5:15 p.m. the evening before the day on which the witness will testify or at a time otherwise agreed to by all parties.

13.6.11 Remote Witness Testimony

Remote testimony is disfavored. A witness may only testify remotely with approval from the Administrative Law Judge upon a showing of good cause and not simply because parties agree that a witness should be permitted to testify remotely. Such approval should be sought by filing a motion; however, parties should inform the court of the possibility of a remote witness as soon as possible. For the motion, the movant must set forth the reason(s) for requesting remote testimony.

Such motions shall be made at least two weeks prior to the start of the hearing, unless there are extenuating circumstances. Any responses to the motion must be filed within seven days. In the motion, the movant shall identify the time(s) the witness is available to testify. When possible, remote testimony should occur at the start of the day and all remote testimony should occur on the same hearing day. Additionally, any time needed to accommodate the remote testimony of the witness (including set-up of the technology necessary for remote testimony) may be deducted from the appropriate party's allotted time at the hearing.

13.8 Submission of Updated Schedule of Witnesses.

By 8:30 a.m. on each day of the evidentiary hearing, the parties should submit an updated schedule of hearing witnesses. This list should be emailed to the Moore337@usitc.gov.

13.9 Time-Keeping

The parties are responsible for keeping track of the time that each party has used. Generally, time will be allocated as follows: 45% (complainant), 45% (respondent), 10% (staff).

13.10 Closing Argument

The Administrative Law Judge does not normally schedule closing arguments. Parties may request closing arguments, which are to be held at the discretion of the Administrative Law Judge.

13.11 Close of Hearing Procedures.

13.11.1 Physical Exhibits.

Immediately upon completion of the hearing, the parties should contact Tinesha Lawson, Tinesha.Lawson@usitc.gov, to arrange for transport of physical exhibits to the office of the Administrative Law Judge. All physical exhibits submitted to the Administrative Law Judge should be identified on a "List of Physical Exhibits." The list should include the exhibit number and a description of the exhibit. If a party intends to leave a photograph in lieu of a physical exhibit, the party should so state on the list. Physical exhibits will not be returned to the parties until the conclusion of the investigation, including all appeals.

13.11.2 Correction to Transcripts.

If a transcript needs to be corrected after the conclusion of the hearing, the party requesting the change shall do so through a motion. Once an order issues adopting the proposed correction, the party requesting the change shall send a copy of the order to the reporting company so that the corrections can be made no later than two (2) business days after issuance of the order.

If the correction results in a change in pagination in the transcript, all parties must, within five (5) days of the date the corrected transcript is received on EDIS, refile any post-hearing brief

necessary to reflect the corrected pagination, along with a cover letter describing the changes made to the brief(s).

14 Post-Hearing Briefs.

14.1 Undisputed Claim Limitations.

By the date set forth in the procedural schedule, the parties should each file a document identifying claim limitations that are no longer contested. Specifically, respondent(s) should identify those limitations that it does not dispute with respect to infringement and technical prong and complainant(s) should identify those limitations it does not dispute with respect to invalidity. If a limitation is not identified as undisputed by this deadline, the party must include a discussion in its post-hearing responsive brief as to how the limitation is met or present. Parties may not rely on conclusory statements with citations to the evidence.

14.2 Post-hearing Initial Briefs.

By the date set forth in the procedural schedule, each party shall file a post-hearing initial brief. The post-hearing brief shall be organized on a patent-by-patent basis.

Absent leave from the Administrative Law Judge and for good cause, the post-hearing initial brief shall be limited to 25,000 words, as counted by Ground Rule 1.6. The parties should include citations to the evidence in the body of the brief (as opposed to in footnotes). Any party filing a post-hearing initial brief containing information designated for confidential treatment must also file a public version of the post-hearing brief following the instructions in Ground Rule 1.3.1.

Any contentions that are not set forth in detail in the post-hearing initial brief shall be deemed abandoned or withdrawn.

Defenses of patent invalidity under 35 U.S.C. § 103 raised in a post-hearing initial brief must address the factors of *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), separately for each unique combination of prior references relied upon. Obviousness arguments that use "and/or" nomenclature to combine references are not preserved.

14.3 Post-hearing Responsive Briefs.

By the date set forth in the procedural schedule, each party shall file a post-hearing responsive brief. The post-hearing responsive brief shall address only the issues and evidence raised in the post-hearing initial briefs of the opposing party and the Commission Investigative Attorney and shall follow the same outline as the post-hearing initial brief.

Absent leave from the Administrative Law Judge and for good cause, the post-hearing initial brief shall be limited to 15,000 words, as counted by Ground Rule 1.6. The rules relating to post-hearing initial briefs set forth in Ground Rule 14.2 also apply to post-hearing responsive briefs.

Any contentions raised in a post-hearing initial brief which a party does not answer in detail in the post-hearing responsive brief shall be deemed unopposed.

14.4 Citations to Evidence.

When citing to witness testimony, the party must include a parenthetical identifying the witness whose testimony is being cited. For example, if a party is citing to the hearing testimony of their witness, Dr. Smith, the party should include the citation: Tr. (Smith) at 123:1-124:14. This rule also applies if the cited exhibit is deposition testimony.

14.5 Citations to Pre-Hearing Briefs.

Parties must cite to the evidentiary record rather than pre-hearing briefs. Parties may not incorporate any portion of their pre-hearing briefs into their post-hearing briefs by reference.

14.6 Courtesy Copies of Post-hearing Briefs.

In addition to the courtesy copy of each post-hearing brief required by Ground Rule 1.9, each party must submit a hyperlinked PDF courtesy copy of each of the party's post-hearing briefs via Box within five business days from the date of filing of the last post-hearing responsive brief. In the hyperlinked courtesy copies, citations to any patents, exhibits, transcripts, and legal authorities must be hyperlinked to PDF versions of the evidence or authority cited. The courtesy copy should not be compressed or password protected. Access to Box will be provided in accordance with the procedures in Ground Rule 1.9.2. The hyperlinked courtesy materials should not be filed on EDIS.

15 NEXT Advocates Program.

In accordance with the NEXT Advocates Program initiated by the Commission's Office of Administrative Law Judges, 9 the parties are encouraged to provide opportunities for less experienced attorneys (*i.e.*, those that have given three or fewer substantive oral arguments or witness examinations in any federal tribunal) to participate in substantive oral presentations during the investigation and/or to examine witnesses at the evidentiary hearing.

To support such participation, the following opportunities will be provided to parties that permit a less-experienced attorney to provide substantive portion of a presentation or witness examination:

- An additional 15 minutes of hearing time will be provided to a party that permits a less-experienced attorney to examine a witness at the hearing (limited to two such time extensions for the complainant group, and two for the respondent group, at a single

9 *See* NEXT Advocates Program Announcement, https://www.usitc.gov/next_advocates_nurturing_excellence_in_trial_advocates.htm.

hearing). The additional time will be added to the hearing day. Parties who wish to participate in this arrangement should provide notice to the Administrative Law Judge and the other parties before the prehearing conference.

- Oral argument will generally be permitted on summary determination motions, upon request and subject to approval in a particular investigation, where at least one party commits to permitting a less-experienced attorney to argue a substantive portion of the motion. Parties who wish to participate in this arrangement should provide notice to the Administrative Law Judge and the other parties by no later than 3 business days after briefing is complete on the motion.

The notices discussed above should include a certification by lead counsel that one or more less-experienced attorneys will be examining a witness at the hearing and/or will be arguing a substantive portion of a summary determination motion. Such certification need not identify the less-experienced attorneys or the witnesses who will be examined. The parties must, however, identify the attorney in an email to Moore337@usitc.gov after the conclusion of the hearing. Such submissions should be sent to Moore337@usitc.gov and need not be filed.

As set forth in the NEXT Advocates program announcement, more-experienced attorneys will be permitted to assist less-experienced attorneys, if necessary, and to clarify any statements on the record before conclusion of the session, if necessary.

In addition, less-experienced attorneys are encouraged to participate in the United States Patent and Trademark Office Legal Experience and Advancement Program (LEAP),[10] which includes training on preparing for oral argument. The parties are further encouraged to provide any other proposals to encourage participation of less-experienced attorneys. Proposals are welcome at any time and may be submitted to Moore337@usitc.gov.

16 *Ex Parte* Contacts.

There shall be no *ex parte* contacts with the Administrative Law Judge. Any questions of a technical or procedural nature shall be directed to Attorney Advisor Rebecca Watson, Rebecca.Watson@usitc.gov.

17 Suspension, Waiver, and Modification of Ground Rules.

At all times the Administrative Law Judge retains the authority to modify, waive, suspend, or otherwise alter these Ground Rules during the course of the investigation, either prospectively or retroactively.

[10] *See* Legal Experience and Advancement Program (LEAP) | USPTO: https://www.uspto.gov/patents/ptab/leap

APPENDIX A

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of **Certain . . .**	Investigation No. 337-TA-___

SUBPOENA DUCES TECUM

TO: NAME
ADDRESS

TAKE NOTICE: By authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by ["complainant" / "respondent"/ *etc*., followed by name of company],

YOU ARE HEREBY ORDERED to produce at _____, or at such other time and place agreed upon, all of the documents and things in your possession, custody or control which are listed and described in Attachment A hereto. Such production will be for the purpose of inspection and copying, as desired.

If production of any document listed and described in Attachment A hereto is withheld on the basis of a claim of privilege, each withheld document shall be separately identified in a privileged document list. The privileged document list must identify each document separately, specifying for each document at least: (1) the date; (2) author(s)/sender(s); (3) recipient(s), including copy recipients; and (4) general subject matter of the document. The sender(s) and recipient(s) shall be identified by position and entity (corporation or firm, *etc.*) with which they are employed or associated. If the sender or the recipient is an attorney or a foreign patent agent,

he or she shall be so identified. The type of privilege claimed must also be stated, together with a certification that all elements of the claimed privilege have been met and have not been waived with respect to each document.

If any of the documents or things listed and described in Attachment A hereto are considered "confidential business information," as that term is defined in the Protective Order attached hereto, such documents or things shall be produced subject to the terms and provisions of the Protective Order.

Any motion to limit or quash this subpoena shall be filed within ten (10) days after the receipt thereof. At the time of filing of any motion concerning this subpoena, a copy of the motion and the subpoena at issue shall be emailed to Moore337@usitc.gov.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this ___ day of _____, 20____.

_____

Bryan F. Moore
Administrative Law Judge
United States International Trade Commission

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of **Certain . . .**	Investigation No. 337-TA-___

SUBPOENA AD TESTIFICANDUM

TO: NAME
ADDRESS

TAKE NOTICE: By authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), 5 U.S.C. § 556(c)(2), and pursuant to 19 C.F.R. § 210.32 of the Rules of Practice and Procedure of the United States International Trade Commission, and upon an application for subpoena made by ["complainant" / "respondent"/ *etc*., followed by name of company],

YOU ARE HEREBY ORDERED to present yourself for purposes of your deposition upon oral examination on_____, by televideo means or at such other time and place agreed on, concerning the subject matter set forth in Attachment A hereto.

This deposition will be taken before a Notary Public or other person authorized to administer oaths and will continue from day to day until completed.

If any of your testimony is considered "confidential business information," as that term is defined in the Protective Order attached hereto, such testimony shall be so designated and treated according to the terms and provisions of the Protective Order.

Any motion to limit or quash this subpoena shall be filed within ten (10) days after the receipt hereof. At the time of filing of any motion concerning this subpoena, a copy of the motion and the subpoena at issue shall be emailed to Moore337@usitc.gov.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set his hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this ___ day of _____, 20__.

_____

Bryan F. Moore
Administrative Law Judge
United States International Trade Commission

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served via EDIS upon the Commission Investigative Attorney, **Megan Wantland**, **Esq.** and the following parties as indicated, on **August 1, 2025**.

Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainants Epson Portland Inc., Epson America, Inc., and Seiko Epson Corporation:

S. Alex Lasher, Esq.
QUINN EMMANUEL URQUHART & SULLIVAN, LLP
1300 I Street, NW, Suite 900
Washington, D.C., 20005
Email: alexlasher@quinnemanuel.com

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Respondents:

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d/b/a Ocbestjet
B-3-302, Guancheng Electronic Information Industrial Park, No. 689 Jian'an Road, Shatou Community
Chang'an Town
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d/b/a Ocbestjet
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