UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of
CERTAIN HEIGHT-ADJUSTABLE
DESK PLATFORMS AND
COMPONENTS THEREOF

Inv. No. 337-TA-1214

Order No. 2: Issuance of Ground Rules

The conduct of this investigation before the administrative law judge shall be governed by the ground rules attached hereto.¹

So ordered.

David P. Shaw
Administrative Law Judge

Issued: August 25, 2020

¹ (a) While temporary remote operating procedures are in place in response to COVID-19, the Office of the Secretary and the Office of Unfair Import Investigations are not able to serve parties who have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), I order that the Complainant complete service of any public documents in this investigation originating within the Commission (such as orders, determinations, or OUII briefs) upon all parties for whom no method of electronic service is noted on the attached Certificate of Service. Complainant is further ordered to serve any OUII discovery requests upon such parties in coordination with the Commission investigative attorney. Complainant shall not serve the confidential version of any document originating within the Commission in this investigation upon any party.

(b) While temporary remote operating procedures are in place in response to COVID-19, the parties are not required to comply with the paper copy or electronic medium requirements of Ground Rules 1, 4 and 5.
GROUND RULES FOR THE INVESTIGATION

These ground rules supplement the Commission’s procedural rules contained in 19 C.F.R. Part 210.

1. Discovery

   a. To be entitled to receive confidential submissions, attorneys must file with the Office of the Secretary to the Commission a letter or notice consenting to be bound by the provisions of Order No. 1 (Protective Order), and serve the same on the administrative law judge and on all other parties. See 19 C.F.R. § 210.5.

   b. Unless otherwise ordered, any party desiring to take a deposition shall give notice in writing to every other party of not less than 10 days if the deposition is to be taken of a person located in the United States, or of not less than 15 business days if the deposition is to be taken of a person located outside the United States. See 19 C.F.R. § 210.28(c).

   c. Unless otherwise ordered, the party upon whom interrogatories have been served shall serve a copy of the answers, and any objections, within 10 days after the service of the interrogatories. See 19 C.F.R. § 210.29(b).

   d. 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 10 business days after the service of the request. See 19 C.F.R. § 210.30(b)(2).

   e. Unless otherwise ordered, a request for admission may be served at any time 20 days after the date of service of the complaint and notice of investigation. See 19 C.F.R. § 210.31(a).
serve an answer or objection within 10 days after the service of the request, otherwise the matter may be deemed admitted. See 19 C.F.R. § 210.31(b).

f. A party who has responded to a request for discovery with a response that was complete when made is under a duty seasonably to supplement his or her response to include information thereafter acquired. 19 C.F.R. § 210.27(c).

g. If production of any document is withheld on the basis of a claim of privilege, each withheld document must be separately identified via a privilege log as defined in 19 C.F.R. § 210.27(e).

h. The deposition testimony of a witness shall be continuous, except as provided in the following paragraph. Once the testimony has begun, there shall be no consultation with the witness concerning prior or subsequent testimony until the deposition is completed.

With respect to witnesses designated by a company to testify on its behalf, such individuals may consult with company counsel and other company employees during a deposition for the limited purpose of securing additional information to respond more completely to deposition questions.

i. Subpoenas under Rule 210.32 should follow form (attached hereto) with a copy served on other parties. Generally, subpoenas are necessary only to compel third parties to testify or produce documents. Hearing subpoenas for witnesses within a party’s control, e.g., an employee, are generally not issued. In the case of a subpoena to an individual, the subpoena application shall provide a detailed and thorough explanation. Two paper copies of any application and proposed subpoena (with attachments) shall be submitted to the office of the administrative law judge.
j. Any motion to limit or quash a subpoena shall be filed within 10 days after receipt thereof, or within such other time as the administrative law judge may allow. See 19 C.F.R. § 210.32(d).

k. No motion stops discovery, except a timely motion to quash a subpoena.

l. All parties shall make intensive good faith efforts to facilitate discovery and to resolve discovery disputes without intervention from the administrative law judge.

2. Notice of Prior Art

Any party asserting invalidity or noninfringement of a patent claim must file, on or before the date set in the procedural schedule, a notice of any prior art, including but not limited to the following information: the country, number, date, and name of the patentee of any patent; the title, date and page numbers of any publication to be relied upon as anticipation of the patent claim, or as showing the state of the art; and the name and address of any person who may be relied upon as the prior inventor or as having prior knowledge of or as having previously used or offered for sale the invention of the patent claim.

If a trademark is involved, the parties must file on or before the date set in the procedural schedule, notices of any art on which a party will rely at the hearing regarding the functionality or non-functionality of any trademarks at issue.

In the absence of such notice, proof of the said matters may not be introduced into evidence at the trial except upon a timely written motion showing good cause.

3. Settlement

All parties, throughout the duration of the proceedings, shall explore reasonable possibilities for settlement of all or any of the contested issues. The parties are required to have
at least two settlement conferences, or may opt to commence a mediation procedure available through the Commission.

All parties shall certify in their prehearing statements that good faith efforts were undertaken to settle the remaining issues. Additionally, for each of the required settlement conferences provided for in the procedural schedule, the parties shall provide the administrative law judge with one copy of a joint report signed by all the parties setting forth any stipulations on which the parties have agreed. These reports are due by the time designated in the procedural schedule or within such other time as the administrative law judge may allow. The reports shall not be filed with the Secretary’s Office.

4. **Experts**

   a. No later than the date ordered by the administrative law judge in the prehearing schedule, parties who anticipate using an expert(s) at the hearing shall serve on all other parties a written identification of their experts, which shall describe each expert’s qualifications and disclose the general nature of the subject matter on which the expert is expected to testify. The identification shall be filed with the Secretary’s Office.

   b. Expert reports shall be filed in accordance with the due dates set in the prehearing schedule. An expert report shall contain a statement of all opinions the witness will express and the basis and reasons for them, including the facts or data considered by the expert in forming the opinions. Expert reports shall be filed with the Secretary’s Office. Experts are to have final and complete expert reports before them when they add their signatures. Thus, for example, facsimile signature pages may not be added to expert reports. Additionally, the parties shall provide a single hard drive or a single flash drive containing the expert reports in searchable PDF format.
5. **Filing of Documents**

   a. All filings in the Secretary’s Office shall be made in accordance with Commission Rules 201.15 and 210.4(f) unless otherwise specifically provided for in these Ground Rules or by order of the administrative law judge.

   b. In accordance with the requirements of Commission Rules 210.4(f) and (g), copies of each submission shall be served on all other parties, including the Commission investigative staff of the Office of Unfair Import Investigations. Also, on the same day that the document is filed, an electronic copy in PDF format, including attachments such as exhibits, shall be sent to the administrative law judge’s attorney-advisor at Joseph.Speyer@usitc.gov with a copy to Shaw337@usitc.gov. A single PDF document is preferred. In addition, for motions (including motions *in limine*), responses, and related filings (such as notice to withdraw a motion), one paper copy of each filing shall be submitted to the administrative law judge the next business day after the filing is made, unless otherwise ordered (*see* Ground Rules 5.1., 7.f and 11.g).

   c. For the paper copy served on the administrative law judge, all attachments *must* be identified by tabs. A party may serve attachments that are more than 500 pages in PDF format on a disc or other electronic medium. In such a case, a table of contents file that lists the names of all files on the medium should be created and included on each medium.

   d. With respect to motions, responses, and related filings, in addition to the paper copy, a version in MS Word for Windows shall be submitted via e-mail to the administrative law judge’s attorney-advisor at Joseph.Speyer@usitc.gov with a copy to Shaw337@usitc.gov by the next business day.
e. If a change in circumstances renders all or any portion of a motion moot, the moving party shall promptly file notice (with the pertinent motion number in the document title) as to whether all or a specific portion of said motion is being withdrawn.

f. All motions and responses are to refer to a motion docket number if one has been assigned.

g. All motions shall include a certification that the moving party has made reasonable, good-faith efforts to contact and resolve the matter with the other parties at least two business days prior to filing the motion, and shall state, if known, the position of the other parties on such motion.

h. All documents to be filed with the Secretary must be received on the date upon which they are due.

i. Computation of time for responding to motions shall be in accordance with 19 C.F.R. § 201.14.

j. Documents are not to be sent by facsimile to the administrative law judge.

k. Confidential business information (“CBI”) is defined in accordance with 19 C.F.R. § 201.6(a) and § 210.5(a). When redacting CBI or bracketing portions of documents to indicate CBI, a high level of care must be exercised in order to ensure that non-CBI portions are not redacted or indicated. In most cases, redaction or bracketing of only discrete CBI words and phrases will be permitted. Titles of documents shall not contain CBI.

l. If a motion or related document (e.g., response or reply) contains CBI, the private parties must file a non-confidential copy of the motion and/or related document (i.e., a public version) within five business days from the date of filing. For those cases in which the
Commission investigative staff is a party, the Commission investigative staff shall have ten business days to submit a public version of the motion and/or related document.

Ground Rule 5.b concerning paper copies does not apply to public versions. Thus, parties should not submit paper copies of public versions to the administrative law judge, unless otherwise required. For example, two paper copies of the confidential version and two paper copies of the public version of motions to terminate (and the exhibits thereto) pursuant to 19 C.F.R. § 210.21 must be submitted to the administrative law judge the next business day after the filing is made.

If an exhibit to a motion or related document is not capable of redaction, this must be clearly indicated on the exhibit cover sheet. In addition, for any document a party is claiming is not capable of redaction, a declaration shall be filed justifying why the entire document must remain confidential. When redacting CBI, a high level of care must be exercised in order to ensure that non-confidential business information is not redacted or indicated.

In addition, confidential motions or related documents shall, when filed, include bold red brackets indicating any portions asserted to be CBI. All confidential motions and related documents must be accompanied by declarations, grounded in facts, explaining how each proposed redaction is CBI. If the main text of a confidential motion or related document contains no redaction, the declaration shall explain why the filing is designated confidential (e.g., the motion contains no confidential text but has a confidential attachment).

When filing public versions of motions to terminate (and the exhibits thereto) pursuant to 19 C.F.R. § 210.21, the parties shall make their redactions in accordance with Ground Rule 5.k.
m. In the event the administrative law judge issues a confidential order or initial
determination without a public version thereof, within seven days of the date of the document,
each party shall file with the Commission Secretary a statement as to whether or not it seeks to
have any portion of the document redacted from the public version. Any party seeking to have a
portion of the document redacted from the public version must submit to the administrative law
dge a copy of the document with bold red brackets indicating the portion, or portions, asserted
to contain CBI. In the case of a final initial determination on violation, the parties shall file a
joint document with bold red brackets indicating the portion, or portions, asserted to contain
CBI.

n. While not encouraging citation to unpublished opinions, if a party chooses to cite to an
opinion, order, judgment, or other written disposition of the Commission or another tribunal that
is either unpublished or designated as not for publication, the party must file and serve a copy of
that opinion, order, judgment, or disposition with the brief or other paper in which it is cited.

6. Asserted Claims, Claim Construction, Accused Products, and Technology Stipulation

a. When an investigation covers more than four utility patents and/or more than 20
utility patent claims (including non-asserted claims from which asserted claims depend),
complainant shall file biweekly declarations as set forth in the procedural schedule, detailing its
efforts to reduce the number of patent claims and patents at issue, as well as a list of the patents
and claims remaining at issue.

b. On the date set in the procedural schedule, the parties are to file a list of claim terms
that each party contends should be construed, including any term to be given its plain and
ordinary meaning. The parties shall thereafter meet and confer for the purposes of limiting the
terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of
a Joint Claim Construction Chart. The parties shall also jointly identify the 10 terms likely to be most significant to resolving the parties’ disputes, including those terms for which construction may be case or claim dispositive.

c. On the date set in the procedural schedule, the parties shall file proposed constructions of each term identified by any party for claim construction, including any claim term that a party contends should be given its plain and ordinary meaning. Any party that contends that a claim term should be given its plain and ordinary meaning shall define the plain and ordinary meaning of the claim term to one of ordinary skill in the relevant art. Each party shall identify all references from the specification or prosecution history that support the proposed construction. Each party shall also designate any supporting extrinsic evidence. Extrinsic evidence shall be identified by production number or by producing a copy of the evidence if not previously produced. The parties shall thereafter meet and confer for the purposes of narrowing the issues and finalizing preparation of the Joint Claim Construction chart.

d. On the date set in the procedural schedule, the parties shall complete and file a Joint Claim Construction Chart, which shall contain the construction of those terms on which the parties agree; and each party’s proposed construction of each disputed term. The parties shall also identify those terms whose construction will be most significant to the resolution of the case up to a maximum of 10. The parties shall also identify any term among the 10 whose construction will be case or claim dispositive. If the parties cannot agree on the 10 most significant terms, the parties shall identify the ones which they do agree are most significant and then they may evenly divide the remainder with each party identifying what it believes are the remaining most significant terms. The Joint Claim Construction Chart shall set forth, by patent
and claim number (or patent family where applicable) each agreed-upon claim term and the claim construction thereof and each disputed claim term with each party’s proposed claim construction thereof.

e. Unless otherwise ordered, there will be no Markman hearing in the investigation.

f. No later than the date set in the procedural schedule:
   • the parties are to file a joint statement regarding identification of accused products;
   • complainant is to file a list of all products it will rely upon to satisfy the domestic industry requirement;
   • complainant is to file a list of proposed representative accused products based on complainant’s infringement contentions;
   • respondent and Commission investigative staff are to file responses to complainant’s proposed representative accused products assuming complainant’s infringement contentions; and
   • the parties are to file a final joint stipulation regarding representative accused products.

g. No later than the date set in the procedural schedule, the parties should file a joint technology stipulation. The parties are to meet and confer concerning the technology at issue in this investigation and produce a joint technology stipulation, not to exceed ten pages. The stipulation may include, for example, definitions of terms, descriptions of apparatuses or materials, and explanations of scientific principles or industry practices. The stipulation may include illustrations, charts or other images. The stipulation may not include legal arguments.

7. Prehearing Statement and Brief

Prehearing statements and briefs shall contain the following information:

a. The names of all known witnesses, whether they are fact or expert witnesses (and their area of expertise), and a brief outline of each witness’ testimony. In the case of expert witnesses, a copy of the expert’s curriculum vitae shall be included as an attachment.

   b. A list of all exhibits that the parties will seek to introduce at the hearing.
c. A statement of the issues to be considered at the hearing that sets forth with particularity a party’s contentions on each of the proposed issues, including citations to supporting facts and legal authorities, *e.g.*, proposed exhibits. Incorporation by reference is not allowed. Any contentions not set forth in detail as required therein 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 prehearing statement. The prehearing statement and the brief may be combined into one document.

d. The parties shall brief anticipation and obviousness arguments separately. For example, a party should not argue that a reference “anticipates and/or renders obvious” a patent claim or limitation under a single heading. The parties shall also brief each obviousness combination separately. For example, each unique prior art combination should be presented under its own heading, followed by the argument therefor. Thus, an argument such as “the X reference in combination with the Y and/or Z references” will not be accepted. Prior art not briefed is waived.

e. Absent leave granted by the administrative law judge, the total number of pages of a prehearing brief filed by (1) the complainants (collectively); (2) the respondents (collectively); and (3) the Commission investigative staff, may not exceed 200, and relevant attachments may not exceed 50 pages. The attachments shall be limited to critical charts, figures, or other material, and shall not be used to circumvent the page limit of the prehearing brief.

f. The parties shall submit two paper copies of their prehearing briefs the next business day after the filing is made. Additionally, a version in MS Word for Windows shall be submitted via e-mail to the administrative law judge’s attorney-advisor with a copy to Shaw337@usitc.gov by the next business day.
8. **Conduct of Trial**

   a. Unless ordered otherwise, all witnesses shall be deposed before they testify during the evidentiary hearing. Unless ordered otherwise, all direct witness testimony, with the exception of adverse witnesses, shall be made by witness statements in lieu of live testimony. The Commission investigative staff may, however, ask the witness supplemental direct testimony on the witness stand. Witness statements shall be marked and offered into evidence as exhibits. Witnesses shall be available for cross-examination on the witness stand unless waived. Witnesses will not read their prepared testimony into the record. In view of the written rebuttal witness statements, no live rebuttal testimony is permitted, unless ordered.

   Witness statements may not be withdrawn, in whole or in part, without leave. Witness statements may not be amended. If witnesses desire to correct typographical or clerical errors in their testimony, they should prepare errata sheets. Counsel should mark the errata sheets as exhibits, and should give them as quickly as possible to the other parties and to the administrative law judge. During the hearing, a motion may be made to have the errata sheets accepted into the record.

   A witness statement shall be in the form of numbered questions from counsel, with each question followed by the witness’ own answer to that question, and with the final question from counsel asking the witness whether or not the witness statement contains the witness’ answers to the questions from counsel, followed by the witness’ answer to this question and the witness’ signature. The witness statement shall be assigned an exhibit number and each question shall be numbered consecutively. For evidentiary support, witness statements shall cite to exhibit numbers and brief descriptions of the exhibits (e.g., JX-0002 (‘123 Patent File History)) 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.

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

Absent leave granted by the administrative law judge, the total number of witness statement pages offered by the complainants (collectively) may not exceed 600. Similarly, absent leave granted by the administrative law judge, the respondents (collectively) may not offer more than 600 pages of witness statements. Tables of contents and certified translations are not counted toward the page limits. 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. Illustrations may be included in the witness statements, but they will be counted among the aggregate number of pages that may be offered.

On the date set forth in the procedural schedule, the parties shall provide one set of witness statements in binders (without exhibits). Each binder shall be labeled on its spine to indicate the witness and the party providing the binder. Additionally, the parties shall provide a single hard drive or a single flash drive containing the witness statements in searchable PDF format. Each expert witness statement shall include a detailed table of contents. The witness statements in PDF format must include a file name with a brief description of the exhibit, e.g., CX-0005C (Smith Witness Statement).pdf. If the PDF witness statements are submitted on the same electronic medium as other trial exhibits (see G.R. 9.d), the witness statements shall be placed in a separate folder.

b. Before cross-examination of a witness, counsel shall provide opposing counsel and the Commission investigative staff with a binder containing all exhibits to be used in the
cross-examination of the witness. The exhibits in each binder shall be separated by tabs. Each
binder shall be labeled on its spine to indicate the witness and the party providing the binder.
The requirement of cross-examination binders may be waived by mutual agreement of the
parties.

c. Any document that counsel wishes to show to a witness that is not in the witness’s
witness binder must first be shown to opposing counsel.

d. Once testimony has commenced, there shall be no consultation with the witness
concerning his or her testimony until it is completed.

e. The rule of exclusion shall be followed. Fact witnesses shall be excluded from the
hearing until they are called to testify.

f. Legal experts may only testify as to procedures of the U.S. Patent and Trademark
Office, or as to foreign law.

g. Parties are permitted to make opening statements. A party’s opening statement will
be charged to its allocated hearing time.

h. The order of trial is the following:

1. Complainant’s Case-in-Chief.
3. Commission investigative staff’s Case.

In the event there is more than one respondent, the order of presentation will be
determined at the prehearing conference. Respondents where possible should avoid duplication
of effort.

i. No tutorial will be held unless otherwise ordered.

j. If any party seeks a posthearing correction or corrections of the transcript, the
corrections shall be proposed in a motion to the administrative law judge. If the proposed
corrections are adopted, the administrative law judge will do so by a written order. It will then be incumbent upon the party or parties seeking correction to provide the order to the court reporter. The procedure set forth in this rule applies only to posthearing transcript corrections, and does not prevent the court reporter from making minor changes to transcripts upon its own review of recordings made during the hearing.

k. Two days prior to the start of the hearing, the parties must email a list of all attendees to the administrative law judge’s attorney advisor with a copy to Shaw337@usitc.gov. Additions to the list are permitted, but the updated list must be provided no later than 5:00 p.m. the evening before the person(s) plans to attend the hearing. All persons must bring a photo ID in order to gain access to the Commission.

9. Exhibits

a. Written exhibits shall be marked serially commencing with the number “0001” and preceded by the prefix “CX” for complainant(s)’ exhibits, “RX” for respondent(s)’ exhibits, “SX” for the Commission investigative staff’s exhibits, and “JX” for any joint exhibits. No other prefixes are permitted. The parties shall not “reserve” numbers, but instead shall assign all numbers in consecutive sequence.

Physical exhibits shall be numbered in a separate series commencing with “0001” preceded by the prefixes “CPX”, “RPX”, “SPX” and “JPX”, for complainant, respondent, the Commission investigative staff, and joint exhibits, respectively. No other prefixes are permitted.

The parties shall not submit or bring dangerous or noxious (e.g., sharp, radioactive, toxic, odoriferous, caustic) items to the Commission.
Demonstrative exhibits shall be numbered in a separate series commencing with “0001” preceded by the prefixes “CDX”, “RDX”, and “SDX”, for complainant, respondent, and the Commission investigative staff, respectively. No other prefixes are permitted. Demonstrative exhibits shall on their face cite to the supporting exhibits received into evidence, *e.g.*, CX-0005C (Smith Witness Statement) at 55-60; JX-0001 (‘123 Patent) at col. 7, lns. 36-54). Additionally, the parties shall provide the administrative law judge with two (2) copies of key over-sized demonstrative exhibits (*e.g.*, charts, drawings, etc.) reduced to 8 ½ inches x 11 inches.

b. A party that participated in the preparation or marking of a joint exhibit may not object to that exhibit, absent leave to do so.

c. 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. Further, the pages of each exhibit must be sequentially numbered in a consistent location on the pages.

Respondent(s) shall coordinate their numbering to avoid duplication. Additionally, the parties shall coordinate exhibits to avoid unnecessary duplication (*e.g.*, patents; file wrappers). Further, all exhibits or copies of exhibits shall be clear and legible. Lastly, each exhibit may be assigned no more than one number.

d. If any portion of an exhibit contains confidential business information, the entire exhibit shall be treated as confidential, a “C” shall be placed after the exhibit number, and the exhibit shall be so designated pursuant to 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. In addition, on any exhibit list, exhibits that contain confidential business information
shall be denoted by placing a “C” after the exhibit number. No exhibit list shall contain confidential information; all exhibit lists shall be public documents.

e. On the date set forth in the procedural schedule, the parties shall provide a single hard drive or a single flash drive containing proposed exhibits and exhibit lists in PDF format. Each of the exhibits must include a file name with a brief description of the exhibit, e.g., JX-0002 (‘123 Patent File History).pdf. The exhibits shall be organized alphanumerically. A table of contents file in PDF and in MS Excel for Windows that lists the names of all exhibit files must be included on the hard drive or flash drive. For exhibits that cannot be submitted in PDF format, contact the administrative law judge’s attorney-advisor. The title, number, and sponsoring witness for each proposed exhibit shall be listed in the prehearing statement. Any request for receipt of an exhibit without a sponsoring witness shall be filed. The parties shall submit a paper copy of the request the next business day after the filing is made. Additionally, a version in MS Word for Windows shall be submitted via e-mail to the administrative law judge’s attorney-advisor with a copy to Shaw337@usitc.gov by the next business day.

f. On the date set forth in the procedural schedule, each party may file a document listing and providing a narrative explanation of the objections to proposed exhibits which the party believes to be of high priority for ruling at the prehearing conference. No party shall place more than ten objections on the high priority list. The parties shall submit a paper copy of their high priority objections the next business day after the filing is made. Additionally, a version in MS Word for Windows shall be submitted via e-mail to the administrative law judge’s attorney-advisor with a copy to Shaw337@usitc.gov by the next business day.

g. On the same day the initial posthearing briefs are due, the parties shall serve on the administrative law judge a set of all final exhibits (including those that are rejected, but not those
that are withdrawn) to be filed with the Commission on EDIS (“the original set”). The parties are responsible for confirming that all admitted and rejected exhibits are included in the original set. Any exhibit that is not identified on the final exhibit list and is not included in the original set will not be considered as part of the record to be certified to the Commission when the Initial Determination issues.

The original set shall be submitted on electronic media pursuant to the procedure set forth at the Internet address http://www.usitc.gov/docket_services/documents/EDIS3UserGuide-CDSubmission.pdf unless prior permission has been received pursuant to Commission Rule 19 C.F.R. § 210.4(f)(8) and The Handbook on Filing Procedures § II.C(3)(a), at the Internet address https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf. A table of contents file that lists the names of all files on each disc should be created and included on each disc. Each table of contents must match the exhibits that are on each disc. Each party is responsible for verifying the accuracy of the exhibits and the table of contents. For example, if an exhibit is labeled CX-0001, verify that it is indeed CX-0001, and that it does not contain any confidential designations.

The original set must have a four-digit exhibit number, with leading zeroes as necessary (e.g., CX-0001, RX-0002C). Each type of exhibit (i.e., CX, CDX, CPX, RX, RDX, RPX, JX, JDX, JPX, SX, SDX, SPX, CX-[four digit number]C, CDX-[four digit number]C, CPX-[four digit number]C, RX-[four digit number]C, RDX-[four digit number]C, RPX-[four digit number]C, JX-[four digit number]C, JDX-[four digit number]C, JPX-[four digit number]C, SX-[four digit number]C, SDX-[four digit number]C, and SPX-[four digit number]C) must be submitted on a different CD or set of CDs. Each CD must have a label with the investigation
name and number, and the range of exhibits contained thereon. The original set may not be submitted on a hard drive or flash drive.

Each party is to submit a duplicate of the original set on a single hard drive or a single flash drive to the administrative law judge. For the duplicate set, the final exhibits are to be organized alpha-numerically (e.g., CDX-0001, CDX-0002C … CPX-0001C, CPX-0002 … CX-0001C, CX-0002). Additionally, the confidential and public exhibits shall be combined and organized alpha-numerically (e.g., CX-0001C, CX-0002, CX-0003, CX-0004C …). Each of the exhibits must include a file name with a brief description of the exhibit, e.g., JX-0002 (’123 Patent File History).pdf. A table of contents file in PDF and in MS Excel for Windows that lists the names of all exhibit files must be included on the hard drive or flash drive. For exhibits that cannot be submitted in PDF format, contact the administrative law judge’s attorney-advisor.

If the appropriate permission is received pursuant to Commission Rule 19 C.F.R. § 210.4(f)(8) and The Handbook on Filing Procedures § II.C(3)(a) (accessible at the Internet address https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf) to submit the original set on paper, the following shall apply. In order to facilitate the optical scanning of the exhibits, the exhibits in the original set shall consist of loose sheets (which may be clipped but not stapled) in folders (file folders, accordion folders, etc.) that are provided in sequentially-numbered boxes. Each folder must be labeled to reflect the number of the exhibit contained therein, e.g., RX-0014C. In each box of the original set, the folders containing the exhibits shall be placed in numerical order. Confidential exhibits and public exhibits shall be placed in separate boxes which are clearly marked as containing either confidential or public exhibits. Inasmuch as public and confidential exhibits are to be placed in separate boxes,
numerical gaps may appear in each box, e.g., the public box may contain exhibits CX-0001, CX-0002 and CX-0004, while the confidential box contains CX-0003C and CX-0005C.

h. On the same date that the initial posthearing briefs are due, each party must submit a final exhibit list that reflects the status of all exhibits as “admitted,” “withdrawn” or “rejected.” Additionally, the exhibit list in MS Excel for Windows shall be sent via e-mail to the administrative law judge’s attorney-advisor with a copy to Shaw337@usitc.gov.

i. No later than thirty (30) days after the filing of posthearing reply briefs, each party shall deliver one binder set of copies of all final exhibits (including those exhibits that are rejected, but not those that are withdrawn) directly to the Office of General Counsel along with a final exhibit list. Rejected exhibits shall be submitted under separate cover and so marked. The parties may provide the General Counsel set on electronic media.

j. No foreign language exhibits will be received into evidence unless a translation thereof is provided.

k. 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.

10. Use of Interpreters

If an interpreter will be used at hearing, the parties are responsible for obtaining a qualified, neutral interpreter upon whom counsel can agree.

11. Posthearing

a. On the same day the initial posthearing briefs are due, the parties shall file a comprehensive joint outline of all of the issues, including sub-issues, to be decided in the final Initial Determination. Exemplary issues and sub-issues include:
• the level of ordinary skill in the art;
• disputed claim terms (The claim terms briefed by the parties must be identical. For example, if the construction of the claim term “wireless device” is disputed, the parties must brief that exact claim term. If a party briefs only a portion of the claim term such as “wireless” or “device,” that section of the brief will be stricken.);
• which products infringe a given claim (The infringement argument for each asserted claim should contain a conclusion stating which products infringe the claim.);
• which products practice a given claim (The domestic industry technical prong argument for each asserted claim should contain a conclusion stating which products practice the claim.);
• whether a reference is prior art;
• whether a reference anticipates a given claim;
• whether a given claim is obvious in light of a reference;
• whether a given claim is obvious in light of a given prior art combination;
• whether there is a domestic industry under § 337(a)(3)(A), (a)(3)(B), or (a)(3)(C);
• whether a proposed remedial order should include any exceptions; and
• the amount of a bond, if appropriate.

The outline shall refer to specific sections and pages of the posthearing briefs.

 b. On the same day the reply posthearing briefs are due, the parties shall file a comprehensive joint outline of all of the issues, including sub-issues. The outline shall refer to specific sections and pages of the reply posthearing briefs.

c. Complainant’s posthearing brief shall include a conclusion stating which accused products infringe each asserted claim. Additionally, complainant’s posthearing brief shall include a conclusion stating which domestic industry products practice each asserted claim.

d. The parties shall brief anticipation and obviousness arguments separately. For example, a party should not argue that a reference “anticipates and/or renders obvious” a patent claim or limitation under a single heading. The parties shall also brief each obviousness combination separately. For example, each unique prior art combination should be presented under its own heading, followed by the argument therefor. Thus, an argument such as “the X
reference in combination with the Y and/or Z references” will not be accepted. Prior art not briefed is waived.

e. Posthearing briefs shall not cite to withdrawn or rejected exhibits.

f. While demonstrative exhibits may be cited in posthearing briefs, the parties shall also cite to the supporting exhibits received into evidence, e.g., CDX-0002C (CX-0005C (Smith Witness Statement) at 55-60; JX-0001 (‘123 Patent) at col. 7, lns. 36-54).

g. The parties shall submit two paper copies of their initial and reply posthearing briefs the next business day after the filing is made. Additionally, a version in MS Word for Windows shall be submitted via e-mail to the administrative law judge’s attorney-advisor with a copy to Shaw337@usitc.gov by the next business day.
UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

Inv. No. 337-TA-

SUBPOENA DUCES TECUM

TO:


______________________________,

YOU ARE HEREBY ORDERED to produce at ______________________________, on ____________, or at another 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 should 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) sender(s); (3) recipient(s); and (4) general subject matter of the document. If the sender or the recipient is an attorney or a foreign patent agent, he or she should 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.

Any motion to limit or quash this subpoena shall be filed within 10 days after the receipt thereof. On the same day that the motion is filed, versions in PDF format (including attachments such as exhibits) and MS Word for Windows shall be sent to Shaw337@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_____.

_____________________________________
David P. Shaw
Administrative Law Judge
United States International Trade Commission
UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

Inv. No. 337-TA-

SUBPOENA AD TESTIFICANDUM

TO:


____________________________________________________, the undersigned Notary Public or other person authorized to administer oaths and will continue from day to day until completed.

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 the information listed and described in Attachment A is considered “confidential business information,” as that term is defined in Order No. I attached hereto.
(Protective Order), the deposition transcript shall be marked as such subject to the terms and provisions of Order No. 1.

Any motion to limit or quash this subpoena shall be filed within 10 days after the receipt thereof. On the same day that the motion is filed, versions in PDF format (including attachments such as exhibits) and MS Word for Windows shall be sent to Shaw337@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_____.

____________________________________
David P. Shaw
Administrative Law Judge
United States International Trade Commission
CERTAIN HEIGHT-ADJUSTABLE DESK PLATFORMS
AND COMPONENTS THEREOF

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached ORDER has been served upon the Commission Investigative Attorney Jeffrey Hsu, Esq. via EDIS, and the following parties as indicated, on August 25, 2020.

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

On Behalf of Complainant Versa Products Inc:

Brian R. Galvin, Esq.
GALVIN PATENT LAW LLC
2916 NW Bucklin Hill Rd, Suite 485
Silverdale, WA 98383
Email: brian@galvinpatentlaw.com

☐ Via Hand Delivery
☐ Via Express Delivery
☐ Via First Class Mail
☒ Other: Email Notification of Availability for Download

Respondents:

Varidesk LLC
1221 Belt Line Road
#500
Coppell, TX 75019

☐ Via Hand Delivery
☐ Via Express Delivery
☐ Via First Class Mail
☒ Other: Service to Be Completed by Complainants

CKNAPP Sales, Inc.
195 E. Martin Drive
Goodfield, IL 61742

☐ Via Hand Delivery
☐ Via Express Delivery
☐ Via First Class Mail
☒ Other: Service to Be Completed by Complainants

Loctek, Inc.
6475 Las Positas Road
Livermore, CA 94551

☐ Via Hand Delivery
☐ Via Express Delivery
☐ Via First Class Mail
☒ Other: Service to Be Completed by Complainants
Loctek Ergonomic Technology Corporation
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Yinzhou Economic Development Zone
Zhanqi Town, Yinzhou District, Ningbo City, Zhejiang Province
China 315191
☐ Via Hand Delivery
☐ Via Express Delivery
☐ Via First Class Mail
☒ Other: Service to Be Completed by Complainants

Zhejiang Loctek Smart Drive Technology Co., Ltd.
Science & Technology Zone, Jiangshan Town
Yinzhou District, Ningbo City, Zhejiang Province
China 315191
☐ Via Hand Delivery
☐ Via Express Delivery
☐ Via First Class Mail
☒ Other: Service to Be Completed by Complainants

Amazon Import Inc.
9910 Baldwin Place
El Monte, CA 91731
☐ Via Hand Delivery
☐ Via Express Delivery
☐ Via First Class Mail
☒ Other: Service to Be Completed by Complainants

Stand Steady Company, LLC
5724 Highway 280 East
Birmingham, AL 35242
☐ Via Hand Delivery
☐ Via Express Delivery
☐ Via First Class Mail
☒ Other: Service to Be Completed by Complainants