UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of **CERTAIN ELECTRONIC EYEWEAR PRODUCTS, COMPONENTS THEREOF, AND RELATED CHARGING APPARATUSES (II)**	**Inv. No. 337-TA-1455**

ORDER NO. 2: GROUND RULES

(July 14, 2025)

The conduct of this investigation before the Administrative Law Judge shall be governed by the Commission Rules and the Ground Rules attached hereto.

SO ORDERED.

Monica Bhattacharyya
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 the Administrative Law Judge in the orderly conduct of the section 337 investigation pursuant to the Administrative Procedure Act, 5 U.S.C. § 556(c).

Certain of these Ground Rules (*e.g.,* Ground Rules 5 and 6, and Appendix B) only apply to U.S. patent-based investigations pursuant to section 337(a)(1)(B). In the case of an investigation based upon unfair methods of competition and unfair acts pursuant to section 337(a)(1)(A) or a registered copyright, registered trademark, or registered mask work pursuant to section 337(a)(1)(B), (C) or (D), additional Ground Rules may govern. In addition, in a case involving an early initial determination pursuant to Commission Rule 210.10(b)(3) or a motion for temporary relief pursuant to section 337(e), additional Ground Rules may also govern.

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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JUDGE BHATTACHARYYA'S GROUND RULES[1]

1. Address; Requirements for Filing, Service, and Copies; Time

1.1 Address of the Administrative Law Judge

The Administrative Law Judge's address is as follows:

The Honorable Monica Bhattacharyya
U.S. International Trade Commission
500 E Street, S.W., Room 317
Washington, D.C. 20436

The Administrative Law Judge may be contacted through her chambers by email to Bhattacharyya337@usitc.gov.

1.2 Filings and Submissions

All submissions 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.

1.3 Service Copy Requirements

In accordance with the requirements of Commission Rules 210.4(i), copies of each submission shall be served on all other parties, including the Commission Investigative Staff. On the same day that the submission is filed, an electronic copy in Word or PDF format shall be sent by email to Bhattacharyya337@usitc.gov. For any motion or brief longer than five pages, the electronic service shall include a Word format version of the motion, brief and/or memorandum. Electronic copies of exhibits shall be in PDF form and shall be bookmarked to indicate each separate exhibit.

Regardless of the requirements stated in the Electronic Document Information System (EDIS), for *Markman* briefs, summary determination briefs, pre-hearing briefs, and post-hearing briefs, the parties shall serve a paper copy on the Administrative Law Judge within one business day of the filing. These paper copies should be double-sided, and they should be delivered to the address specified in Ground Rule 1.1.

[1] Revised July 14, 2025.

1.4 Concurrent Service

Service on opposing counsel may be by hand, by e-mail, or by overnight courier. Parties are encouraged to agree upon a method of service so that the parties will receive all submissions at the same time the submissions are received by the Commission.

1.5 Service on Unrepresented Parties

Pursuant to Commission Rules 201.16(a) and 210.7(a)(1), Complainant(s) shall complete service of any public documents in this investigation originating within the Commission (*e.g.*, orders and determinations issued by the Administrative Law Judge, or filings of the Office of Unfair Import Investigations (OUII)) upon all non-defaulted parties for whom there is no known method of electronic service. Complainants shall also complete service of any OUII discovery requests upon such parties in coordination with the Commission Investigative Attorney. **This requirement does not apply to confidential documents**, and Complainant(s) shall **not** serve the confidential version of any document originating within the Commission in this investigation upon any party.

1.6 Computation of Time

The first day of the ten (10) calendar days for responding to a motion received by the Administrative Law Judge shall be the first business day following the date that said motion was filed in the Office of the Secretary, and shall apply whether a motion is hand delivered, emailed, or served by overnight courier on the other parties. In addition to the requirements of Commission Rules 201.14, 201.16(d)-(f), and 210.6 for computation of time, if the last day of the period of time 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 that is not one of the aforementioned days.

1.7 Requests for Extension of Time

Any request for extension of time must be made by written motion **two days before** the due date and good cause for such extension must be established. 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 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), and does not affect deadlines set forth in the Procedural Schedule, the parties may modify the deadline without seeking judicial approval, provided that all parties and the Commission Investigative Staff agree to the new deadline. This includes requests for an extension of time to respond to a subpoena.

1.8 Confidential Submissions

The confidential nature of any filing with the Office of the Secretary of the Commission or of any submission to the Administrative Law Judge shall be conspicuously noted on the top page of any filing or other submission. The parties should ensure that any confidential submission complies with Commission Rule 201.8.

If a party makes any filing with a confidential designation, a public version of that filing must be made within five (5) business days from the date of the original filing, including public versions of any exhibits attached thereto. For pre-hearing and post-hearing briefs, the parties shall have ten (10) business days to comply with this rule. For any filing made by the Office of Unfair Import Investigations, the Commission Investigative Staff shall have ten (10) business days to comply. A designation of "Public Version" shall be conspicuously noted on the top page, and all confidential labels shall be removed. If an exhibit is not capable of redaction, this must be clearly indicated on the exhibit cover sheet, and the party must attach a declaration justifying why the entire document must remain confidential. When redacting confidential business information, parties shall limit their redactions to information that meets the definition for confidential business information set forth in Commission Rule 201.6(a).

1.9 Public Versions of Confidential Orders

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).

To the extent possible, 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 parties' submissions under this rule need not be filed with the Commission Secretary but shall be submitted by e-mail to Bhattacharyya337@usitc.gov.

1.10 Style Guide; Citations

Unless otherwise specified, all text in any submitted paper shall use at least 12-point font. In addition, all briefs shall be double-spaced (with the exception of headings, footnotes, quotations, etc.) with one-inch margins (excluding headers for CBI and footers, such as page numbers).

Any submission with attached exhibits shall include a table of contents for the exhibits.

The official case reporter citation must be included for any published decision or order that is cited in a party's motion, brief, or pleading. 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. Citations to unreported decisions shall include a Westlaw, LEXIS, or EDIS Document ID. A copy of any cited decision or order that is not available on Westlaw, LEXIS, or EDIS shall be provided in an appendix to the brief or pleading. Further, every party must cite to the specific page(s) of any cited decision or order that includes the holding for which the authority is cited.

1.11 Courtesy Copies of Patents and File Histories

Within thirty (30) days of institution of the investigation, Complainant(s) must submit via Box a word-searchable PDF copy of each patent at issue and a bookmarked, Bates-stamped PDF copy of the file history for each patent at issue. The Box folder will be created by the Office of Administrative Law Judges and associated with this investigation.

2. Procedural Schedule

The Administrative Law Judge will promulgate a procedural schedule for the investigation. Modifications of the procedural schedule by any party shall be made by written motion showing good cause. The event and deadline dates in the procedural schedule will generally adhere to the following framework; however, the parties may suggest modifications when proposing dates in the Joint Proposed Procedural Schedule[2]:

File identification of expert witnesses, including their expertise and curriculum vitae
Exchange list of claim terms to be construed[3]
Exchange proposed claim constructions
Initial deadline for responses to contention interrogatories on issues for which the responding party bears the burden of proof, and on public interest issues (if applicable)
Meet and confer to discuss and limit number of disputed claim terms
Initial deadline for responses to contention interrogatories on issues for which the responding party does not bear the burden of proof
Exchange of initial expert reports (if any) on claim construction issues
Exchange of rebuttal expert reports (if any) on claim construction issues
File joint proposed claim construction chart

[2] The dates in the parties' Joint Proposed Procedural Schedule should be provided in chronological order.

[3] The parties may propose staggered deadlines for the Commission Investigative Staff for deadlines relating to exchange of claim terms, proposed claim constructions, and claim construction briefing.

Initial *Markman* Briefs
Rebuttal *Markman* Briefs
File Joint Technology Stipulation
Technology Tutorial and *Markman* Hearing
File updated joint proposed claim construction chart
File notice of prior art
Cut-off date for supplements to contention interrogatories on issues for which the responding party bears the burden of proof, and on public interest issues (if applicable)[4]
Cut-off date for supplements to contention interrogatories on issues for which the responding party does not bear the burden of proof
Fact discovery cutoff and completion
Deadline for motions to compel fact discovery
Exchange of initial expert reports (identify tests/surveys/data)
Exchange of rebuttal expert reports (identify tests/surveys/data)
File tentative list of witnesses a party will call to testify at the hearing, with an identification of each witness' relationship to the party
Expert discovery cutoff and completion
Deadline for motions to compel expert discovery
Attendance at one-day mediation session[5]
Submission of joint report on mediation
Deadline for filing summary determination motions
Deadline to file requests for remote witness testimony[6]
Deadline to file responses to requests for remote witness testimony
Exchange of exhibit lists among the parties
Exchange proposed direct exhibits, with physical exhibits available – Complainant(s) and Respondent(s)
Exchange proposed direct exhibits, with physical exhibits available – Staff
Exchange proposed rebuttal exhibits, with physical exhibits available – all parties

[4] *See* Ground Rule 5 n.13 regarding disclosure of corroborating evidence for prior art printed publications.

[5] For any questions regarding the mediation program, the parties should refer to the Revised Users' Manual for Commission Mediation Program, available at https://www.usitc.gov/intellectual_property/mediation.htm.

[6] The deadline to file requests for remote witness testimony must be no later than 30 days prior to the date for filing pre-hearing statements and briefs.

File pre-hearing statements and briefs – Complainant(s) and Respondent(s)
File pre-hearing statement and brief – Staff
File requests for receipt of evidence without a sponsoring witness
Deadline to file motions *in limine*
Deadline to file high priority objections statement[7]
File responses to requests for receipt of evidence without a sponsoring witness
Submit proposed exhibits to Administrative Law Judge
File responses to motions *in limine*
File responses to high priority objections statement
Pre-hearing conference
Hearing
File initial post-hearing briefs and exhibit lists and submit final exhibits
File reply post-hearing briefs
Initial Determination
Target date for completion of investigation

3. Motions; Deadlines for Responses

3.1 Contents; In General

All written motions shall consist of: (1) the motion; (2) a separate memorandum of points and authorities in support of the motion;[8] (3) an appendix of declarations, affidavits, exhibits, or other attachments in support of the memorandum of points and authorities; and (4) a Certificate of Service as required by Commission Rule 201.16(c).

All responses to motions shall include the Motion Docket Number assigned to the motion by the Commission's Office of the Secretary in either the title or the first paragraph of the response,[9] and shall consist of: (1) a memorandum of points and authorities in response to the motion; (2) an appendix of declarations, affidavits, exhibits, or other attachments in support of the memorandum of points and authorities; and (3) a Certificate of Service as required by Commission Rule 201.16(c).

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[7] To facilitate resolution, responses to motions *in limine*, and responses to high priority objection statements must be submitted by no later than ten (10) business days prior to the hearing.

[8] For procedural motions, such as motions for extensions of time, and for motions less than ten pages, a separate memorandum is not necessary.

[9] Motion Docket Numbers may be obtained online through the Commission's Electronic Document Information System (EDIS).

3.2 Contents; Certification

All motions shall include a certification that the moving party has made reasonable, good-faith efforts to resolve the matter with the other parties **at least two business days**[10] prior to filing the motion, and shall state, if known, the position of the other parties on such motion. Said certification shall be placed at the beginning of the motion under a heading entitled "Ground Rule 3.2 Certification" or similar language.

3.3 Motions for Summary Determination and Responses Thereto

Absent leave of the Administrative Law Judge, motions for summary determination are limited to 30 pages (excluding exhibits). Responses to motions for summary determination are limited to 30 pages (excluding exhibits). To the extent there is more than one complainant and/or respondent in an investigation, complainants and/or respondents shall coordinate their efforts and submit a single brief. Exceptions to this rule will be made on a case-by-case basis.

No more than one motion for summary determination on one issue may be filed by a party without leave from the Administrative Law Judge.

3.4 Discovery-Related Motions

3.4.1 Teleconference Requirement

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 Rules 3.2 and 4.1.1. If, after discharging its obligation under that rule, the discovery dispute persists, the party intending to file the discovery-related motion shall contact the Administrative Law Judge's chambers to schedule a telephone conference with the Administrative Law Judge in an attempt to resolve the discovery dispute. Prior to contacting the Administrative Law Judge's chambers, the party should determine the availability of the other parties for a telephone conference.

At least forty-eight (48) hours prior to the conference call, the party intending to file the motion shall file a written explanation of the discovery dispute.[11] The written explanation shall be no more than three (3) pages. Any other party wishing to submit an explanation of that discovery dispute may also do so provided the explanation is filed at least **twenty-four**

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[10] Parties can agree to waive the "two business days" requirement.

[11] If the 48-hour deadline falls on a weekend or a holiday, the initial submission shall be due by 5:15PM on the last business day before the deadline. Discovery teleconferences will not be held on Mondays or on the day after a holiday.

(24) hours prior to the conference call and shall be no more than three (3) pages. The written submissions shall identify the person(s) who will be speaking at the teleconference.

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.

Note that this subsection does not apply to third-party (a.k.a. non-party) discovery disputes.

3.4.2 Content 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. Additionally, if a party serves supplemental responses subsequent to the filing of a motion to compel, that party must file copies of the supplemental responses, 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.

3.5 Deadline for Filing Response to Motion

The deadline for responding to motions shall be computed in accordance with Ground Rule 1.6.

3.6 Request for Shortened Time to Respond to Motion

A motion may include a request to shorten the period of time during which other parties may respond to the motion. The fact that a shortened response time is requested shall be noted in the title of the motion and the motion shall include an explanation of the grounds for such a request. A request for a shortened response time shall not be made through a separate motion. Requests for shortened response time are disfavored and should only be made for good cause.

3.7 Reply Briefs

Except for motions *in limine*, discovery-related motions, or as otherwise ordered, the moving party is permitted to file a reply brief within three (3) days of the deadline for filing a response to the motion, limited to no more than ten (10) pages. The reply brief shall include the Motion Docket Number assigned to the motion by the Commission's Office of the Secretary in either the title or the first paragraph of the brief and shall consist of: (1) a memorandum of points and authorities limited to issues raised in the response; and (2) an appendix of declarations, affidavits, exhibits, or other attachments in support of the memorandum of points and authorities, with a list of the contents thereof. Sur-reply briefs will not be permitted absent exceptional circumstances.

3.8 No Motion Stops Discovery Except Motion to Quash Subpoena

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

4. Discovery

4.1 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.

4.1.1 Discovery Committee

Commencing with the first full week after these Ground Rules are issued, a discovery conference committee (the "Discovery Committee") consisting of the lead counsel of each party and the Commission Investigative Staff shall convene at least once every two weeks during the discovery phase of this Investigation, either in person or by telephone, 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.

No discovery teleconference pursuant to Ground Rule 3.4.1 may be requested unless the subject matter of the dispute has first been brought to the Discovery Committee and the Committee has reached an impasse in resolving the matter.

4.2 Stipulations Regarding Discovery Procedure

Unless otherwise directed by the Administrative Law Judge, the parties may by written stipulation provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions. The parties may also modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time for responses to discovery may, if they would interfere with the target date of the investigation or with any time set in the procedural schedule or in an order for completion of discovery, for hearing of a motion, or for the trial, be made only with the approval of the Administrative Law Judge upon a written motion showing good cause.

4.3 Service of Discovery Requests and Responses

Discovery requests and responses thereto shall be served upon all parties, including the Commission Investigative Staff, 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.

4.4 Discovery Requests, Responses and Objections

4.4.1 Depositions; Notice

In addition to the requirements of Commission Rule 210.28(d), 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.

4.4.2 Contention Interrogatories

Parties are expected to respond to contentions interrogatories by the date(s) set forth in the Procedural Schedule.

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 may be prohibited from later introducing evidence regarding the details of such infringement.

Amendment or supplementation of responses to final contention interrogatories after the cut-off dates set forth in the Procedural Schedule may be made in good faith, in appropriate circumstances. Supplemental contentions may be stricken if there is a lack of good cause or where there is significant prejudice to opposing parties.

4.4.3 Discovery Related to Non-Accused Products for Which Adjudication is Sought

Absent good cause, if a respondent seeks adjudication regarding any product(s) that have not been accused, the respondent must identify such product(s) and produce all relevant written discovery by thirty (30) days prior to the close of fact discovery.

4.4.4 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 compelling circumstances.

4.5 Subpoenas

4.5.1 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 writing with the proposed subpoena attached, and one (1) copy thereof shall be submitted in an editable format readable by Microsoft Word (*e.g.*, .doc or .docx) to the email identified in Ground Rule 1.1. A cover letter must accompany the application and should clearly indicate who to contact when the subpoena application is ready. Neither a subpoena application nor a subpoena shall contain confidential business information.

The application shall set forth with specificity the relevance 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 and should also state that the subpoena will be served by overnight delivery, if not sooner. The signature page for the subpoena shall not be on a separate page and must include the case caption. Any dates in a subpoena set for appearance of a deponent or production of documents should not be prior to the deadline for filing of any motions to quash. Samples of subpoenas are attached in Appendix A hereto.

A copy of the issued subpoena 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. One (1) copy of the issued subpoena, the application, and the proof of service to the subpoenaed party shall be supplied to the Administrative Law Judge. The application and subpoena need not be filed with or served on the Office of the Secretary of the Commission, including EDIS, unless they are appended to a motion to quash or motion for a protective order.

4.5.2 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. Filing of any motion to quash an issued subpoena automatically stays such subpoena pending disposition of the motion by the Administrative Law Judge.

4.5.3 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. Leave to subpoena a witness after this time will only be granted upon a written motion showing compelling circumstances.

4.5.4 Extension of Time

Per Ground Rule 1.7, parties may jointly agree to modify the deadlines set forth in a subpoena, and which does not affect deadlines in the Procedural Schedule, without seeking judicial approval.

4.6 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.

4.7 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.

4.8 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 or work product).

4.8.1 Claiming Privilege

If a party objects to discovery on the basis of a claim of privilege, the party asserting the privilege shall, in the objection to the interrogatory, document request, or part thereof, identify with specificity the nature of the privilege (including work product) that is being claimed.[12] The following information shall be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged

[12] If a party asserts that the common interest privilege applies, the party should so note and also identify the underlying privilege (*i.e.*, attorney-client privilege or work product) that protects the discovery from disclosure.

information: (A) For oral communications: (i) the name of the person making the communication and the name(s) of persons present while the communication was made; (ii) the date and place of the communication; and (iii) the subject matter of the communication; (B) For documents: (i) the sender(s)/author(s) of the document; (ii) the recipient(s) of the document; (iii) the date of the document; and (iv) the subject matter of the document. The individuals involved in any discovery withheld on the basis of privilege shall be identified by position and entity (corporation, 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 above information should be provided separately for each document for which privilege/protection is asserted, unless doing so would be excessively burdensome or expensive. In such instances, the party asserting privilege/protection should particularize why providing separate designations would be excessively burdensome or expensive, and then may identify by categories the voluminous documents or communications for which privilege/protection is asserted, providing the above information for each category. A party may only designate documents as privileged/protected by category if each document (A) is within the privilege/protection claimed and (B) shares common characteristics such as sender, receiver, author, or specific subject matter.

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."

4.8.2 Motions 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. Failure to submit evidence to support privilege claims may result in waiver of the privilege.

4.8.3 Timing of Privilege Claims

The privileged document list shall be supplied, unless otherwise ordered or agreed upon by the parties, within ten (10) days after objections based on privilege to the underlying discovery request are due.

5. 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: country, number, title, date, and name of the patentee(s);
- For alleged prior art printed publications: title, date, author, and relevant page numbers[13];
- For alleged prior inventors: name and address of the alleged inventor, and any corroborating witnesses; and
- For alleged prior sales or offers for sale: brand name and model name or number of the article, date and location of the offer or sale, and name and address of any corroborating witnesses.

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

6. Claim Construction Proceedings

6.1 Terms Requiring Construction and Submission of Joint Claim Construction Chart

By the date(s) ordered in the procedural schedule, each party shall serve a list of claim terms that the 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 or step-plus-function language under 35 U.S.C. § 112 ¶ 6 / (f).

Thereafter, each party shall serve proposed constructions for all terms the parties have exchanged by the date(s) ordered on the procedural schedule.

The parties shall meet and confer for the purpose of narrowing claim construction disputes and shall jointly file a chart of agreed and disputed constructions by the date ordered on the procedural schedule.

The joint chart shall list all agreed and disputed constructions, regardless of whether the terms are identified for the *Markman* hearing process.

In addition, the joint chart should identify up to eight (8) terms that the parties believe are amenable to resolution in the *Markman* hearing process and likely to be significant to resolving the parties' dispute. To the extent the parties identify terms for the *Markman* hearing that any

[13] Any corroborating evidence, including witnesses, for alleged prior art printed publications should be disclosed no later than the cut-off date for supplements to contention interrogatories on issues for which the responding party bears the burden of proof. In the absence of such disclosure, such evidence may not be introduced at the hearing except upon a showing of good cause.

party contends are indefinite based in substantial part on expert opinion, it is likely that resolution may be deferred until a complete record has been presented (*e.g.*, on summary determination or after the evidentiary hearing).

6.2 Claim Construction Briefing

By the date(s) ordered on the procedural schedule, and unless otherwise ordered by the Administrative Law Judge, each party shall serve an opening claim construction brief only addressing the up to eight (8) terms that the parties believe are amenable to resolution in early claim construction and likely to be significant to resolving the parties' dispute. The briefs should be organized by patent. Opening briefs are limited to 50 pages (excluding attachments). Rebuttal briefs may also be filed by the date(s) set forth in the procedural schedule and are limited to 25 pages (excluding attachments).[14]

The opening claim construction brief for each party should identify the person of ordinary skill in the art.

If the parties intend to rely on declarations from any witness to support their claim construction arguments, such witnesses shall be made available for deposition prior to the deadline for rebuttal briefs.

6.3 Claim Construction Hearing Procedure and Post-Hearing Claim Construction Chart

Unless otherwise ordered, the claim construction hearing will be limited to the up to eight (8) terms identified by the parties as amenable to resolution in the *Markman* hearing process and likely to be significant to resolving the parties' dispute.

Parties should present all of the arguments for each term in sequence before proceeding to the next term, except that similar terms may be grouped together if agreed upon by the parties. Each party will receive an opportunity for an initial presentation and rebuttal. Parties are expected to meet and confer to coordinate on the order in which the terms are presented as well as the order in which the parties present each term.

Exhibits at the claim construction hearing shall be limited to those attached to the parties' claim construction briefs, although the parties may use additional demonstrative exhibits.

Witness testimony will not be permitted at the claim construction hearing absent leave from the Administrative Law Judge. The parties may make reference to any witness declarations and/or depositions filed in connection with the claim construction briefs.

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[14] The parties shall serve paper copies and Word versions of their *Markman* briefs on the Administrative Law pursuant to Ground Rule 1.3.

After the claim construction hearing, the parties shall submit an updated joint proposed claim construction chart, by the date set forth in the procedural schedule, setting forth their post-hearing constructions of the terms discussed at the hearing. For completeness and the Administrative Law Judge's convenience, the updated joint chart should also include all other agreed and disputed constructions.

6.4 Technology Stipulation and Technology Tutorial

In advance of the *Markman* hearing, the parties shall meet and confer concerning the technology at issue in this investigation and file a joint technology stipulation, not to exceed twenty 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.

On the date of the *Markman* hearing, the parties may present a technology tutorial, which shall consist of one presentation agreed upon by all parties. The tutorial shall not exceed one hour, and it shall be limited to a general overview of the technology, without addressing the asserted patents, the claim terms at issue, or the accused products.

7. 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.

Issues on which a party has the burden shall be addressed in expert reports served on the initial deadline, while non-burden issues shall be addressed in rebuttal expert reports. The parties shall confer with each other to agree on appropriate deadlines for disclosing expert opinions on rebuttal issues on which the party has the burden of production or persuasion, *e.g.*, secondary considerations of non-obviousness. Unresolved disputes should be raised with the Administrative Law Judge before the deadlines for expert reports.

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).

7.1 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 live objections during the hearing. Moving or objecting at that delayed time will be looked upon unfavorably.

8. Settlement/Mediation

Negotiated settlements are favored by the Commission as a matter of policy. To this end, the Commission has a mediation program described at www.usitc.gov/intellectual_property/mediation.htm. The parties shall notify the Administrative Law Judge as soon as practicable after they reach a negotiated settlement on any aspect of the proceeding.

9. Pre-hearing Filings and Submissions

9.1 Pre-hearing Statement

Each party who desires to participate in the hearing in this Investigation must file on or before the date set forth in the procedural schedule a pre-hearing statement containing the following information:[15]

(a) The names of all known witnesses, their addresses, whether they are fact or expert witnesses (and their area of expertise), 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) A list of 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.

[15] The parties shall serve paper copies and Word versions of their pre-hearing statements on the Administrative Law Judge pursuant to Ground Rule 1.3.

(f) Certification regarding good faith efforts to settle.

9.2 Pre-hearing Brief

On or before the date set forth in the procedural schedule, each party shall file a pre-hearing brief not exceeding 250 pages.[16] To the extent there is more than one complainant and/or respondent in an investigation, complainants and/or respondents shall coordinate their efforts and submit a single brief. Exceptions to this rule will be made on a case-by-case basis.

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 each of the proposed issues, including specific citations to legal authorities and record evidence, and shall conform to the general outline set forth in Appendix B hereto. With respect to the issues of infringement, validity, and the technical prong of domestic industry, the parties should present their briefing on a limitation-by-limitation basis. The parties shall meet and confer prior to filing the pre-hearing briefs in order to agree on an outline (within the general framework in Appendix B), so that each of the submitted briefs addresses the issues in the same order. If any party has issues that are not specifically named in this general outline, the parties may insert these issues where appropriate.

Any contentions not set forth in detail as required herein 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.

For investigations involving patents, the pre-hearing brief shall contain a table reciting the asserted claims for purposes of infringement and claims relied on for purposes of technical prong of the domestic industry. The parties should meet and confer to agree upon common identifiers for identifying each limitation of those claims.

9.3 High Priority Objections

High priority objections may address proposed exhibits or testimony. The parties must confer before filing objections, and the statement of high priority objections shall include a certification pursuant to Ground Rule 3.2. No party shall place more than ten objections on the high priority list. The parties should not attempt to circumvent this limitation by including numerous subsections in their objections.

[16] The parties shall serve paper copies and Word versions of their pre-hearing briefs on the Administrative Law Judge pursuant to Ground Rule 1.3.

High priority objections and responses thereto shall include the exhibit(s) that is the subject of the objection and/or exhibit(s) that is referenced or discussed in the objection or response. Any high priority objection that does not include said exhibit(s) will not be considered.

9.4 Motions *in Limine*

Unless granted leave by the Administrative Law Judge, each side shall be limited to a maximum of five motions *in limine*. The parties should not attempt to circumvent this limitation by including numerous subsections in a motion *in limine*. Additionally, any motion regarding an expert must be its own motion and cannot be combined with arguments relating to other exhibits or witnesses. The parties are limited to 10 pages per motion. A separate memorandum is unnecessary for motions *in limine*.

Motions *in limine* and responses thereto shall include the exhibit(s) that is the subject of the motion and/or the exhibit(s) that is referenced or discussed in the response. Any motion *in limine* that does not include said exhibit(s) will not be considered.

9.5 Exhibits

9.5.1 Exhibit Lists

Every exhibit list shall consist of a table enumerating all exhibits 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 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 list all exhibits together in numerical order, *e.g.*, CX-0001, CX-0002, CX-0003C, CX-0004, CX-0005C, etc. The exhibit list must be formatted in a way that it is legible when viewed in hard copy.

The parties shall meet and confer before submitting any joint exhibits to agree upon a common descriptive title, statement of purpose, and sponsoring witnesses.

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

9.5.2 Numbering and Labeling of Exhibits

Written exhibits shall be marked serially commencing with the four-digit number "0001" and preceded by the prefix "CX-" for Complainant's(s') exhibits, "RX-" for Respondent's(s') exhibits, "SX-" for the Commission Investigative Staff's exhibits, and "JX-" for any joint exhibits.

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. The pages of each exhibit must be sequentially numbered in a consistent location on the pages.

If there is more than one respondent in the Investigation, Respondents shall coordinate their numbering to avoid duplication in numbering. Additionally, the parties shall coordinate exhibits to avoid unnecessary duplication (*e.g.*, patents; file wrappers).

9.5.2.1 Confidential Exhibits

If an exhibit (or any portion of the exhibit) contains confidential business information, a "C" shall be placed after the exhibit number. For certain lengthy exhibits of which only portions are confidential, the parties may be asked to submit a public version of the exhibit.

On any exhibit list submitted, exhibits which contain confidential business information shall be denoted by placing a "C" after the exhibit number in the listing.

9.5.2.2 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 Staff, and joint exhibits, respectively. Confidential exhibits shall be denoted with the letter "C" as in the case of documentary exhibits.

9.5.2.3 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(s), and the Commission Investigative Staff, respectively. Confidential demonstrative exhibits shall be denoted with the letter "C". Demonstrative exhibits shall contain citations to the substantive evidence on which they are based.

9.5.2.4 One Document Per Exhibit

Except for good cause shown, each exhibit shall consist of no more than one document. Exceptions to this "one document per exhibit" rule include instances when it would be appropriate to group certain documents together as one exhibit, such as a group of invoices or related e-mails.

9.5.3 Inclusion on Exhibit List.

9.5.3.1 Exhibits Used for Impeachment

A party may not use a document at the hearing for impeachment that was not included on the exhibit list exchanged on the date provided for in the Procedural Schedule, except for good cause.

9.5.3.2 Documents Not Included on Exhibit List

A party may not introduce a document at the hearing that was not included on the exhibit list exchanged on the date provided for in the Procedural Schedule, except for good cause.

9.5.4 Sponsoring Witness

Except as set forth below, 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.

If a party believes evidence 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. Upon good cause shown, the exhibit shall be received in evidence without a sponsoring witness subject to the right of objection on other grounds.

9.5.5 Foreign Language Exhibits

Translations of foreign language exhibits should be provided at the time set for the exchange of exhibits. The translation shall be included as part of the foreign language exhibit. Failure to do so may lead to preclusion of the foreign language exhibit.

9.5.6 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.

9.5.7 Exchange of Proposed Exhibits Among Parties

Copies of documentary proposed exhibits, along with a proposed exhibit list shall be served on the opposing parties (including the Commission Investigative Staff) on the date ordered in the procedural schedule. Once the parties have exchanged their proposed exhibit lists, they shall eliminate any duplicative exhibits or renumber such exhibits as joint exhibits and update their exhibit lists before they are submitted to the Administrative Law Judge by the due date in the procedural schedule. Proposed physical exhibits need not be served, but shall be identified in the proposed exhibit list and made available for inspection by the other parties on the date established for the submission and service of proposed exhibits. Proposed exhibits shall not be filed with the Office of the Secretary of the Commission.

9.5.7.1 Exchange of Demonstrative Exhibits

Demonstrative exhibits to be used in direct examination must be exchanged by 9:00 p.m. the evening before the day on which the demonstrative exhibit will be used. 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.

Paper copies of demonstrative exhibits to be used in direct examination shall be provided to the Administrative Law Judge before the witness examination commences. An electronic copy of all demonstratives used shall be submitted via Box within one business day of their use.

9.5.8 Service of Proposed Exhibits Upon the Administrative Law Judge

On the date that is set forth in the procedural schedule, the Administrative Law Judge shall receive an electronic PDF version of all proposed exhibits, along with a proposed exhibit list. The electronic version of proposed exhibits shall be submitted via a Box folder created by the Office of Administrative Law Judges and associated with this investigation.

10. Hearing - Evidence and Exhibits

10.1 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.

10.1.1 Identification of Exhibits for Admission Into Evidence

Exhibits that will be admitted into evidence through a witness's testimony must be identified on the record at the hearing. For expert witnesses who rely on a large number of exhibits, the witness does not need to individually identify each exhibit but may describe the

exhibits generally with reference to a demonstrative listing the exhibits. A list of exhibits that will be offered for admission should be prepared after the witness is done testifying.

The parties should also prepare lists of exhibits for admission without a sponsoring witness and lists of exhibits for admission through deposition designations.

10.1.2 Objections and Admission of Exhibits Into Evidence

The parties should meet and confer and attempt to resolve any objections to the exhibits identified for admission. Once the objections have been resolved, the party requesting that the exhibits be admitted into evidence should present the list to the Administrative Law Judge, with a copy emailed to Bhattacharyya337@usitc.gov. The list will be identified on the record and it will be confirmed that neither the opposing party nor the Commission Investigative Staff has any unresolved objections. After that, the Administrative Law Judge will admit the exhibits into evidence. The party offering the exhibits shall provide a copy of the list of admitted exhibits to the court reporter.

If parties need to submit additional exhibits after the hearing has concluded, they should do so via motion.

10.2 Witness Testimony

Unless leave is otherwise granted, all direct testimony must be given by a live witness.

10.2.1 Deposition Testimony in Lieu of Live Testimony

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(i).

Parties are expected to make reasonable efforts to bring party witnesses to the evidentiary hearing to present live testimony.

10.2.1.1 Exchange of Deposition Transcripts

If a party intends to seek admission of a designated deposition transcript at the hearing, the designations must be served on the other parties on the appropriate deadline for exchanging proposed exhibits (for direct or rebuttal exhibits).

10.2.1.2 Counter-Designation of Deposition Testimony

Other parties may counter-designate any designated deposition transcript pursuant to Commission Rule 210.28(i)(4), but any such counter-designations shall be limited to parts of the transcript that ought in fairness to be considered with the part that has been designated. The parties should meet and confer to determine an appropriate date to serve counter-designations

(and, if applicable, any rebuttal counter-designations) before the deadline for pre-hearing briefs.

10.2.2 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 may stipulate as to the manner in which exhibits are provided to other counsel and the witness (*e.g.*, physical binders or electronic files).

Prior to commencing the examination or cross-examination of a witness, counsel shall provide 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.

10.2.3 Requests for Remote Witness Testimony

Live, in-person testimony is the norm, and remote testimony is generally disfavored. However, in some circumstances, good cause may exist for a witness to testify remotely. If a party seeks to have any witness testify remotely, the party must file a request for leave to permit the witness to testify remotely no later than the date specified in the procedural schedule. Parties should file the request as soon as reasonably possible; any delay may be looked upon unfavorably. The request should include information about each witness and their expected testimony, including subject matter and estimated length of examination. Parties must meet and confer prior to filing the request and the request must include, if known, the position of the other parties on such request. The request must establish that good cause exists to allow the witness to testify remotely under the circumstances. Good cause will be evaluated on a case-by-case basis. Some relevant factors may include the witness's location, the witness's relation to the parties, the scope of potential testimony, and the reasons why remote testimony is requested. Good cause will not exist merely because all parties agree the witness should be permitted testify remotely, and the parties should therefore make a persuasive showing of good cause for any witness they request to testify remotely. If a party opposes any request, the party should file a brief setting forth the basis for its opposition by the date set forth in the procedural schedule.

11. Hearing Procedure

11.1 Hearing; Order of Examination; Coordination 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. The parties may present brief opening statements as follows: Complainant(s) (limited to 1 hour); Respondent(s) (limited to 1 hour); Commission Investigative Staff (limited to thirty minutes).

11.2 Closing Argument

There are no closing arguments.

11.3 Hearing Hours

Normal hearing hours are 9:30 a.m. to 5:00 p.m. with a one-hour luncheon recess beginning each day at approximately 12:45 p.m. There will be one fifteen-minute break in the morning and one fifteen-minute break in the afternoon.

11.4 WebEx Procedures

To aid in the identification of hearing participants, any person attending a hearing or conference conducted via WebEx 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), he or she must include a "[PO]" in his or her display name (e.g., "[PO] [R] John Brown").

The examinations of witnesses shall be divided into separate public and confidential portions. Protecting confidential business information ("CBI") is of paramount importance. 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), he or she should draw attention to that fact by making a statement on the record or contacting the Administrative Law Judge's chambers via email.

Counsel and witnesses must be in separate locations. During confidential sessions, witnesses should be in a private location (i.e., a room with a closed door) and may not be accompanied by unauthorized individuals.

Each testifying witness shall have his or her camera and microphone turned on continuously for the entire duration of the witness's testimony. Each questioning attorney shall have his or camera and microphone turned on during his or her period of questioning. One attorney for each party may have his or her microphone turned on during each witnesses' testimony to aid in making objections or making any necessary statements and should turn his or her camera on when speaking. All other participants/attendees shall turn off their cameras and mute their microphones.

11.5 Trial Decorum

All audible sounds from mobile phones, tablets, and computers shall be silenced in the courtroom during the hearing. All telephone calls must be taken outside of the courtroom. No food, gum, or beverages other than bottled water will be permitted in the courtroom during trial.

No photo taking, video recording, or audio recording is permitted during hearings (including online hearings) except by a court reporter authorized by the Commission.

11.6 Examination of Witnesses

11.6.1 Scope of Examination; In General

Except as noted below, direct examination of non-hostile witnesses shall not be conducted by leading questions, however, the Commission Investigative Staff may ask leading questions at any time.

Except in extraordinary circumstances, examination of witnesses shall be limited to direct, cross, Staff questioning, redirect, and recross. Cross examination shall be limited to the scope of direct examination; examination by the Staff shall not be limited in scope; redirect examination shall be limited to the scope of cross and Staff examination; and recross examination shall be limited to the scope of redirect and Staff examination.

A party may call a witness on an opposing party's witness list, however, that witness must be identified by name on the party's own witness list. In the event both Complainants and Respondents wish to call the same witness, the witness shall testify only once, and the parties shall meet and confer regarding when to call the witness.

11.6.2 Scope of Expert Witness Testimony

An expert's testimony at the trial shall be limited in accordance with the scope of his or her expert report(s), deposition testimony, or within the discretion of the Administrative Law Judge.

11.6.3 Coordination of Respondents' Cross-examination

Respondents shall coordinate cross-examination through one attorney as far as practicable to avoid duplication. If that is not possible, counsel who intends to cross-examine must be present in the trial room during the entire preceding cross-examination of the witness so as not to engage in repetitive questioning.

11.6.4 Use of Translators

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

11.6.5 Conferring with Witness during a Break in Testimony

Counsel shall not confer with a witness during a break in the witness's testimony on the witness's substantive testimony.

11.6.6 Sequestration of Witnesses

Fact witnesses shall be sequestered prior to offering testimony at the hearing. Each party will be permitted one exception to the sequestration rule for an officer or employee who has been designated as the party's representative. The parties may agree to waive sequestration or to request additional exceptions. Such requests should be made at the pre-hearing conference.

11.6.7 Submission of Updated Schedule of Estimated Time and Date of Witnesses

By 8:30 a.m. on each day in which the court is in session, the parties should submit an updated schedule of estimated time and date of hearing witnesses. This list should be provided to the email address identified in Ground Rule 1.1.

11.7 Time-Keeping

The parties are responsible for keeping track of the time that each party has used.

11.8 Close of Hearing Procedures

11.8.1 Physical Exhibits

Unless otherwise requested by the Administrative Law Judge, in lieu of leaving physical exhibits at the Commission, at the close of the hearing, parties should leave a photograph(s) of each physical exhibit, which should be identified on a "List of Physical Exhibits." No photographs are necessary for source code physical exhibits. The list should include the exhibit number, a description of the exhibit, and the location where the physical exhibit is being held. The photographs will not be returned to the parties until the conclusion of the investigation, including all appeals.

11.8.2 Corrections 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, it is incumbent upon the party requesting the change to send a copy of the order to the court reporting service so that the corrections can be made.

12. Submission of Final Exhibit Lists and Final Exhibits

On the same day that initial post-hearing briefs are due, the parties shall each submit the following: [1] the final exhibit lists; and [2] an electronic version of the final set of exhibits to the Administrative Law Judge for use in drafting the final initial determination.[17]

On the date that reply post-hearing briefs are due, the parties shall submit a Commission set of exhibits, with rejected exhibits submitted under separate cover and so marked.

Each side is only responsible for submitting its own exhibits.[18]

12.1. Final Exhibit List

Each party must submit a final exhibit list prepared in accordance with Ground Rule 9.5.1 reflecting the status of all exhibits, including those admitted or rejected during the hearing. Withdrawn exhibits do not need to be on the exhibit list.

The parties should submit three versions of the final exhibit list: (1) a list identifying all confidential exhibits: (2) a list identifying all public exhibits; and (3) a master list with all exhibits (both confidential and public). Each side is only responsible for submitting its own exhibit list, except that Complainant(s) is also responsible for submitting the three versions of the joint exhibit lists.

Each party should also submit a list of rejected exhibits. Only one version of this list is required.

12.2 Administrative Law Judge's Electronic Copy

The parties should provide an electronic copy of the exhibits. This electronic copy shall be uploaded using the Box platform and need not be separated or broken up in the manner described below for the Commission's set of exhibits.

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[17] Demonstrative exhibits should be included.

[18] Complainant(s) are responsible for submitting joint exhibits.

Native files (such as Excel, videos) may be included with the electronic copy of exhibits submitted to the Administrative Law Judge.

12.3 Commission's Copy

The Commission set of exhibits shall be submitted in electronic format. The format for these exhibits is set forth at:
http://www.usitc.gov/docket_services/documents/EDIS3UserGuide-CDSubmission.pdf.

There are twenty-four standard exhibit categories: 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.

The Commission set of exhibits shall be uploaded using the Box platform with separate folders for each type of exhibit, *e.g.,* CX (Public), CX (Confidential), etc. The exhibits must be PDF files (version 1.5 or higher) and any file larger than 25MB shall be broken up into separate files. A Table of Contents file in PDF format which lists the names and descriptions of all files in each folder should be created and included in each folder. Rejected exhibits should be provided in separate folders.

Any exhibits that are not included with the Commission exhibits and on the final exhibit list at the conclusion of the hearing will not be considered as part of the record to be certified to the Commission when the final initial determination issues.

12.3.1 Native Files

Native files (such as Excel, videos) should be printed to PDF and placed in the appropriate folder. If the native file cannot be printed to PDF in a legible manner, a placeholder should be placed in the appropriate folder indicating that the exhibit is a native file. In addition to the PDF files, parties may submit the native files in separate folders that are explicitly identified, *e.g.,* CX (Native).

13. Post-hearing Briefs

13.1 Initial Post-hearing Briefs; Filing and Content

On or before the date set forth in the procedural schedule, each party shall file a post-hearing brief. The post-hearing brief shall discuss the issues and evidence tried within the framework of the general issues determined by the Commission's Notice of Investigation and

those issues that are included in the pre-hearing brief and any permitted amendments thereto. All other issues shall be deemed waived.

The parties are expected to follow the outline used in pre-hearing briefs in the post-hearing brief (as identified in Appendix B), except that the parties should remove references to any issue that the parties agree is no longer in dispute.

A reasonable page limit or word limit will be imposed for all post-hearing briefs, which will be determined on a case-by-case basis. Parties should meet and confer regarding a reasonable page or word limit for post-hearing briefs, which will be discussed prior to the close of the hearing. Parties are required to use double-spacing (with the exception of headings, footnotes, quotations, etc.), at least 12-point font, and one-inch margins (excluding headers for CBI and footers, such as page numbers). If the parties have any questions regarding the acceptable formatting requirements for post-hearing briefs, they should contact the Administrative Law Judge's chambers.

To the extent there is more than one complainant and/or respondent in an investigation, complainants and/or respondents shall coordinate their efforts and submit a single brief. Exceptions to this rule will be made on a case-by-case basis. This rule shall also apply to post-hearing reply briefs.[19]

The post-hearing brief shall contain a table reciting the asserted claims for purposes of infringement and claims relied on for purposes of technical prong of the domestic industry. The parties should meet and confer to agree upon common identifiers for identifying each limitation of those claims.

13.2 Post-hearing Reply Briefs; Filing and Content

On or before the date set forth in the procedural schedule, each party shall file a post-hearing reply brief. The post-hearing reply brief shall discuss the issues and evidence discussed in the initial post-hearing briefs of each opposing party.

The rules relating to post-hearing briefs detailed in Ground Rule 13.1 also apply to reply briefs.[20]

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[19] The parties shall serve paper copies and Word versions of their initial post-hearing briefs on the Administrative Law Judge pursuant to Ground Rule 1.3.

[20] The parties shall serve paper copies and Word versions of their post-hearing reply briefs on the Administrative Law Judge pursuant to Ground Rule 1.3.

13.3 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 trial 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 testimony received during a deposition.

13.4 Citations to Pre-hearing Briefs

It is preferable to 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.

13.5 Citation to Demonstrative Exhibits

If a party cites to a demonstrative exhibit in its post-hearing brief, it must include a parenthetical identifying the substantive evidence on which the demonstrative is based, *e.g.*, RDX-0001 (summarizing RX-0001). If the demonstrative was prepared during examination of the witness, the party should so state.

14. NEXT Advocates Program

In accordance with the NEXT Advocates Program initiated by the Commission's Office of Administrative Law Judges,[21] 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 apart from the present investigation) to participate in substantive oral presentations during the course of 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 trial 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 hearing). The additional time will be added to the hearing day. Parties who wish to participate in this arrangement should provide notice to the ALJ and the other parties before the prehearing conference.

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

- 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 ALJ 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. Such submissions should be sent to Bhattacharyya337@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),[22] 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 and will be requested to provide any such proposals at the beginning of the investigation. Proposals are also welcome at any other time and may be submitted to Bhattacharyya337@usitc.gov.

15. Cooperation Among Parties

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. To assure the proper cooperative spirit in this investigation, continuing good faith communications between counsel for the parties is essential and expected.

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 the Administrative Law Judge's chambers.

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

17. Protective Order Breach Notification

Pursuant to 19 C.F.R. § 210.34(b), the disclosure of confidential business information in any manner other than that authorized by the protective order must be immediately brought to the attention of the Administrative Law Judge, along with all pertinent facts related to the unauthorized disclosure. Any party who becomes aware of an unauthorized disclosure should notify the Administrative Law Judge by email to Bhattacharyya337@usitc.gov, which should copy ***only*** lead counsel for the parties. The body of any such email should not contain any confidential business information. Any confidential business information regarding the potential breach, including any information regarding the identity, firm, and/or party affiliation of any alleged breacher, should be disclosed in a password-protected attachment. *See* 19 C.F.R. § 210.34(c)(1). **Notification should not be filed on EDIS**. The Administrative Law Judge will then instruct the parties on how to proceed.

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(s)" / "Respondent(s)"/ etc., followed by name of company]___ ,

YOU ARE HEREBY ORDERED to produce at _____, on___ , 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 hereof. At the time of filing of any motion concerning this subpoena, a copy shall be sent by email to Bhattacharyya337@usitc.gov.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set her hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this ___ day of _____, 2025.

Monica Bhattacharyya
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(s)" / "Respondent(s)" / etc., followed by name of company].

YOU ARE HEREBY ORDERED to present yourself for purposes of your deposition upon oral examination on_____, at_____, 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 shall be sent by email to Bhattacharyya337@usitc.gov.

IN WITNESS WHEREOF the undersigned of the United States International Trade Commission has hereunto set her hand and caused the seal of said United States International Trade Commission to be affixed at Washington, D.C. on this ___ day of _____, 2025.

Monica Bhattacharyya
Administrative Law Judge
United States International Trade Commission

APPENDIX B

GENERAL OUTLINE FOR PRE-HEARING AND POST-HEARING BRIEFS

I. INTRODUCTION

- A. Procedural History
- B. The Parties
- C. Overview of the Technology
- D. The Patents at Issue
- E. The Products at Issue

II. IMPORTATION

III. PATENT "A"

- A. Claim Construction
- B. Infringement
  - 1. Claim 1
  - 2. Claim 2
- C. Domestic Industry – Technical Prong
- D. Validity
  - 1. Anticipation Under 35 U.S.C. § 102(a)
  - 2. Obviousness Under 35 U.S.C. § 103(a)
- E. Unenforceability
- F. Other Defenses

IV. PATENT "B" . . .

V. DOMESTIC INDUSTRY - ECONOMIC PRONG

- A. Significant Investment in Plant and Equipment
- B. Significant Employment of Labor or Capital

VI. REMEDY AND BONDING

CERTAIN ELECTRONIC EYEWEAR PRODUCTS, COMPONENTS THEREOF, AND RELATED CHARGING APPARATUSES (II) **Inv. No. 337-TA-1455**

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served via EDIS upon the following parties as indicated, on **July 14, 2025**.

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

On Behalf of Complainant IngenioSpec, LLC:

Evan H. Langdon, Esq.
Fabricant LLP
1050 Connecticut Avenue, NW, Suite 500
Washington, DC, 20036
Email: elangdon@fabricantllp.com

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

Respondents:

Brilliant Labs Limited
68 Circular Road, #02-01
Singapore 049422

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

SZ DJI Technology Co., Ltd.
Lobby of T2, DJI Sky City
No. 53 Xianyuan Road, Xili Community, Xili Street
Nanshan District Shenzhen, China 518055

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

Even Realities Ltd.
B201-1, Design Commune
Vanke Cloud City, Nanshan District,
Shenzhen, China 518000

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

Even Realities GmbH
Friedrichstraße 79, 10117
Berlin, Germany

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

Halliday Global
8 Kaki Bukit Avenue 4
Kaki Bukit, East Region
Singapore 415875

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

Halliday Holdings Pte. Ltd.
8 Kaki Bukit Avenue 4, #08-32
Premier @ Kaki Bukit
Singapore, 415875

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

Cosonic Intelligent Technologies Co., Ltd.
No. 3 Keyuan Road, Songshan Lake
Dongguan City
Guangdong Province, China 523808

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

Shenzhen Yingmu Technology Co., Ltd
D804, Building F1, TCL International E City
Shuguang Community, Xili Street
Nanshan District, Shenzhen, China 518052

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

Sichuan INMO Technology Co., Ltd.
Room 804, Building F1, TCL Science Park
No. 1001, Zhongshanyuan Road, Shuguang Community, Xili Street, Nanshan District
Shenzhen, Guangdong, China 518052

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

MyW Technology Co., Ltd.
Yibo Building, Dianda Guyuan Industrial Park
Gongming Matian Street, Guangming District
Shenzhen, Guangdong, China 518106

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

Shenzhen Langzhiyin Electronic Co., Ltd.
Eastern Floor 6, Building D, No. 2
Xuezhujing 1st Road, Ji Hua Road
Xuexiang Bantian Longgang District
Shenzhen, China 518129

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other

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Room 209, 2nd Floor, Building 1#
Ma Cheng Rd 36#, Xi Hu District, Hangzhou

☐ Via Hand Delivery
☐ Via Express Delivery

Zhejiang, China 310000

☒ Via First Class Mail
☐ Other

Lexiang Technology Co., Ltd.
A101, 456 Bibo Road
Pudong New Area
Shanghai, China 201204

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other