

EXHIBIT 3

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN SET-TOP BOXES, AND HARDWARE
AND SOFTWARE COMPONENTS THEREOF**

Inv. No. 337-TA-761

**ORDER NO. 2: NOTICE OF GROUND RULES AND SETTING TARGET DATE
AND DATE FOR SUBMISSION OF PROPOSED PROCEDURAL
SCHEDULE**

(March 3, 2011)

The Commission instituted this Investigation pursuant to subsection (b) of Section 337 of the Tariff Act of 1930, as amended, to determine:

whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain set-top boxes, and hardware and software components thereof that infringe one or more of claims 1 and 13 of the '838 patent; claims 1, 7, 11-15, and 21 of the '844 patent; claims 1, 2, 7-9, 14-16, and 19 of the '604 patent; and claims 1, 2, 3, 6, and 7 of the '258 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337[.]

76 F.R. 11512 (March 2, 2011).

The Notice of Investigation names Microsoft Corporation of Redmond, Washington as complainant and TiVo Inc. of Alviso, California as respondent. The Commission Investigative Staff of the Office of Unfair Import Investigations is also a party in this Investigation.

Pursuant to Commission Rule 210.51(a), a target date for completion of the Investigation in the above-captioned matter must be set. *See* § 19 C.F.R. 210.51(a). Upon a review of the Complaint and the Notice of Investigation, and taking into account the Administrative Law Judge's

commitments in other already instituted Investigations, the Administrative Law Judge has determined that a sixteen month target date is appropriate. Accordingly, a target of July 2, 2012 is set for this Investigation. Based on this target date, the final initial determination on violation in this Investigation will be due no later than March 2, 2012.

The conduct of this Investigation before the Administrative Law Judge shall be governed by the Commission Rules and the Ground Rules attached hereto. The parties should pay particular attention to the Ground Rules governing this Investigation, as they differ from the ground rules issued by the Administrative Law Judge in other investigations.

In order that the proceeding in this matter may begin expeditiously, the parties are directed to submit a discovery statement by April 4, 2011 (the discovery statement need not be filed with Office of the Secretary of the Commission). The discovery statement shall include: (i) a description of information and evidence that each party intends to submit to prove its own case; (ii) a description of specific information and evidence that each party will be seeking from other parties and third persons; and (iii) a description of information and evidence each party believes can be obtained only by deposition, interrogatory, subpoena, or request for admissions.

In addition to the discovery statement, the parties also shall jointly file by April 4, 2011 a proposed procedural schedule that includes dates for each of the events set forth in Ground Rule 1.14. If the parties wish to deviate from the attached sample schedule, they should explain their rationale for the proposed changes in their submission. Based on the target date for this Investigation along with courtroom availability, the Administrative Law Judge anticipates a technology tutorial to start at 9:00 a.m. on November 30, 2011, in the Main Hearing Room. The Administrative Law Judge may set aside time after the technology tutorial for a brief overview of

claim construction issues. The pre-hearing conference and hearing will commence in the Main Hearing Room immediately following the tutorials. The hearing shall conclude no later than December 9, 2011. The parties shall take these dates, and the other dates noted in **Attachment A** below, into consideration when proposing their procedural schedule.

The proposed schedule includes dates for three settlement meetings (which will not include the Administrative Law Judge) at a time, date, and location of the parties' choosing for the good faith exploration of settlement, by persons of requisite settlement authority, of some or all of the issues in the case. Unless the parties obtain the permission of the Administrative Law Judge, for good cause shown, the settlement meetings should not occur by video-conferencing or by teleconferencing. The Commission Investigative Staff, designated as a party to the Investigation (*see* 76 F.R. 11512), may be present at the settlement meetings to facilitate, but not mediate, the process without prior approval of the Administrative Law Judge. The first of the settlement meetings should be relatively early in the Investigation, the second should be approximately midway through the period for discovery, while the last should be set for the period between the close of discovery and before the commencement of the hearing. The parties should also include dates in the proposed schedule for filing the joint settlement conference reports.

In addition, the parties are expected to identify prior art and solidify their positions with respect to claim construction for the asserted patents early in the Investigation. The proposed schedule provides dates for the submission of proposed claim constructions for disputed claim terms. Absent a showing of good cause, the parties will be bound by their proposed constructions for disputed claim terms on the date the joint submission of disputed claim terms is due. The parties may submit proposals on or before June 9, 2011, with their comments as to whether a

Markman hearing at least two months in advance of the hearing would be useful in resolving disputed claim terms.

The parties should make intensive good faith efforts to agree to a procedural schedule. It is expected that in most instances the parties should be able to submit a joint proposal on this matter.

SO ORDERED.

A handwritten signature in black ink that reads "E. James Gildea". The signature is written in a cursive style with a large, stylized initial "E".

E. James Gildea
Administrative Law Judge

ATTACHMENT A

FORM OF PROCEDURAL SCHEDULE & DATES

Parties submit discovery statement	April 4, 2011
Parties file a proposed procedural schedule	
Parties exchange list of patent claim terms for construction	May 12, 2011
First settlement conference	
Submission of first settlement conference joint report	
File identification of expert witnesses, including their expertise and curriculum vitae	
File notice of prior art	May 26, 2011
Complainant and Respondent provide Staff with their proposed construction of the disputed claim terms	June 7, 2011
Markman hearing proposals	June 9, 2011
Parties meet and confer (including Staff) in an attempt to reconcile or otherwise limit disputed claim terms	
Parties submit a joint list showing each party's proposed construction of the disputed claim terms	June 15, 2011
Second settlement conference	
Submission of second settlement conference joint report	
File tentative list of witnesses a party will call to testify at the evidentiary hearing, with an identification of each witness' relationship to the party	
Deadline for contention interrogatory responses	
Fact discovery cutoff and completion	

Exchange of initial expert reports (identify tests/surveys/data)	
Exchange of rebuttal expert reports	
Deadline for motions to compel discovery	
Third settlement conference	
Submission of third settlement conference joint report	
Deadline for filing summary determination motions	September 19, 2011
Expert discovery cutoff and completion	
Submission of statements regarding the use of witness statements in lieu of live direct testimony, and statements regarding whether any party intends to offer expert reports into evidence	
Exchange of exhibit lists among the parties	
Submit and serve direct exhibits (including witness statements), with physical and demonstrative exhibits available -- Complainant and Respondent	
Submit and serve direct exhibits (including witness statements), with physical and demonstrative exhibits available -- Staff	
File Pre-hearing statements and briefs -- Complainant and Respondent	
File Pre-hearing statement and brief -- Staff	
File requests for receipt of evidence without a witness	
File objections to direct exhibits (including witness statements)	
Submit and serve rebuttal exhibits (including witness statements), with rebuttal physical and demonstrative exhibits available -- all parties	
Deadline for motions <i>in limine</i>	November 9, 2011

File responses to objections to direct exhibits (including witness statements)	
File objections to rebuttal exhibits (including witness statements)	
File statement of high priority objections	
File response to objections to rebuttal exhibits (including witness statements)	
File responses to statement of high priority objections	
Submission of declarations justifying confidentiality of exhibits	
File responses to motions <i>in limine</i>	November 18, 2011
Tutorials	9:00 a.m., November 30, 2011, Main Hearing Room
Pre-hearing conference	November 30, 2011, Main Hearing Room
Hearing	November 30-December 9, 2011, Main Hearing Room
File initial post-hearing briefs, proposed findings of fact and conclusions of law, and final exhibit lists	December 20, 2011
File reply post-hearing briefs, objections and rebuttals to proposed findings of fact	January 4, 2012
Final ID due	March 2, 2012
Target Date	July 2, 2012

ATTACHMENT B

GROUND RULES

GROUND RULES FOR THIS SECTION 337 INVESTIGATION

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 this Section 337 Investigation pursuant to the Administrative Procedure Act, 5 U.S.C. § 556(c).

These Ground Rules govern a U.S. patent-based investigation pursuant to 19 U.S.C. § 1337(a)(1)(B). In the case of an investigation based upon a registered copyright, registered trademark, or registered mask work pursuant to 19 U.S.C. § 1337(a)(1)(B), (C) or (D), additional Ground Rules may also govern. In addition, in a case involving a motion for temporary relief pursuant to 19 U.S.C. § 1337(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 GILDEA'S GROUND RULES

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

1.1. Address of Administrative Law Judge.

The Administrative Law Judge's address is as follows:

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

1.2. Filing Requirement.

While this Investigation is before the Administrative Law Judge, all documents filed with the Secretary must include one (1) original and six (6) copies pursuant to Commission Rule 210.4(f)(2). Electronic filing, may be made where the Commission Rules allow such filing.¹

1.3. Service Copy Requirement.

1.3.1. Paper Copies.

Copies of the papers served on the Secretary shall be served concurrently on all other parties, including the Commission Investigative Attorney, and two (2) courtesy paper copies shall be served concurrently on the Administrative Law Judge at his office. The Administrative Law Judge's courtesy copies may be printed on double-sided pages (preferred).

1.3.2. Electronic Copies.

In addition to that which is required in Ground Rule 1.3.1, while the Investigation is pending before the Administrative Law Judge, any party submitting a motion or any response to a motion, as well as any other paper submitted in this Investigation, shall no later than the next business day send one (1) courtesy electronic copy of said document in Microsoft Word, WordPerfect (version 11 or higher), or PDF format (preferred), excluding attachments such as exhibits, to the Administrative Law Judge's Attorney Advisor, Sarah Zimmerman.

The courtesy copy should be sent either (i) via e-mail (preferred) to sarah.zimmerman@usitc.gov, (ii) on CD, or (iii) on any other electronic memory data storage device. Copies submitted on CD or other electronic storage devices must be clearly labeled with the Investigation number, party name, and document title. Copies sent via e-mail should include the number of this Investigation as the first item in the subject line, followed by a very brief summary of the contents. For example, the subject line may read: "Inv. No. 337-TA-7##, Motion for Summary Determination."

¹ See Commission Rule 201.8(f).

1.4. Submission by Fax Disfavored.

Service of any document on the Administrative Law Judge by facsimile transmission is **strongly** disfavored. A party may not serve any paper on the Administrative Law Judge by facsimile unless it has contacted the office of the Administrative Law Judges and received permission to serve the paper on the Administrative Law Judge by facsimile. The party should be prepared to explain why service of the paper by mail, overnight courier, or hand delivery is not feasible, and inform the office of the Administrative Law Judges of the number of pages to be transmitted, the exact time the transmission will take place, and whether the document to be transmitted contains any confidential business information. Service of any paper on the Administrative Law Judge by facsimile must be followed by service on the Administrative Law Judge of a hard copy of the paper within three (3) business days.

1.5. Concurrent Service.

Service on opposing counsel may be made by hand, facsimile, e-mail, or overnight courier. Unless otherwise agreed by counsel, service of documents of no more than fifteen (15) pages (exclusive of any service list) shall be effected by facsimile transmission, e-mail, hand delivery or overnight courier and documents consisting of more than fifteen (15) pages shall be served by e-mail, overnight courier or hand. Any foreign respondent who is not represented by counsel may be served by first class mail. Motions served by facsimile shall be served no later than 5:15 pm EST on the day the motion is filed with the Office of the Secretary. Motions served by overnight courier shall be received by the other parties no later than the close of business on the day following the day on which the motion is filed. Where documents are served on the Office of the Secretary by hand, they shall also be served on local counsel the same day. Where service is made by facsimile, the serving party must notify the other parties so served.

1.6. Confidential Submissions.

Any document containing confidential business information shall be prominently marked on its first page with the legend "confidential business information," or equivalent wording.² Documents filed with confidential attachments shall similarly contain a marking on the first page of the document indicating that there are confidential attachments and the first page of each of the confidential attachments shall be marked pursuant to Commission Rules. A party who mistakenly files a document without a confidential designation thereon shall immediately contact the Office of the Secretary and the Attorney Advisor.

1.7. Unreported Court Decisions.

Any submission that makes reference to an unreported court decision shall include as an exhibit the text of the decision.

² See Commission Rules 210.6 and 210.34.

1.8. Certificates of Service.

Certificates of service shall state the date and manner of delivery of documents filed with the Office of the Secretary.

1.9. Temporary Relief.

In any aspect of an investigation which involves a pending motion for temporary relief, a party serving any paper, including any motion or discovery requests, must notify counsel for the other parties, including the Commission Investigative Staff Attorney ("Staff"), by telephone on the day the paper is served about the substance of the paper, and must arrange for the other parties to receive the paper the next business day.

1.10. Due Dates; Requests for Extensions; Urgent Filings.

All due dates for any paper necessitate that the paper be received by the intended recipient no later than the close of business on the due date. Any request for extension of time must be made by written motion no later than the day before the due date and good cause for such extension must be established.

Urgent matters should be brought to the attention of the Administrative Law Judge as follows. First, motions, responses, or other filings that are urgent or that should receive expedited treatment should be **clearly noted** in the document's caption. Second, on the date of said filing, the Administrative Law Judge's Attorney Advisor must be notified by e-mail, with a copy to all parties, that the matter is of pressing importance or urgency. The parties should note, however, that the Administrative Law Judge has many ongoing investigations. All pending matters will be addressed with as much dispatch as time and circumstances allow.

1.11. Public Versions of Orders/IDs.

Two (2) copies of a proposed public version of an issued order or initial determination must be submitted to the Administrative Law Judge at the time specified in the issued confidential order or initial determination. Proposed information subject to the protective order should be bracketed in red. It is essential that the confidential matter be bracketed and not deleted in the proposed public version submitted to the Administrative Law Judge.

The proposed public version must be served on all parties at least two (2) business days before the submission of the proposed public version to the Administrative Law Judge. Any party with comments regarding another party's proposed public version must submit them to the Administrative Law Judge on the same date as specified for the submission of the proposed public version.

If no public version is received by the date set in an order requiring such filing, the totality of the order will be made public. Parties shall not file the public version with the

Secretary. The Administrative Law Judge will issue the public version of the order once all required redactions are made.

1.12. Electronic Filing (EDIS).

Commission Rule 201.8(f) governs the electronic filing of certain documents with the Office of the Secretary via the Commissions' Electronic Document Information System (EDIS). Presently, parties may use EDIS to file any non-confidential document that must be filed with the Secretary. Filing through EDIS, however, does not remove the requirement that parties also submit two (2) courtesy hard copies and an electronic copy of such filing, (not by facsimile transmission), with the office of the Administrative Law Judges.

For additional information regarding EDIS, parties may access the EDIS 3 User Guide at <http://www.usitc.gov/DocketServices/EDIS3UserGuide-External.pdf> or contact the EDIS Helpdesk at (202) 205-3347.

All submissions shall be filed with the Office of the Secretary of the Commission in accordance with Commission Rules 201.15 and 210.4(f)(2) unless otherwise specifically provided for in these Ground Rules or by order of the Administrative Law Judge.

1.13. 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, faxed or served by overnight courier on the other parties. In addition to the requirements of Commission Rules 201.14, 201.16(d) and 210.6 for computation of time, if the last day of the period 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 cut off shall be extended to the end of the next business day which is not one of the aforementioned days.

1.14. Procedural Schedule.

The Administrative Law Judge will establish a procedural schedule for this Investigation. Modifications of the procedural schedule by any party shall be regulated by written motion showing good cause. The event and deadline dates in the procedural schedule will generally adhere to the following chronological order:

First settlement conference
Submission of first settlement conference joint report
Parties exchange list of patent claim terms for construction

File identification of expert witnesses, including their expertise and curriculum vitae
File notice of prior art
Complainant(s) and Respondent(s) provide Staff with their proposed construction of the disputed claim terms
Parties meet and confer (including Staff) in an attempt to reconcile or otherwise limit disputed claim terms
Parties submit a joint list showing each party's proposed construction of the disputed claim terms
Second settlement conference
Submission of second settlement conference joint report
Exchange of initial expert reports (identify tests/surveys/data)
Deadline for contention interrogatory responses
File tentative list of witnesses a party will call to testify at the hearing, with an identification of each witness' relationship to the party
Exchange of rebuttal expert reports
Fact discovery cutoff and completion
Deadline for motions to compel discovery
Third settlement conference
Submission of third settlement conference joint report
Deadline for filing summary determination motions
Expert discovery cutoff and completion
Submission of statements regarding the use of witness statements in lieu of live direct testimony, and statements regarding whether any party intends to offer expert reports into evidence
Exchange of exhibit lists among the parties
Submit and serve direct exhibits (including witness statements), with physical and demonstrative exhibits available -- Complainant(s) and Respondent(s)

Submit and serve direct exhibits (including witness statements), with physical and demonstrative exhibits available -- Staff
File Pre-hearing statements and briefs -- Complainant(s) and Respondent(s)
File requests for receipt of evidence without a witness
File objections to direct exhibits³ (including witness statements)
Submit and serve rebuttal exhibits (including witness statements), with rebuttal physical and demonstrative exhibits available -- all parties
Deadline for motions <i>in limine</i>
File Pre-hearing statement and brief -- Staff
File responses to objections to direct exhibits (including witness statements)
File objections to rebuttal exhibits (including witness statements)
File statement of high priority objections
File response to objections to rebuttal exhibits (including witness statements)
File responses to statement of high priority objections
Submission of declarations justifying confidentiality of exhibits
File responses to motions <i>in limine</i>
Tutorial on technology
Pre-hearing conference
Hearing
File initial post-hearing briefs, proposed findings of fact and conclusions of law, and final exhibit lists

³ The parties should note that the use of codes for exhibit objections is strongly discouraged. In addition, the Administrative Law Judge would prefer that parties include the exhibit title (or summary) in addition to the exhibit number, and, where practicable, a brief explanation of the rationale for the objection(s).

File reply post-hearing briefs, objections and rebuttals to proposed findings of fact

2. Motions; Deadlines for Responses.

2.1. Contents; In General.

All written motions shall consist of (i) the motion; (ii) a separate memorandum of points and authorities in support of the motion;⁴ (iii) an appendix of declarations, affidavits, exhibits, or other attachments in support of the memorandum of points and authorities; and (iv) a Certificate of Service as required by Commission Rule 201.16(c).

All responses to motions shall consist of: (i) a memorandum of points and authorities in response to the motion; (ii) an appendix of declarations, affidavits, exhibits, or other attachments in support of the memorandum of points and authorities; and (iii) a Certificate of Service as required by Commission Rule 201.16(c). All responses to motions shall also 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 any such responses. Motion Docket Numbers may be obtained online through the Commission's Electronic Documents Information System known as EDIS.

2.2. Contents; Certification.

All motions shall include a certification that the moving party has made a reasonable, good-faith effort to contact and resolve the matter with the other parties at least two (2) business days before filing the motion, and shall state, if known, the position of the other parties regarding the motion. Non-moving parties shall make an effort to timely and substantively respond in good faith to moving party's efforts to resolve a motion.

2.3. Contents; Motion for Summary Determination.

In addition to the foregoing requirements, motions for summary determination shall be accompanied by a separate statement of the material facts ("SMF") as to which the moving party contends there are no genuine issues and which entitle the moving party to summary determination as a matter of law. The SMF shall consist of short numbered paragraphs with specific references to supporting declarations, affidavits or other materials.

2.4. Contents; Response to Motion for Summary Determination.

In addition to the foregoing requirements, each party opposing a motion for summary determination shall include in the response separate statements directed to each of the numbered paragraphs in the moving party's SMF, with specific references to supporting declarations,

⁴ For procedural motions, such as motions for extensions of time, a separate memorandum is not necessary.

affidavits or other materials. The responsive statement shall include a recitation of each of the material facts alleged to be undisputed that are included in moving party's SMF, followed separately by the nonmoving party's response. Parties should avoid boilerplate rebuttals, and particularly should avoid rebuttals or objections that are not directly relevant to the material fact at issue. If a material fact, or a portion of a material fact, is undisputed, the responding party should so state. All material facts set forth in the moving party's SMF may be deemed admitted by a nonmoving party unless specifically controverted in the nonmoving party's responsive statement.

2.5. Contents; 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 after the filing of a motion to compel, that party must provide copies of the supplemental responses, or, where documents are produced, a detailed accounting of what additional documents were produced.

2.6. Deadline for Filing Response to Motion.

In addition to the requirements of Commission Rules 201.16 and 210.15(c) governing the period for a nonmoving party's response to a written motion, the date of service of a motion on a nonmoving party by electronic mail, personal delivery, express-type mail or courier service is the date of delivery. The additional time provided under Commission Rule 201.16(d) after service by mail does not apply in such instances, unless service by electronic mail, personal delivery or an express-type mail or courier service is to a nonmoving party in a foreign country, in which event the additional time allowed for responses to motions shall be five (5) days.

2.7. Request for Shortened Time to Respond to Motion.

A motion shall include any request to shorten the time for 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.

2.8. No Motion Stops Discovery Except Motion to Quash Subpoena.

The submission of a motion does not stop discovery except in the case of a timely motion to quash a subpoena.

3. Discovery.

3.1. Resolution of Disputes; Coordinated Discovery.

The parties shall make reasonable efforts to resolve between or among themselves

disputes that arise during discovery. Parties with similar interests must coordinate and consolidate depositions and all other discovery.

3.1.1. Discovery Committee.

Starting the first full week after these Ground Rules are issued, a discovery conference committee (the "Discovery Committee") consisting of the lead counsel for each party and the Staff shall confer at least once every two (2) 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. Within ten (10) calendar days after the end of each month during the discovery phase, the Discovery Committee shall report in writing to the Administrative Law Judge all disputes that were resolved during the preceding month and all disputes about which there is an impasse as of the end of that month. No motion to compel discovery may be filed unless the subject matter of the motion has first been brought to the Discovery Committee and the Committee has reached an impasse in trying to resolve it.

3.2. Stipulations Regarding Discovery Procedure.

Unless otherwise directed by the Administrative Law Judge, the parties may by written stipulation (i) provide that depositions be taken before any person, at any time or place, and in any manner and when so taken be used in the same manner as other depositions, and (ii) modify other procedures for, or limitations placed upon, discovery. However, stipulations extending the time provided in **Ground Rules 3.4.2, 3.4.3 and 3.4.4** for responses to discovery, if they would interfere with the target date of this 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 hearing, may only be made with the approval of the Administrative Law Judge upon a written motion showing good cause.

3.3. Service of Discovery Requests and Responses.

Discovery requests and responses must be served on all parties, including the Commission Investigative Attorney, but are not to 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.

3.4. Timing of Discovery Requests, Responses and Objections.

3.4.1. Depositions; Notice.

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

outside the United States. No party shall notice the deposition of a party witness without first consulting with the opposing party and the Staff regarding the availability of witnesses and counsel for the deposition.

3.4.1.1. Depositions in Japan.

If an application for a recommendation to the U.S. District Court requiring depositions of a party in Japan is necessary, it should be titled as an “application” but filed on EDIS as a “motion.” The application should include a statement as to the other parties’ positions regarding the application as well as any relevant supportive material.

If the Administrative Law Judge determines that the application should be granted, an order and recommendation will issue. One copy⁵ of the order will be given to the Office of the Secretary for certification, a copy of which will then be served on all parties. If the applicant prefers to pick up the certified original, applicant should include in a cover letter, or include in the application itself, clear instructions as to the manner of pick up and the individual to be contacted. Absent these instructions, the certified original will be sent to the applicant along with the service copy.

3.4.2. Interrogatories; Deadline for Responses and Objections.

In addition to the requirements of Commission Rule 210.29(b), unless otherwise ordered, the party on whom interrogatories have been served shall serve a copy of the answers, and any objections, within **ten (10) days** after the service of the interrogatories.

3.4.3. Requests for Production of Documents or Things or for Entry upon Land; Deadline for Responses and Objections.

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

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

In addition to the requirements of Commission Rule 210.31(a) and (b), unless otherwise ordered, a request for admission may be served at any time **twenty (20) days** after the date of service of the Complaint and Notice of Investigation. Unless otherwise ordered, a party on whom a request for admission has been served, shall serve an answer or objection within **ten (10) days** after the service of the request, otherwise the matter may be deemed admitted.

⁵ If additional certified copies are needed by applicant, this should be made clear in a cover letter or in the application itself.

3.4.5. Discovery Cutoff and Completion.

All discovery requests, including requests for admissions, must be initiated long enough before the fact discovery cutoff and completion date to allow responses by that date without curtailing the response times prescribed elsewhere herein. 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.

3.5. Interrogatory Limitation.

Any party may serve on any other party written interrogatories not exceeding one hundred seventy-five (175) in number, including all discrete subparts. Leave to serve additional interrogatories must be obtained from the Administrative Law Judge by written motion showing good cause.

3.6. Subpoenas.

Subpoenas may be requested to compel third parties to testify or produce documents. Hearing subpoenas will be issued only if the subpoenaed party refuses to testify.

3.6.1. Issuance and Service.

Pursuant to Commission Rule 210.32, applications for subpoenas may be made ex parte to the Administrative Law Judge. An application shall be in writing with the proposed subpoena attached. One (1) original and one (1) copy thereof shall be submitted to the office of the Administrative Law Judges. The subpoena application shall set forth (i) the relevancy of the information sought and the reasonableness of the scope of the inquiry and (ii) shall state that the subpoena will be served by overnight delivery, if not sooner. The subpoena should (i) set forth a time limit for a motion to quash, and (ii) should also have a copy of the Protective Order in this Investigation as an attachment. At a minimum, the subpoenaed party shall be given ten (10) days after receipt of the subpoena to file a motion to quash.

Any dates in a subpoena for appearance of a deponent or production of documents shall accommodate the time allowed for the filing of any motions to quash, and shall accommodate for the time needed for the Office of Administrative Law Judges to process the subpoena application.⁶ See Commission Rule 201.14(a), Ground Rule 1.13. A copy of the issued subpoena and the application shall be served by the applicant on the subpoenaed party by overnight delivery, if not sooner, and on all other parties to this Investigation on the next business day, at the latest, after the subpoena is issued. Samples of subpoenas are attached in **Appendix A** hereto. The application and subpoena shall 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.

⁶ This is typically 24-48 hours, depending in part on whether the application is delivered by mail or by courier. Parties with urgent subpoena requests should contact the Administrative Law Judge's Attorney Advisor.

3.7. Bates Numbering.

Documents produced in response to a document request which are copies of original documents, 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. The parties are encouraged to use Bates numbers without long prefixes. For example, the Bates number XYZ-00001 is preferable over LONGPARTYNAME-ITCNUMBER-00001.

3.8. Translations.

All documents produced in response to a document request shall be the original or else legible and complete copies of originals. If an English translation of any document produced exists, the English translation shall also 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.

3.9. Privileged Matter.

The following procedure shall be followed with respect to those documents for which counsel claims privilege (attorney-client or work product).

3.9.1. Privileged Document List.

If production of any document is withheld on the basis of a claim of privilege, each withheld document must be separately identified in a privileged document list.⁷ The privileged document list shall be supplied, unless otherwise ordered, within ten (10) days after objections based on privilege to the underlying document requests are due. The privileged document list must identify each document separately, specifying the following for each entry: (i) the date; (ii) the author(s)/sender(s); (iii) the recipient(s), including copy recipient(s); and (iv) the general subject matter of the document. The sender(s) and recipient(s) shall be identified in each entry⁸ by position and entity (corporation or firm, etc.) with which they are employed or associated. If the author/sender or recipient is an attorney or foreign patent agent, he or she shall be so identified in each entry. The type of privilege claimed must also be stated, together with certification that all elements of the claimed privilege are met and have not been waived with respect to each document.

The parties may stipulate, *see* Ground Rule 3.2, as to the date of production and scope of the privileged document list (*e.g.*, may stipulate that the privilege log scope does not extend past the institution of the Investigation). Failure to provide a timely and complete privileged document list *may* result in waiver of privilege.

⁷ *See Duplan Corp. v. Deering Millikin, Inc.*, 397 F. Supp. 1146, 184 U.S.P.Q. 775 (D.S.C. 1974).

⁸ The parties should not provide a “key” at the end of the log with the position and entity of each sender and recipient.

4. Notice of Prior Art.

Parties must file on or before the date set in the procedural schedule, notices of any prior art containing of the following information: issuing 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 evidence of invalidity of the patent in suit; 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 in suit. Such notices should include the information set out in 35 U.S.C. § 282.

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.

Prior art, as well as related evidence, that is not disclosed in the Notice of Prior Art on or before the date set forth in the procedural schedule will not be admitted at the hearing absent a timely written motion showing good cause.

5. Expert Witnesses and Reports.

On or before the dates set forth in the procedural schedule, a party shall disclose to all other parties the identity of any person who is retained or employed to provide expert testimony at the hearing and shall provide the other parties a written report prepared and signed by that witness. Experts who are not disclosed on or before the date set forth in the procedural schedule must be approved in advance by the Administrative Law Judge upon a showing of compelling circumstances.

Two (2) courtesy copies⁹ of the expert report shall be served on the Administrative Law Judge on or before the date set forth in the procedural schedule. 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 hearing or by deposition within the preceding four (4) years. The parties shall supplement these disclosures as needed in the manner provided in Commission Rule 210.27(c). The parties should note, however, that unseasonable,¹⁰ substantive supplementation of an expert report requires agreement from the other parties or prior

⁹ These may be double-sided copies.

¹⁰ For example, if a party wishes to supplement an initial expert report after the deadline for rebuttal reports has passed.

approval from the Administrative Law Judge.

6. Settlement.

All parties, throughout the proceedings, shall explore reasonable possibilities for settlement of all or any of the contested issues. All parties shall certify in their pre-hearing 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 two (2) copies 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 Office of the Secretary of the Commission.

7. Pre-Hearing Submissions.

7.1. Pre-Hearing Statement.

Each party who intends to take part 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:

- (a) The names of all known witnesses, their addresses, whether they are fact or expert witnesses (and their fields 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, by title and number, of all exhibits which the parties will seek to introduce at the trial. The list shall include five columns. In the first four columns, the party shall include the number of the exhibit, a brief description and the title of the exhibit, the purpose for which it is being offered, and each sponsoring witness. The last column shall be labeled "Received" and need only include sufficient space for a date.
- (c) A list of any stipulations on which the parties have agreed.
- (d) A proposed agenda for the pre-trial 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-trial statements).
- (f) Certification regarding good faith efforts to settle. *See infra.*

7.2. Pre-Hearing Brief.

On or before the date set in the procedural schedule, each party shall file a pre-hearing brief. The pre-hearing brief shall be prefaced with a table of contents and a table of authorities. It shall set forth **with particularity** the authoring party's contentions on each of the proposed

issues, including citations to legal authorities in support thereof, and shall conform to the general outline set forth in **Appendix B** hereto. All issues, including issues not specifically named in the general outline set forth in said appendix that any party seeks to address, shall be added to the general outline where appropriate. The parties shall meet and confer as needed prior to filing the pre-hearing briefs in order to determine appropriate common locations for each issue in the foregoing outline of every pre-hearing brief. The parties shall provide complete proposed claim constructions for all patent claims at issue, consistent with the claim constructions provided in the joint list of proposed claim constructions for disputed claim terms submitted in accordance with the procedural schedule.

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.

8. Hearing Exhibits.

8.1. 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.

8.2. Legal Experts.

Legal experts may only testify as to procedures of the U.S. Patent and Trademark Office.

8.3. Witness Testimony.

8.3.1. Witness Statements in Lieu of Direct Testimony.

Consistent with the procedural schedule, each party, including the Staff, shall submit to the Administrative Law Judge, after conferring with each other, two (2) copies of a statement commenting on the efficacy of witness statements in lieu of direct testimony. The statement shall not be filed with the Office of the Secretary of the Commission. Each party's comments should set forth the reasons why the party believes witness statements would or would not facilitate the hearing.

8.3.2. Witness Statements.

A witness statement shall be in the form of numbered questions from counsel, with each question followed by the witness's independent answer to the question. The statement should also contain the final question from counsel asking the witness whether or not the witness statement contains the witness's independent answers to each of the questions from counsel, followed by the witness's answer to this question and the witness's signature. A witness statement shall be in the language of the witness, and a foreign language witness statement shall

be accompanied by a certified English translation. If any of the parties dispute the translation, it must be certified by a qualified and neutral translator upon whom counsel can agree. The witness statement shall be assigned an exhibit number and each question shall be numbered consecutively.

Witness statements shall be marked and offered into evidence as exhibits. Any witness who produces a witness statement in lieu of live direct testimony shall be made available for live cross-examination at the hearing, unless waived by all parties. Witnesses shall not read their prepared testimony into the record.

8.4. Expert Reports.

Pursuant to the procedural schedule, each party, including the Staff, shall submit to the Administrative Law Judge, after conferring with each other, two (2) copies of a statement stating its position on whether or not it intends to offer into evidence any expert reports, and identifying any such expert reports. The statement shall not be filed with the Office of the Secretary of the Commission.

8.5. Foreign Language Exhibits.

No foreign language exhibit will be received in evidence for substantive purposes unless an English translation thereof is provided at the time set for exchange of exhibits. If any of the parties dispute the translation, then the translation must be certified by a qualified and neutral translator upon whom counsel can agree.

8.6. Exhibits.

8.6.1. Exchange of Proposed Exhibits.

Copies of proposed documentary exhibits, along with a proposed exhibit list, shall be served on the opposing parties (including the Staff) by the date set in the procedural schedule. Once the parties have exchanged their proposed exhibit lists, they shall eliminate any duplicate 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 and demonstrative exhibits need not be served, but shall be identified in the proposed exhibit list. Proposed physical and demonstrative exhibits, however, must be 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.

8.6.2. Service of Proposed Exhibits upon Administrative Law Judge.

On the date set forth in the procedural schedule for service of proposed hearing exhibits,

the Administrative Law Judge shall receive an electronic PDF version¹¹ of all proposed exhibits, along with a proposed exhibit list.

Prior to the start of the hearing, the parties must bring two additional sets of proposed exhibits to the hearing room, along with a proposed exhibit list: (i) a set containing each proposed exhibit in an individual folder (which will be used for scanning purposes) (the “Dockets Set”), (ii) another full set of proposed exhibit copies in loose-leaf binders, which will be used by the Administrative Law Judge during and after the hearing (the “ALJ Set”). Clear photocopies may be used instead of original documents.

8.6.3. Format of Original and Binder Exhibit Sets.

In order to facilitate optical scanning of the exhibits, the exhibits in the original Dockets Set shall be 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 therein, *e.g.*, RX-14C. Likewise, each box should be labeled properly to indicate which specific exhibits are contained therein. Box labels should bear the same format as the exhibit lists and be attached to each box lid. In each of the boxes of the original Dockets Set, the folders containing the exhibits shall be placed in sequential order.

The exhibits in the ALJ Set shall be individually tabbed, with each tab reflecting the number of the corresponding exhibit, *e.g.*, CX-3C. Each binder must be labeled on its spine with the name and number of this Investigation and the nature of the contents of the binder, *e.g.* Complainant’s Exhibits CX-1 through CX-18C. The Administrative Law Judge would prefer, but does not require, double-sided copies for the ALJ Set, in binders no wider than 3”.

8.6.4. Maintenance and Filing of Final Exhibits and Final Exhibit List.

Each party must submit a final exhibit list in conformity with Ground Rule 8.6.7, reflecting the status of all exhibits, including those admitted and rejected during the hearing. Any withdrawn exhibit shall be identified on the final exhibit list only, by exhibit number, and shall indicate that it has been withdrawn.

The parties are responsible throughout the course of the hearing for updating the exhibit lists and for maintaining and updating the original Docket Set and the ALJ Set, as well as for confirming that all admitted and rejected exhibits are included in these sets and in the final exhibit list at the conclusion of the hearing. The exhibits shall be separated into the following groups: (i) Admitted Confidential; (ii) Admitted Public; (iii) Rejected Confidential; and (iv) Rejected Public. Withdrawn exhibits are not to be submitted, however, the rejected exhibits will be retained with the official record. The Docket Set shall become the set that is filed with the Commission after the record is closed.

Any exhibits that are not included in the Docket Set and the final exhibit list at the

¹¹ Parties preferring to submit a paper copy should contact the Attorney Advisor in advance.

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.

The Docket Set and ALJ Set, as well as the final exhibit list, should be submitted on paper no later than 5 p.m. on the second business day after the last day of the hearing. These two sets should be submitted to the Administrative Law Judge's assistant, Danielle Vu, by appointment. Ms. Vu will review the exhibits with the parties, notify them of any necessary corrections, and ensure that the Docket Set will be appropriately transferred to Docket Services. It is advisable to leave time between the appointment with Ms. Vu and the submission deadline in order to make any needed corrections. Please be timely and courteous when working with Ms. Vu on the submission of these exhibit sets.

In addition to the above, the parties may, but are not required to, file electronic courtesy copies of the post-hearing exhibits on or before the date for submission of the initial post-hearing briefs. *See* Ground Rule 8.7 re format.

8.6.4.1. Binder Exhibit Set for the Office of General Counsel.

No later than thirty (30) days after the submission of post-hearing reply briefs, each party shall deliver one (1) additional binder-set of copies of all, except those withdrawn, exhibits directly to the Office of General Counsel along with a final exhibit list, with rejected exhibits submitted under separate cover and so marked. In the alternative, the parties may submit this set electronically pursuant to Ground Rule 8.7.

8.6.5. Numbering and Labeling of Exhibits.

8.6.5.1. Documentary Exhibits.

Written exhibits shall be marked in order beginning with the number "1" and preceded by the prefix "CX" for Complainant's exhibits, "RX" for Respondent(s)' exhibits, "SX" for the Commission Investigative Attorney's exhibits, and "JX" for any joint exhibits. The parties shall not "reserve" numbers, but instead must assign all numbers to the exhibits in their proper order.

8.6.5.2. Confidential Exhibits.

If an exhibit contains confidential business information a "C" shall be placed after the exhibit number. Furthermore, exhibits containing confidential business information shall be so designated pursuant to the Protective Order. In addition, 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. No exhibit list shall contain confidential information; all exhibit lists shall be public documents.

8.6.5.3. Numbering; Labeling.

Each exhibit shall be identified by placing a label bearing the exhibit's number (*e.g.*, CX-3C or RX-5) 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 and in a manner that will not permanently conceal information that is included in the exhibit.

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

8.6.5.4. Physical Exhibits.

Physical exhibits shall be numbered in a separate series commencing with "1" preceded by the prefixes "CPX", "RPX", "SPX" and "JPX", for Complainant, Respondent, the Staff, and joint exhibits, respectively. Confidential exhibits shall be denoted with the letter "C" as in the case of documentary exhibits. For the Docket Set, physical exhibits should be boxed separately from demonstrative exhibits. Physical exhibits that have been admitted into evidence are retained by the Commission. A party may request permission from the Administrative Law Judge to substitute a photograph for an admitted physical exhibit prior to the deadline for submission of the Docket Set.

8.6.5.5. Demonstrative Exhibits.

Demonstrative exhibits shall be numbered in a separate series commencing with "1" preceded by the prefixes "CDX", "RDX", and "SDX", for Complainant, Respondent(s), and the Staff, respectively. Confidential exhibits shall be denoted with the letter "C". Additionally, the parties shall provide the Administrative Law Judge with two (2) copies of key demonstrative exhibits (*e.g.*, charts, drawings, etc.) reduced to 8 ½ inches x 11 inches for use during the hearing. If applicable, demonstrative exhibits shall indicate what documentary or physical exhibit was the source for its creation.

The parties may seek to have demonstrative exhibits admitted into evidence, for substantive or solely for demonstrative purposes. Such designation must be made clear on the record at the time of admission. Admitted demonstrative exhibits must be submitted with the ALJ and Docket Sets pursuant to Ground Rule 8.6.4. For the Docket Set, demonstrative exhibits should be boxed separately from physical exhibits.

8.6.5.6. Joint Exhibits; Deposition Transcripts as Joint Exhibits.

If agreed to by parties, they may submit joint documentary exhibits, including for example, a patent in issue, prosecution history, etc.

The joint documentary exhibits shall include an index which identifies the parties that

have submitted each joint exhibit and should be arranged based on the various groups offering such exhibits. For example, if complainant and respondent A have offered a series of joint documentary exhibits, those exhibits would appear as the first group of joint documentary exhibits in the joint documentary exhibit index. The index would then include all joint documentary exhibits offered by complainant and respondent B, then joint documentary exhibits offered by complainant and respondent C, etc.

8.6.6. Public and Confidential Exhibits.

If any portion of an exhibit contains confidential business information, the entire exhibit shall be treated as confidential. For certain lengthy exhibits of which only portions are confidential, the parties may be asked to submit a public version of the exhibit. In the original Docket Set only, confidential exhibits and public exhibits shall be placed in separate boxes which are clearly marked as containing either confidential or public exhibits. Because 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-1, CX-2 and CX-4, while the confidential box contains CX-3C and CX-5C. For exhibits submitted electronically, in accordance with Ground Rule 8.7, public and confidential exhibits should be placed on separate discs.

Exhibits submitted in binder sets shall be in numerical order, and shall not be separated according to confidential or public status.

8.6.7. Exhibit Lists.

Every exhibit list shall include a table enumerating all exhibits consecutively by exhibit number and identify 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.

Every joint exhibit list shall identify each exhibit, and the parties shall meet and confer before submitting the lists for the purpose of seeking an agreement on a common descriptive title, statement of purpose, and sponsoring witnesses that shall appear on every list for each joint exhibit.

In any exhibit list submitted before the offer of an included exhibit into evidence, the entry in the column for the status of receipt shall be left blank. In any exhibit list submitted after the exhibit is offered into evidence or withdrawn, the entry in that column shall show the date of admission into evidence or rejection of the exhibit or shall indicate its withdrawal.

Exhibit lists shall include public and confidential exhibits, and shall list all exhibits together in numerical order, *e.g.*, CX-1, CX-2, CX-3C, CX-4, CX-5C, etc.

8.6.8. One Document Per Exhibit; All Pages Bates-numbered.

Except for good cause shown, each exhibit shall consist of no more than one (1) document and every page of every document shall be Bates numbered in accordance with Ground Rule 3.7. Exceptions to this “one document per exhibit” rule include instances when it would be appropriate to group certain documents together as a single exhibit, such as a group of invoices or related e-mails.

8.6.9. Witness Exhibit Binder.

In questioning a witness on direct examination during the hearing, counsel shall provide the witness, the Administrative Law Judge, and other counsel, before the commencement of the examination, a binder (or binders) containing all the exhibits that the examining attorney intends to use with that witness, in numerical order and individually tabbed.

In examining adverse witnesses, or cross-examining witnesses, counsel shall provide the witness, the Administrative Law Judge, and other counsel, before the commencement of the examination, with a binder containing all exhibits, in numerical order, and individually tabbed, to be used in the examination of the witness.

Each witness binder must be labeled on its spine with the name and number of this Investigation and the nature of the contents of the binder, *e.g.*, Cross-Examination of Witness - Volume 1 of 1.

In addition, the front of the witness binder must include a table of all exhibits to be used in the examination of the witness with a blank column entitled “Received into Evidence” or having similar language.

If there are certain exhibits (*i.e.* patent, prosecution histories) that will be used frequently with more than one witness, a separate exhibit binder containing those exhibits may be used with those witnesses and do not have to be included in the separate witness binder for each witness.

8.6.10. References for Exhibit.

When appropriate, exhibits shall cite sources of information and methods employed in formulating accounting, economic or other types of data. Rebuttal exhibits, if submitted, shall refer specifically to exhibits being rebutted.

8.6.11. Authenticity.

All documents that appear to be regular on their face shall be deemed authentic, unless it is shown by other evidence that the document is not genuine.

8.6.12. Sponsoring Witness.

Each exhibit that is offered into evidence shall have a “sponsoring witness.” One of the

purposes for a sponsoring witness is to establish a foundation for the exhibit and to prevent exhibits from entering the record that have not been adequately explained. Sponsoring witness testimony does not have to be in the form of oral testimony if all parties are in agreement to allow otherwise. For example, if the parties are willing to stipulate and agree to designate portions of deposition testimony into the record in lieu of oral testimony, along with certain exhibits that were discussed during the deposition, such request will generally be permitted, as long as the exhibit was clearly identified and discussed during the deposition and the deposition pages discussing the exhibit are included in the designation.

Except for investigations without a participating respondent, if a party believes evidence to be non-controversial and appropriate for admission into 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 (i) an affidavit or declaration that the declarant prepared or someone under the declarant's direction prepared the exhibit; (ii) a request that the exhibit be received in evidence without a witness at the hearing; and (iii) 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. In the absence of objections, and upon good cause being shown, the exhibit shall be received in evidence without a witness subject to the right of objection on other grounds.

8.6.13. High Priority Objections for Pre-Hearing Conference.

Each party's objections to rebuttal or supplemental exhibits shall be accompanied by a separate document listing and providing a narrative explanation of the objections to exhibits which the party believes to be of high priority for discussion or ruling at the pre-hearing conference. The objections placed on the high priority list may be taken from the party's objections to direct, rebuttal or supplemental exhibits. No party shall place more than ten (10) objections on the high priority list.

8.7. Filing of Exhibits by CD/DVD Media.

8.7.1. Introduction.

This ground rule defines the technical requirements that must be met in order to submit post-hearing exhibits by electronic media. The parties may, but are not required to, submit an electronic courtesy copy of post-hearing exhibits in electronic format.

8.7.2. Rules for Preparing Exhibit Files to be Submitted:

The following rules are laid forth for preparing electronic courtesy copies of the post-hearing exhibits, or for submission to the Office of the General Counsel, as noted in Ground Rules 8.6.4 and 8.6.4.1.

- (1) All files submitted as exhibits on the media must be in Portable Document Format (PDF) format version 1.3 or higher. (Suggestion: use Adobe Acrobat 7 Professional for conversion.)
- (2) PDF size must be less than 10 megabytes in size. Files larger than 10 megabytes must be separated into segments or portions which are less than 10 megabytes. (Suggestion: use 300 or less dots per inch (dpi) on images depicted into documents.)
 - (a) If a file must be broken into segments or portions, name the files in accordance with the standard naming convention set out in the Ground Rules, followed by the part number (e.g., CX-1 part 1; CX-1 part 2, etc.).
- (3) The following conversion settings should be used when converting files from standard word processing software to PDF format:

Converting Microsoft Word files to PDF (Adobe PDF → Change Conversion Settings):

Settings tab:

Required:

- a. Uncheck option “Attached source file to Adobe PDF”
- b. Uncheck option “Add bookmarks to Adobe PDF”
- c. Uncheck “Add links to Adobe PDF”

Recommended:

- d. Check “Enable accessibility and reflow with Tagged PDF” (enables Section 508 compliance capabilities)
- e. Set compatibility to Acrobat 6 (PDF 1.5) (Advanced Settings → Compatibility)

Security tab:

Required:

- f. Uncheck “Require a password to open the document”

Converting files from WordPerfect to PDF (File → Publish to PDF → Document):

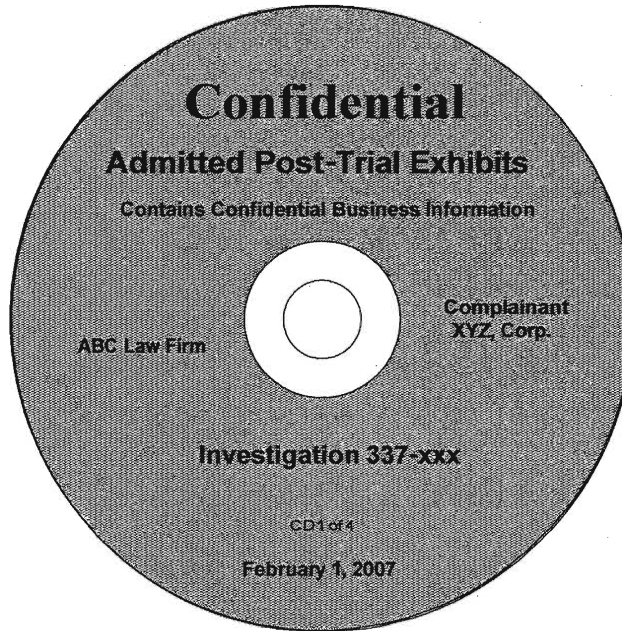
Required:

- a. Uncheck “Include hyperlinks”
 - b. Uncheck “Generate bookmarks”
- (4) All files must have password protection disabled.
 - (5) An Optical Character Recognition (OCR) should be run on each file containing text. Once the PDF is created, run Document → Recognize Text using OCR, to extract any words that could be readable by a search engine.
 - (6) Each file should be named for the exhibit it contains, conforming to the rules set forth in Ground Rule 8.6.5.

8.7.3. Preparing the Electronic Media.

All exhibit files created following the rules defined above must be transferred to electronic media following the guidelines defined below:

- (1) All files for each category of exhibits must be copied onto separate DVD+R or CD media. Four separate DVDs/CDs or four separate sets of DVDs/CDs should be submitted, each one only containing Admitted Public, Admitted Confidential, Rejected Public or Reject Confidential files.
 - (a) If one CD cannot hold all the exhibit files for a category, multiple CDs per category can be created, but the sequence of the CDs should be identified accordingly on the label (*e.g.*, Disc 1 of 2). However, use of a DVD is preferred in such cases.
- (2) Demonstrative exhibits can be submitted on the same media as the hearing exhibits, but the files should be labeled according to the defined naming conventions set forth in Ground Rule 8.6.5 (*e.g.*, RDX-xxxx).
- (3) Animations or any type of macromedia automated presentation must be submitted separately as a physical exhibit. Animation files will not meet the PDF acceptance criteria of EDIS.
- (4) All files should be written at the root directory level of the DVD/CD. No subdirectories should be created on the disc.
- (5) A Table of Contents (TOC) file which lists the names of all files on the disc should be created and included on each disc.
- (6) Each disc should be labeled with the Investigation Number, Security Level, Document Type (*e.g.*, Admitted Post-Hearing Exhibits), Party (*e.g.*, Complainant XYX Corp.), Firm (submitting the exhibits), and the Creation Date. Discs containing Confidential Business Information or Business Proprietary information should be clearly labeled as such. An example is shown below:



- (7) Each DVD/CD should be checked to ensure it has been correctly created, labeled, and contains ONLY the desired content. It is the responsibility of the parties to ensure that if confidential information is present on a DVD/CD then that DVD/CD is marked in accordance with the Protective Order.

8.7.4. Delivery to Administrative Law Judge.

The DVDs/CDs should be delivered to the Administrative Law Judge's office on the same day that initial post-hearing briefs are due.

9. Hearing Procedure.

9.1. Hearing; Order of Examination.

The order of examination at the hearing is as follows (subject to alteration at the Pre-hearing conference or other changes in the discretion of the Administrative Law Judge):

- (1) Complainant's Case-in-Chief.
- (2) Respondent's Case-in-Chief (In the event there is more than one respondent, the order of presentation will be determined at the Pre-hearing conference. Respondents should avoid unnecessary repetition of testimony or other evidence.)
- (3) Commission Investigative Attorney's Case-in-Chief.
- (4) Complainant's Rebuttal (Complainant's rebuttal, in the discretion of the Administrative Law Judge, shall be limited to the scope of respondent's defense)

case.)

- (5) Respondent's Rebuttal (Respondent's rebuttal, in the discretion of the Administrative Law Judge, shall be limited to the issues for which Respondent carries ultimate burden of proof.)

9.2. Opening Statement and Closing Argument.

The Administrative Law Judge does not require opening statements and closing arguments. The parties may present opening statements. Opening statements are limited to one (1) hour for the complainant, one (1) hour for respondent(s), and thirty (30) minutes for the Commission Investigative Staff. The parties may make a request to present closing arguments, which, if granted, would be held after all post-hearing briefs have been submitted.

9.3. Hearing Hours.

Normal hearing hours are 9:00 a.m. to 5:00 p.m., with a one (1) hour luncheon recess beginning each day at approximately 12:00 p.m.

9.4. Hearing Decorum.

9.4.1. Conversations at Hearing.

No audible discourse between opposing counsel will be permitted while the hearing is in session. If an attorney has anything to address to opposing counsel, it must be done through the Administrative Law Judge.

9.4.2. Cell Phones and Beepers; Food and Beverages.

Audible cell phone and beeper signals shall be turned off in the courtroom during hearing, and all cell phone conversations must occur outside the courtroom. No food or drink (other than water) is permitted in the courtroom during hearing, unless permitted by the Administrative Law Judge.

9.4.3. Swearing of Witnesses.

Each witness shall stand while being administered the oath of affirmation. All others in the hearing room should remain seated and quiet

9.4.4. Arguments on Objection.

Arguments or objections may only be made by counsel prior to a ruling. Once a ruling is made, no further discussion of the matter will be permitted. The basis for the objection must be stated; general objections are not acceptable.

9.5. Examination of Witnesses.

9.5.1. Scope of Examination; In General.

Except in extraordinary circumstances, examination of witnesses for Complainant(s)' case-in-chief and Respondent(s)' case-in-chief shall be limited to direct, cross, redirect, and re-cross.

9.5.2. Scope of Cross-Examination.

Cross-examination will be limited to the scope of the direct examination. For witnesses called for the purpose of giving testimony in support of a position on an issue that is the same as the position on that issue of a party desiring cross-examination of that witness, that party is precluded from asking that witness leading questions; *i.e.* "no friendly cross-examination."

When counsel is presenting a witness with a question that refers back to the witness's previous testimony, counsel shall refrain from summarizing the witness's previous testimony because this can lead to a time-consuming objection that counsel's summary was not an accurate recitation of the witness's previous testimony. If counsel wishes to refer back to a witness's previous testimony, counsel must use direct quotations.

9.5.3. Scope of Redirect and Re-Cross Examination.

Redirect examination is limited to matters brought out on cross-examination. Re-cross examination is limited to matters brought out on redirect examination.

9.5.4. Coordination of Witnesses.

The parties are expected to conduct their witness examination in a matter that will adhere to the total time allotted for the hearing.

9.5.5. Documents Presented to Witnesses.

Any document that an attorney wishes to show a witness must first be shown to opposing counsel.

9.5.6. Scope of Expert Witness Testimony.

Expert witness testimony at the hearing shall be confined to the scope of the expert's report(s), and deposition testimony. The proponent of the witness is expected to be prepared to demonstrate promptly where in that witness's reports or deposition may be found each element of testimony sought to be elicited at the hearing.

9.5.7. Coordination of Respondents' Cross-Examination.

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

9.5.8. Requests for Clarification of a Question.

Requests for clarification of a question may only be made by the witness or the Administrative Law Judge.

9.5.9. Use of Translators.

If a translator will be used at the hearing, the parties are responsible for obtaining a qualified, neutral translator on whom they can agree. It is suggested that the translator be chosen from a list of approved translators, such as the ones maintained by various federal courts and federal agencies. Translators will be administered an oath or affirmation.

9.5.10. Conferring with Witness During a Break in Testimony.

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

9.6. Transcript.

The parties have the option of arranging for the hearing transcript in real time. The Administrative Law Judge prefers to have hearing transcripts in real time.

9.7. Bench Briefs.

Bench briefs, if they are permitted by the Administrative Law Judge during the hearing, must be filed on EDIS as motions and must comport with the Commission Rules and Ground Rules relating to motions.

10. Post-Hearing Submissions.

10.1. Initial Post-hearing Briefs; Filing and Content.

On or before the date set forth in the procedural schedule, the parties shall file a post-hearing brief together with proposed findings of fact and brief proposed conclusions of law. In addition, each party shall submit a copy of its final exhibit list.

The post-hearing brief shall discuss the issues and evidence tried (through, *e.g.*, citations to the proposed findings of fact, *see* Ground Rule 10.2 below) within the framework of the general issues determined by the Commission's Notice of Investigation, the general outline of the briefs as set forth in **Appendix B**, and those issues that are included in the pre-hearing brief and any permitted amendments thereto. All other issues shall be deemed waived.

A reasonable page limit will be imposed for all post-hearing briefs, which will be determined on a case-by-case basis. As noted in Ground Rule 1.3.1, only the Administrative Law Judge's courtesy copies may be printed on double-sided pages (preferred), but the page limit shall still apply to each printed page.

10.2. Proposed Findings of Fact; Form and Content.

Following the close of the hearings, each party will submit with its post-hearing brief proposed findings of fact and a final revised exhibit list. Parties may also submit brief proposed conclusions of law, but these are not required. Each party will submit proposed rebuttal findings of fact with its reply brief.

The parties should cite to the proposed findings of fact or proposed rebuttal findings of fact to support arguments made in the post-hearing briefing.

10.2.1. Form of Findings of Fact.

Proposed findings of fact should be in the form of numbered paragraphs and should collectively reflect all Section 337 elements, all issues set forth in the Scope of Investigation of the Notice of Investigation, and any other issues that arose during the course of this Investigation. Section headings consistent with the outline of the post-hearing brief may be used to set off paragraphs that relate to particular Section 337 elements or issues. The sections and sub-sections should reflect the issues in this Investigation.

10.2.2. Content of Findings of Fact.

The parties should select only those facts that will further the claims or defenses in the Investigation, including remedy issues. Parties should avoid duplicative statements of fact, and should cite to those portions of the admitted evidence that support the proposed fact finding. Findings of fact should not be used to quote large portions of the hearing transcript (instead a summary of the relevant transcript and citation to the original would be reasonable). Figures and lists of accused products are appropriate, if they are not used indiscriminately. Proposed findings of fact relating to credibility of witnesses are appropriate. Background or extraneous material should not be included, and parties should craft the findings of fact concisely. Section headings consistent with the outline of the post-hearing brief may be used to set off paragraphs that relate to particular Section 337 elements or issues.

Proposed findings of fact and proposed rebuttal findings of fact must state facts only,

without argument. Argument is restricted to the post-hearing brief and reply brief. The Administrative Law Judge may disregard proposed findings of fact and proposed rebuttal findings of fact that raise legal argument. A restatement of a party's claim construction position is considered to be argument and is not appropriate. In contrast, a proposed finding of fact relating to the state of the art at the time of the claimed invention may be an appropriate factual issue.

Each proposed finding of fact must be followed by citations to supporting evidence in the record. Examples of commonly used citations are as follows:

Transcript: (Tr. at 895:3-10 (Smith).) [Transcript page, Line number(s), Witness Name]

Exhibits: (CX-3 at Figure 6; RX-5 at 21; SPX-2 at 14:2-21.)

Pleadings: (Complaint at 2; XYZ Corp. Response to Complaint at ¶5.)

The parties **must** cite to the proposed findings of fact, or proposed rebuttal findings of fact, *see* Ground Rule 10.4 below, in the initial and reply post-hearing hearing briefs (and thus to the underlying admitted evidence). The parties **may** also string cite to the underlying evidence in addition to the proposed findings of fact, or proposed rebuttal findings of fact, in the initial and reply post-hearing hearing briefs; however, space in the briefing will be limited. The Administrative Law Judge may disregard those proposed findings of fact or proposed rebuttal findings of fact that are not referenced in the post-hearing briefing.

10.3. Post-hearing Reply Briefs; Filing and Content.

On or before the date set in the procedural schedule, the parties shall file a post-hearing reply brief together with objections and rebuttals to the proposed findings of fact of each of the other parties. The post-hearing reply brief shall discuss the issues and evidence raised in the initial post-hearing briefs of each opposing party, following the general outline of the briefs as set forth in **Appendix B**.

A reasonable page limit will be imposed on all post-hearing reply briefs, which will be determined on a case-by-case basis. As noted in Ground Rule 1.3.1, only the Administrative Law Judge's courtesy copies may be printed on double-sided pages (preferred), but the page limit shall still apply to each printed page.

10.4. Objections and Rebuttals to Proposed Findings of Fact; Form and Content.

A party's objections and rebuttals to proposed findings of fact of an opposing party shall recite the text and citation to the record of the proposed finding of fact being objected to or rebutted and its paragraph number.

Rebuttals shall assert only facts (*i.e.*, without argument more appropriately placed in the post-hearing reply brief), and must be followed with citations to the party's own proposed findings of fact or, more preferably, to directly supporting evidence in the record. The parties

should note that citations to the evidence or a party's own proposed findings of fact should not appear without a brief explanation of their significance. Parties should avoid boilerplate rebuttals, and particularly should avoid rebuttals or objections that are not directly relevant to the proposed finding of fact at issue. It shall not be a ground for objection that a proposed finding of fact is duplicative, vague, or compound.

The responding party must state whether all or a portion of a proposed finding of fact is undisputed.

Failure to object to or rebut proposed findings of fact may be considered a waiver of that objection or rebuttal. As a result, the Administrative Law Judge, may in his discretion, deem that proposed findings of fact not objected to or specifically rebutted have been admitted.

Below is an example of a proposed finding of fact with a rebuttal finding of fact:

SFF 26 In 2005, Company ABC offered 27 units of Product 12 for sale in the United States. (Tr. at 111:11 (Smith); CX-000C at 6.)

ROSFF 26 Company ABC did not make an offer to sell Product 12 in the United States. The offer was to Company XYZ in New Zealand. (RFF 212; Tr. at 354:21-66 (Kang); RX-99C at 12; RX-122 at 63.) Respondents do not dispute that the offer occurred in 2005 and was for 27 units of Product 12. (*Id.*)

11. Citation of Cases.

The official case reporter citation must be included for any published decision or order that is cited in a party's briefs or pleadings. Additionally, the docket number and the full date of the disposition must be included in the citation of any unreported decision or order that is referenced by the parties. A copy of any cited decision or order that is not available on LEXIS or WESTLAW shall be provided in an appendix to the brief or pleading. Further, every party must cite to the specific page(s) of the cited decision or order that includes the holding for which the authority is cited.

12. Cooperation among Parties.

Because of the time limitations imposed by Section 337, all counsel shall attempt to resolve, by stipulation or negotiated agreement, any procedural disputes 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 is expected.

13. Ex Parte Contacts.

There shall be no *ex parte* communication with the Administrative Law Judge. Any questions of a technical or procedural nature shall be directed to the Administrative Law Judge's Attorney Advisor, Sarah Zimmerman, at (202) 205-3436 or sarah.zimmerman@usitc.gov.

The parties should further note that the Docket Manager for this Investigation, as well as other staff in Docket Services and the Administrative Law Judge's Secretary, should not be contacted relating to such issues as whether an order has been signed, when an order posted on EDIS will be processed, whether an order posted on EDIS will go out by overnight courier or U.S. Mail (as opposed to an issue of non-receipt several days later). This is not to say that Docket Services may never be contacted with respect to this Investigation. If the parties have generic questions relating, e.g., to a party filing, such an inquiry would be appropriate. However, Docket Services' staff members are not allowed to give out information relating to the status of the Administrative Law Judge's orders. The Docket Manager for this Investigation and the Administrative Law Judge's Secretary may log any inappropriate calls made in this Investigation and bring them to the attention of the Administrative Law Judge if necessary.

14. Mediation.

The Commission has approved the initiation of a voluntary pilot mediation program for investigations under Section 337 of the Tariff Act of 1930 as amended, to facilitate the settlement of disputes. The Commission will evaluate the pilot program for possible implementation of a permanent mediation program. Parties who wish to participate in the pilot mediation program should notify the Administrative Law Judge's Attorney Advisor.

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: (i) the date; (ii) author(s)/sender(s); (iii) recipient(s), including copy recipients; and (iv) 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, two (2) courtesy copies shall be served concurrently on the Administrative Law Judge at his office.

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 _____, 200_.

E. James Gildea
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, two (2) courtesy copies shall be served concurrently on the Administrative Law Judge at his office.

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 _____, 200_.

E. James Gildea
Administrative Law Judge
United States International Trade Commission

APPENDIX B

GENERAL OUTLINE FOR ALL 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. JURISDICTION**

- III. PATENT "A"**
 - A. Claim Construction**
 - 1. Define Level of Skill of a Person of Ordinary Skill in the Art**
 - 2. First Disputed Claim Term (Claims 1, 2, 3, . . .)**
 - 3. Second Disputed Claim Term (Claims 1, 2, 3, . . .)**
 - 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**

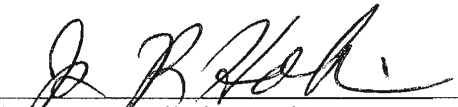
- VI. REMEDY AND BONDING**

**IN THE MATTER OF CERTAIN
SET-TOP BOXES, AND
HARDWARE AND SOFTWARE
COMPONENTS THEREOF**

337-TA-761

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, **Thomas S. Fusco, Esq.**, and the following parties as indicated on **MAR 03 2011**


James R. Holbein, Acting Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112A
Washington, D.C. 20436

ON BEHALF OF COMPLAINANT MICROSOFT CORPORATION:

Mark G. Davis, Esq.
WEIL GOTSHAL & MANGES, LLP
1300 Eye Street, NW
Suite 900
Washington, DC 20005-3314
P: 202-682-7000

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

ON BEHALF OF RESPONDENT TIVO, INC.:

Lyle B. Vander Schaaf, Esq.
BRINKS HOFER GILSON & LIONE
1850 K Street, NW
Suite 675
Washington, DC 20006
P: 202-296-8700

() Via Hand Delivery
() Via Overnight Mail
() Via First Class Mail
() Other: _____

**IN THE MATTER OF CERTAIN
SET-TOP BOXES, AND
HARDWARE AND SOFTWARE
COMPONENTS THEREOF**

337-TA-761

PUBLIC CERTIFICATE OF SERVICE – PAGE TWO

PUBLIC MAILING LIST

Heather Hall
LEXIS - NEXIS
9443 Springboro Pike
Miamisburg, OH 45342

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____

Kenneth Clair
THOMSON WEST
1100 13th Street, NW, Suite 200
Washington, DC 20005

Via Hand Delivery
 Via Overnight Mail
 Via First Class Mail
 Other: _____