

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ICEMAKING MACHINES
AND COMPONENTS THEREOF**

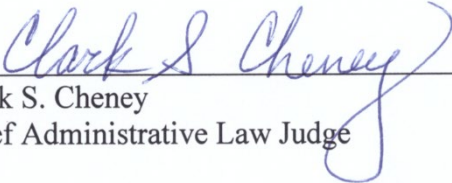
INV. NO. 337-TA-1369

ORDER NO. 2: NOTICE OF GROUND RULES

(August 16, 2023)

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

SO ORDERED.


Clark S. Cheney
Chief Administrative Law Judge

GROUND RULES FOR SECTION 337 INVESTIGATIONS

These Ground Rules supplement the Commission's Rules of Practice and Procedure, 19 C.F.R. Parts 201 and 210 ("Commission Rules"), in order to aid Chief Administrative Law Judge Clark S. Cheney (he/him) in the orderly conduct of the 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). The Chief Administrative Law Judge may promulgate other rules for investigations involving other matters.

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

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GROUND RULES

1 Filings and Submissions.

1.1 Definitions.

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

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

1.2 Format of Filings and Submissions.

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

1.3 Filing Requirement.

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

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

1.3.1 Public Version Required.

If a document is filed that contains confidential business information as defined in Commission Rule 201.6(a), the private parties must file a public version of the document within five business days from the date of filing. For those investigations where a Commission investigative attorney is a party, the Commission investigative attorney shall have ten business days to submit a public version of the document. When redacting confidential business information, a high level of care shall be exercised to ensure that information that does not meet the Commission’s definition of confidential business information is not redacted.

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

1.4 Service.

Whenever practicable, service of all documents filed with the Secretary or submitted to the Chief Administrative Law Judge shall be by email addressed to all parties, including the Commission investigative attorney. Otherwise, service shall be as specified in Commission Rules 210.4(i), 210.7, 201.16, or as agreed by the parties.

1.5 Confidentiality.

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

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

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

Procedures for seeking protection of confidential information at the hearing are found in Ground Rule 11.2 and Ground Rule 11.3. Determinations concerning evidence that will be treated as confidential during the evidentiary hearing will be made at the final pre-hearing conference specified in the procedural schedule or at another practicable time determined by the Chief Administrative Law Judge.

If the Chief Administrative Law Judge issues a confidential order or initial determination, the parties must jointly submit within seven (7) days of the order a single proposed public version of that order with any proposed redactions indicated in red. If the parties submit excessive redactions, they may be required to provide declarations from individuals with personal knowledge, justifying each proposed redaction and specifically explaining why the information sought to be redacted meets the definition for confidential business information set forth in Commission Rule 201.6(a). To the extent possible, the proposed redactions should be made electronically, in a single PDF file of the issued order or initial determination, using the “Redact Tool” within Adobe Acrobat. The proposed redactions should be submitted as “marked” but not yet “applied.” The proposed redactions or statement of no redactions should be submitted via email to Cheney1369@usitc.gov and not filed on EDIS.

1.6 Word Limits.

Certain Ground Rules provide word limits for certain briefs. *See, e.g.*, Ground Rules 5.4.2, 7.2, and 14. Any brief that is word-count limited by a Ground Rule must include a certificate by the attorney, or by an unrepresented party, that the brief complies with the word limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief. The certificate must state the number of words in the brief and must appear immediately before the signature block. The word count must include footnotes. However, the

word count need not include the following: captions, any tables of contents or authorities, words in figures, the word count certificate, the signature block, and the certificate of service.

1.7 Citation of Cases.

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

1.8 Coordination of Briefs Among Interested Parties.

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

1.9 Courtesy Copies.

1.9.1 Documents Requiring a Courtesy Copy.

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

1.9.2 Procedure.

On the same day that any document is filed, the filer shall submit a courtesy electronic copy of the filing in Microsoft Word format whenever possible, and otherwise in PDF format via Box, a cloud-based content management platform. When all related documents have been submitted, the filer should email Cheney1369@usitc.gov with notice that the upload is complete. Documents submitted according to this procedure should not be compressed or password protected.

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

- Summary Determination Motions and Responses – see Ground Rules 5.4.2
- Claim Construction Briefing – see Ground Rule 7.2
- Post-Hearing Briefing – see Ground Rule 14

Access to Box will be provided upon request to Cheney1369@usitc.gov.

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

2 Time.

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

As set forth in Ground Rule 5.6, when computing the due date for a response to a motion under Commission Rule 210.15(c), the first day shall be the first business day following the date that the motion was filed with the Secretary, no matter the method of service of the motion. If the last day for making a submission falls on a day on which weather or other conditions have made the Office of the Secretary inaccessible, the period shall run until the end of the next business day on which the Office of the Secretary is accessible.

As used in these rules, “business day” shall mean a day that is not a Saturday, Sunday, or Federal legal holiday. “Federal legal holiday” refers to any full calendar day designated as a legal holiday by the President or the Congress of the United States.

3 Preliminary Conference.

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

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

- A. formulating and simplifying the issues, and eliminating frivolous claims or defenses;
- B. amending the pleadings if necessary or desirable;
- C. obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;
- D. avoiding unnecessary proof and cumulative evidence;
- E. controlling and scheduling discovery, including discovery involving non-parties;
- F. identifying witnesses and documents, and setting dates for further conferences if necessary;
- G. settlement and mediation;
- H. disposing of pending motions;
- I. adopting special procedures for managing potentially difficult or protracted actions

that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems, including the possible consolidation or severance of proceedings;

J. opportunities for less-experienced attorneys to participate in substantive oral arguments in this investigation or to examine witnesses at the evidentiary hearing in accordance with the NEXT Advocates program;¹ and

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

4 Procedural Schedule.

The Chief Administrative Law Judge will promulgate a procedural schedule for the investigation after inviting input from the parties by separate order. Parties are encouraged to reach consensus on any procedural schedule proposals. Once ordered, modifications of the procedural schedule by any party shall be made by written motion showing good cause. The event and deadline dates in the procedural schedule will generally adhere to the following chronological order, although parties may suggest other procedures as they deem necessary for the efficient and orderly disposition of the investigation:

Preliminary conference
Exchange list of claim terms to be construed
Exchange proposed constructions for all terms on all lists
File chart of agreed and disputed constructions
File identification of expert witnesses, including their expertise and curriculum vitae
File opening claim construction briefs
File responsive claim construction briefs
<i>Markman</i> claim construction hearing
File notice of prior art
Exchange initial expert reports (identify tests/surveys/data)
File tentative list of witnesses a party will call to testify at the hearing, with an identification of each witness' relationship to the party

¹ Information about the Commission's NEXT Advocates program is available at https://usitc.gov/next_advocates_nurturing_excellence_in_trial_advocates.htm.

Exchange rebuttal expert reports
Fact discovery cutoff and completion
Deadline for motions to compel discovery
Expert discovery cutoff and completion
One-day mediation session ²
Submit joint report on mediation
Deadline for filing summary determination motions
Exchange of exhibit lists among the parties
Complainant and respondent serve proposed direct exhibits, including prepared demonstrative exhibits, ³ and identify physical exhibits.
Commission investigative attorney serves proposed direct exhibits, including prepared demonstrative exhibits, and identifies physical exhibits.
Complainant and respondent file pre-trial statements and briefs
Serve proposed rebuttal exhibits, including rebuttal demonstrative exhibits, and identify rebuttal physical exhibits
File joint list of unopposed exhibits
Deadline for motions <i>in limine</i>
Commission investigative attorney files pre-trial statement and brief
Final pre-hearing conference
Hearing
File final exhibit list

² For any questions regarding the mediation program, the parties should refer to the revised User Manual for the Commission’s mediation program, available at <http://www.usitc.gov>.

³ The parties may agree on a separate time to exchange prepared demonstrative exhibits, and such exchange need not be concurrent with the exchange of documentary exhibits.

Complainant and respondent file post-hearing initial briefs with the Secretary and submit final exhibits with the Chief Administrative Law Judge
Staff files post-hearing initial brief
Complainant and respondent file post-hearing responsive briefs
Staff files post-hearing responsive brief
Initial determination due
Target date for completion of investigation

5 Motions.

5.1 Obligation to Confer.

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

5.2 Numbering Responses to Motions.

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

5.3 Deadline for Filing Response to Motion.

When computing the due date for a response to a motion under Commission Rule 210.15(c), the first day shall be the first business day following the date that the motion was filed with the Secretary, no matter the method of service of the motion. If the last day for making a submission falls on a day on which weather or other conditions have made the Office of the Secretary inaccessible, the period shall run until the end of the next business day on which the Office of the Secretary is accessible.

5.4 Rules for Certain Motions.

5.4.1 Discovery-Related Motions.

5.4.1.1 Videoconference Requirement.

The Chief Administrative Law Judge will schedule monthly videoconferences with the parties until the evidentiary hearing in this investigation. Dates for these videoconferences will be

included in the procedural schedule governing this investigation. Connection information will be provided to the parties in a separate communication. The Commission will provide a court reporter who will transcribe these conferences and the transcript for all conferences will be made available on EDIS.

Prior to filing any motion related to a discovery dispute, the party that seeks to file such a motion must discharge its obligation to meet and confer under Ground Rule 5.1. If, after discharging its obligation under that rule, any discovery disputes persist, that party shall submit a letter explaining all ripe discovery disputes. The letter shall be submitted by e-mail to Cheney1369@usitc.gov no later than three business days before a scheduled videoconference and shall be no more than two pages. Any party submitting a responsive letter must do so no later than one business day following submission of the initial letter by the intended movant. Any responsive letter should be submitted by e-mail to the address above and shall address all issues in no more than two pages.

On the last business day before each scheduled videoconference, the parties shall jointly submit to Cheney1369@usitc.gov a proposed agenda for the videoconference, which shall include only disputes raised according to the procedure above. If no disputes are pending, the parties shall notify the Chief Administrative Law Judge by e-mail to Cheney1369@usitc.gov that the videoconference may be cancelled. Leave to file a discovery-related motion will be granted, if at all, only after the intended movant has complied with the procedure provided herein.

5.4.1.2 Contents of Discovery-Related Motions.

Any discovery-related motion must have appended to it the pertinent parts of the discovery request and all objections and answers thereto. If a party serves supplemental responses subsequent to the filing of a motion to compel, that party must provide a detailed accounting of what supplemental responses were provided. No motion stops discovery, except a timely motion to quash a subpoena suspends any obligation to comply with the subpoena until the motion has been decided.

5.4.2 Motions for Summary Determination and Responses Thereto.

5.4.2.1 Motion.

No more than one motion for summary determination may be filed by a party without leave from the Chief Administrative Law Judge. A motion for summary determination is limited to 10,000 words as counted in Ground Rule 1.6.

Motions for summary determination shall be accompanied by a separate chart of the material facts as to which the moving party contends there is no genuine issue and which entitle the moving party to a summary determination as a matter of law. The chart shall consist of short, factual statements with specific references to supporting declarations, affidavits or other materials. Whenever possible, the factual statement should be a direct quote from record evidence, using quotation marks. The format of the chart should be substantially as follows:

Item #	Factual Statement	Citation	Disputed?	Factual Rebuttal	Citation
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The moving party shall fill out the first three columns of the chart (item number, factual statement, and citation), and any non-moving party shall fill out the remaining columns (indication of dispute, factual rebuttal, citation) as specified in Ground Rule 5.4.2.2. The chart shall not be included in the word count of Ground Rule 1.6.

5.4.2.2 Response.

A response to a motion for summary determination is limited to 10,000 words as counted in Ground Rule 1.6. The response shall complete and append the chart of facts prepared by the movant under Ground Rule 5.4.2. The response shall complete the last three columns of the chart (indication of dispute, factual rebuttal, citation) by reproducing specific record evidence that shows a disputed issue of fact for each item, with specific references to supporting declarations, affidavits or other materials. Whenever possible, the factual rebuttal should be a direct quote from record evidence, using quotation marks. The chart shall not be included in the word count of Ground Rule 1.6.

All material facts set forth in the moving party’s chart may be deemed admitted by a non-moving party unless the non-moving party specifically controverts the statement.

5.4.2.3 Courtesy Copies.

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

5.4.2.4 Oral Argument.

In general, the Chief Administrative Law Judge does not hear oral argument on motions for summary determination. However, a party may move for oral argument if the moving party represents that the motion will be argued by a less-experienced attorney in accordance with the NEXT Advocates program.

5.5 Effect of Filing Unopposed Motions to Terminate.

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

6 Discovery.

6.1 Resolution of Disputes; Coordinated Discovery.

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

6.2 Discovery Committee.

Commencing with the first full week after these Ground Rules are issued, a discovery conference committee (the “Discovery Committee”) consisting of the lead counsel of each party and the Commission investigative attorney (if applicable) shall convene at least once every two weeks during the discovery phase of this investigation, either in person or by telephone, to resolve discovery disputes. The Discovery Committee shall confer in good faith to resolve every outstanding discovery dispute in a timely manner within the deadlines set forth in the Procedural Schedule.

6.3 Service of Discovery Requests and Responses.

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

6.4 Timing of Discovery Requests, Responses and Objections.

6.4.1 Depositions; Notice.

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

6.4.2 Interrogatories; Deadline for Responses and Objections.

As provided in Commission Rule 210.29(b), unless otherwise ordered, the party upon whom interrogatories have been served shall serve a copy of the answers, and any objections, within ten (10) days after the service of the interrogatories.

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

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

6.4.4 Request for Admission; Period for Service; Deadline for Responses and Objections; Time for Requests and Responses and Objections.

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

6.4.5 Discovery Cutoff and Completion.

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

6.5 Interrogatory Limitation.

Without leave of the Chief Administrative Law Judge or written stipulation, any party may serve upon any other party written interrogatories not exceeding 30 in number including all discrete subparts. Leave to serve additional interrogatories shall be granted by the Chief Administrative Law Judge only upon a written motion showing good cause.

6.6 Subpoenas.

6.6.1 Issuance and Service.

Pursuant to Commission Rule 210.32, application for subpoena may be made *ex parte* to the Chief Administrative Law Judge. The application shall be in writing with the proposed subpoena and protective order attached, and one (1) copy thereof shall be submitted in an editable PDF format to Cheney1369@usitc.gov. The application shall set forth with specificity the relevancy of the information sought and the reasonableness of the scope of the inquiry. In addition, the subpoena should set forth a time limit for a motion to quash of not less than ten (10) days after receipt of the subpoena and should also state that the subpoena will be served by overnight delivery, if not sooner. Any dates in a subpoena set for appearance of a deponent or production of documents should take into account the date set for the filing of any motions to quash. Neither a subpoena application nor a subpoena shall contain confidential business information. A copy of the issued subpoena, protective order, and the application shall be served by the applicant upon the subpoenaed party and all other parties to the investigation on the next business day, at the latest, after the subpoena is issued, and all parties including the subpoenaed party shall be notified on that day about the contents of the subpoena. One (1) copy of the issued subpoena, the application, and the proof of service to the subpoenaed party shall be submitted to the Chief Administrative Law Judge at Cheney1369@usitc.gov but should not be filed with the Office of the Secretary of the Commission. Samples of subpoenas are attached in Appendix A hereto.

6.6.2 Motion to Quash Subpoena; Deadline.

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

6.6.3 Withdrawing Subpoena.

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

6.7 Bates Numbering.

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

6.8 Translations.

All documents produced in response to a document request shall be the original or true complete copies of originals. If an English translation of any document produced exists, the English translation shall be produced. If any of the parties dispute the translation provided by the producing party, then the translation must be certified by a qualified and neutral translator upon whom counsel can agree.

6.9 Privileged Matter.

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

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

6.9.2 Motion to Compel Production of Privileged Matter.

Any party seeking production of allegedly privileged documents shall file an appropriate motion only after examining the privileged document list.

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

7 Claim Construction.

7.1 Terms Requiring Construction.

By the date ordered in the procedural schedule, each party shall serve a list of claim terms which that party contends should be construed by the Chief Administrative Law Judge. The list shall identify any claim term which the party contends is indefinite and any claim term that the party construes as invoking means-plus-function language under 35 U.S.C. § 112 ¶ 6 / (f). Each party shall serve proposed constructions for all terms the parties have exchanged by the date ordered on the procedural schedule. The parties shall confer for the purpose of narrowing claim construction disputes and shall jointly file a chart of agreed and disputed constructions by the date ordered on the procedural schedule. The chart shall identify up to ten (10) terms agreed by all parties as likely to be most significant to resolving the parties' dispute, including those terms for which construction may be dispositive of an issue in the investigation.

7.2 Claim Construction Briefing.

By the date ordered on the procedural schedule, each party shall serve an opening claim construction brief addressing the 10 terms agreed by all parties as likely to be most significant to resolving the parties' dispute. The opening brief shall be no more than 10,000 words, as calculated under Ground Rule 1.6. By the date ordered on the procedural schedule, each party shall serve a

⁴ See *Duplan Corp. v. Deering Millikin, Inc.*, 397 F. Supp. 1146, 184 U.S.P.Q. 775 (D.S.C. 1974).

responsive claim construction brief of no more than 5,000 words, as calculated under Ground Rule 1.6. The briefs should be organized by patent.

In addition to the courtesy copy of each claim construction brief required by Ground Rule 1.9, each party that filed a claim construction brief must submit a hyperlinked PDF courtesy copy of the brief and all exhibits thereto via Box within five business days from the date of filing of the last responsive brief. Citations to any patents, exhibits, and legal authorities must be hyperlinked to PDF versions of the evidence or authority cited. Access to Box will be provided in accordance with the procedures in Ground Rule 1.9.2. The hyperlinked courtesy materials should not be filed on EDIS.

7.3 Claim Construction Hearing Exhibits.

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

8 Notice of Prior Art.

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

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

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

9 Expert Witnesses and Reports.

On or before the dates set forth in the procedural schedule, a party shall disclose to other parties the identity of any person who is retained or employed to provide expert testimony at the hearing and shall provide to the other parties a written report prepared and signed by the witness. The report shall not be filed with the Office of the Secretary of the Commission. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation

to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. The parties shall supplement these disclosures as needed in the manner provided in Commission Rule 210.27(f).

10 Narrowing Issues, Mediation, Settlement.

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

For the one-day mediation session required in the procedural schedule, the parties shall submit to the Chief Administrative Law Judge a joint report about the mediation by the time designated in the procedural schedule. The report shall not be filed with the Office of the Secretary of the Commission.

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

11 Pre-hearing Submissions.

11.1 Pre-hearing Statement.

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

- (a) The names of all known witnesses, their addresses, whether they are fact or expert witnesses, and a brief outline of the testimony of each witness. In the case of expert witnesses, a copy of the expert's curriculum vitae shall accompany this submission.
- (b) A list of all exhibits which the parties will seek to introduce at the hearing.
- (c) Any stipulations on which the parties have agreed.
- (d) A proposed agenda for the pre-hearing conference.
- (e) Estimated date and approximate length for appearance of each witness. The parties shall confer on estimated dates and approximate length prior to submission of their pre-hearing statements.
- (f) Certification regarding good faith efforts to settle the investigation.

11.2 Pre-hearing Brief.

By the date set forth in the procedural schedule, each party shall file a pre-hearing brief. The pre-hearing brief shall be prefaced with a table of contents and a table of authorities. The pre-hearing brief shall set forth a party's contentions on every issue the party intends to address at hearing, no matter which party has the burden on the issue. The pre-hearing brief shall include specific citations to legal authorities and record evidence.

The pre-hearing brief of each party shall use red underlining to designate the specific information for which that party seeks confidential treatment at the hearing. These designations shall form the basis of any motion *in limine* for confidential treatment at the evidentiary hearing under Ground Rule 11.3.2. When making determinations on confidential treatment, the Chief Administrative Law Judge may take into account a party's failure to mark information as seeking confidential treatment in the pre-hearing brief. Any party filing a pre-hearing brief containing information designated for confidential treatment must also file a public version of the pre-hearing brief following the instructions in Ground Rule 1.3.1.

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

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

11.3 Motions *in Limine*.

Unless otherwise permitted by the Chief Administrative Law Judge, each side shall be limited to a maximum of five (5) motions *in limine*. The parties should not attempt to circumvent this limitation by including numerous subsections in a motion *in limine*.

11.3.1 Requirement to Include Evidence in Question.

Except as provided in Ground Rule 11.3.2 below, all motions *in limine* shall include a copy of the evidence at issue as an attachment to the motion when the motion is filed with the Office of the Secretary. Any motion *in limine* that does not attach a copy of the evidence at issue when the motion is filed may be denied.

11.3.2 Motion for Confidential Treatment at the Hearing.

If a party or non-party seeks confidential treatment of any material at the evidentiary hearing, the party-proponent of that material as evidence shall make the request for confidential treatment the subject of its first motion *in limine*. The motion *in limine* shall explain with particularity how the information satisfies the definition of confidential information in Commission Rule 201.6(a) and shall include the following attachments:

- A. A chart numbering and reproducing each passage of the pre-hearing brief that has been marked as confidential, along with the page number of the passage. The chart should also list any witnesses and exhibits relating to the passage. Substantially similar passages should be grouped together on the chart. The format of the chart should be substantially as follows:

Item #	Passage Text	Page #	Witness	Exhibits
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- B. A certification in writing by a competent witness under oath that (1) substantially identical information is not available to the public, and (2) disclosure of the information is likely to have the effect of causing substantial harm to the competitive position of the party seeking confidential treatment. *See* Commission Rule 201.6(a), (b)(3)(iii).

The attachments listed above shall be filed with the Office of the Secretary and shall be included in the courtesy copies required under Ground Rule 1.9. However, copies of exhibits designated for confidential treatment should not be filed with the Secretary. Instead, the filer shall submit a copy of the exhibits to the Chief Administrative Law Judge via Box before the close of the next business day after the filing of the motion.

When making determinations on confidential treatment, the Chief Administrative Law Judge may take into account a party’s failure to seek confidential treatment in a motion *in limine*.

12 Exhibits.

12.1 Form and Marking.

12.1.1 One Document Per Exhibit.

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

12.1.2 Labeling Exhibits.

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

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

Each exhibit must have sequential Bates numbers in accordance with Ground Rule 6.7 above.

Each exhibit in PDF form must be PDF version 1.5 or higher.

12.1.3 Physical Exhibits.

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

12.1.4 Demonstrative Exhibits.

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

Any party presenting a demonstrative exhibit shall provide the Chief Administrative Law Judge with an electronic copy of the demonstrative exhibit as required in Ground Rules 12.4.2 and 12.4.3.

12.1.5 Confidential Exhibits.

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

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

12.1.6 Foreign Language Exhibits.

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

12.2 Pre-Hearing Disclosure.

12.2.1 Content of Exhibit Lists.

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

PDF version used to create exhibits presented in PDF format; the entry for this column shall be left blank for physical exhibits and other exhibits not in PDF format. As stated in Ground Rule 12.4.3, the PDF version must be version 1.5 or higher. In any exhibit list submitted prior to the offer of any exhibit into evidence, the entry in the column for the status of receipt shall be left blank. In any exhibit list submitted after the exhibit is offered into evidence or withdrawn, the entry in that column shall show the date of admission into evidence or rejection of the exhibit or shall indicate its withdrawal.

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

Exhibit lists shall include prepared demonstrative exhibits and shall indicate that the exhibit was not received into evidence.

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

12.2.2 Exchange of Proposed Exhibit Lists.

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

12.2.3 Exchange of Proposed Exhibits.

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

12.3 Use in Hearing.

12.3.1 Authenticity.

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

12.3.2 Exhibits Not in Dispute.

By the date specified in the procedural schedule, the parties shall jointly file a list of exhibits to which no party has an objection. The list may include exhibits for which there will be no sponsoring witness. The list should indicate which party is offering the exhibit. At the opening of the evidentiary hearing, each party shall tender its exhibits on the list and move for admission

of those exhibits. Inclusion of an exhibit on the list does not necessarily mean the exhibit will be admitted into the record.

12.3.3 Witness Exhibits.

Prior to commencing the examination or cross-examination of a witness, counsel shall provide the witness and other counsel with all exhibits to be used in the examination of the witness. The parties may stipulate as to the manner in which exhibits are provided to other counsel and the witness (*e.g.*, physical binders or electronic files).

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

12.4 Final Exhibit List and Final Exhibits.

12.4.1 Final Exhibit List.

The parties are responsible during the course of the hearing for composing a final list of admitted exhibits by the conclusion of the hearing. The parties are advised to confer at each hearing break about the exhibits discussed during the previous segment of testimony. Before the commencement of each day of the hearing, the parties shall jointly email a list of the exhibits to be admitted from the previous day's hearing, if any, to the addresses specified in Ground Rule 1.9.2.

The final exhibit list shall be jointly filed by the parties with the Office of the Secretary no later than the next business day after the conclusion of the hearing. The final exhibit list shall reflect the status of all exhibits, including those admitted and those rejected during the hearing. Any exhibits that are not labeled as admitted on the final exhibit list will not be considered as part of the record to be certified to the Commission when the final initial determination issues.

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

12.4.2 Final Exhibits Must Be Submitted to the Chief Administrative Law Judge.

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

12.4.3 Format for Submitting Final Exhibits.

All admitted physical exhibits shall have exhibit labels attached and shall be delivered to the office of the Chief Administrative Law Judge.

All admitted document exhibits and all demonstrative exhibits used at the hearing must be submitted in electronic format whenever possible. All PDF-format exhibits shall be PDF version 1.5 or higher. Admitted document exhibits and demonstrative exhibits shall be submitted to the office of the Chief Administrative Law Judge via Box, a cloud-based content management platform. Separate guidance will be provided to the parties regarding gaining access to Box.

The procedure for formatting and organizing admitted exhibits for submission is set forth in the EDIS 3 User Guide on Submitting Electronic Media, found at: http://www.usitc.gov/docket_services/documents/EDIS3UserGuide-CDSsubmission.pdf.⁵

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

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

⁵ Although the parties will not submit final exhibits on physical media, the exhibits will ultimately be uploaded to EDIS and must conform with EDIS requirements such as the 25 MB file size limitation. Exhibits larger than 25 MB must be broken into multiple files, none of which exceed 25 MB.

Joint Demonstrative Exhibit	JDX-[four-digit number]	JDX-[four-digit number]C
Joint Physical Exhibit (includes native format files)	JPX-[four-digit number]	JPX-[four-digit number]C
Staff Exhibit	SX-[four-digit number]	SX-[four-digit number]C
Staff Demonstrative Exhibit	SDX-[four-digit number]	SDX-[four-digit number]C
Staff Physical Exhibit (includes native format files)	SPX-[four-digit number]	SPX-[four-digit number]C

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

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

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

13 Hearing Procedure.

13.1 Final Pre-hearing Conference.

A final pre-hearing conference will be held prior to the opening of the hearing. The parties should be prepared to answer procedural as well as substantive questions concerning any aspect of the investigation at the final pre-hearing conference.

Attorneys that qualify for the NEXT Advocates program are encouraged to participate in the final pre-hearing conference. Participation of NEXT Advocates at the hearing will also be discussed.

13.2 Hearing Hours.

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

13.3 Hearing Decorum.

13.3.1 Conversations During the Hearing.

No cross conversation between opposing counsel will be permitted on the record. Argument is to be addressed to the Chief Administrative Law Judge. Any communication not addressed to the Chief Administrative Law Judge or a witness must not be audible to the Chief Administrative Law Judge or to any witness.

13.3.2 Audible Devices; Food and Beverages.

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

13.3.3 Photos or Video Recording.

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

13.4 Opening Statements.

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

13.5 Material to Be Received into Evidence.

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

13.6 Examination of Witnesses.

13.6.1 Live Direct Testimony.

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

13.6.2 Scope of Cross-examination.

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

13.6.3 Scope of Redirect and Re-cross Examination.

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

13.6.4 Order of Witnesses.

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

13.6.5 Documents Presented to Witnesses.

Any document which counsel wishes to show to a witness must first be shown to opposing counsel.

13.6.6 Scope of Expert Witness Testimony.

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

13.6.7 Use of Interpreters.

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

13.6.8 Conferring with Witness during a Break in Testimony.

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

13.7 Corrections to Transcripts.

If a transcript needs to be corrected after the conclusion of the hearing, the party requesting the change shall do so through a motion. Once an order issues adopting the proposed correction, it is incumbent upon the party requesting the change to send a copy of the order to the reporting company so that the corrections can be made.

14 Post-Hearing Briefs.

14.1 Post-hearing Initial Briefs.

By the date set forth in the procedural schedule, the complainant and respondent shall each file a post-hearing initial brief addressing only those issues upon which the party bears the burden of proof. The Commission investigative attorney shall also file a post-hearing initial brief by the date set forth in the procedural schedule and may address any issue in its post-hearing initial brief. The post-hearing initial brief shall be organized on a patent-by-patent basis. Unless otherwise ordered, the post-hearing initial briefs of the complainant and respondent shall be limited to 20,000 words, respectively, as counted by Ground Rule 1.6. Unless otherwise ordered, the post-hearing initial brief of the Commission investigative attorney shall be limited to 35,000 words, as counted by Ground Rule 1.6. Any party filing a post-hearing brief containing information designated for

confidential treatment must also file a public version of the post-hearing brief following the instructions in Ground Rule 1.3.1.

Any contentions for which a party has the burden of proof that are not set forth in detail in the post-hearing initial brief shall be deemed abandoned or withdrawn.

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

14.2 Post-hearing Responsive Briefs.

By the date set forth in the procedural schedule, each party shall file a post-hearing responsive brief. The post-hearing responsive brief shall address only the issues and evidence raised in the post-hearing initial briefs of the opposing party and the Commission investigative attorney and shall follow the same outline as the post-hearing initial brief from the Commission investigative attorney. Unless otherwise ordered, the post-hearing responsive briefs of the complainant and respondent shall be limited to 20,000 words, as counted by Ground Rule 1.6. Unless otherwise ordered, the post-hearing responsive brief of the Commission investigative attorney shall be limited to 5,000 words, as counted by Ground Rule 1.6. Any party filing a post-hearing responsive brief containing information designated for confidential treatment must also file a public version of the post-hearing responsive brief following the instructions in Ground Rule 1.3.1.

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

14.3 Courtesy Copies of Post-hearing Briefs.

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

15 Ex Parte Contacts.

There shall be no *ex parte* contacts with the Chief Administrative Law Judge. Any questions of a technical or procedural nature shall be directed to Cheney1369@usitc.gov.

16 Suspension, Waiver, and Modification of Ground Rules.

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

APPENDIX A

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

Certain . . .

Investigation No. 337-TA-____

SUBPOENA DUCES TECUM

TO: NAME
ADDRESS

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

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

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

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

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

Any motion to limit or quash this subpoena shall be filed within ten (10) days after the receipt thereof. At the time of filing of any motion concerning this subpoena, a copy of the motion and the subpoena at issue shall be emailed to Cheney1369@usitc.gov.

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

Clark S. Cheney
Chief Administrative Law Judge
United States International Trade Commission

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

Certain . . .

Investigation No. 337-TA-____

SUBPOENA AD TESTIFICANDUM

TO: NAME
ADDRESS

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

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

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

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

Any motion to limit or quash this subpoena shall be filed within ten (10) days after the receipt hereof. At the time of filing of any motion concerning this subpoena, a copy of the motion and the subpoena at issue shall be emailed to Cheney1369@usitc.gov.

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

Clark S. Cheney
Chief Administrative Law Judge
United States International Trade Commission