

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN ELECTRONIC DEVICES,
INCLUDING MOBILE PHONES, PORTABLE
MUSIC PLAYERS, AND COMPUTERS**

Inv. No. 337-TA-701

ORDER NO. 15: SETTING MARKMAN PROCEDURE

(June 16, 2010)

The rules set forth in Attachment A below shall govern the Markman Hearing set for
August 11, 2010.

SO ORDERED.



E. James Gildea
Administrative Law Judge

MARKMAN HEARING PROCEDURES

1. Pre-Hearing Submissions.

1.1. Pre-Hearing Statement.

Each party who intends to take part in the Markman hearing in this Investigation must file on or before August 4, 2010 a brief statement containing the following information:

- (a) The names of all known speakers or witnesses, including an identification of whether the speaker is counsel, a fact witness, or an expert witness. If a party intends to use witnesses, the prehearing statement should include a very brief outline of the testimony of each witness.
- (b) A list, by title and number, of all exhibits which the parties will seek to introduce at the Markman hearing. 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 to which the parties have agreed.
- (d) A proposed schedule/allocation of time for the Markman hearing, including the estimated length for the appearance of each speaker or witness. (The parties shall confer on estimated dates and approximate length prior to submission of their pre-trial statements).

2. Markman Hearing Evidence.

2.1. Exhibits.

2.1.1. Exchange of Proposed Exhibits.

Copies of proposed exhibits, if any, as well as any demonstratives, along with a proposed exhibit list, shall be served on the opposing parties (including the Staff) by August 4, 2010. 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 the exhibit lists are submitted to the Administrative Law Judge on August 6, 2010. Proposed exhibits shall not be filed with the Office of the Secretary of the Commission.

2.1.2. Service of Proposed Exhibits upon Administrative Law Judge.

Prior to the start of the Markman hearing, the parties must bring two 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 double-sided 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.

2.1.3. 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 single-sided 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.*, RXM-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.*, CXM-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 CXM-1 through CXM-18C. The Administrative Law Judge would prefer binders no wider than 3”.

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

Each party must submit a final exhibit list reflecting the status of all exhibits, including those admitted and rejected during the Markman 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 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 conclusion of the Markman 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 day following the Markman hearing. These two sets should be submitted to the Administrative Law Judge’s assistant, Danielle Vu, by appointment. Ms. Vu will ensure that the Docket Set will be appropriately transferred to Docket Services. Please be timely and courteous when working with Ms. Vu on the submission of these exhibit sets.

2.1.5. Numbering and Labeling of Exhibits.

2.1.5.1. Documentary Exhibits.

Written exhibits shall be marked in order beginning with the number “1” and preceded by the prefix “CXM” for Complainants’ Markman exhibits, “RXM” for Respondent’s exhibits, “SXM” for the Commission Investigative Attorney’s exhibits, and “JXM” for any joint exhibits. The parties shall not “reserve” numbers, but instead must assign all numbers to the exhibits in their proper order.

2.1.5.2. Confidential Exhibits.

If an exhibit contains confidential business information a “C” (e.g., CXM-12C) 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.

2.1.5.3. Numbering; Labeling.

Each exhibit shall be identified by placing a label bearing the exhibit’s number (e.g., CXM-3C or RXM-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.

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.

2.1.6. 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.*, CXM-1, CXM-2, CXM-3C, CXM-4, CXM-5C, etc.

2.1.7. 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.

2.1.8. Presentation or Witness Binders.

Counsel shall provide a binder of any materials to be shown as slides or visual aids (such as Power Point slides) to the Administrative Law Judge, the Administrative Law Judge’s Attorney Advisor, and the other parties before the commencement of a presentation by counsel. Furthermore, double-sided copies (in binders) of materials/proposed exhibits to be shown to witnesses, if any, should also be distributed to the Administrative Law Judge, the Administrative Law Judge’s Attorney Advisor, and the other parties.

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.*, Complainants’ Markman Presentation.

3. Markman Hearing

The parties have the discretion to determine the order of presentation and allocation of time for the Markman proceedings. For example, the parties may have Complainants discuss all of the patents before moving on to Respondent and then Staff, or all the parties may present their arguments with respect to one patent before moving on to the next patent. The parties may also determine what, if any, time will be allocated for rebuttal. The parties should keep in mind that the total time allocated for the Markman hearing is 6.5 hours.

3.1. Opening Statement and Closing Argument.

No opening statements and closing arguments are necessary.

3.2. Markman Hearing Hours.

Normal hearing hours are 9:00 a.m. to 5:00 p.m., with a one (1) hour luncheon recess beginning at approximately 12:00 p.m. and two (2) fifteen (15) minute breaks.

3.3. Markman Hearing Decorum.

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

Audible portable electronic devices such as cell phones or beepers shall be turned off in the courtroom during the Markman hearing, and all cell phone conversations must occur outside the courtroom. No food or drink (other than water) is permitted in the courtroom during the Markman hearing.

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

3.4. Transcript.

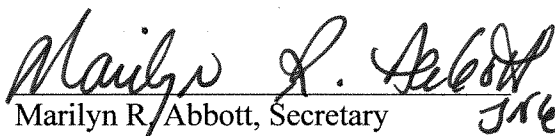
The parties have the option of arranging for the Markman hearing transcript in real time. The Administrative Law Judge prefers to have hearing transcripts in real time.

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PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **ORDER** has been served by hand upon, the Commission Investigative Attorney, **Rett Snotherly, Esq.**, and the following parties as indicated on June 16, 2010.


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

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FOR RESPONDENT APPLE, INC.:

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