

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN ELECTRONIC DEVICES,
INCLUDING MOBILE PHONES,
TABLET COMPUTERS, AND
COMPONENTS THEREOF

Inv. No. 337-TA-1039

**ORDER NO. 5: ORDER SETTING TARGET DATE, AND DATE FOR
SUBMISSION OF PROPOSED PROCEDURAL SCHEDULE**

(February 21, 2017)

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 electronic devices, including mobile phones, tablet computers, and components thereof by reason of infringement of one or more of claims 18, 19, 21, and 23 of the '247 patent; claims 1-11, 13-41, and 43-122 of the '301 patent; claims 6, 8, 10, and 11 of the '260 patent; . . . [and] claims 1-14, 16-21, 23, and 24 of the '391 patent . . . and whether an industry in the United States exists as required by subsection (a)(2) of section 337[.]¹

82 F.R. 8626 (January 27, 2017).

The Notice of Investigation names as complainant: Nokia Technologies Oy (“Complainant”). *Id.* The Notice of Investigation names as respondent: Apple Inc., a/k/a Apple Computer, Inc. (“Respondent”). *Id.* The Commission Investigative Staff of the Office of Unfair Import Investigations (“Staff,” and with Complainant and Respondent, “Parties”) is also named as a party. *Id.*

¹ This investigation has been severed from Inv. No. 337-TA-1038. (See Doc. ID No. 601868 (Order No. 1) (Jan. 26, 2017)).

Target Date

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 my commitments in other already-instituted investigations, I have determined that a target date of eighteen (18) months is appropriate. The **target date** is therefore set for **July 27, 2018**. Based on this target date, the final initial determination on violation in this Investigation will be due **March 27, 2018**. The conduct of this Investigation before me shall be governed by the Commission Rules and the Ground Rules provided in Order No. 2. The Parties should pay particular attention to the Ground Rules governing this Investigation as they may differ from the Ground Rules I have issued in other investigations.

Discovery

In order for the proceeding in this matter to begin expeditiously, the Parties were directed to submit a complete discovery statement by **February 16, 2017**, which they did. (*See* Order No. 2 at 1 (Feb. 2, 2017); Doc. ID No. 603812 (Feb. 16, 2017).). Additionally, on **February 17, 2017**, the Parties submitted a Joint Electronic Discovery Submission and Proposed Order. (*See* Doc. ID No. 603908 (Feb. 17, 2017).).

By **March 6, 2017**, the Parties shall file a proposed procedural schedule, filling in the dates to the Procedural Schedule attached hereto as **Attachment A**, including dates for each of the events set forth in Ground Rule 1.13.

Management Conference

A first management conference is tentatively scheduled for **February 28, 2017** at 2:00 p.m. (*See* Order No. 2 at 2 (Feb. 2, 2017).).

Evidentiary Hearing and Pre-hearing

With respect to the evidentiary hearing, I anticipate an optional technology tutorial to start at **9:30 a.m.** on **October 9, 2017**, at a location to be announced closer to the hearing date. The pre-hearing conference and hearing will commence in the same location immediately following the tutorial(s). The hearing shall conclude no later than **October 13, 2017**. The hearing days will start at 9:30 a.m. and conclude at 5:30 p.m. each day, barring unforeseen circumstances (such as snowstorms, etc.). Additionally, at my discretion, I may hold telephone conferences over a period of ten (10) days or so before the pre-hearing conference in order to resolve motions *in limine* and high priority objections. The Parties shall take these dates, and the other dates noted in **Attachment A** below, into consideration when proposing their procedural schedule. Additionally, direct testimony will be taken during the hearing.

Settlement and Mediation

The proposed schedule includes dates for three (3) settlement meetings and a one-day mediation session (none of which will include me) 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 my permission, for good cause shown, the settlement meetings should not occur by video-conferencing or by teleconferencing. 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 mediation should ideally be scheduled between the second and third settlement conferences. The Parties should also include dates in the proposed schedule for filing the joint settlement conference reports.²

² Settlement conference reports, at a minimum, should state what meeting(s) took place, who attended, and what

Patent Priority Dates, Prior Art and Technology

In addition, the Parties are expected to identify patent priority dates, prior art, and to 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 **May 1, 2017**, with their comments as to whether a *Markman* hearing at least three (3) months in advance of the hearing would be useful in resolving all disputed claim terms.

Conclusion

The Parties should make intensive good faith efforts to agree to and to submit a joint proposed procedural schedule *and to promptly commence and respond to discovery*. This includes early and diligent applications for nonparty subpoenas, and quick action to enforce said subpoenas if third parties delay. Lack of diligence may affect a party's showing of good cause for motions to enforce discovery, particularly if such motions are adjacent to the close of fact discovery.

In the same vein, the Parties should also note that the deadlines in the procedural schedule are considered to be the *last* day to complete a task.

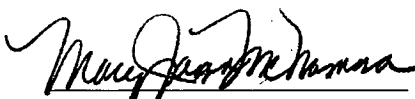
To recap: because these are fast-paced proceedings, Parties are expected to exert diligence and file motions earlier than the stated deadline, such as motions to compel discovery or to enforce subpoenas, motions for summary determination, and even motions *in limine* or high

result, if any, was obtained in each meeting. *See Certain Dynamic Random Access Memory and NAND Flash Memory Devices and Products Containing Same*, Inv. No. 337-TA-803, Order No. 16 (U.S.I.T.C., Nov. 21, 2011).

priority objections. Parties should not tactically seek to withhold or delay motions, as every party is expected to proceed expeditiously. Commission Rule 210.2.

In the event the Parties need to reach me, as guided by the attached Ground Rules, the point of contact for this Investigation will be my Attorney-Advisor, Jae B. Lee, at jae.lee@usitc.gov. If a back-up contact is needed, one will be provided.

SO ORDERED.


Mary Jean McNamara
Administrative Law Judge

ATTACHMENT A

PROCEDURAL SCHEDULE: INV. NO 337-TA-1003

Deadline for Proposed Procedural Schedule and Discovery Statement	March 6, 2017
Initial Case Management Conference	February 28, 2017
Deadline for Propounding First Set of Interrogatories	
Deadline for Propounding First Request for Productions of Documents	
Deadline for Complainants' Objections and Responses to Respondents' First Set of Interrogatories and Request for Production	
Deadline for Respondents' Objections and Responses to Complainants' First Set of Interrogatories and Request for Production	
Deadline for Initial Contention Interrogatories	
Deadline for Initial Contention Interrogatory Responses	
File identification of expert witnesses, including their expertise and Curriculum Vitae	March 20, 2017
Complainant files Notice of Patent Priority dates/dates of conception/reduction to practice	March 27, 2017
Parties exchange List of Patent Claim Terms for Construction	March 27, 2017
Respondent files Notice of Prior Art	April 3, 2017
Deadline for Disclosure of Invalidity Contentions	April 4, 2017
Deadline for Disclosure of Infringement Contentions	April 4, 2017
File Joint Claim Construction Chart	April 7, 2017

Deadline for Disclosure of Domestic Industry Products	April 17, 2017
Parties meet and confer in an attempt to reconcile or otherwise limit disputed claim terms	April 19, 2017
Deadline for Disclosure of Domestic Industry Contentions	April 21, 2017
First Settlement Conference Deadline (Must have occurred by this Date)	April 26, 2017
Initial Deadline for Responses to Contention Interrogatories on issues for which the responding party bears the burden of proof	April 26, 2017
Deadline to file <i>Markman</i> Hearing Proposals	April 28, 2017
File Report of First Settlement Conference (within 7 days of First Settlement Conference)	
Parties File a Joint List showing each Party's Proposed Construction of Disputed Claim Terms, with Initial Briefs by all Parties explaining their Initial Claim Constructions	May 1, 2017
File Replies to Initial Claim Construction Briefs (which should include reconciled claim terms)	May 8, 2017
Initial Deadline for Responses to Contention Interrogatories on issues for which the responding party does not bear the burden of proof	May 10, 2017
Technology Stipulation Deadline	
<i>Markman</i> Hearing (if ordered)	Week of May 22, 2017
Deadline for post-<i>Markman</i> Hearing Claim Construction and Briefs	7 Days after <i>Markman</i> Hearing if ordered, or at date to be provided if there is no <i>Markman</i> Hearing
Last day to file Motions to Compel Discovery (Motions should be filed on a rolling basis as it	July 10, 2017

becomes apparent that information is missing)	
Fact Discovery Cutoff/Completion	July 14, 2017
Deadline for Second Settlement Conference	July 21, 2017
Submission of Second Settlement Conference Joint Report (within 7 days of Settlement Conference)	
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	
Exchange of Initial Expert Reports (identify tests/surveys/data)	July 28, 2017
Cutoff Date for Supplements to Contention Interrogatories on issues for which the responding party bears the burden of proof, and on public interest issues	August 1, 2017
Attendance at One-day Mediation Session³	By August 11, 2017
Submission of Joint Report on Mediation	
Exchange of Rebuttal Expert Reports	August 11, 2017
Cut-off Date for Supplements to Contention Interrogatories on Issues for Which the Responding Party Does Not Bear the Burden of Proof	August 15, 2017
Last day to file Summary Determination Motions	August 18, 2017
Expert Discovery Cutoff and Completion	August 18, 2017
Deadline for Third Settlement Conference	August 25, 2017
Submission of Third Settlement Conference joint report	

³ For any questions regarding the mediation program, the Parties should refer to the Revised Users' Manual for Commission Mediation Program, available at <http://www.usitc.gov>.

Submission of Statements regarding the use of Witness Statements in lieu of Live Direct Testimony, and Statements whether any party intends to offer Expert Reports into evidence (where applicable)	
Exchange of Exhibit Lists among the Parties	
Submit and serve direct exhibits (including witness statements, if appropriate), with physical and demonstrative exhibits available – Complainants and Respondents	
File Pre-hearing Statements and Briefs – Complainants and Respondents	September 1, 2017
File Pre-hearing Statements and Briefs – Staff	September 8, 2017
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	
Last day to file Motions <i>in Limine</i>	September 15, 2017
File Responses to Objections to Direct Exhibits (including witness statements)	
File objections to Rebuttal Exhibits (including Witness Statements)	
Last day to file Statement of High Priority Objections	September 15, 2017
Last day to file Response to Objections to Rebuttal Exhibits (including Witness Statements)	
Last day to file Responses to Statement of High Priority Objections	September 22, 2017
Submission of declarations justifying confidentiality of exhibits	

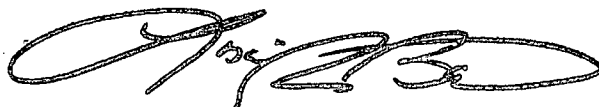
Last day to file Responses to Motions <i>in Limine</i>	September 22, 2017
Pre-hearing Conference	9:30 a.m., October 9, 2017, TBA
Tutorials (optional-as part of individual or joint presentation following Pre-hearing Conference)	October 9, 2017, TBA
Hearing	October 9-13, 2017, 9:30 a.m. to 5:30 each day
Last day to submit final exhibits, by appointment	No more than two business days after hearing
Deadline for Initial Post-hearing Briefs <u>and</u> Final Party Exhibit Lists	October 27, 2017
Submit Final JOINT Direct and Rebuttal Exhibits (CDROM or Flash Drive)	October 30, 2017
File Reply Post-hearing Briefs	November 8, 2017
Initial Determination (ID) on violation target date	March 27, 2018
Target Date for completion of Investigation	July 27, 2018

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Inv. No. 337-TA-1039

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, **Peter Sawert, Esq.**, and the following parties as indicated, on **February 21, 2017**.



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

On Behalf of Complainant Nokia Technologies Oy:

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- Via Hand Delivery
- Via Express Delivery
- Via First Class Mail
- Other: _____

On Behalf of Respondents Apple Inc., a/k/a Apple Computer, Inc.:

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