

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN COMPUTERS AND
COMPUTER PERIPHERAL DEVICES
AND COMPONENTS THEREOF AND
PRODUCTS CONTAINING THE SAME**

Inv. No. 337-TA-841

ORDER NO. 17: SETTING PROCEDURAL SCHEDULE

(June 19, 2012)

On June 14, 2012, complainant Technology Properties Limited LLC (“TPL”) submitted a proposed procedural schedule. The submission included a proposed procedural schedule as well as TPL’s position on a *Markman* hearing, which changed from its stated position during the June 5, 2012 preliminary conference. Specifically, TPL seeks to either move the *Markman* hearing to September or combine the *Markman* hearing with the trial in January 7, 2013. TPL argues for these alternatives because the *Markman* hearing in this investigation is set before the parties in a related investigation, Inv. No. 337-TA-807 (“the 807 Investigation”), which includes four of the six patents at issue in this investigation, are to exchange proposed claim constructions and submit final pre-trial briefs. TPL asserts that continuing forward with the *Markman* hearing in August would “unnecessarily inject confusion into the proceedings” and that TPL’s proposed alternatives “promotes judicial economy and administrative efficiency and is in the best interests of the parties.”

On June 18, 2012, respondents submitted a joint position on the *Markman* hearing date. Respondents argue that the *Markman* will streamline the issues in this investigation and promote judicial economy. Respondents argue that TPL’s arguments are without merit because TPL has agreed to produce non-confidential discovery from the 807 Investigation and the parties will

have the benefit of the claim construction positions taken in that investigation. Respondents further argue that TPL chose to initiate this Investigation prior to the completion of the 807 Investigation and as such ran the risk of any problems and/or conflicts created in overlapping schedules.


The ALJ finds TPL's arguments unpersuasive. TPL argues that the current date for the *Markman* hearing would create "confusion," but fails to explain what sort of "confusion" could ensue relating to claim construction. Absent a binding Commission final determination in the 807 Investigation, the claim construction from the 807 Investigation will likely have little or no effect on the claim construction in this Investigation, especially in light of the fact that respondents in this investigation are different from those in the 807 Investigation (and, vice versa, the claim construction in this Investigation will likely have little to no effect on the 807 Investigation). Furthermore, the ALJ finds that the overlap of the 4 patents with the 807 Investigation while making the investigations "related" does not warrant delaying the *Markman* hearing. TPL is the complainant in both investigations and was in control of when in chose to file the complaint in this Investigation and ran the risk of any sort of overlap that may occur in procedural schedules. Indeed, had TPL wished to avoid such overlap, it could have easily waited until the Commission issued its final determination in the 807 Investigation before filing its complaint in this Investigation. Finally, the ALJ further finds that in light of the large number of respondents and patents in this investigation, a *Markman* hearing would be beneficial in streamlining the issues in this case. Thus, the *Markman* hearing will be held on August 9, 2012 as set forth in Order No. 13.

In addition, TPL seeks to hold at least one settlement conference with each respondent via videoconference or teleconference in light of the number of respondents. TPL's request is

denied and TPL shall be required to meet with each respondent in person as required by Order No. 13 and Ground Rule 7. The ALJ considers the three scheduled meeting for settlement conferences to be of utmost importance and has only granted holding settlement conferences via video or teleconference on a case by case basis with a showing of good cause. Furthermore, to the extent the number of respondents in this investigation are completely within TPL's control, the ALJ further finds the mere fact that there are a large number of respondents fails to meet the good cause standard.

The procedural schedule in this investigation shall hereby be controlled by the procedural schedule attached hereto as Attachment A.

SO ORDERED.



Theodore R. Essex
Administrative Law Judge

ATTACHMENT A

Event	DATE
Exchange of claim terms for construction	7/2/12
Exchange of proposed constructions	7/12/12
First settlement conference	7/20/12
Opening Claim Construction Briefs	7/23/12
Pre-Markman Meet and Confer	7/27/12
Submission of first settlement conference joint report	7/27/12
Responsive Claim Construction Briefs	8/2/12
Markman Hearing	8/9/12
Post-Markman Chart (GR 5A)	8/17/12
File identification of expert witnesses, including their expertise and curriculum vitae	8/17/12
Serve responses to contention interrogatories on issues for which that party bears the burden	10/4/12
Serve responses to contention interrogatories on issues for which the opposing party bears the burden	10/15/12
File notice of prior art	8/31/12
File tentative list of witnesses a party will call to testify at the hearing, with an identification of each witness' relationship to the party	9/21/12
Second settlement conference	9/28/12
Submission of second settlement conference joint report	10/5/12
Fact discovery cutoff and completion	10/17/12
Exchange of initial expert reports (identify tests/surveys/data)	10/12/12
Deadline for motions to compel discovery	10/22/12
Exchange of rebuttal expert reports	10/24/12
Expert discovery cutoff and completion	11/7/12
Cut-off date for responses to contention interrogatories on the issues for which that party bears the burden	11/12/12
Cut-off date for responses to contention interrogatories on the issues for which the opposing party bears the burden	11/14/12
Deadline for filing summary determination	11/5/12

motions	
Third settlement conference	11/23/12
Exchange of exhibit lists among the parties	11/16/12
Submit and serve direct exhibits (including witness statements), with physical and demonstrative exhibits available -- Complainant and Respondents	11/23/12
Submission of third settlement conference joint report	11/30/12
File Pre-hearing statements and briefs – Complainant and Respondents	12/7/12
File requests for receipt of evidence without a witness	12/7/12
File objections to direct exhibits (including witness statements)	12/12/12
Submit and serve rebuttal exhibits (including witness statements), with rebuttal physical and demonstrative exhibits available -- all parties	12/12/12
File responses to objections to direct exhibits (including witness statements)	12/17/12
File objections to rebuttal exhibits (including witness statements)	12/17/12
File high priority objections statement	12/21/12
Deadline for motions <i>in limine</i>	12/21/12
File response to objections to rebuttal exhibits (including witness statements)	12/21/12
File responses to high priority objections statement	12/28/12
Submission of declarations justifying confidentiality of exhibit	12/28/12
File responses to motions <i>in limine</i>	12/29/12
Tutorial on technology (if necessary)	1/4/13
Pre-hearing conference	1/4/13
Hearing	1/7/13 – 1/11/13
File initial post-trial briefs and final exhibit lists; file proposed findings of fact and conclusions of law	1/25/13
File reply post-trial briefs; file objections and	2/8/13

rebuttals to proposed findings of fact	
Final Initial Determinations	5/2/13
Target Date	9/3/13

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PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served upon the following parties as indicated on **June 21, 2012**.



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

**On Behalf of Complainants Technology Properties
Limited LLC:**

Anthony G. Simon, Esq.
THE SIMON LAW FIRM PC
800 Market St., Ste. 1700
St. Louis, MO 63101

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

On Behalf of Respondent Hewlett-Packard Company:

Marcia H. Sundeen, Esq.
KENYON & KENYON LLP
1500 K Street, N.W.
Washington, DC 20005

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

On Behalf of Respondent Dell Inc.:

Raymond A. Kurz, Esq.
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004

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

**On Behalf of Respondents HiTi Digital Inc. and Shuttle
Inc.:**

Jenny W. Chen, Esq.
EASTWIND CONSULTANTS COMPANY LTD
57th Floor, Key Tower, 127 Public Square
Cleveland, Ohio 44114

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

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Certificate of Service – Page 2

On Behalf of Respondent Fujitsu Limited:

G. Brian Busey, Esq.
MORRISON & FOERSTER LLP
2000 Pennsylvania Ave., NW, Suite 6000
Washington, DC 20006

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

On Behalf of Respondent Acer Inc.:

Eric C. Rusnak, Esq.
K&L GATES LLP
1601 K Street, NW
Washington, DC 20006-1600

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

On Behalf of Respondent Brother Industries Ltd.:

Joseph M. Potenza, Esq.
BANNER & WITCOFF LTD
1100 13th Street, N.W., Suite 1200
Washington, DC 20005

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

On Behalf of Respondent on Seiko Epson Corporation:

Louis S. Mastriani, Esq.
ADDUCI, MASTRIANI & SCHAUMBERG LLP
1133 Connecticut Avenue, NW, 12th Floor
Washington, DC 20036

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

**On Behalf of Respondent of Canon Inc., Lexar Media, Inc.
and Micron Technology, Inc.:**

David M. Maiorana, Esq.
JONES DAY
901 Lakeside Avenue
Cleveland, OH 44114

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

**On Behalf of Respondent Kingston Technology Company,
Inc.:**

Christine Yang, Esq.
LAW OFFICES OF S.J. CHRISTINE YANG
17220 Newhope Street, Suites 101-103
Fountain Valley, CA 92708

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

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On Behalf of Respondent on Behalf of Systemax Inc.:

David W. Denenberg, Esq.
DAVIDOFF MALITO & HUTCHER LLP
200 Garden City Plaza, Suite 315
Garden City, NY 11530

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

On Behalf of Respondents Newegg Inc. and Rosewill Inc.:

Kent E. Baldauf, Esq.
THE WEBB LAW FIRM
One Gateway Center
420 Ft. Duquesne Boulevard, Suite 1200
Pittsburgh, PA 15222

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

Respondents:

Dane Elec Memory
c/o Jeff Jacobs
15770 Laguna Canyon Road, Suite 100
Irvine, CA 92618

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

Falcon Northwest Computer Systems, Inc.
2015 Commerce Drive
Medford, OR 97504

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

Jasco Products Company
10 East Memorial Road
Building B
Oklahoma City, OK 73114

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

Microdia Limited
Lakeside 1
8 Science Park West Avenue
Hong Kong Science Park
Shatin, Hong Kong

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

Sabrent
238 South Mission Rd.
Los Angeles, CA 90033

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

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Certificate of Service – Page 4

Public:

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

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

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

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