

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN SINGLE-MOLECULE  
NUCLEIC ACID SEQUENCING  
SYSTEMS AND REAGENTS,  
CONSUMABLES, AND SOFTWARE  
FOR USE WITH SAME

Inv. No. 337-TA-1032

ORDER NO. 4: REGARDING TARGET DATE, CASE MANAGEMENT  
CONFERENCE, AND PROCEDURAL SCHEDULE

(January 10, 2017)

By publication of a notice in the *Federal Register* on December 8, 2016, pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, the Commission instituted this investigation to determine:

[W]hether 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 single-molecule nucleic acid sequencing systems and reagents, consumables, and software for use with same by reason of infringement of one or more of claims 1, 5–7, 10, 14, 16–21, and 23–25 of the '146 patent [U.S. Patent No. 9,404,146], and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

81 Fed. Reg. 88703 (Dec. 8, 2016).

Additionally, pursuant to Commission Rule 210.50(b)(1), the Commission ordered:

Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1).

*Id.*

The complainant is Pacific Biosciences of California, Inc. of Menlo Park, California. The named respondents are Oxford Nanopore Technologies Ltd. of the United Kingdom; Oxford Nanopore Technologies, Inc. of Cambridge, Massachusetts; and Metrichor, Ltd. of the United Kingdom. The Office of Unfair Import Investigations is also named as a party to this investigation. *Id.*

The target date for this Investigation shall be Monday, April 9, 2018, which is sixteen months from the date that the Notice of Investigation was published in the Federal Register. *See* 19 C.F.R. § 210.51(a); 19 C.F.R. § 201.14(a). Consequently, any final initial determination would be due by Friday, December 8, 2017. *See* 19 C.F.R. § 210.42(a)(1)(i).

#### **Initial Case Management Conference**

Pursuant to Ground Rule 6, I will hold the initial case management conference in this Investigation on **Thursday, January 26, 2017 at 10:00 a.m.** The conference will be held telephonically. Complainants shall be responsible for setting up the teleconference number, ensuring a court reporter is present to transcribe the call, and filing the transcript of the teleconference on EDIS. As set forth in Ground Rule 6.3, each party shall file a case management statement two (2) business days prior to the scheduled initial case management conference, *i.e.*, on **Tuesday, January 24, 2017**, by the close of business.

#### **Procedural Schedule**

I hereby order that the Procedural Schedule attached hereto as Appendix A is now in effect. A technology tutorial will commence at 9:00 a.m. on Monday, April 24, 2017. The tutorial shall be

immediately followed by a *Markman* hearing, which shall conclude no later than 4:45 p.m. on Tuesday, April 25, 2017. The pre-hearing conference in this investigation shall commence at 9:00 a.m. on Friday, August 4, 2017. Immediately following the pre-hearing conference, the evidentiary hearing in this investigation shall commence. The hearing shall conclude no later than Friday, August 11, 2017. The typical hearing day shall be from 9:00 a.m. to 4:45 p.m., except on Fridays where the hearing day shall end at 11:45 a.m.

The parties shall meet and confer to propose joint deadlines for those events in the Procedural Schedule where no deadline is indicated. The parties may also propose additional deadlines or modifications to the listed deadlines. The parties shall include a proposed joint procedural schedule at the time they file their initial case management statements.

**SO ORDERED.**

A handwritten signature in black ink, reading "Thomas B. Pender". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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Thomas B. Pender  
Administrative Law Judge

**APPENDIX A**

<b>PROCEDURAL SCHEDULE, INVESTIGATION NO. 337-TA-1032</b>	
<b>Event</b>	<b>Date</b>
Initial Case Management Conference	Thursday, January 26, 2017
Deadline for Propounding Ground Rule 6.2 Interrogatories	
File identification of expert witnesses, including their expertise and curriculum vitae	
Deadline for Ground Rule 7.1 Disclosure of Priority Dates and Dates of Conception/Reduction to Practice	
Exchange list of claim terms for construction	
Exchange proposed claim constructions	
File joint claim construction chart	Monday, March 13, 2017
Deadline for Ground Rule 7.2 Disclosure of Products	
First settlement conference	
Submit first settlement conference joint report	
Deadline for Ground Rule 7.3 Disclosure of Domestic Industry Contentions	
File initial claim construction briefs	Monday, March 27, 2017
File reply claim construction briefs	Monday, April 10, 2017
Deadline for Ground Rule 7.4 Disclosure of Infringement Contentions	
Deadline for Ground Rule 7.5 Disclosure of Invalidity Contentions	
Technical Tutorial	Monday, April 24, 2017
Markman Hearing Start	Monday, April 24, 2017
Markman Hearing End	Tuesday, April 25, 2017

Issue Order Construing Terms (*tentative date*)	Tuesday, May 23, 2017
Fact discovery cutoff and completion	
Second settlement conference	
Submit second settlement conference joint report	
Serve initial expert reports	
Serve rebuttal expert reports	
Deadline for filing summary determination motions	Thursday, June 08, 2017
Expert discovery cutoff and completion	
Third settlement conference	
Submit third settlement conference joint report	
File requests for receipt of evidence without a witness	
Serve proposed exhibit lists	
Serve proposed direct exhibits (including witness statements), with available proposed physical and demonstrative exhibits	
File objections to proposed direct exhibits (including witness statements)	
File responses to objections to proposed direct exhibits (including witness statements)	
Serve proposed rebuttal exhibits (including witness statements), with available proposed rebuttal physical and demonstrative exhibits	
File pre-hearing statements and briefs	Friday, June 30, 2017
Submit on electronic media proposed direct and proposed rebuttal exhibits (including witness statements) with available proposed direct and proposed rebuttal physical and demonstrative exhibits	Friday, June 30, 2017
Deadline for filing motions in limine	Friday, July 07, 2017

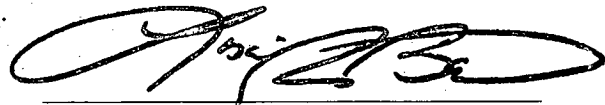
File objections to proposed rebuttal exhibits (including witness statements)	
File responses to objections to proposed rebuttal exhibits (including witness statements)	
File responses to motions in limine	Friday, July 21, 2017
Pre-hearing conference	Friday, August 04, 2017
Hearing Start	Monday, August 07, 2017
Hearing End	Friday, August 11, 2017
File initial post-hearing briefs addressing issues on which the party bears the burden of proof	Friday, August 25, 2017
File final exhibit lists	Friday, August 25, 2017
Submit final direct and rebuttal exhibits (including witness statements) with direct and rebuttal physical and demonstrative exhibits	Friday, August 25, 2017
File responsive post-hearing briefs	Friday, September 08, 2017
File reply post-hearing briefs	Friday, September 15, 2017
Initial Determination Due	Friday, December 08, 2017
Target date for completion of investigation	Monday, April 09, 2018

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337-TA-1032

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 04** has been served upon the **Commission Investigative Attorney, Brian B. Koo**, and the following parties as indicated on JAN 10 2017



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

**FOR COMPLAINANTS PACIFIC BIOSCIENCES OF CALIFORNIA, INC.:**

Robert T. Vlasik, Esq.

**WEIL, GOTSHAL & MANGES LLP**  
1300 Eye Street, N.W., Suite 900  
Washington, DC 20005

- ( ) Via Hand Delivery
- ( ) Via Express Delivery
- (x) Via First Class Mail
- ( ) Other: \_\_\_\_\_

**FOR RESPONDENTS OXFORD NANOPORE TECHNOLOGIES, LTD., OXFORD  
NANOPORE TECHNOLOGIES, INC. & METRICHOR, LTD.**

Lisa M. Kattan, Esq.

**BAKER BOTTS LLP**  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004

- ( ) Via Hand Delivery
- ( ) Via Express Delivery
- (x) Via First Class Mail
- ( ) Other: \_\_\_\_\_