

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

**Washington, D.C.**

**In the Matter of**

**CERTAIN NON-VOLATILE MEMORY  
DEVICES AND PRODUCTS CONTAINING  
SAME**

**Inv. No. 337-TA-1046**

**ORDER NO. 5:      SETTING TARGET DATE, HEARING DATES, AND  
PRELIMINARY CONFERENCE**

(April 24, 2017)

On April 6, 2017, the Commission issued a Notice of Investigation in this matter upon a complaint alleging violations of section 337 of the Tariff Act of 1930, as amended, by reason of infringement of certain claims of U.S. Patent No. 6,552,360 (the “’360 patent”), U.S. Patent No. 6,788,602 (the “’602 patent”), and U.S. Patent No. 8,035,417 (the “’417 patent”). The Commission ordered that an investigation be instituted 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 non-volatile memory devices and products containing same by reason of infringement of one or more of claims 1-8 of the ’360 patent; claims 1-12 and 16 of the ’602 patent; and claims 1-7, 11-16, and 18 of the ’417 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

Notice of Investigation at 2. The Investigation was instituted upon publication of the Notice of Investigation in the *Federal Register* on April 12, 2017. 82 Fed. Reg. 17687-88 (2017); see 19 C.F.R. § 210.10(b). The Complainants are Macronix International Co., Ltd. of Taiwan and Macronix America, Inc. of Milpitas, California. Notice of Investigation at 2. The Respondents are Toshiba Corporation of Japan, Toshiba America, Inc. of New York, New York, Toshiba

America Electronic Components, Inc. and Toshiba America Information Systems, Inc. of Irvine, California, and Toshiba Information Equipment of the Philippines. *Id.* at 2-3.

Based upon the issues identified in the Complaint and Notice of Investigation, and in consideration of the schedules for other ongoing investigations, the target date for completion of this Investigation shall be Friday, August 10, 2018, which is sixteen months after institution of the Investigation. *See* 19 C.F.R. § 210.51(a). Accordingly, the initial determination on alleged violation of section 337 shall be due by Tuesday, April 10, 2018. *See* 19 C.F.R. § 210.42(a)(1)(i).

The evidentiary hearing in this Investigation shall begin following a pre-hearing conference on Monday, January 22, 2018, and it will conclude by the close of business on Friday, January 26, 2018. *See* 19 C.F.R. § 210.36. Pursuant to Ground Rule 5.2, I have determined that a *Markman* hearing would be beneficial to this Investigation, and a *Markman* hearing shall be held on Wednesday, October 4, 2017. The parties may also present technology tutorials on the day of the *Markman* hearing.

The parties shall submit a proposed procedural schedule no later than Friday, May 5, 2017, taking into account the target date and the above-identified dates for hearings. The contents for the procedural schedule are set forth in Ground Rule 2. The parties should make intensive good faith efforts to agree to a procedural schedule, and it is expected that in most instances the parties will submit a joint proposal. Any proposed procedural schedule should not be filed with the Secretary but served on the Administrative Law Judge pursuant to Ground Rule 1.3 with an electronic copy in Word format pursuant to Ground Rule 1.4.

I will hold a preliminary conference on Wednesday, May 10, 2017, at 11:00 a.m. via telephone. The parties should be prepared to discuss any issues with respect to the ground rules,

the protective order, the procedural schedule, discovery, and any other matters that may have surfaced. Counsel for Complainant shall be responsible for the logistics of the teleconference, including arranging for a court reporter and circulating a dial-in number.

**SO ORDERED.**



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Dee Lord  
Administrative Law Judge

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served by hand upon the Commission Investigative Attorney, **Vu Bui, Esq.**, and the following parties as indicated, on 4/24/2017



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

**On Behalf of Complainants Macronix International  
Co., Ltd. and Macronix America, Inc.:**

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- Via Hand Delivery
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**On Behalf of Respondents Toshiba Corporation, Toshiba  
America, Inc., Toshiba America Electronic Components,  
Inc., Toshiba America Information Systems, Inc. and  
Toshiba Information Equipment (Phillipians), Inc.:**

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