

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN PRODUCTS CONTAINING
INTERACTIVE PROGRAM GUIDE AND
PARENTAL CONTROLS TECHNOLOGY**

Inv. No. 337-TA-747

**ORDER NO. 9: INITIAL DETERMINATION GRANTING RESPONDENTS'
UNOPPOSED MOTION TO AMEND THE TARGET DATE AND
RESETTING PROCEDURAL SCHEDULE**

(April 4, 2011)

On April 1, 2011, Respondents Toshiba Corp., Toshiba America, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba America Information Systems, Inc. (collectively, “Toshiba”) filed an unopposed motion to extend the target date in this Investigation. (Motion Docket No. 747-008.) Toshiba explains that the earthquake and tsunami in Japan, as well as the resultant nuclear crisis, rolling blackouts, and other related hardships, have affected the parties’ ability to complete discovery. (Mot. at 1; Mot. Mem. at 1-2.) According to Toshiba, its witnesses and resources are further limited because “Prime Minister Naoto Kan [has] instructed Toshiba President Norio Sasaki to do all he can to contain the problems at the [affected nuclear] plant.” (Mot. Mem. at 1; Mot., Ex. E.) In addition, a reduced availability of consular personnel has resulted in the cancellation of a number of depositions currently scheduled at the Osaka Consulate. (Mot. Mem. at 1, 3. *See also* Mot., Ex. D (travel restrictions to Japan).) While the parties expect that the Markman hearing may proceed on schedule, they anticipate that discovery will be delayed—particularly with respect to witnesses and evidence located in Japan. (Mot. Mem. at 4.)

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The parties have jointly proposed a revised procedural schedule. (Mot., Ex. C.)

It is the Initial Determination of the Administrative Law Judge that Motion Docket No. 747-008 should be GRANTED as follows. While the Administrative Law Judge agrees that moving the target date in this situation is warranted, it will not be possible to accommodate the proposed hearing dates (11/7-16/11) set forth by the parties. Keeping in mind that the Administrative Law Judge already has other hearings scheduled in early November (2011), early December (2011), and early January (2012), there are no hearing rooms available for an eight day hearing in November or December. As the first available hearing room opening is in mid-January, the target date will have to be extended further than the parties have requested. Additional time will have to be allotted for post-hearing briefing. Furthermore, the Administrative Law Judge already has two initial determinations due in March of 2012. Accordingly, a target of August 13, 2012 is set for this Investigation. Based on this target date, the final initial determination on violation in this Investigation will be due no later than April 13, 2012. The parties will be permitted to revise their submission of proposed dates for an amended procedural schedule.

With respect to the hearing, technology tutorials (if any) are scheduled to start at 9:00 a.m. on January 12, 2012, in the Main Hearing Room. The pre-hearing conference and hearing will commence in the Main Hearing Room immediately following the tutorials. The hearing shall conclude no later than January 24,¹ 2012.

The parties shall take these dates, and the other dates noted in **Attachment A** below, into consideration when jointly proposing the amended procedural schedule. Submissions are due no later than April 15, 2011.

¹ The agency will be closed for a Federal holiday on January 16, 2012.

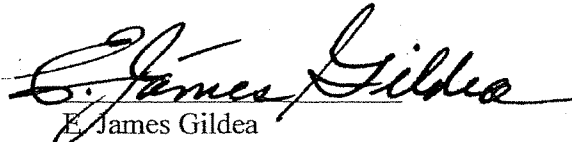
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This Initial Determination is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.

Within seven days of the date of this document, each party shall submit to the Office of the Administrative Law Judges a statement as to whether or not it seeks to have any portion of this document deleted from the public version. The parties' submissions may be made by facsimile and/or hard copy by the aforementioned date.

Any party seeking to have any portion of this document deleted from the public version thereof must submit to this office a copy of this document with red brackets clearly indicating any portion asserted to contain confidential business information. The parties' submissions concerning the public version of this document need not be filed with the Commission Secretary.

SO ORDERED.


E. James Gildea
Administrative Law Judge

ATTACHMENT A

AMENDED PROCEDURAL SCHEDULE

| | |
|--|--|
| Second settlement conference deadline | April 7, 2011 |
| Submission of second settlement conference joint report | April 12, 2011 |
| Parties submit proposed revisions to amended procedural schedule | April 15, 2011 |
| File Initial Markman briefs² | April 26, 2011 |
| Parties exchange proposed Markman exhibit lists | May 2, 2011 |
| File responsive Markman briefing | May 6, 2011 |
| Exchange of Proposed Markman Exhibits | May 9, 2011 |
| File Markman Pre-Hearing Statement, including proposed Markman exhibit lists | May 11, 2011 |
| Markman hearing and technology tutorials | 9:00 a.m.-5:00 p.m., May 18, 2011, Hearing Room A |
| Deadline for submission of Markman hearing exhibits, by appointment | 5:00 p.m., May 20, 2011 |
| Parties submit an updated joint list showing each party's proposed construction of any claim terms remaining in dispute | May 24, 2011 |
| 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 | |
| Deadline for contention interrogatory responses | |
| Fact discovery cutoff and completion | |
| Exchange of initial expert reports (identify tests/surveys/data) | |
| Exchange of rebuttal expert reports | |

² The parties should meet and confer with respect to joint exhibits prior to filing the Markman briefing. (See Order No. 4, Attachment B). The parties may further wish to exchange proposed Markman exhibit lists or exhibits in advance of the deadlines set forth in the revised procedural schedule.

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|--|--|
| Deadline for motions to compel discovery | |
| Third settlement conference | |
| Deadline for filing summary determination motions | |
| Submission of third settlement conference joint report | |
| Expert discovery cutoff and completion | |
| Submission of statements regarding the use of witness statements in lieu of live direct testimony, and statements regarding whether any party intends to offer expert reports into evidence | |
| Exchange of exhibit lists among the parties | |
| Submit and serve direct exhibits (including witness statements), with physical and demonstrative exhibits available | |
| File Pre-hearing statements and briefs | |
| 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 | |
| Deadline for motions <i>in limine</i> | |
| File responses to objections to direct exhibits (including witness statements) | |
| File objections to rebuttal exhibits (including witness statements) | |
| File statement of high priority objections | |
| File response to objections to rebuttal exhibits (including witness statements) | |
| File responses to statement of high priority objections | |
| Submission of declarations justifying confidentiality of exhibits | |

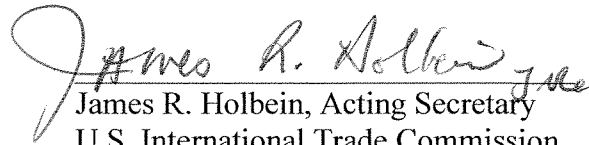
| | |
|--|---|
| File responses to motions <i>in limine</i> | |
| Technology tutorials (optional) | 9:00 a.m., January 12, 2012, Main Hearing Room |
| Pre-hearing conference | January 12, 2012, Main Hearing Room |
| Hearing | January 12-24, 2012, Main Hearing Room |
| File initial post-hearing briefs, proposed findings of fact and conclusions of law, and final exhibit lists | February 6, 2012 |
| File reply post-hearing briefs, objections and rebuttals to proposed findings of fact | February 15, 2012 |
| Final ID due | April 13, 2012 |
| Target Date | August 13, 2012 |

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PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER 9** has been served in the manner indicated to the following parties on **April 6, 2011**.



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

**ON BEHALF OF COMPLAINANTS ROVI CORPORATION, ROVI GUIDES, INC.
(F/K/A GEMSTAR-TV GUIDE INTERNATIONAL INC.), UNITED VIDEO PROPERIES,
INC., INDEX SYSTEMS, INC.**

Yar R. Chaikovsky, Esq.
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 Via First Class Mail
 Other: _____

**ON BEHALF OF RESPONDENTS TOSHIBA CORP., TOSHIBA AMERICA, INC.,
TOSHIBA AMERICA CONSUMER PRODUCTS, LLC, TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.:**

Doris Johnson Hines, Esq.
**FINNEGAN, HENDERSON, FARABOW
GARRETT & DUNNER, L.L.P.**
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 Via Overnight Mail
 Via First Class Mail
 Other: _____

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PUBLIC CERTIFICATE OF SERVICE – PAGE TWO

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