

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN SET-TOP BOXES, AND HARDWARE
AND SOFTWARE COMPONENTS THEREOF**

Inv. No. 337-TA-761

ORDER NO. 3: SETTING PROCEDURAL SCHEDULE

(April 5, 2011)

In Order No. 2, the parties were directed to submit a discovery statement and a proposed procedural schedule. (Order No. 2 at 2.) The parties were informed that if they wished to deviate from the attached sample schedule, they should explain their rationale for the proposed changes in their submission. (*Id.*) Additionally, the parties were given specific deadlines set by the Administrative Law Judge to take into consideration when proposing their other dates. (*Id.* at 3.) With respect to claim construction, the parties were informed that they could submit proposals with their comments as to whether a Markman hearing at least two months in advance of the hearing would be useful in resolving disputed claim terms. (*Id.* at 3-4.) Instead of following the instructions outlined in Order No. 2, the parties determined that they should rewrite the procedural schedule, including deadlines set by the Administrative Law Judge, and insert their own dates for a Markman hearing. (Proposed Procedural Schedule, dated April 4, 2011.)

The Administrative Law Judge declines to set a Markman hearing as a matter of course. If a party wishes to have a hearing on claim construction issues in advance of the evidentiary hearing, it may put together a submission explaining why such a hearing would be useful. No such submission was included with the proposed procedural schedule. Furthermore, as the parties have


not yet exchanged patent claim terms for construction or set forth their proposed constructions of disputed terms, it is too soon to determine whether an early Markman hearing would be beneficial here.

It is also noted that Respondent TiVo Inc. wishes to move the hearing to accommodate lead trial counsel's availability. The Administrative Law Judge cannot grant the proposed shift in dates.

There is no other hearing room space available in November or December, and the Administrative Law Judge's calendar in January 2012 is full. It is the Commission's policy that the parties and the Administrative Law Judge shall make every effort at each stage of the Investigation to avoid delay.

Commission Rule 210.2. Therefore, the Administrative Law Judge will not consider moving the hearing to February 2012 and delaying the Investigation based on the unavailability of lead counsel.

SO ORDERED.


E. James Gildea
Administrative Law Judge

ATTACHMENT A

PROCEDURAL SCHEDULE & DATES

Parties exchange list of patent claim terms for construction	May 12, 2011
First settlement conference deadline	May 13, 2011
Submission of first settlement conference joint report	May 20, 2011
File identification of expert witnesses, including their expertise and curriculum vitae	May 23, 2011
File notice of prior art	May 26, 2011
Complainant and Respondent provide Staff with their proposed construction of the disputed claim terms	June 7, 2011
Deadline for Markman hearing proposals	June 9, 2011
Parties meet and confer (including Staff) in an attempt to reconcile or otherwise limit disputed claim terms	June 10, 2011
Parties submit a joint list showing each party's proposed construction of the disputed claim terms	June 15, 2011
Second settlement conference deadline	June 16, 2011
Submission of second settlement conference joint report	June 23, 2011
Deadline for initial contention interrogatory responses	July 1, 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	July 20, 2011
Fact discovery cutoff and completion	August 8, 2011
Exchange of initial expert reports (identify tests/surveys/data)	August 15, 2011
Deadline for motions to compel discovery	August 22, 2011

Third settlement conference deadline	August 31, 2011
Submission of third settlement conference joint report	September 7, 2011
Exchange of rebuttal expert reports	September 8, 2011
Deadline for filing summary determination motions	September 19, 2011
Expert discovery cutoff and completion	October 7, 2011
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	October 11, 2011
Exchange of exhibit lists among the parties	October 11, 2011
Submit and serve direct exhibits (including witness statements), with physical and demonstrative exhibits available -- Complainant and Respondent	October 14, 2011
Submit and serve direct exhibits (including witness statements), with physical and demonstrative exhibits available -- Staff	October 18, 2011
File Pre-hearing statements and briefs -- Complainant and Respondent	October 21, 2011
File requests for receipt of evidence without a witness	October 26, 2011
File Pre-hearing statement and brief -- Staff	October 28, 2011
Submit and serve rebuttal exhibits (including witness statements), with rebuttal physical and demonstrative exhibits available -- all parties	November 2, 2011
File objections to direct exhibits (including witness statements)	November 2, 2011
Deadline for motions <i>in limine</i>	November 9, 2011
File responses to objections to direct exhibits (including witness statements)	November 9, 2011

File objections to rebuttal exhibits (including witness statements)	November 9, 2011
File statement of high priority objections	November 10, 2011
File response to objections to rebuttal exhibits (including witness statements)	November 16, 2011
File responses to statement of high priority objections	November 18, 2011
Submission of declarations justifying confidentiality of exhibits	November 18, 2011
File responses to motions <i>in limine</i>	November 18, 2011
Tutorials	9:00 a.m., November 30, 2011, Main Hearing Room
Pre-hearing conference	November 30, 2011, Main Hearing Room
Hearing	November 30-December 9, 2011, Main Hearing Room
File initial post-hearing briefs, proposed findings of fact and conclusions of law, and final exhibit lists	December 20, 2011
File reply post-hearing briefs, objections and rebuttals to proposed findings of fact	January 4, 2012
Final ID due	March 2, 2012
Target Date	July 2, 2012

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337-TA-761

PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER** has been served by hand upon the Commission Investigative Attorney, **Thomas S. Fusco, Esq.**, and the following parties as indicated on **APR 05 2011**



James R. Holbein, Acting Secretary
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PUBLIC CERTIFICATE OF SERVICE – PAGE TWO

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