

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN WEARABLE ELECTRONIC  
DEVICES WITH ECG FUNCTIONALITY  
AND COMPONENTS THEREOF

Inv. No. 337-TA-1266

**ORDER NO. 2: NOTICE OF GROUND RULES; ORDER SETTING DATE FOR  
SUBMISSION OF JOINT DISCOVERY STATEMENT**

(May 26, 2021)

**GROUND RULES**

The conduct of this Investigation shall be governed by the Commission Rules and the Ground Rules attached hereto.

**DISCOVERY STATEMENTS**

In order that the proceeding in this matter may begin expeditiously, the parties are directed to file a joint discovery statement, on or before June 9, 2021, addressing the questions and answers set forth in the Attachment A.

**TARGET DATE**

The parties are advised that an order will issue setting the target date after I have considered the positions of the parties as set forth in their respective discovery statements.

**SO ORDERED.**



Cameron Elliot  
Administrative Law Judge

# ATTACHMENT A

## JOINT DISCOVERY STATEMENT

The parties shall file a Joint Discovery Statement that includes the following:

1. The parties' positions on the applicable topics of the "Discovery Statement Checklist" (*see* Exhibit A).
2. The parties' proposed limitations and procedures for fact and expert discovery including:
  - a. Whether the parties recommend that expert discovery precede or follow any summary determination practice.
  - b. Whether the parties agree to conduct depositions in a particular location (*e.g.*, bring up to five foreign witnesses to the U.S. for deposition).
  - c. Whether the parties recommend that the ALJ set a date before which contention interrogatory responses need not be provided.
  - d. Recommendations for limiting the number of claim terms to be presented to the ALJ for construction.

## EXHIBIT A

### DISCOVERY STATEMENT CHECKLIST

1. Issues to be litigated
  - a. Identify all issues to be litigated (*e.g.*, infringement, affirmative defenses, importation, domestic industry, remedy, bonding, and public interest (if delegated to the undersigned by the Commission))
  - b. Identify specific proposals in which these issues can be narrowed to make the hearing more meaningful and efficient.
2. A description of information and evidence that each party intends to submit to prove its own case;
3. A description of the specific information and evidence that each party will be seeking from other parties and third persons;
4. Preliminary issues that are likely to arise that will require judicial intervention;
5. Identification of dispositive issues that should be resolved early in the Investigation, and specific proposals for disposition of such issues;
6. Identification of issues amenable to stipulations (*e.g.*, electronic service of discovery);
7. Proposed discovery limitations including, but not limited to:
  - a. limitations on types of discovery beyond those in the Commission Rules and applicable Ground Rules (*i.e.*, limits on depositions, number of interrogatories, requests for admission);
  - b. limitations on scope of discovery;
  - c. limitations on timing and sequence of discovery;
  - d. agreements to allow depositions of hearing witnesses named if not already deposed, and preservation depositions, foreign discovery, or other anticipated issues;
  - e. agreements to exchange certain information without the use of formal discovery;
  - f. agreements or limitations on discovery of electronically-stored information;
  - g. and

- h. limitations on discovery of expert-related hearing preparation materials.
  
- 8. Status of any litigation that may affect any issue in this Investigation;
- 9. Status of any proceedings (including reexaminations) before the U.S. Patent and Trademark Office;
- 10. Proposal for any modifications to the protective order now in effect for this Investigation, with the understanding that actual amendments to the protective order will only be effected through subsequent written motion;
- 11. Whether a *Markman* hearing is necessary and if so, a proposed date for the *Markman* hearing; and
- 12. Position as to target date.

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