

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.

Before the Honorable Bryan F. Moore  
Administrative Law Judge

In the Matter of

**CERTAIN LOCATION-SHARING  
SYSTEMS, RELATED SOFTWARE,  
COMPONENTS THEREOF, AND  
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-1347

**COMMISSION INVESTIGATIVE STAFF'S MOTION FOR LEAVE TO ADMIT  
MARKMAN EXHIBIT**

On May 16, 2023, the Commission Investigative Staff (“Staff”) introduced an exhibit during the Markman Hearing that was not cited in the Staff’s Markman Briefing because the proposed construction dispute was not disclosed until the evening before the hearing. Accordingly, the Staff respectfully seeks leave to have the document (attached as Ex. A herewith) admitted. More specifically, the document introduced by the Staff is a Hearing Transcript from the district court litigation where the disputed term “Group” was construed. *See* Ex. A at 76-78; *see also id.* at 5-6. The purpose of the document was to demonstrate that from the onset, that the construction of the term “group” was directed to “users” as opposed to “devices,” and any characterization by Complainants that the prior construction encompassed “devices” is unsupported, misleading, and untimely.<sup>1</sup>

The Staff represents that there is good cause to admit the document because the issue for which the document was presented did not arise until the evening before the Markman hearing.

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<sup>1</sup> For the avoidance of doubt, the Staff is not suggesting that the document amounts to intrinsic or extrinsic evidence in support of its proposed construction. Instead, the document was introduced to rebut Complainants’ representation to the ALJ that the District Court’s construction encompassed “devices.”

More specifically, the private parties agreed to adopt a construction of the term “group” from the parallel district court litigation the evening before the Markman Hearing. However, the Staff sought to clarify that the word “participants” in the agreed-to construction referred to “users” as opposed to “device” before agreeing to not oppose the private parties’ construction. As a result, Complainants disclosed for the first time that they contend “group” encompasses “more than two [devices].” Notwithstanding the Staff’s proposed construction explicitly referring to “users,” only at the hearing did Complainant argue that the term refers to “devices.”<sup>2</sup> Notably, Respondents expressed their disagreement with Complainants’ “device” interpretation for the purportedly “agreed-to” construction. Thus, there is good cause.

With respect to prejudice, the Staff notes that the document is a transcript from a district court hearing where the same counsel that is representing the Complainants in this investigation argued for the construction of the term “Group” on behalf of Complainants. Accordingly, Complainants have had better knowledge and access to this document than any other party and could have cited it in support of its “devices” interpretation had it (i) timely disclosed such interpretation, or (ii) believed that the transcript supported the position it is presenting in this investigation.

Pursuant to Ground Rule 5.1, the private parties were given notice of this motion on May 16, 2023. Respondents have responded to say that they do not oppose this motion. On May 22, 2023, Complainants provided the following position:

“Complainants do not oppose to the extent the Motion to Admit is granted and the hearing transcript that relates to JMX-0016 is admitted, then good cause exists to admit any evidence Complainants cite in support of their May 23 briefing.”

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<sup>2</sup> For the avoidance of doubt, Complainants’ initial Markman brief in this investigation does not advocate for the “device” interpretation it raised at the hearing. CIMB at 34.

Dated: May 23, 2023

Respectfully submitted,

s/ Monisha Deka

Margaret D. Macdonald, Director

Anne Goalwin, Supervisory Attorney

Monisha Deka, Investigative Attorney

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Certificate of Service

Investigation 337-TA-1347

I, Monisha Deka, hereby certify that on May 23, 2023 copies of the foregoing Commission Investigative Staff's Motion to Admit served on parties as indicated below:

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