

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN MOBILE ELECTRONIC
DEVICES AND RADIO FREQUENCY
AND PROCESSING COMPONENTS
THEREOF (II)**

Inv. No. 337-TA-1093

ORDER NO. 2:

**PROPOSED SCHEDULING ORDER AND NOTICE
OF GROUND RULES**

(January 19, 2018)

On January 2, 2018, the Commission instituted this Investigation pursuant to subsection (b) of Section 337 of the Tariff Act of 1930, as amended, 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 mobile electronic devices and radio frequency and processing components thereof by reason of infringement of one or more of claims 1, 7, 8, 10, 11, 17, and 18 of the '356 patent; claim 4 of the '336 patent; claims 1, 5–8, 12, 16–18, and 21–22 of the '674 patent; claims 1–4, 7–9, 11, 17, 20–23, 31–33 and 36 of the '002 patent; and claims 1–3, 10–12, 18, and 22–24 of the '633 patent;¹ and whether an industry in the United States exists as required by subsection (a)(2) of section 337[.]

83 Fed. Reg. 834-35 (Jan. 8, 2018). Moreover, pursuant to Commission Rule 210.50(b)(1), the presiding Administrative Law Judge shall:

take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as

¹ The asserted utility patent numbers are: U.S. Patent No. 9,154,356 (“the '356 patent”); U.S. Patent No. 9,473,336 (“the '336 patent”); U.S. Patent No. 8,063,674 (“the '674 patent”); U.S. Patent No. 7,693,002 (“the '002 patent”); and U.S. Patent No. 9,552,633 (“the '633 patent”). *See, e.g.*, 83 Fed. Reg. 834 (Jan. 8, 2018).

appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1)[.]

Id. at 835.

The Notice of Investigation (“NOI”) names as complainant: Qualcomm Inc. of San Diego, California (“Complainant” or “Qualcomm”). *Id.* at 835. The NOI names as respondent: Apple Inc. of Cupertino, California (“Respondent” or “Apple”). *Id.* The NOI also names the Office of Unfair Import Investigations (“Staff”) as a party. *Id.*

Target Date

Pursuant to Commission Rule 210.51(a), a target date for completion of the Investigation in the above-captioned matter must be set. *See* 19 C.F.R. 210.51(a). Upon a review of the Complaint and the NOI, and taking into account my commitments in other already instituted investigations, and staffing constraints, I have determined that a target date of sixteen-and-a-half (16.5) months is appropriate. The target date is therefore set for **May 22, 2019**. Based on this target date, the final initial determination on violation (“ID”) in this Investigation will be due no later than **January 22, 2019**. The proposed Procedural Schedule is set forth in **Attachment A** hereto. Ground Rules for this Investigation are set forth in **Attachment B**.

Procedural Schedule

The Parties shall file jointly by **February 2, 2018** their own proposed procedural schedule that includes dates for each of the events in the attached proposed Procedural Schedule (as set forth in Ground Rule 1.13) that have not been identified.

If the Parties wish to deviate from the proposed Procedural Schedule in **Attachment A** when proposing other dates, they should explain their rationale for the proposed changes in their submission. The Parties should have extraordinary reasons for proposing scheduling changes.

However, certain dates such as the evidentiary hearing dates, the target date and the date for submission for the initial determination on violation may not be changed at this time.

When the Parties submit their proposed dates to fill in those dates left blank, or if the Parties wish to propose different dates for certain scheduled items, it would be helpful for the Parties to use the chart in **Attachment A**, below, and to add a third column, or, alternatively, to use color to identify/highlight the new or changed dates the Parties propose.

Ground Rules and Changes

The conduct of this Investigation before me shall be governed by the Commission Rules and Ground Rules attached hereto as **Attachment B**. The Parties should pay particular attention to the Ground Rules governing this Investigation as they may differ from the Ground Rules issued by me in other investigations. For example, here are some recent changes of which Parties should be aware:

(1) Exhibits attached to motions or memoranda, in addition to all post-hearing exhibits, must contain exhibit descriptions of the content in addition to an alpha or numerical identification.

(2) All documents submitted as exhibits should be dated. If there are multiple iterations of the same documents, those multiple iterations should be dated. If, for example, screen shots of web sites are used, then the dates the screen shots were taken along with the <https://address> should be provided.

(3) Moot issues (and issues that will not be pursued), such as withdrawn claims that will be dropped, contentions that will no longer be advocated, witnesses who will be dropped, documents that will not be used that were previously relied upon, etc., should be identified at the earliest practicable time via an EDIS filing, with the Party responsible for the change doing the

filing.

(4) The parties must jointly create and maintain a single chart of substantive legal issues being litigated in the Investigation. The chart shall be jointly filed as a separate docket entry simultaneously with the pre-hearing and the post-hearing briefs. The parties' pre-hearing and initial post-hearing briefs will follow the order of the issues set forth in the chart. The leftmost column of the chart will list the issues being litigated, including all infringement and invalidity theories and defenses. The parties will create subsequent columns for each of their briefs, grouped by party (i.e., the chart accompanying the post-hearing reply briefs will include columns for Complainant(s)'s pre-hearing brief, initial post-hearing brief, and post-hearing reply brief, followed by columns for Respondent(s)'s pre-hearing brief, initial post-hearing brief, and post-hearing reply brief). The cells of the columns will contain page numbers of the particular sections of the briefs where those issues are addressed. If issues, contentions, arguments, or defenses have dropped out from the pre-hearing briefs, that should be noted explicitly in the chart accompanying the initial post-hearing briefs. That same principle should carry through to the outline accompanying the post-hearing reply briefs.

(5) Initial post-hearing briefs are now limited to issues on which each party bears the burden of proof.

(6) Post-hearing reply briefs are now limited to the issues and evidence discussed in the initial post-hearing brief of each opposing party.

(7) Parties should notify Chambers of any stipulations to which they have agreed whenever they occur during this Investigation.

(8) All motions are now limited to 25 pages, and all attachments to motions may not exceed a total of 100 pages without requesting leave for good cause.

(9) Unopposed motions and joint motions shall contain a proposed order. On the same day the motion is filed, a version of the motion including the proposed order in MS Word for Windows shall be submitted to the Administrative Law Judge's Attorney Advisor via e-mail.

(10) A party may file a stipulation to extend the deadline to respond to a subpoena only once as a matter of course. For any additional extensions, the party must file a motion for leave and show good cause. The same applies to third-party subpoenas.

(11) With regard to deadlines in general, Parties may not jointly stipulate to extend deadlines without leave. Parties must file a motion and show good cause.

(12) Any informal communication with the Administrative Law Judge's Attorney Advisors via email or telephone shall not be referenced in any briefs, documents, or papers filed on EDIS. If a party references such a communication in a document filed on EDIS, the party will no longer be permitted to informally contact the Attorney Advisors on any matter. All correspondence with Chambers will be conducted formally via EDIS.

Discovery

Discovery should proceed expeditiously. Any discovery disputes should be brought to the Court's attention as soon as practicable. Because discovery statements are generally vague early in the Investigation, they are no longer required. However, the Parties should file on EDIS by **February 2, 2018** a list/notice of any proceedings in the United States Patent and Trademark Office ("USPTO"), including those before the Patent Trial and Appeal Board ("PTAB"), in addition to the identification and the status of any concurrent federal or state litigation that may affect the issues in this Investigation.

The Parties should make intensive good faith efforts *to commence and respond to discovery promptly*. This includes early and diligent applications for nonparty subpoenas, and

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.