

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN FOODSERVICE
EQUIPMENT AND COMPONENTS
THEREOF**

Inv. No. 337-TA-1166

**ORDER NO. 51: GRANTING COMPLAINANTS' MOTION TO AMEND
PROCEDURAL SCHEDULE AND GROUND RULES; ORDERING
DEPOSITION OF DR. LEI SCHLITZ; AND POSTPONING
HEARING BY THREE WEEKS**

(June 29, 2020)

On June 17, 2020, Complainants Illinois Tool Works, Inc., Vesta (Guangzhou) Catering Equipment Co., Ltd., Vesta Global Limited, and Admiral Craft Equipment Corporation filed a motion to amend the Procedural Schedule and Ground Rules in this investigation to provide a date for certain fact witnesses who will testify remotely to submit written witness statements *in lieu* of live direct testimony (Motion Docket No. 1166-044). Respondents Guangzhou Rebenet Catering Equipment Manufacturing Co., Ltd., and Zhou Hao, Aceplus International Limited (aka Ace Plus International Ltd.), Guangzhou Liangsheng Trading Co., Ltd., and Zeng Zhaoliang filed a response to the motion on June 23, 2020.¹ The Commission Investigative Staff (“Staff”) also filed a response on June 23, 2020. Complainants filed a reply brief on June 24, 2020.

Complainants seek to amend the Procedural Schedule and Ground Rules to permit the submission of witness statements for four fact witnesses: Lei Schlitz, Paul Forrest, Rick Powers, and Mark Suchecki. There is no opposition to Complainants’ proposal to submit witness

¹ The response time was shortened pursuant to Order No. 50 (Jun. 18, 2020).

statements for these witnesses *in lieu* of live direct testimony, and Complainants and Respondents have agreed to a schedule for exchanging the witness statements and filing objections thereto. Respondents' Response at 2; Complainants' Reply at 1-2. Staff argues that Complainants have not shown good cause for any amendment to the procedural schedule at this late date. Staff's Response at 6-7.

Complainants further seek to expand the scope of Dr. Schlitz's testimony, allowing her to sponsor and testify regarding additional exhibits. Complainants' Motion at 4-5. Complainants submit that Dr. Schlitz should be permitted to testify with respect to the topics that were previously identified for fact witnesses that will not be able to travel from China, including Bob Wang, Raymond Chen, Allay Li, and Kevin Lai. *Id.* Respondents oppose this expansion of Dr. Schlitz's testimony, arguing that the scope of the testimony is unclear and that there has been no fair opportunity to question Dr. Schlitz regarding her potential testimony. Respondents' Response at 3-7. Moreover, Respondents identify several exhibits identified in Complainants' motion that were not previously associated with any witness testimony. *Id.* at 6-7. Staff also opposes the expansion of Dr. Schlitz's testimony, noting that the previous deposition of Dr. Schlitz was limited in time and scope, and argues that her proposed testimony may conflict with rulings on motions *in limine*. Staff's Response at 7-9.²

I agree with Staff that Complainants have not shown good cause to amend the Procedural Schedule at this stage of the investigation, and Complainants should have raised these issues earlier. Order No. 37 set a schedule that included deadlines for the parties to confer regarding alternatives to live testimony, to schedule depositions, and to raise objections. Order No. 37 at 3-

² Staff also identifies certain exhibits containing confidential information that should not be accessible to Dr. Schlitz, but these exhibits were declassified pursuant to a letter sent on behalf of Kevin Lai, submitted by Complainants' counsel on June 26, 2020.

5 (Apr. 24, 2020).³ Nevertheless, I agree with Complainants that the use of witness statements would streamline the conduct of the hearing, and there is no opposition to this change in the format of the witness testimony. With respect to the scope of Dr. Schlitz’s testimony, I am sensitive to Complainants’ arguments that a substantial body of relevant evidence will not be admissible without an expansion of the scope of her witness statement. Accordingly, the Ground Rules shall be amended to allow Complainants to submit their additional witness statements, including additional testimony from Dr. Schlitz that is commensurate with the scope of the witness outlines for Complainants’ Chinese witnesses who will not be able to participate in the hearing. All of this testimony will not necessarily be admissible, however, and Respondents and Staff raise several legitimate concerns in their oppositions that may be renewed in objections after the witness statements are served.

To further mitigate the prejudice to Respondents and Staff with respect to Dr. Schlitz’s testimony, Complainants shall make Dr. Schlitz available for a deposition, which may be conducted remotely. Although Complainants argue that Dr. Schlitz was already deposed pursuant to Order No. 10, that deposition was limited to four hours and did not address the full range of topics that Complainants now propose to address in her witness statement. Order No. 10 (Dec. 20, 2019). An additional deposition of Dr. Schlitz will allow Respondents and Staff to question her regarding the content of her witness statement and to raise appropriate objections. Like any fact witness, her testimony must be within the scope of her personal knowledge, and Complainants will not be allowed to use her testimony to introduce new facts or evidence beyond the scope of their previously disclosed contentions and pre-hearing briefing.

³ Complainants suggest that they did not expect that the hearing would be conducted remotely, but this possibility was explicitly noted in Order No. 37, and subsequently in Order No. 44, the parties were told that “it is likely that any live hearing in this investigation will be held via remote technology.” Order No. 44 at 14 n.4 (May 19, 2020).

Because of the late filing of Complainants' motion, there is insufficient time in the procedural schedule to conduct a deposition and allow for the consideration of objections in advance of the hearing scheduled to begin July 20, 2020. Accordingly, the dates for the evidentiary hearing shall be postponed by three weeks. Other pre-hearing deadlines shall be extended accordingly. Complainants and Respondents have agreed that Complainants shall serve their witness statements on July 3, 2020, but Staff does not appear to be part of this agreement, and July 3 is a federal holiday. The date for Complainants to serve their witness statements shall therefore be set for Monday, July 6, 2020. The deposition of Dr. Schlitz shall be conducted no later than Friday, July 17, 2020. The deadline for objections to the new witness statements shall be Friday, July 24, 2020. Responses to these objections shall be due on Friday, July 31, 2020. The hearing shall be rescheduled for August 10-14, 2020. Initial post-hearing briefs shall be due August 31, 2020, and reply post-hearing briefs shall be due September 11, 2020. The target date will not be extended at this time.

For the reasons and to the extent discussed above, Motion Docket No. 1166-044 is hereby GRANTED. The remaining deadlines in the procedural schedule are set forth below:

Event	Date
File objections to deposition designations	July 2, 2020
Complainants serve witness statements	July 6, 2020
File response to deposition objections	July 10, 2020
Deadline for deposition of Dr. Lei Schlitz	July 17, 2020
File objections to witness statements	July 24, 2020
File response to witness statement objections	July 31, 2020
Pre-hearing conference	August 10, 2020
Hearing	August 10-14, 2020
File initial post-hearing briefs and final exhibit lists	August 31, 2020
File reply post-hearing briefs	September 11, 2020

Initial Determination due	November 5, 2020
Target date for completion of investigation	March 5, 2021

SO ORDERED.

Dee Lord

Dee Lord
Administrative Law Judge

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.