

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC

Before The Honorable MaryJoan McNamara
Administrative Law Judge

In the Matter of

CERTAIN PERCUSSIVE MASSAGE DEVICES

Investigation No. 337-TA-1206

**JOINT PROPOSED PROCEDURAL SCHEDULE AND IDENTIFICATION OF
LITIGATION POTENTIALLY RELEVANT TO THIS INVESTIGATION**

Pursuant to Order No. 4, Complainant Hyper Ice, Inc. (“Hyperice”), Respondents Opove, Ltd., Shenzhen Shufang E-Commerce Co., Ltd., Fu Si, Rechar, Inc., Ning Chen, and Performance Health Systems, LLC (collectively, “Respondents”), and the Commission Investigative Staff (“Staff”), by and through their respective counsel, hereby submit the following Joint Proposed Procedural Schedule and an identification of litigation potentially relevant to this investigation.

Joint Proposed Procedural Schedule. The parties have proposed dates for all deadlines applicable to this investigation in the attached Exhibit A. The parties have met and conferred and are in agreement as to all dates in their Joint Proposed Procedural Schedule. The parties would welcome the opportunity to address their proposal telephonically with the ALJ, and respectfully request that the ALJ enter their Joint Proposed Procedural Schedule, and grant leave for (i) the private parties to move the filing of Complainant and Respondents’ Pre-Hearing Statements and Briefs from January 8, 2021, to January 12, 2021, and (ii) the Staff to add staggered deadlines for the filing of its Initial Claim Construction Brief, Pre-Hearing Statement and Brief, Initial Post-Hearing Brief, and Reply Post-Hearing Brief..

A. Good Cause for Moving Deadline for Private Parties to File Pre-Hearing Statements and Briefs

To allow for the Christmas and New Year's Day holidays and to allow sufficient time for the parties to complete expert discovery, including depositions, the parties respectfully request that the ALJ reset the deadline for the Pre-Hearing Statements and Briefs from January 8 until January 12. OUII does not oppose this deadline and this will not materially affect any other deadline in the Joint Proposed Procedural Schedule.

B. Good Cause for Adding Staggered Briefing Deadlines for Staff

The Staff respectfully requests adding the proposed staggered briefing deadlines for the filing of its Initial Claim Construction Brief (on October 30, 2020), Pre-Hearing Statement and Brief (on January 20, 2021), Initial Post-Hearing Brief (on April 16, 2021), and Reply Post-Hearing Brief (on April 23, 2021) in the Joint Proposed Procedural Schedule. The Staff submits that there is good cause for the addition of these proposed deadlines. Specifically, the staggered briefing will provide the Staff with a better opportunity to consider and to address the issues in dispute and the evidence of record. Also, the private parties do not oppose the staggered deadlines, which do not affect materially any other deadline in the Joint Proposed Procedural Schedule.

Identification of Litigation Potentially Relevant to this Investigation. The parties identify the following pending cases as potentially relevant to this Investigation:

- Hyperice was involved in litigation in the United States District Court for the Central District of California with respect to the '822 Patent from January 17, 2020 to March 10, 2020. *See Hyper Ice, Inc. v. Yourniceday.com, et al.*, 8:2020-cv-00115 (C.D. Cal.). Hyperice voluntarily dismissed the litigation after it was

unable to serve any of the Defendants, and yourniceday.com has subsequently ceased operating.

- Hyperice was involved in litigation in the United States District Court for the Central District of California, with respect to the '822 Patent from September 16, 2019 to November 5, 2019. *See Addaday LLC v. Hyperice, Inc.*, No. 8:2019-cv-01760 (C.D. Cal.). The parties have settled that dispute.
- Respondent Addaday LLC recently filed a declaratory judgment action against Complainant on August 6, 2020 asserting, among other things, non-infringement and invalidity of the patents asserted in this investigation, breach of a settlement agreement, intentional interference with contractual relations, intentional interference with prospective economic relations, and unfair competition. *See Addaday LLC v. Hyper Ice, Inc.*, No. 8:2020-cv-1459 (C.D. Cal.).

Dated: August 7, 2020

Respectfully submitted,

/s/ Brian G. Arnold

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EXHIBIT A

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