

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

CERTAIN ELECTRONIC DEVICES,
INCLUDING SMARTPHONES,
COMPUTERS, TABLET COMPUTERS,
AND COMPONENTS THEREOF

Inv. No. 337-TA-1373

ORDER NO. 3: PROPOSED PROCEDURAL SCHEDULE

(October 19, 2023)

On October 11, 2023, 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 products identified in paragraph (2) by reason of infringement of one or more of claims 1, 4, 7, and 8 of the '877 patent; claims 10 and 15 of the '859 patent; claims 1, 3-5, 7 and 8 of the '566 patent; claims 1 and 23 of the '933 patent; and claims 1 and 23 of the '054 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337[.]¹

88 Fed. Reg. 70425-26 (Oct. 11, 2023).

The Notice of Investigation (“NOI”) names as complainants: InterDigital, Inc. of Wilmington, DE, InterDigital VC Holdings, Inc., of Wilmington, DE, InterDigital Patent Holdings, Inc., of Wilmington, DE, and InterDigital Madison Patent Holdings SAS, of Paris, France (collectively, “Complainants” or “InterDigital”). *Id.* at 70425. The NOI names as respondents: Lenovo Group Limited, of Quarry Bay, Hong Kong SAR, Lenovo (United States)

¹ The asserted patents are U.S. Patent No. 10,250,877 (“the '877 patent”), U.S. Patent No. 8,674,859 (“the '859 patent”), U.S. Patent No. 9,674,556 (“the '556 patent”), U.S. Patent No. 9,173,054 (“the '054 patent”), and U.S. Patent No. 8,737,933 (“the '933 patent”).

Inc. of Morrisville, NC, and Motorola Mobility LLC, of Chicago, IL (collectively, “Respondents”). *Id.* Commission Investigative Staff (“Staff,” and with Complainants and Respondents, the “Parties”) is a party in this Investigation. *Id.*

Target Date

Based upon a review of the Complaint and the NOI, and taking into account my commitments in other instituted investigations, I have determined that a target date of **16-months** is appropriate. The target date is therefore **Tuesday, February 11, 2025**. Based upon the target date, the final initial determination on violation (“ID”) in this Investigation will be due no later than **Friday, October 11, 2024**. The proposed Procedural Schedule is set forth in **Attachment A** hereto.

Filings with OALJ

The OALJ is not accepting paper filings/copies, CD’s, flash drives, and the like. As we get closer to the evidentiary hearing (“Hearing”), we may be accepting flash drives, but that remains to be determined.

Applications for Subpoenas should be filed exclusively on McNamara337@usitc.gov. Courtesy copies of documents filed on EDIS should be sent to McNamara337@usitc.gov. Please contact Dockets Staff for procedures for filing documents on EDIS. Filing instructions on EDIS are also available on the Commission’s website.

The Hearing most likely will be conducted in-person. This will be discussed at a Management Conference. The Commission uses WEBEX as its secure video platform. Management Conferences most likely will be held by WEBEX.

Pre-Hearing and Evidentiary Hearing

The Hearing is scheduled for **May 8-10 and May 13-14, 2024** in a Courtroom to be

announced closer to the Hearing date. At my discretion, a Pre-Hearing Conference (or more than one) to resolve outstanding Motions *in Limine* (“MIL”) and High Priority Objections (“HPO”) and other outstanding motions and issues is likely to be held by telephone within two (2) to three (3) weeks before the Hearing, if possible. A final Pre-Hearing Conference will commence in the same location as the Hearing and on the first day of the Hearing, **May 8, 2024**.

The Hearing will be held in one of the Commission courtrooms. The Hearing days will start at 9:30 a.m. and conclude at 5:30 p.m. each day, barring unforeseen circumstances (severely inclement weather, etc.). If any part of the Hearing is held by video on WEBEX, we will issue other instructions.

Complainants (collectively as a group) and Respondents (collectively as a group), unless they lack an identity of interests,² are each limited to two (2) total MILs and/or HPOs in combination, without a request for leave and an approval of additional MILs and/or HPOs. If the parties (each group) do not share an identity of interests on infringement and invalidity, they may request leave for additional MILs and/or HPOs, as may be necessary. MILs and/or HPOs styled as a single motion but are in fact omnibus in nature may: (1) be denied automatically in their entirety; (2) be ruled on according to the number of MILS/HPOs allowed while denying the remaining MILs/HPOs in the document; (3) be denied without prejudice with a request for refiling. Motions for Receipt of Evidence without a Sponsoring Witness will be treated separately.

Direct testimony will be taken live, or in-person, during the Hearing, unless leave is requested by motion and is granted for an alternative pursuant to Ground Rule 8.4. This type of

² If any Respondent alleges that it lacks an identity of interests with any other Respondent, a motion for leave must be filed showing such lack of identity of interest. Unless and until such motion is granted, Respondents are collectively limited to no more than two (2) total MILs and/or HPOs in combination. Likewise for Complainants.

Leave is given rarely and almost never for an expert. Please do not count on an exception to Rule 8.4. Basic background information about a witness or the issues (no other substance) may be considered as part of an acceptable witness statement if leave is granted. Whether other testimony may be provided in a witness statement will be determined later but it is not likely unless exigent circumstances exist, and then, only with leave.

As discussed in Ground Rule 1.14.4.1, opening statements are required. Closing statements are not. However, they are helpful and encouraged.

Changes to Ground Rules

Please read the Ground Rules and follow them.

The procedure for discovery disputes has been clarified. (*See* G.R. 2.5.). However, the Parties should bring discovery problems to the attention of Chambers as soon as possible in addition to the scheduled Management Conferences that are designed to deal with problems as they occur.

There is a more complete explanation of the expectations for pre-hearing briefs. (G.R. 7.2.). Conclusory statements are not sufficient.

Service of paper copies of proposed exhibits to Chambers prior to the Hearing is no longer required. (*See* G.R. 8.7.2.).

The document filing requirement of Ground Rule 1.2 has been amended. All documents that the Parties create for filing (e.g., motions and memoranda of law, affidavits, declarations, expert reports—any document created in Word for filing on EDIS) must contain in the footer of each page the name of the party that filed the document along with the title of the document.

Chambers and Dockets require that certain documents be filed on BOX before they are transmitted by Chambers to Dockets for filing. The Parties will each be sent a link to BOX

before those hearings (always the Evidentiary Hearing) where exhibits must be transmitted to BOX. Each party will be expected to notify my Program Support Specialist, of one individual who will be responsible for the filings on BOX. Chambers does not accept FTP or other links from law firms.

In addition to pertinent Ground Rules regarding expert reports, the Parties shall file on EDIS all expert reports upon which they intend to rely. (*See, e.g.*, G.R. 8.5.).

Any submission that exceeds the page limitations set forth in the Ground Rules may be denied provisionally. Likewise, an opposition or response to a motion that exceeds the relevant page limitations may be denied provisionally and returned for re-filing. If there is not a re-filing, the response may not be considered for the ruling. A party must show good cause and receive permission for leave to file any submission that exceeds the page limitations for that type of submission.

Other Instructions/Contact

Most Case/Discovery Management Conferences will be held by WEBEX. Several days before, the Parties will be invited to submit: (1) the names of the speaker and listener for each party with the identity of the party they represent; and (2) their e-mail addresses and telephone numbers where they can be reached, if necessary. The Parties will be sent an invitation, that will include a dial-in number, which they must accept if they wish to participate. Other procedural suggestions or directions will be sent before a WEBEX proceeding.

Other Issues

Parties should notify Chambers of the names of all non-parties or third-parties that are known to have discoverable information in this Investigation by a filing a Notice on EDIS before the first Discovery Management Teleconference, or as soon as can be determined. A copy of the

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