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PATRIOT SCIENTIFIC CORPORATION

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 ACER, INC., ACER AMERICA )  
CORPORATION and GATEWAY, INC., )  
17 Plaintiffs, )  
18 v. )  
19 TECHNOLOGY PROPERTIES LIMITED, )  
PATRIOT SCIENTIFIC CORPORATION, )  
20 and ALLIACENSE LIMITED, )  
21 Defendants. )

Case No. 5:08-cv-00877 PSG

**DEFENDANTS' MOTION UNDER  
CIVIL LOCAL RULES 6-3 AND 7-11  
TO CONTINUE TRIAL DATE AND  
CORRESPONDING DATES;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Judge: Hon. Paul S. Grewal

22 HTC CORPORATION and HTC )  
AMERICA, INC., )  
23 Plaintiffs, )  
24 v. )  
25 TECHNOLOGY PROPERTIES LIMITED, )  
26 PATRIOT SCIENTIFIC CORPORATION )  
and ALLIACENSE LIMITED, )  
27 Defendants. )  
28

Case No. 3:08-cv-00882 PSG

## **Notice of Motion**

PLEASE TAKE NOTICE that Defendants Technology Properties Ltd., Patriot Scientific Corporation, and Alliacense Ltd. (collectively, “TPL”) move, pursuant to Civil Local Rules 6-3 and 7-11, to continue the June 24, 2013 trial date to October 21, 2013 (and a continuance of other dates in the 9/14/12 Case Management Order, Doc. 350). This Motion is based on the following Memorandum of Points and Authorities, the accompanying Declaration of James C. Otteson, the [Proposed] Order, the entire record in this matter, and such evidence as may be presented at any hearing of this Motion, on a date and at a time to be determined by the Court.

## **Introduction**

Due to a direct conflict with trial and post-trial briefing on the same subject matter in the U.S. International Trade Commission (“ITC”), TPL respectfully asks the Court to continue the trial in this case for four months, from June 24, 2013 to October 21, 2013. Good cause exists for a continuance because TPL’s entire trial team – including lead trial counsel – will be deeply involved in the related ITC proceeding on the ’336 patent, which includes a trial from June 3 through June 14, 2013, and substantial post-trial and reply briefing, due on June 28 and July 10, respectively. Quite simply, it will be impossible for TPL and its counsel to prepare for and try the case before this Court at exactly the same time as the ITC trial and post-trial briefing.

The interests of judicial economy also weigh in favor of a continuance. All parties in this case are also parties in the ITC. Moreover, the ITC case alleges infringement of the same ’336 patent at issue in this Court. Not only would a four-month continuance permit TPL to complete the ITC trial and post-trial briefing, the ITC will issue its Initial Determination on September 6, 2013. This could significantly increase the likelihood of settlement, and may obviate the need for a trial before this Court. Additionally, the Court may find that the record before the ITC and its Initial Determination are useful to narrow the disputed issues between the parties in this case in advance of trial. Accordingly, TPL’s motion should be granted.

## **Factual Background**

Acer and HTC filed related declaratory judgment actions in 2008, which became Case Nos. 5:08-cv-00877 PSG (the “877 Case”) and 3:08-cv-00882 PSG (the “882 Case”) (together,

1 the “Related Cases”). On June 17, 2009, Judge Fogel granted Acer and HTC’s motions to stay  
2 the cases pending the Patent Office’s reexamination of the patents-in-suit (filed by Acer), which  
3 substantially delayed the Related Cases. 877 Docs. 144, 126; 882 Docs. 131, 109. More than  
4 two years later, the Related Cases were re-assigned to Chief Judge James Ware on September 1,  
5 2011. TPL’s current lead counsel, James Otteson of Agility IP Law, first appeared on November  
6 15, 2011. Otteson Decl., ¶ 2. Judge Ware conducted the very first *Markman* hearing in the  
7 Related Cases on January 27, 2012, and issued a First Claim Construction Order on June 12,  
8 2012. 877 Doc. 336.

9 On July 24, 2012, TPL filed an ITC complaint that alleged infringement of U.S. Patent  
10 No. 5,809,336 (“the ’336 patent”), one of the patents at issue in the Related Cases. In late  
11 August 2012, the ITC instituted Investigation No. 337-TA-853 (the “853 Investigation”) based  
12 on TPL’s Complaint, which named Acer and HTC as respondents (as well as 12 other respondent  
13 groups).<sup>1</sup> Otteson Decl., ¶ 3. On September 4, 2012, the ITC ALJ issued Order No. 3, which set  
14 January 6, 2014 as the “target date” for the completion of the 853 Investigation, as required by  
15 statute. *See* Otteson Decl., ¶¶ 4, 5; Exhs. A, B. Order No. 3 also set a trial date of June 3-14,  
16 2013 for the 853 Investigation, with initial post-hearing briefs due June 28, 2013, and post-  
17 hearing reply briefs due July 10. *Id.*

18 This Court held a case management conference on September 4, 2012, and issued a Case  
19 Management Order on September 14, 2012 (Doc. 350). In that Order, the Court set the Related  
20 Cases for trial starting on June 24, 2013. The Court also set dates for supplemental claim  
21 construction briefing, and held a supplemental *Markman* hearing on November 30, 2012. The  
22 Court issued a Claim Construction Order (877 Doc. 381) on December 4, 2012.

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24  
25 <sup>1</sup> TPL also filed related district court actions in the Northern District of California  
26 against all of the respondents in the 853 Investigation, except for Acer and HTC. Pursuant to 28  
27 U.S.C. § 1659, all of the ITC respondents moved for stays of their respective district court  
28 actions, *except for* Acer and HTC – even though they could have moved for a stay under § 1659.

1 After completion of *Markman* proceedings, TPL contacted Acer and HTC on December  
2 6, 2012 to point out the direct conflict in trial schedules between the 853 Investigation and this  
3 case. While acknowledging the conflict, Acer and HTC would not agree to a continuance of the  
4 trial, despite the fact that they had previously delayed the Related Cases much longer through  
5 their own motions for stays pending the reexaminations they had filed. *See* Otteson Decl., ¶¶ 8,  
6 9; Exh. C. HTC has now indicated that it will move to *reopen* already settled claim construction  
7 issues. Otteson Decl., ¶ 10; Exh. D. Pending HTC’s forthcoming claim construction motion  
8 (which TPL will oppose), there is no “final claim construction ruling” – which is a triggering  
9 event for final contentions under the Case Management Order. *See* Doc. 350.

### 10 Argument

11 The Court may modify its schedule upon a showing of good cause. *See* Fed. R. Civ. P.  
12 16(b)(4); *see also* Civ. L.R. 6-3. Here, good cause for granting a continuance exists because  
13 TPL’s lead counsel (indeed, TPL’s entire trial team) cannot simultaneously represent TPL before  
14 the ITC during its hearing and post-hearing briefing *and* represent TPL in trial before this Court.  
15 Judicial economy also favors a continuance until after the ITC renders its Initial Determination,  
16 which may advance settlement and permit this Court to make use of the ITC record.

17 Although the ITC trial will conclude on June 14, 2013, TPL’s entire trial team, including  
18 lead counsel, will be intimately involved in the required post-hearing briefing. Otteson Decl. ¶¶  
19 4, 5; Exhs. A, B. Opening briefing is a massive undertaking, and is due June 28, 2012 – on the  
20 fifth day of the trial currently scheduled in this Court. Thereafter, TPL’s trial team must submit  
21 substantial post-trial reply briefing, due on July 10, 2013. *Id.* Mr. Otteson’s and Agility’s  
22 obligations to represent TPL before the ITC make it impossible for them to simultaneously  
23 satisfy their professional obligations to TPL before this Court. Otteson Decl. ¶¶ 6, 7. Given the  
24 existence of an immovable conflict, the Court should grant TPL’s motion. *See, e.g., Felder v.*  
25 *Puthuff*, C-93-20303-RPA (EAI), 1995 WL 16821 (N.D. Cal. Jan. 13, 1995) (granting motion to  
26 continue trial where counsel had immovable trial conflict in another case).

27 Significantly, the ITC’s enabling statute requires the ITC to conclude Section 337  
28 investigations “at the earliest practicable time.” *See* 19 U.S.C. § 1337(b)(1) (“The Commission

1 shall conclude any such investigation and make its determination under this section at the earliest  
2 practicable time after the date of publication of notice of such investigation.”). Recognizing the  
3 potential conflict with related district court actions, Congress enacted 28 U.S.C. § 1659, which  
4 permits a respondent in an ITC investigation to stay any related district court case until the  
5 Commission’s determination becomes final. *See* 28 U.S.C. § 1659. (However, Acer and HTC  
6 chose not to avail themselves of Section 1659. Otteson Decl., ¶ 3.) Given the ITC’s statutory  
7 mandate and the availability of a mandatory stay of related civil proceedings, the ITC cannot  
8 reschedule its hearings to permit counsel to represent parties in related district court matters.<sup>2</sup>

9 A continuance of the trial will permit Mr. Otteson and the Agility trial team to fulfill their  
10 professional obligations to TPL before both the ITC and this Court. Although Acer and HTC are  
11 also involved in the 853 Investigation, they are multinational corporations represented by global  
12 law firms with literally hundreds of attorneys at their disposal. After years of intentional delay  
13 through their unsuccessful reexamination requests and related motions to stay the Related Cases,  
14 Acer and HTC now oppose a much more modest stay. Their motivation is clear: to obtain an  
15 improper tactical advantage as a result of their much greater size and resources. Obviously, TPL  
16 lacks the resources of an Acer or an HTC, and Agility lacks the resources of K&L Gates or  
17 Cooley. Otteson Decl., ¶¶ 1, 6-7. Acer and HTC essentially seek to deprive TPL of its choice  
18 counsel. TPL respectfully asks the Court to remedy the situation by granting a continuance.

19 Moreover, the proposed continuance in this case will promote judicial economy. All of  
20 the parties in the Related Cases are also parties in the 853 Investigation, which will involve  
21 essentially all of the same issues relating to the ’336 patent. A four-month continuance will  
22 permit the ITC to issue its initial determination a little over a month before trial in this case.  
23 Otteson Decl., ¶ 11; Exhs. A, B. Although the ITC’s initial determination is not binding on this

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25 <sup>2</sup> *See e.g.* Pub.L. 103-465, § 321(a)(1)(B) (eliminating language in 19 U.S.C. §  
26 1337(b)(1) that had previously permitted ITC to suspend investigations based on “proceedings in  
27 a court or agency of the United States involving similar questions concerning the subject matter  
28 of such investigation.”).

1 Court, it will provide the Court with valuable background and analysis, and could lead to the  
2 resolution or narrowing of common issues through stipulation and/or settlement. Indeed, it could  
3 eliminate the need for a trial at all.

4 **Conclusion**

5 For the foregoing reasons, Defendants respectfully ask the Court to continue the trial date  
6 from June 24, 2013 to October 21, 2013, with a corresponding continuance of the other dates in  
7 the Court's Case Management Order.

8  
9 Dated: December 11, 2012

Respectfully submitted,

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AGILITY IP LAW, LLP

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By: /s/ James C. Otteson  
James C. Otteson

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14

Attorneys for Defendants  
TECHNOLOGY PROPERTIES LIMITED  
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By: /s/ Charles T. Hoge  
Charles T. Hoge

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19 TECHNOLOGY PROPERTIES LIMITED, )  
PATRIOT SCIENTIFIC CORPORATION, )  
20 and ALLIACENSE LIMITED, )  
21 Defendants. )

Case No. 5:08-cv-00877 PSG

**DECLARATION OF JAMES C.  
OTTESON IN SUPPORT OF  
DEFENDANTS' MOTION TO  
CONTINUE TRIAL DATE AND  
CORRESPONDING DATES**

Judge: Hon. Paul S. Grewal

22 HTC CORPORATION and HTC )  
AMERICA, INC., )  
23 Plaintiffs, )  
24 v. )  
25 TECHNOLOGY PROPERTIES LIMITED, )  
26 PATRIOT SCIENTIFIC CORPORATION )  
and ALLIACENSE LIMITED, )  
27 Defendants. )  
28

Case No. 3:08-cv-00882 PSG

1 I, James C. Otteson, declare:

2 1. I am the founding partner of Agility IP Law, LLP (“Agility”), counsel for  
3 Defendants Technology Properties Ltd. and Alliacense Ltd. (collectively, “TPL”) in the present  
4 case. I founded Agility as a sole proprietorship in January 2010, and added my first employees  
5 in April and May 2010. Since then, Agility has grown to a partnership that includes  
6 approximately 15 attorneys and about a dozen staff. I submit this declaration in support of  
7 Defendants’ Motion to Continue Trial Date and Corresponding Dates. I have knowledge of the  
8 facts set forth in this Declaration, and could competently testify to those facts.

9 2. In November 2011, I was retained by TPL as lead trial counsel in the assertion of  
10 TPL’s MMP Portfolio (the “Moore Microprocessor Portfolio”), which includes the asserted  
11 patents in this case: U.S. Patent Nos. 5,809,336 (“the ’336 patent”), 5,784,584 (“the ’584  
12 patent”), 5,440,749 (“the ’749 patent”), 6,598,148 (“the ’148 patent”) and 5,530,890 (“the ’890  
13 patent”). Agility made its first appearance in this case on behalf of TPL on November 15, 2011.  
14 Although Agility does not directly represent defendant Patriot Scientific Corporation (“PTSC”),  
15 PTSC is aligned with TPL, and I am lead trial counsel for the assertion of the MMP patents on  
16 behalf of all of the Defendants.

17 3. I am also lead trial counsel for TPL and the other complainants in Investigation  
18 No. 337-TA-853, entitled *In the Matter of Certain Wireless Consumer Electronics Devices and*  
19 *Components Thereof* (the “853 Investigation”) before the U.S. International Trade Commission  
20 (“ITC”). The Complaint for the 853 Investigation, which was filed on July 24, 2011, alleges  
21 infringement of the same ’336 patent that is at issue in the case before this Court. In addition,  
22 the Acer and HTC entities that are declaratory judgment plaintiffs before this Court are also  
23 respondents in the 853 Investigation (although the ITC case also includes 12 other respondent  
24 groups). The ITC instituted the 853 Investigation on August 21, 2011. Thereafter, all of the  
25 respondents in the 853 Investigation sought and received stays of their co-pending district court  
26 cases on the MMP patents in this District under 28 U.S.C. § 1659 – except for Acer and HTC.

27 4. On Friday, September 4, 2012, ALJ Gildea issued Order No. 3 in the 853  
28 Investigation (although Agility did not receive a copy until early the following week). In Order



1 No. 3, Judge Gildea set the trial in the 853 Investigation for June 3-14, 2013. He also ordered  
2 that initial post-hearing briefs be filed on June 28, 2013, and that post-hearing reply briefs be  
3 filed on July 10, 2013. As required by statute (19 U.S.C. § 1337) and the ITC's rules, Judge  
4 Gildea also set a "target date" for the completion of the 853 Investigation: January 6, 2014. Due  
5 to the statutory requirements for the expeditious completion of Section 337 ITC investigations, it  
6 is my experience that the ITC's judges never continue trial dates based on attorneys' calendar  
7 conflicts with other matters. Order No. 3 from the 853 Investigation is attached to this  
8 Declaration as **Exhibit A**. On October 1, 2012, Judge Gildea confirmed the trial schedule in  
9 Order No. 7, which is attached to this Declaration as **Exhibit B**.

10 5. I have been lead trial counsel in many ITC investigations, including at least six  
11 that proceeded to trial and post-trial briefing. The preparation of post-trial briefs is a massive  
12 undertaking that is compressed into a very short time after the conclusion of trial. In the 853  
13 Investigation, we will have only two weeks from the completion of trial to submit opening briefs  
14 covering all issues in the case (*e.g.*, claim construction, infringement, validity, domestic industry,  
15 etc.). In addition, post-hearing briefs must be fully cross-referenced to the trial transcript and  
16 exhibits. Based on my experience, it will take a team of at least six to eight lawyers working 12-  
17 16 hours every day to complete the initial post-trial briefing in the 853 Investigation (which will  
18 likely be at least 150-200 pages) by June 28, 2013. After that, it will take a similar effort to  
19 prepare post-hearing reply briefs, which are due twelve days later on July 10, 2013.

20 6. Currently, Agility has six partners, four of whom are working on both the 853  
21 Investigation and the case before this Court. Agility also employs nine other attorneys and/or  
22 contract attorneys, seven of whom are working on both the 853 Investigation and the case  
23 pending before this Court. Agility also has approximately eight legal staff working on both the  
24 ITC case and the above-captioned case.

25 7. Thus, approximately 75% of Agility's attorney and staff resources will be  
26 committed to trial and post-trial briefing for the 853 Investigation between June 1 and July 10,  
27 2013. More specifically, the ten to eleven Agility attorneys mentioned in paragraph 6 –  
28 including myself – will be spending essentially all of their time on the 853 Investigation during

1 those six weeks. As a result, it will be impossible for us to fulfill our responsibilities on the 853  
2 Investigation while simultaneously preparing for and trying the above-captioned case if it  
3 remains scheduled for June 24, 2013. As I am sure the Court can appreciate, counsel for Acer  
4 and HTC – K&L Gates and Cooley – are also excellent firms, but they do not share the resource  
5 constraints that Agility has as a small start-up firm.

6 8. After receiving the Court’s December 4, 2012 claim construction order, I called  
7 Acer’s counsel, Dr. Timothy Walker, on December 6, 2012. Dr. Walker and I recently tried an  
8 ITC case together as co-defense counsel (in July 2012), so I knew that he understood the  
9 requirements associated with an ITC trial and post-trial briefing. I pointed out that there was an  
10 obvious conflict between the 853 Investigation’s trial and post-trial briefing and the trial  
11 currently set for June 24, 2013 in this case. I suggested that the parties agree to continue the trial  
12 date in this case to avoid the scheduling conflict. Dr. Walker said that he would check with his  
13 client and HTC’s counsel and get back to me.

14 9. I followed up with an e-mail to Dr. Walker on December 7, 2012. Dr. Walker  
15 responded that Acer and HTC did not wish to change the trial date in this case, and would  
16 oppose any motion by TPL for a continuance. A copy of the e-mail exchange between Dr.  
17 Walker and myself is attached to this Declaration as Exhibit C.

18 10. On December 7, 2012, Dr. Kyle Chen (counsel for HTC) sent me an e-mail to ask  
19 whether TPL would oppose a motion by HTC to submit additional claim construction briefing in  
20 this case. A copy of Dr. Chen’s e-mail to me is attached to this Declaration as Exhibit D. In  
21 TPL’s view, the terms and phrases for which HTC seeks construction have already been  
22 construed by this Court (*e.g.*, “ring oscillator”), or are not the subject of any dispute between the  
23 parties. Thus, I informed Dr. Chen that TPL would oppose any such motion by HTC.

24 11. According to Order Nos. 3 and 7 in the 853 Investigation, Judge Gildea will file  
25 his “Final Initial Determination” (or “ID”) – which is essentially a lengthy, detailed opinion on  
26 all issues in the case – on September 6, 2013. *See* Exhibits A and B, attached to this Declaration.  
27 Thus, if the trial in this case is continued until October 21, 2013, it is possible that the ITC’s ID  
28 could clarify and/or narrow issues in advance of a trial in this Court. In addition, the decision

1 from the ITC could well promote a settlement between the parties in this case, and eliminate the  
2 need for any trial at all.

3 12. Although I believe it is extremely unlikely that the ITC will change any dates  
4 relating to the hearing in the 853 Investigation, I will promptly advise the Court if there are any  
5 such changes.

6  
7 I declare under penalty of perjury that the foregoing is true and correct and that this  
8 declaration was executed at Menlo Park, California on December 12, 2012.

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11 /s/James C. Ottesson  
James C. Ottesson

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**Exhibit A**

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.**

**In the Matter of**

**CERTAIN WIRELESS CONSUMER  
ELECTRONICS DEVICES AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-853**

**ORDER NO. 3: [CORRECTED<sup>1</sup>] INITIAL DETERMINATION SETTING TARGET  
DATE PURSUANT TO COMMISSION RULE 210.51(a); AND**

**NOTICE OF GROUND RULES AND DATE FOR SUBMISSION OF  
PROPOSED PROCEDURAL SCHEDULE**

(September 10, 2012)

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 wireless consumer electronic devices and components thereof that infringe one or more of claims 1, 6, 7, 9-11, and 13-16 of the '336 patent and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

77 Fed. Reg. 51572 (August 24, 2012).

The Notice of Investigation names Technology Properties Limited LLC and Phoenix Digital Solutions LLC of Cupertino, California and Patriot Scientific Corporation of Carlsbad, California as complainant and Acer, Inc. of Taipei, Taiwan; Acer America Corporation of San Jose, California; Amazon.com, Inc. of Seattle, Washington; Barnes and Noble, Inc. of New York, New York; Garmin Ltd of Schaffhausen, Switzerland; Garmin International, Inc. of Olathe, Kansas; Garmin USA, Inc. of Olathe, Kansas; HTC Corporation of Taoyuan, Taiwan; HTC America of Bellevue, Washington; Huawei Technologies Co, Ltd. of Shenzhen, China;

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<sup>1</sup> A typographical error listing the target date as January 6, 2013 has been corrected to January 6, 2014.

Huawei North America of Plano, Texas; Kyocera Corporation of Kyoto, Japan; Kyocera Communications, Inc. of San Diego, California; LG Electronics, Inc. of Seoul, Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; Nintendo Co. Ltd. of Kyoto, Japan; Nintendo of America, Inc. of Redmond, Washington; Novatel Wireless, Inc. of San Diego, California; Samsung Electronics Co., Ltd., of Seoul, Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; Sierra Wireless, Inc. of British Columbia, Canada; Sierra Wireless America, Inc. of Carlsbad, California; ZTE Corporation of Shenzhen, China; and ZTE (USA) Inc. of Richardson, Texas as respondents. (*Id.*) The Commission Investigative Staff of the Office of Unfair Import Investigations is also a party in this investigation. (*Id.*)

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 Notice of Investigation, and taking into account the Administrative Law Judge's commitments in other Investigations already instituted, the Administrative Law Judge has determined that a target date exceeding sixteen months is appropriate. There is no room in the Administrative Law Judge's schedule<sup>2</sup> for a ten-day hearing until June of 2013. Adequate time must further be allocated for post-hearing briefing and analysis. Accordingly, a target of January 6, 2014 is set for this Investigation. Based on this target date, the final initial determination on violation in this Investigation will be due no later than September 6, 2013.

On August 30, 2012, this Investigation was reassigned to the undersigned Administrative Law Judge. Order No. 2, which issued on August 24, 2012, is hereby rescinded in its entirety. The conduct of this Investigation before the Administrative Law

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<sup>2</sup> The Administrative Law Judge's docket for the first half of 2013 is crowded with hearings and final initial determination deadlines, including four evidentiary hearings and seven final initial determinations currently scheduled between January and June of 2013.

Judge shall be governed by the Commission Rules and the Ground Rules attached hereto.

The parties should pay particular attention to the Ground Rules governing this Investigation, as they differ from the ground rules issued previously in this Investigation and the ground rules issued by the Administrative Law Judge in other investigations. Further, the Administrative Law Judge has assigned Ken Schopfer as the primary attorney advisor for this Investigation. Any inquiries or correspondence from the parties should be directed to Mr. Schopfer by email at [kenneth.schopfer@usitc.gov](mailto:kenneth.schopfer@usitc.gov) or by telephone at (202) 205-3330. However, the parties should note Ground Rule 1.3.2 requiring that electronic copies of submissions be sent to both of the Administrative Law Judge's attorney advisors.

In order that the proceeding in this matter may begin expeditiously, the parties are directed to submit a discovery statement by September 21, 2012 (the discovery statement need not be filed with the Office of the Secretary of the Commission). The discovery statement shall include: (i) a description of information and evidence that each party intends to submit to prove its own case; (ii) a description of specific information and evidence that each party will be seeking from other parties and third persons; and (iii) a description of information and evidence each party believes can be obtained only by deposition, interrogatory, subpoena, or request for admissions.

In addition to the discovery statement, the parties also shall jointly file by September 21, 2012 a proposed procedural schedule that includes dates for each of the events set forth in Ground Rule 1.14. If the parties wish to deviate from the attached sample schedule when proposing dates, they should explain their rationale for the proposed changes in their submission. Certain dates have already been set in the schedule below. The parties may not alter the dates the Administrative Law Judge has already set forth below when proposing their schedule.

With respect to the evidentiary hearing, the Administrative Law Judge anticipates an optional technology tutorial to start at 9:00 a.m. on June 3, 2013 at a location to be announced closer to the hearing date. The pre-hearing conference and hearing will commence in the same location immediately following the tutorials. The hearing shall conclude no later than June 14, 2013. The parties shall take these dates, and the other dates noted in **Attachment A** below, into consideration when proposing their procedural schedule.

The proposed schedule includes dates for three settlement meetings (which will not include the Administrative Law Judge) at a time, date, and location of the parties' choosing for the good faith exploration of settlement, by persons of requisite settlement authority, of some or all of the issues in the case. Unless the parties obtain the permission of the Administrative Law Judge, for good cause shown, the settlement meetings should not occur by video-conferencing or by teleconferencing. The first of the settlement meetings should be relatively early in the Investigation, the second should be approximately midway through the period for discovery, while the last should be set for the period between the close of discovery and before the commencement of the hearing. The parties should also include dates in the proposed schedule for filing the joint settlement conference reports.<sup>3</sup>

In addition, the parties are expected to identify patent priority dates, prior art, and solidify their positions with respect to claim construction for the asserted patents early in the Investigation. The proposed schedule provides dates for the submission of proposed claim constructions for disputed claim terms. Absent a showing of good cause, the parties will be bound by their proposed constructions for disputed claim terms on the date the joint submission of disputed claim terms is due. The parties may submit proposals on or before December 7,

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<sup>3</sup> Settlement conference reports, at a minimum, should state what meeting(s) took place, who attended, and what result, if any, was obtained in each meeting. See *Certain Dynamic Random Access Memory and NAND Flash Memory Devices and Products Containing Same*, Inv. No. 337-TA-803, Order No. 16 (U.S.I.T.C., Nov. 21, 2011).




2012 with their comments as to whether a Markman hearing at least two months in advance of the hearing would be useful in resolving disputed claim terms.

The parties should make intensive good faith efforts to agree to a procedural schedule. It is expected that in most instances the parties should be able to submit a joint proposal on this matter.

This Initial Determination is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission, pursuant to 19 C.F.R. § 210.44, orders on its own motion a review of the Initial Determination or certain issues herein.

**SO ORDERED.**

  
E. James Gildea  
Administrative Law Judge

## ATTACHMENT A

**FORM OF PROCEDURAL SCHEDULE & DATES**

<b>Parties submit discovery statement</b>	<b>September 21, 2012</b>
<b>Parties file a proposed procedural schedule</b>	
<b>Parties exchange list of patent claim terms for construction</b>	<b>October 5, 2012</b>
<b>File notice of patent priority dates</b>	<b>October 19, 2012</b>
<b>Deadline for first settlement conference</b>	
<b>Submission of first settlement conference joint report</b>	
<b>File identification of expert witnesses, including their expertise and curriculum vitae</b>	
<b>File notice of prior art</b>	<b>November 16, 2012</b>
<b>Complainant and Respondents exchange and provide Staff their proposed construction of the disputed claim terms</b>	<b>November 30, 2012</b>
<b>Deadline to file Markman hearing proposals</b>	<b>December 7, 2012</b>
<b>Deadline for parties to meet and confer (including Staff) in an attempt to reconcile or otherwise limit disputed claim terms</b>	
<b>Parties submit a joint list showing each party's proposed construction of the disputed claim terms</b>	<b>December 21, 2012</b>
<b>Technology Stipulation deadline</b>	
<b>Deadline for second settlement conference</b>	
<b>Submission of second settlement conference joint report</b>	
<b>File tentative list of witnesses a party will call to testify at the evidentiary hearing, with an identification of each witness' relationship to the party</b>	
<b>Deadline for initial contention interrogatory responses</b>	

<b>Fact discovery cutoff and completion</b>	
<b>Last day for motions to compel discovery</b>	
<b>Exchange of initial expert reports (identify tests/surveys/data)</b>	[must be at least 30 days after the deadline for motions to compel]
<b>Exchange of rebuttal expert reports</b>	
<b>Deadline for third settlement conference</b>	
<b>Submission of third settlement conference joint report</b>	
<b>Last day for filing summary determination motions</b>	<b>February 28, 2013</b>
<b>Expert discovery cutoff and completion</b>	
<b>Submission of statements regarding the use of witness statements in lieu of live direct testimony, and statements regarding whether any party intends to offer expert reports into evidence</b>	
<b>Exchange of exhibit lists among the parties</b>	
<b>Submit and serve direct exhibits, with physical and demonstrative exhibits available – Complainant and Respondents</b>	
<b>Submit and serve direct exhibits, with physical and demonstrative exhibits available – Staff</b>	
<b>File Pre-hearing statements and briefs – Complainant and Respondents</b>	
<b>File Pre-hearing statement and brief – Staff</b>	
<b>File requests for receipt of evidence without a witness</b>	
<b>File objections to direct exhibits (including witness statements)</b>	
<b>Submit and serve rebuttal exhibits (including witness statements), with rebuttal physical and demonstrative exhibits available—all parties</b>	
<b>Last day to file motions <i>in limine</i></b>	<b>May 7, 2013</b>
<b>File responses to objections to direct exhibits</b>	

<b>File objections to rebuttal exhibits</b>	
<b>File statement of high priority objections</b>	
<b>File response to objections to rebuttal exhibits</b>	
<b>File responses to statement of high priority objections</b>	
<b>Submission of declarations justifying confidentiality of exhibits</b>	
<b>Last day to file responses to motions <i>in limine</i></b>	<b>May 17, 2013</b>
<b>Tutorials (optional)</b>	<b>9:00 a.m., June 3, 2013, location TBA</b>
<b>Pre-hearing conference</b>	<b>June 3, 2013, location TBA</b>
<b>Hearing</b>	<b>June 3 to June 14, 2013, location TBA</b>
<b>File initial post-hearing briefs and final exhibit lists</b>	<b>June 28, 2013</b>
<b>File reply post-hearing briefs</b>	<b>July 10, 2013</b>
<b>Final ID due</b>	<b>September 6, 2013</b>
<b>Target Date</b>	<b>January 6, 2014</b>

**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon, the Commission Investigative Attorney, Matthew N. Bathon, Esq., and the following parties as indicated on September 10, 2012.



Lisa R. Barton, Acting Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainants Technology Properties Limited  
LLC, Phoenix Digital Solutions LLC and Patriot Scientific  
Corporation :**

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**On Behalf of Respondents Acer Inc., Acer America  
Corporation, Amazon.com Inc. and Novatel, Inc.:**

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**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

**On Behalf of Respondent Barnes & Noble, Inc.:**

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**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

**On Behalf of LG Electronics, Inc. and LG Electronics U.S.A.,  
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# **Exhibit B**



UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

**In the Matter of**

**CERTAIN WIRELESS CONSUMER  
ELECTRONICS DEVICES AND COMPONENTS  
THEREOF**


**Inv. No. 337-TA-853**

**ORDER NO. 7: SETTING PROCEDURAL SCHEDULE**

(October 1, 2012)

Pursuant to Order No. 2, the parties submitted a joint proposed procedural schedule. The Investigation will be controlled by the procedural schedule appended hereto as Attachment A.<sup>1</sup>

**SO ORDERED.**

  
E. James Gildea  
Administrative Law Judge

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<sup>1</sup> The parties should note that in order to best accommodate the dates proposed by the parties the Administrative Law Judge has adjusted certain dates set forth in Order No. 2.

## ATTACHMENT A

PROCEDURAL SCHEDULE

<b>Parties exchange list of patent claim terms for construction</b>	<b>October 5, 2012</b>
<b>Deadline for first settlement conference</b>	<b>October 15, 2012</b>
<b>File notice of patent priority dates</b>	<b>October 19, 2012</b>
<b>Submission of first settlement conference joint report</b>	<b>October 19, 2012</b>
<b>File notice of prior art</b>	<b>November 16, 2012</b>
<b>Complainant and Respondents exchange and provide Staff their proposed construction of the disputed claim terms</b>	<b>November 30, 2012</b>
<b>Deadline to file Markman hearing proposals</b>	<b>December 7, 2012</b>
<b>Deadline for parties to meet and confer (including Staff) in an attempt to reconcile or otherwise limit disputed claim terms</b>	<b>December 7, 2012</b>
<b>File identification of expert witnesses, including their expertise and curriculum vitae</b>	<b>December 7, 2012</b>
<b>Parties submit a joint list showing each party's proposed construction of the disputed claim terms</b>	<b>December 21, 2012</b>
<b>Technology Stipulation deadline</b>	<b>January 14, 2013</b>
<b>File tentative list of witnesses a party will call to testify at the evidentiary hearing, with an identification of each witness' relationship to the party</b>	<b>January 18, 2013</b>
<b>Deadline for initial contention interrogatory responses regarding issues on which the party bears the burden of proof</b>	<b>January 25, 2013</b>
<b>Deadline for second settlement conference</b>	<b>January 28, 2013</b>
<b>Submission of second settlement conference joint report</b>	<b>February 1, 2013</b>

<b>Deadline for initial contention interrogatory responses regarding issues on which the party does not bear the burden of proof</b>	<b>February 15, 2013</b>
<b>Fact discovery cutoff and completion</b>	<b>February 22, 2013</b>
<b>Last day for motions to compel discovery</b>	<b>February 25, 2013</b>
<b>Submission of statements regarding the use of witness statements in lieu of live direct testimony, and statements regarding whether any party intends to offer expert reports into evidence</b>	<b>March 1, 2013</b>
<b>Last day for filing summary determination motions</b>	<b>March 22, 2013</b>
<b>Exchange of initial expert reports (identify tests/surveys/data)</b>	<b>March 27, 2013</b>
<b>Exchange of rebuttal expert reports</b>	<b>April 17, 2013</b>
<b>Expert discovery cutoff and completion</b>	<b>May 1, 2013</b>
<b>Exchange of exhibit lists among the parties</b>	<b>May 1, 2013</b>
<b>Submit and serve direct exhibits, with physical and demonstrative exhibits available – Complainant and Respondents</b>	<b>May 3, 2013</b>
<b>Submit and serve direct exhibits, with physical and demonstrative exhibits available – Staff</b>	<b>May 6, 2013</b>
<b>File Pre-hearing statements and briefs – Complainant and Respondents</b>	<b>May 7, 2013</b>
<b>File objections to direct exhibits</b>	<b>May 10, 2013</b>
<b>Last day to file motions <i>in limine</i></b>	<b>May 13, 2013</b>
<b>File Pre-hearing statement and brief – Staff</b>	<b>May 13, 2013</b>
<b>File requests for receipt of evidence without a witness</b>	<b>May 14, 2013</b>
<b>Submit and serve rebuttal exhibits, with rebuttal physical and demonstrative exhibits available— all parties</b>	<b>May 14, 2013</b>
<b>Deadline for third settlement conference</b>	<b>May 17, 2013</b>
<b>File responses to objections to direct exhibits</b>	<b>May 17, 2013</b>
<b>File objections to rebuttal exhibits</b>	<b>May 22, 2013</b>

<b>Last day to file responses to motions <i>in limine</i></b>	<b>May 22, 2013</b>
<b>Submission of third settlement conference joint report</b>	<b>May 24, 2013</b>
<b>File statement of high priority objections</b>	<b>May 24, 2013</b>
<b>File response to objections to rebuttal exhibits</b>	<b>May 28, 2013</b>
<b>File responses to statement of high priority objections</b>	<b>May 29, 2013</b>
<b>Submission of declarations justifying confidentiality of exhibits</b>	<b>May 30, 2013</b>
<b>Tutorials (optional)</b>	<b>9:00 a.m., June 3, 2013, location TBA</b>
<b>Pre-hearing conference</b>	<b>June 3, 2013, location TBA</b>
<b>Hearing</b>	<b>June 3 to June 14, 2013, location TBA</b>
<b>File initial post-hearing briefs and final exhibit lists</b>	<b>June 28, 2013</b>
<b>File reply post-hearing briefs</b>	<b>July 10, 2013</b>
<b>Final ID due</b>	<b>September 6, 2013</b>
<b>Target Date</b>	<b>January 6, 2014</b>

**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **ORDER** has been served by hand upon, the Commission Investigative Attorney, Whitney Winston, Esq., and the following parties as indicated on October 1, 2012.



Lisa R. Barton, Acting Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainants Technology Properties Limited  
LLC, Phoenix Digital Solutions LLC and Patriot Scientific  
Corporation :**

James C. Otteson, Esq.  
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**On Behalf of Respondents Acer Inc., Acer America  
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**On Behalf of Respondents Garmin Ltd., Garmin  
International, Inc. and Garmin USA, Inc. :**

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**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

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**On Behalf of Samsung Electronics Co., Ltd. and Samsung  
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**On Behalf of HTC Corporation; HTC America; Nintendo Co.,  
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**On Behalf of Kyocera Corporation and Kyocera  
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**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

**On Behalf of LG Electronics, Inc. and LG Electronics U.S.A.,  
Inc. :**

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**On Behalf of Sierra Wireless, Inc. and Sierra Wireless  
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PATRIOT SCIENTIFIC CORPORATION

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 ACER, INC., ACER AMERICA )  
CORPORATION and GATEWAY, INC., )  
17 Plaintiffs, )  
18 v. )  
19 TECHNOLOGY PROPERTIES LIMITED, )  
PATRIOT SCIENTIFIC CORPORATION, )  
20 and ALLIACENSE LIMITED, )  
21 Defendants. )

Case Nos. 5:08-cv-00877 PSG

**[PROPOSED] REVISED CASE  
MANAGEMENT ORDER**

Judge: Hon. Paul S. Grewal

22 HTC CORPORATION and HTC )  
AMERICA, INC., )  
23 Plaintiffs, )  
24 v. )  
25 TECHNOLOGY PROPERTIES LIMITED, )  
26 PATRIOT SCIENTIFIC CORPORATION )  
and ALLIACENSE LIMITED, )  
27 Defendants. )  
28

Case No. 3:08-cv-00882 PSG





1 Dated: December \_\_\_\_, 2012

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PAUL S. GREWAL