

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN AUDIO PROCESSING
HARDWARE AND SOFTWARE AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-949

**ORDER No. 3: SETTING PROCEDURAL SCHEDULE IN VIEW OF
COMMISSION'S NOTICE REQUIRING ID ON STANDING
WITHIN 100 DAYS OF INSTITUTION**

(March 18, 2015)

By publication in the Federal Register, on March 18, 2015, the Commission instituted Investigation No. 337-TA-949, and ordered the presiding ALJ to determine whether the Complainant has standing to assert each of the asserted patents, within 100 days of institution:

Notwithstanding any Commission Rules that would otherwise apply, the presiding Administrative Law Judge shall hold an early evidentiary hearing, find facts, and issue an early decision, as to whether the complainant has standing to assert each of the asserted patents. Any such decision shall be in the form of an initial determination (ID). Petitions for review of such an ID shall be due five calendar days after service of the ID; any replies shall be due three business days after service of a petition. The ID will become the Commission's final determination 30 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission Rules 210.43, 210.44, and 210.45, 19 C.F.R. §§ 210.43, 210.44, and 210.45. The Commission expects the issuance of an early ID relating to the standing issues within 100 days of institution, except that the presiding ALJ may grant a limited extension of the ID for good cause shown. The issuance of an early ID finding complainant does not have standing to assert the asserted patents shall stay the investigation unless the Commission orders otherwise; any other decision shall not stay the investigation or delay the issuance of a final ID covering the other issues of the investigation.

80 Fed. Reg. 14159-60 (March 18, 2015). As provided in the Commission's Notice, I may grant a limited extension of the ID for good cause shown.

The Complainant in this Investigation is Andrea Electronics Corp. ("Andrea"), and the Respondents are Acer Inc., Acer America Corp., ASUSTeK Computer Inc., ASUS Computer International, Dell Inc., Hewlett Packard Co., Lenovo Group Ltd., Lenovo Holding Co., Inc., Lenovo (United States) Inc., Toshiba Corp., Toshiba America, Inc., Toshiba America Information Systems, Inc., and Realtek Semiconductor Corp. The Complaint alleges violations of section 337 based on the infringement of U.S. Patent No. 5,825,898 ("the '898 patent"); U.S. Patent No. 6,483,923 ("the '923 patent"); U.S. Patent No. 6,049,607 ("the '607 patent"); U.S. Patent No. 6,363,345 ("the '345 patent"); and U.S. Patent No. 6,377,637 ("the '637 patent") (collectively, "the asserted patents"). The Complaint also alleges that an industry in the United States exists as required by section 337(a)(2).

Under the Commission's 100-day timeline, I anticipate the procedural schedule to be as follows:

| Event | Date |
|--|---------------------------|
| Date of Publication of Notice of Institution in the Federal Register | Wednesday, March 18, 2015 |
| Deadline for Propounding Ground Rule 6.2 Interrogatories | Wednesday, March 25, 2015 |
| Initial Case Management Conference | Thursday, April 2, 2015 |
| Opening Briefs on Standing (35 pages max) | Friday, April 24, 2015 |
| Potential Hearing on Standing | Thursday, April 30, 2015 |
| Responsive Briefs on Standing (17 pages max) | Monday May 11, 2015 |
| ID Due Date | Friday June 26, 2015 |

The parties are reminded that the sole issue to be decided within the Commission's 100 day timeline is standing. No matter will be entertained unless it relates directly to a substantive determination concerning Complainant's standing in this investigation.

Given the compressed procedural schedule, as required under the Commission's 100-day timeline, I will attempt to give priority to any issue that arises in this investigation, including by handling discovery conferences and ruling on motions, promptly and expeditiously. I also expect the parties to attempt to resolve any discovery dispute in good faith and in a timely fashion, but if they are unable to resolve a discovery issue, they must promptly submit it to me for resolution. The parties are reminded that discovery responses are required to be provided within 10 days of service and for the purposes of this investigation, a failure to timely serve any reply will be viewed as a violation of this Order, unless good cause is shown or a party has requested a protective order under substantially justified circumstances.

The date for a hearing is a placeholder. There may or may not be a reason for me to conduct such a hearing depending upon the circumstances.

The parties are reminded that in the event I do not determine Complainants lack standing, this investigation will need to proceed. Accordingly, they should be ready to immediately serve and reply to discovery requests upon the issuance of a determination and plan to finish this investigation in 16 months or less from the date of the determination.

The parties are directed to meet and confer and to file a joint submission on the proposed procedural schedule within seven (7) days of this Order.

SO ORDERED.



Thomas B. Pender
Administrative Law Judge

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SAME**

337-TA-949

CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached **PUBLIC ORDER NO. 03** has been served upon the **Commission Investigative Attorney, Lisa Murray, Esq.**, and the following parties as indicated on MARCH 19 2015.



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

FOR COMPLAINANTS ANDREA ELECTRONICS CORP.:

Goutam Patnaik, Esq.
PEPPER HAMILTON LLP
600 Fourteenth Street, NW
Washington, DC 20005

() Via Hand Delivery
() Via Express Delivery
() Via First Class Mail
() Other: _____

FOR RESPONDENT ACER INC. & ACER AMERICA CORPORATION:

Craig Kaufman, Esq.
TECHKNOWLEDGE LAW GROUP LLP
100 Marine Parkway, Suite 200
Redwood Shores, CA 94065

() Via Hand Delivery
() Via Express Delivery
() Via First Class Mail
() Other: _____

FOR RESPONDENT DELL INC.

Scott Denko, Esq.
DENKO COBURN LAUFF LLP
3811 Bee Caves Road, Suite 204
Austin, TX 78746

() Via Hand Delivery
() Via Express Delivery
() Via First Class Mail
() Other: _____

FOR RESPONDENT HEWLETT PACKARD CO.

Eric S. Namrow, Esq.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue N.W.
Washington, DC 20004

() Via Hand Delivery
() Via Express Delivery
() Via First Class Mail
() Other: _____

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**FOR RESPONDENTS LENOVO GROUP LTD., LENOVO HOLDING CO., INC. &
LENOVO (United States) INC.**

Fred Williams, Esq.
AKIN GUMP STRAUSS HAUER & FELD LLP
600 Congress Avenue , Suite 1350
Austin, TX 78701

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

**FOR RESPONDENTS TOSHIBA CORPORATION, TOSHIBA AMERICA INC., &
TOSHIBA AMERICA INFORMATION SYSTEMS, INC.**

Douglas F. Stewart, Esq.
BRACEWELL & GIULIANI LLP
701 Fifth Avenue, Suite 6200
Seattle, WA 98104

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

FOR RESPONDENT REALTEK SEMICONDUCTOR CORP.

Li Chen, Esq.
CHEN MALIN LLP
1700 Pacific Avenue, Suite 2400
Dallas, TX 75201

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

FOR RESPONDENT ASUSTeK COMPUTER INC.

No. 15, Li-Te Rd., Beitou District,
Taipei 112, Taiwan

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____

FOR RESPONDENT ASUS COMPUTER INTERNATIONAL

800 Corporate Way
Fremont, CA 94539

Via Hand Delivery
 Via Express Delivery
 Via First Class Mail
 Other: _____