

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436**

**Before the Honorable MaryJoan McNamara
Administrative Law Judge**

In the Matter of

**CERTAIN SOFT PROJECTILE
LAUNCHING DEVICES, COMPONENTS
THEREOF, AMMUNITION, AND
PRODUCTS CONTAINING SAME**

Inv. No. 337-TA-1325

JOINT OUTLINE OF ISSUES

Pursuant to Ground Rule 7.3 and the Procedural Schedule (Order No. 6), Complainants Hasbro, Inc. (“Hasbro”) and Spin Master, Inc. (“Spin Master”) (collectively, “Complainants”); Respondents Prime Time Toys LLC, Prime Time Toys Ltd., Easebon Services Ltd. (collectively, “Respondents”); and Commission Investigative Staff (“Staff,” and with Complainants and Respondents, the “Parties”) jointly submit the following chart of substantive legal issues being litigated in this Investigation.

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Jurisdiction and Importation									
Overview of technology and patents-at-issue	5-6	4-9	--	5-10	1-7	--	6-10	6-10	--
Overview of accused products and domestic industry products	6-10	4-9	--	10-11	--	--	11-13	10-12	--
Jurisdiction	10-11	9-10	--	11-12	n/a	--	13-14	13-14	--
Standing	12	9-10	--	n/a	n/a	--	15	13-14	--
Importation	12-14	9-10	--	n/a	n/a	--	14	13-14	--
Level of skill in the art	14-15	--	6	12	29-30	--	15-17	15-16	--
THE '282 PATENT									
Whether the accused products directly infringe claims 8, 19, and 20	15-29	10-11 (MSD)	-- (MSD)	12-19	-- (MSD)	-- (MSD)	18-21	18 (MSD)	-- (MSD)

¹ For clarity, the descriptions of the issues have been revised to align with the claims and theories presented to the Court.

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether the elements of indirect infringement are met	29-42	11-15	--	n/a	--	--	21-24	--	--
Whether a technical domestic industry exists with respect to claims 8, 19, and 20 ²	42-54	15-18	--	19-20	--	--	24-26	18-19	--
Whether Clear Spheres Launcher anticipates claim 6	54-58	21	--	20-25, 30-38	N/A – Claim Terminated	--	28-31	--	--
Whether DuneCraft Spit Balls anticipates claim 6	54-58	21	--	20, 25-28, 38-44	N/A – Claim Terminated	--	31-35	--	--

² The private parties agreed, “For purposes of this Investigation only, Respondents stipulate that the Domestic Industry Products (‘DI Products’)[] meet all limitations of Claims 1, 8, 19, and 20 of the ‘282 Patent and all limitations of Claims 1, 5, and 14 of the ‘683 Patent under the ALJ’s Claim Constructions in Order No. 28.” (EDIS No. 796608).

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether Clear Spheres Launcher in view of the general knowledge of a POSITA renders obvious claims 6, 8, 19, and 20	54-58	21-22	--	5-10, 20-25, 30-38, 44, 70-75	N/A as to claim 6 – Terminated	--	36-37	--	--
Whether DuneCraft Spit Balls in view of the general knowledge of a POSITA renders obvious claims 6, 8, 19, and 20	54-58	21-22	--	5-10, 20, 25-28, 38-44, 75-76	N/A as to claim 6 – Terminated	--	38-39	--	--
Whether Peev in combination with Clear Spheres Launcher renders obvious claims 8, 19, and 20	58-68	20-26	3-28	5-10, 20-25, 28-38, 44-62	24-26, 29-57, 76-85	16-20	39-47	19-34	1-3

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether Peev in combination with DuneCraft Spit Balls renders obvious claims 8, 19, and 20	58-68	20-26	3-28	5-10, 20, 25-30, 38-60	24-26, 29-57, 76-85	16-20	39-47	19-34	1-3
Whether Nagayoshi in combination with Clear Spheres renders obvious claims 8, 19, and 20	58-68	20-26	3-28	5-10, 20-25, 30-38, 44-55, 62-70	24-26, 29-57, 76-85	16-20	39-47	19-34	1-3
Whether Nagayoshi in combination with DuneCraft Spit Balls renders obvious claims 8, 19, and 20	58-68	20-26	3-28	5-10, 20, 25-28, 30, 38-55, 62-69	24-26, 29-57, 76-85	16-20	39-47	19-34	1-3

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether objective indicia show the nonobviousness and/or obviousness of claims 8, 19, and 20	68-83	26-47	28-47	76-98	57-76	2-16	48-54	34-45	3-6
Whether claims 6, 8, 19, and 20 are invalid under § 112	83-92	--	--	98-105	N/A as to claim 6 – Claim Terminated Withdrawn as to claims 8, 19, and 20	--	56-62	--	--
Whether the '282 patent is invalid under § 102(f)	92-97	--	--	105-110	Withdrawn	--	62-63	--	--
THE '683 PATENT									
Whether the accused products directly infringe claims 5 and 14	98-103	47-49	-- MSD (for 5); Stip. (for 14)	12-19, 110-111	-- MSD (for 5); Stip. (for 14)	-- MSD (for 5); Stip. (for 14)	64-65	46-47 MSD (for 5); Stip. (for 14)	-- MSD (for 5); Stip. (for 14)

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether the elements of indirect infringement are met	103-104	49-50	--	n/a	--	--	65	--	--

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether a technical domestic industry exists with respect to claims 5 and 14 ³	104-108	50-52	--	19-20, 112	--	--	65	47	--
Whether Clear Spheres Launcher anticipates claim 1, 5, and 11	108, 54-58	52, 21	--	20-25, 30-38, 112-114	N/A as to claims 1 and 11 – Terminated	--	67-68	--	--
					Withdrawn as to claim 5				

³ The private parties agreed, “For purposes of this Investigation only, Respondents stipulate that the Domestic Industry Products (‘DI Products’)[] meet all limitations of Claims 1, 8, 19, and 20 of the ‘282 Patent and all limitations of Claims 1, 5, and 14 of the ‘683 Patent under the ALJ’s Claim Constructions in Order No. 28.” (EDIS No. 796608).

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether Clear Spheres Launcher in view of the general knowledge of a POSITA renders obvious claims 1, 5, 11, and 14	108, 54-58	52, 21	--	5-10, 20-25, 30-38, 44, 70-75, 112-115, 121-122	N/A as to claims 1 and 11 – Claims Terminated	--	68-69	--	--
Whether DuneCraft Spit Balls in view of the general knowledge of a POSITA renders obvious claims 1, 5, 11, and 14	108, 54-58	52, 21	--	5-10, 20, 25-28, 38-44, 75-76, 112-113, 114-117, 122-123	N/A as to claims 1 and 11 – Claims Terminated	--	69	--	--
Whether Peev in combination with Clear Spheres renders obvious claims 5 and 14	108, 58-68	52, 20-26	3-28	5-10, 20-25, 28-38, 44-62, 112-115, 117-118	24-26, 29-57, 76-85	16-20	70	48-49, 19-34	1-3

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether Peev in combination with DuneCraft Spit Balls renders obvious claims 5 and 14	108, 58-68	52, 20-26	3-28	5-10, 20, 25-30, 38-60, 112-117	24-26, 29-57, 76-85	16-20	70	48-49, 19-34	1-3
Whether Nagayoshi in combination with Clear Spheres renders obvious claims 5 and 14	108, 58-68	52, 20-26	3-28	5-10, 20-25, 30-38, 44-55, 62-70, 112-115, 120-121	24-26, 29-57, 76-85	16-20	70	48-49, 19-34	1-3
Whether Nagayoshi in combination with DuneCraft Spit Balls renders obvious claims 5 and 14	108, 58-68	52, 20-26	3-28	5-10, 20, 25-28, 30, 38-55, 62-69, 112-115, 118-120	24-26, 29-57, 76-85	16-20	70	48-49, 19-34	1-3
Whether objective indicia show the nonobviousness and/or obviousness of claims 5 and 14	108, 68-83	52, 26-47	28-47	76-98, 123	57-76	2-16	70	48-49, 34-45	3-6

Issues ¹	Complainants' Pre-Hearing Brief	Complainants' Initial Post-Hearing Brief	Complainants' Reply Post-Hearing Brief	Respondents' Pre-Hearing Brief	Respondents' Initial Post-Hearing Brief	Respondents' Reply Post-Hearing Brief	Staff's Pre-Hearing Brief	Staff's Initial Post-Hearing Brief	Staff's Reply Post-Hearing Brief
Whether claims 1, 5, 11, and 14 are invalid under § 112	108-09, 83-92	--	--	98-105, 123-125	N/A as to claims 1 and 11 – Claims Terminated Withdrawn as to claims 5 and 14	--	70-71	--	--
Whether the '683 patent is invalid under § 102(f)	109, 92-97	--	--	105-110, 125-126	Withdrawn	--	71	--	--

Domestic Industry – Economic Prong ⁴									
Whether Complainants' employment of labor or capital satisfies the economic prong	110-127	52-84, 87-94	47-51	126-135	--	20-34; 36-42	73-80	49-56	6-8
Whether Complainants' investments in exploitation satisfy the economic prong	110-13, 127-29	52-55, 84-94	47-51	126-128, 135-136	--	34-42	73-80	49-51, 56-59	6-8
Affirmative Defenses ⁵									
Whether the Gel Blaster Respondents have shown unclean hands	129-135	--	--	137-143	N/A – Gel Blaster Terminated	--	81-84	59	--

⁴ Respondents state that their prehearing brief addresses Complainants' prior assertions of investment in Plant and Equipment (RPHB at 126-129); however, Complainants' prehearing brief does not attempt to establish a domestic industry based on investment in plant and equipment. Complainants state that they do not allege a domestic industry under 19 U.S.C. § 1337(a)(3)(A); Complainants informed Respondents of this before the filing of prehearing briefs.

⁵ Complainants state that their prehearing brief addresses the Gel Blaster Respondents' prior assertions of estoppel (CPHB at 129, 140-42) and breach of the pre-institution duty of candor (CPHB at 129, 142-44); however, Respondents' prehearing brief does not allege these affirmative defenses.

Whether the Gel Blaster Respondents have shown patent misuse	129, 135-140	--	--	137-138, 143-145	N/A – Gel Blaster Terminated	--	84-85	59	--
Whether the Gel Blaster Respondents have shown waiver	129, 140-42	--	--	137-138, 145-146	N/A – Gel Blaster Terminated	--	85-86	59	--
Remedy and Bonding									
Whether a limited exclusion order should issue and the scope of any such order	144-46	94-96	--	146-148	--	42-43	86	60	--
Whether cease and desist orders should issue and the scope of any such orders	144-49	94-96, 96-97	--	149	--	43-44	87	60-61	--
Whether a bond should issue during the Presidential Review Period and in what amount	144-45, 149-50	97-98	--	149-150	--	44-45	87-88	61-63	--

Dated: July 6, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document, **JOINT OUTLINE OF ISSUES** has been filed and served on July 6, 2023, on the following:

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