UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

Before the Honorable MaryJoan McNamara
Administrative Law Judge

In the Matter of **CERTAIN DERMATOLOGICAL TREATMENT DEVICES AND COMPONENTS THEREOF**	**Investigation No. 337-TA-1356**

THE PARTIES' PROPOSED PROCEDURAL SCHEDULE AND NOTICE OF USPTO/PTO PROCEEDINGS AND STATE AND FEDERAL LITIGATION PURSUANT TO ORDER NO. 3

Pursuant to Order No. 3, Complainant Serendia, LLC ("Serendia"); the Office of Unfair Import Investigations Staff ("Staff"); Respondents Sung Hwan E&B Co., LTD. d/b/a SHEnB Co. LTD ("SHEnB"); Aesthetics Biomedical, Inc. ("AB"); Cartessa Aesthetics, LLC ("Cartessa"); Lutronic Corporation; Lutronic Aesthetics, Inc., also known as Lutronic, Inc.; Lutronic, LLC (collectively "Lutronic"); Ilooda, Co., Ltd. ("Ilooda"); Cutera, Inc. ("Cutera"); Jeisys Medical Inc. ("Jeisys"); Cynosure, LLC ("Cynosure"); Rohrer Aesthetics, LLC; Rohrer Aesthetics, Inc. (collectively "Rohrer"); EndyMed Medical, Ltd.; and EndyMed Medical, Inc. (collectively "EndyMed") (collectively "Respondents") (all collectively "the Parties") respectfully submit this proposed procedural schedule and this Notice of USPTO/PTO Proceedings and State and Federal Litigation.

I. THE PROCEDURAL SCHEDULE

The Parties have met and conferred in good faith to identify mutually agreeable dates and jointly submit this proposed procedural schedule, attached hereto as Exhibit A. The Parties understand that the deadlines for Complainant and Respondents' Initial and Reply Post-Hearing

Serendia, LLC
Exhibit 2017
Jeisys v. Serendia
IPR2024-00386
Ex. 2017-001

Briefs were set in Order No. 3; however, no corresponding deadlines were identified or set for the Staff. Therefore, deadlines for the Staff's Initial and Reply Post-Hearing Briefs have been proposed, and the Parties seek leave to adjust the private parties' corresponding deadlines by a few days to account for the proposed deadlines for the Staff. Those proposed revisions are included in the joint proposed procedural schedule attached as Exhibit A.

Through meet and confer, the Parties have agreed on all deadlines in the proposed procedural schedule except for: (1) Respondents' Notice of Prior Art and (2) whether there should be deadlines for the private parties' initial contentions. The Parties' respective positions are provided below.

A. Serendia's Position

1. Ground Rule 4 Notice of Prior Art

Ground Rule 4 confirms that "[t]he purpose of the prior art identification is to notify all parties (early in the Investigation) of the prior art likely to be raised during the hearing on the question of violation of section 337, and thus to allow the parties to formulate their facts and factual predicates, theories of the case, and to allow the experts to provide meaningful reports and deposition testimony." Order No. 2, Ground Rule 4, at 26. Serendia submits that Respondents' Notice of Prior Art should be served on May 10, 2023, consistent with Ground Rule 4, the procedural schedule included with Order No. 3, and with other recent procedural schedules. Respondents' proposal to serve the Notice of Prior Art on June 16—less than a month before the close of fact discovery—conflicts with Ground Rule 4 and deprives Serendia of the ability to timely formulate its facts and factual predicates, theories of the case, and provide meaningful expert reports and deposition testimony. *Id.*

First, the procedural schedule in Order No. 3 reflects that the Notice of Prior Art should be served before the May 25 Management conference and before commencement of the claim

construction process, tracking Ground Rule 4. Order No. 3, Attachment A at ii. Serving the Notice of Prior Art on May 10, 2023, before the claim construction process permits the Parties to enter the claim construction process with an understanding of the prior art-based validity issues in dispute. That understanding will inform the terms the Parties identify and their proposed constructions on May 19, 2023, and help avoid having the Parties request that the ALJ needlessly resolve claim construction disputes in the abstract, which may not matter in determining whether the asserted patent claims are valid and infringed. *Cf. LoganTree LP v. Garmin Int'l, Inc.*, No. 17-1217-EFM-ADM, 2021 WL 5998293, at *7 (D. Kan. Dec. 20, 2021) ("Infringement and invalidity contentions are 'designed specifically to require parties to crystallize their theories of the case early in litigation so as to prevent the "shifting sands" approach to claim construction' and to 'adhere to those theories once they have been disclosed.'") (collecting cases). Having the Notice of Prior Art served at least a week before the Parties' disclosure of claim construction proposals is thus likely to reduce the number of claim construction issues the ALJ will have to decide and ensure that those issues relate to the decisions that the ALJ will need to make on the question of violation of Section 337, consistent with Ground Rule 4.

Second, Serendia's proposal is not only consistent with Ground Rule 4 but also consistent with procedural schedules entered by the ALJ in prior investigations in which the Notice of Prior Art was due about nine weeks before the close of fact discovery, as Serendia proposes here. *See, e.g.*, *Certain Smart Thermostat Hubs, Systems Containing the Same, and Components of the Same*, Inv. No. 337-TA-1339, Order No. 6 at Attachment A (Nov. 9, 2022) (setting the Notice of Prior Art nine weeks before close of fact discovery); *Certain Integrated Circuits, Mobile Devices Containing the Same, and Components Thereof*, Inv. No. 337-TA-1335, Order No. 6 at Attachment A (Nov. 4, 2022) (setting Notice of Prior Art about nine weeks before close of fact discovery). By

contrast, Respondents' proposal, which sets the Notice of Prior Art deadline less than four weeks before the close of fact discovery, violates Ground Rule 4's requirement that the Notice of Prior Art be served "early in the Investigation" and undermines its rationale for an early Notice of Prior Art. Order No. 2, Ground Rule 4, at 26.

Third, Serendia's proposal is reasonable in view of the scope of validity issues that the parties will need to address and the history of these proceedings. There are only two distinct patent specifications. Four of the asserted patents were subject to *inter partes* review (IPR) petitions where the Board declined to institute IPR proceedings because the petitions failed to establish a reasonable probability of proving the challenged claims unpatentable. In addition, Respondents in this Investigation have served two sets of invalidity contentions in district court—including contentions served after the IPR institutions were denied. Further, Respondents have had access to Serendia's infringement charts since the Complaint was filed. Respondents should be required to inform Serendia of the prior art on which they will rely before the Parties exchange claim constructions so that the Parties' constructions can be based on an evaluation of the infringement and validity issues likely to be in dispute.

2. Initial Contention Deadlines

Serendia proposes May 24, 2023 and June 9, 2023 for submission of burden and non-burden initial contentions, respectively, to provide the Parties notice as to the issues in dispute early enough for the Parties to engage in meaningful discovery into those contentions. Respondents propose no deadline for exchange of initial contentions, instead arguing that the private parties are free to negotiate when contentions are exchanged and what is expected in those exchanges on an ad hoc basis. Respondents' proposal virtually ensures there will be discovery disputes requiring the ALJ's intervention, because the discovery period set forth in this Investigation does not provide time for protracted negotiations over when meaningful contentions

should be disclosed. *See* Order No. 3, Attachment A, at iii (ordering July 12 close of fact discovery). This condensed timeframe is also a compelling reason why the Parties will benefit from earlier disclosures because it will allow the Parties to meaningfully utilize the brief remaining discovery period, and not be left to guess at what arguments the other side intends to raise. The Parties should have a common understanding early in this Investigation as to when contentions will be disclosed to ensure efficient discovery.

B. Respondents' Position

1. Ground Rule 4 Notice of Prior Art

Respondents' proposed deadline for submitting their Notice of Prior Art ("NOPA") should be adopted for several reasons.

First, Complainant's propose a deadline (May 10, 2023) that is only one month and ten days after the March 31, 2023 Notice of Institution. On its face, that is not an adequate or fair amount of time for Respondents to search for, review and identify their ***final*** list of prior art to be relied on. That is especially true given the number of asserted patents (6) and asserted claims (70) in this investigation. A number of Respondents have no litigation history with Complainant and did not even begin searching for and reviewing the prior art until this investigation was instituted. Forty days is not a sufficient amount of time to even complete a prior art search on six asserted patents and 70 asserted claims, let alone review it all and identify the ten best references. Staff's proposed deadline (May 24, 2023) does not alleviate the problem, because it is only two weeks later than Complainant's proposed date. Respondents' proposed deadline (June 16, 2023) is far more reasonable and will minimize prejudice to Respondents.

Second, there are fifteen named Respondents in this investigation and the NOPA must be limited to "no more than 10 pieces of prior art per patent including combinations." Searching for and identifying relevant prior art for 6 asserted patents and 70 asserted claims will alone be

unmanageable in just over a month from the Notice of Investigation. But to then have to reach consensus among 15 respondents as to the 10 pieces of prior art per patent that Respondents will collectively have to rely on will take a considerable amount of additional time.

Third, Complainant's and Staff's proposed deadlines for the NOPA do not accord with prior schedules entered by the ALJ. Respondents' proposed NOPA deadline does. Complainant and Staff propose deadlines for the NOPA of 40 days and 54 days respectively from the Notice of Investigation whereas Respondents propose a NOPA deadline 2 ½ months from the Notice of Investigation. In *Certain Integrated Circuits, Chipsets, and Electronic Devices, and Products Containing the Same,* ITC Inv. 337-TA-1287, Order No. 6 (Dec. 27, 2021), the ALJ set a deadline for the NOPA more than 2 ½ months after the Notice of Investigation, which is entirely consistent with what Respondents propose here. Likewise, in another investigation where Complainants' counsel (Latham & Watkins) was representing respondents, the parties jointly proposed a NOPA deadline more than 2 ½ months from the Notice of Investigation. *Certain Tobacco Heating Articles and Components Thereof*, Inv. No. 337-TA-1199, Order No. 5 (June 11, 2020).

Fourth, Complainant and Staff propose a deadline for initial contention interrogatory responses of May 24, 2023. The parties also agreed on May 19, 2023 as the deadline for serving proposed constructions of disputed claim terms. It would be highly prejudicial if Respondents were required to submit their final list of prior art ***before*** Complainant discloses its claim constructions and infringement contentions. In fact, Complainant's claim constructions and infringement contentions will directly inform the prior art that Respondents include in their NOPA. And Respondents will need time to consider both Complainant's proposed claim constructions and infringement contentions before finalizing their NOPA. Requiring Respondents

to submit their NOPA before claim construction and infringement contentions would be highly prejudicial to Respondents.

Complainant's and Staff's arguments for their proposed dates lack merit. Complainant argues that Ground Rule 4 supports its May 10, 2023 NOPA deadline because that Ground Rule states that one of the "purposes of the prior art identification is to notify all parties (early in the Investigation) of the prior art likely to be raised during the hearing…." But a June 16, 2023 NOPA deadline is a date that is "early in the investigation" that will more than adequately apprise Complainant and Staff of the prior art likely to be raised during the hearing. Such a deadline is only 2 ½ months after the Notice of Investigation, which is early by any standard. And it leaves Complainant with nearly 4 weeks of fact discovery to consider any new prior art not previously disclosed (for which there may be none). Moreover, Respondents anticipate disclosing most of the prior art they uncover well in advance of June 16, 2023 during the normal course of discovery, in which case Complainant's concerns would be moot. But Respondents cannot be held to a May 10 or 24 date to identify every last piece of prior art and narrow that art down to 10 references per patent. To require Respondents to do so for 6 asserted patents and 70 asserted claims just over a month after the Notice of Institution would be unfair and highly prejudicial to Respondents.

Complainant also argues that Order 3 reflects that the NOPA should be served before the May 25, 2023 Management conference and before commencement of claim construction. Staff makes the same argument at least with respect to the May 25, 2023 Management conferences. But that order does not always follow and circumstances warrant deviating from the strict order set forth in Order 3. In fact, in *Integrated Circuits*, the NOPA deadline (Feb. 18, 2022) occurred after the Discovery Management Conference (Jan. 20, 2022) and after the deadline for exchanging proposed constructions (Feb. 2, 2022). *Chipsets, and Electronic Devices, and Products*

Containing the Same, ITC Inv. 337-TA-1287, Order No. 6 (Dec. 27, 2021). To the extent identification of prior art will aid in claim construction (and that is debatable), Respondents are going to do so early in discovery to the extent they have identified relevant art. By the time of the NOPA deadline, Respondents anticipate they will have already disclosed most (if not all) of their prior art and will be working on reducing the number of references per patent down to ten. As a result, this argument has no merit.

Finally, Complainant argues that the NOPA deadline should not be based off the Notice of Investigation; rather the relevant date to look at is the fact discovery cut-off date and the NOPA deadline should be set based sufficiently in advance of that date. Complainant cites to a number of investigations where the NOPA deadline was further from the close of fact discovery than what Respondents propose here. But the relevant inquiry should be what is a fair, reasonable and sufficient amount of time for Respondents to search for, locate and then identify the 10 best references per patent in a 6-patent case where 70 claims are being asserted. Past investigations support that at least 2 ½ months after the Notice of Investigation is appropriate. Respondents should not be penalized or prejudiced simply because the fact discovery period in this case is shorter than in the cases cited by Complainant.

For the foregoing reasons, Respondents' proposed NOPA deadline should be adopted.

1. Initial Contention Deadlines

Complainant and Staff attempt to introduce deadlines for two events (initial responses for burden and non-burden contention interrogatories) not provided for in the ALJ's "proposed Procedural Schedule" attached to Order No. 3 and that the ALJ appears to have intentionally excluded from the proposed procedural schedule. Respondents have heeded the ALJ's guidance from other investigations as well as the ALJ's proposed Procedural Schedule and propose that no deadlines be included for initial responses to contention interrogatories.

Respondents are aware that in prior investigations, the ALJ included deadlines for early burden and non-burden contention responses. *See, e.g., Certain Integrated Circuits, Chipsets, and Electronic Devices, and Products Containing the Same,* ITC Inv. 337-TA-1287, Order No. 3, Attachment A (Dec. 15, 2021). Respondents are also aware that after the *Integrated Circuits* investigation—including in this investigation—the ALJ changed her Ground Rules to eliminate dates for initial contention interrogatory responses. The rationale for doing so was well-reasoned:

> 14 I have changed my ground rules for the next --
> 15 the next patent investigation I just received. ***I came to***
> ***16 the conclusion that asking for contention interrogatories***
> ***17 and contention responses really slows things down***.
> 18 Contentions are facts.
> 19 ***So what I am doing going forward is having a***
> ***20 fact discovery deadline and an expert discovery deadline.***
> ***21 And it is assumed that you are going to lay out the***
> ***22 theories of your case and that the facts that are produced***
> ***23 and support the theories of your case will all be produced***
> ***24 by the end of fact discovery with no more playing around***
> ***25 about whether contentions are complete or not***. Either the
> 1 facts are in or they're not. And contentions are no more
> 2 than facts, so -- or an expression of the facts that you
> 3 are relying upon as part of your theory.

Id., 2/2/22 Discovery Management Conference Tr. at 46:14-47:3 (emphasis added.)

Respondents agree that deadlines for contention responses do slow things down and inevitably result in unnecessary discovery disputes and motion practice. These deadlines are unnecessary because during fact discovery, the parties are obligated to respond to discovery with the facts in their possession at the time responses are due and then to seasonably supplement with

facts as they are uncovered throughout the course of fact discovery. If a party believes that any responses or supplementation is deficient, nothing prevents that party from seeking relief from the ALJ. Initial contention response deadlines only add an unnecessary layer of ambiguity insofar as the parties will inevitably dispute what level of detail is due at the time of initial contentions and what is permitted to be added at the time final contentions are due. Eliminating these initial contention response deadlines and holding the parties to their normal discovery obligations and timely responding and supplementing is a far more efficient process that will avoid burdening the ALJ with unnecessary discovery disputes.

For the foregoing reasons, the two contentions deadlines proposed by Complainant and Staff are unnecessary and should not be included in the procedural schedule.

C. Staff's Position

1. Notice of Prior Art

In accordance with Ground Rule 1.13 (Order No. 2) and the Proposed Procedural Schedule (Order No. 3), the Staff submits that the deadline for the Notice of Prior Art should be set at **May 24, 2023**. Ground Rule 1.13 states that "[t]he event and deadline dates in the procedural schedule will generally adhere (but may vary) to the following chronological order." Order No. 2 at 7. The Proposed Procedural Schedule provides that the deadline for the Notice of Prior Art should be the last deadline before the Management Conference on May 25, 2023. *See* Order No. 3 at ii. Accordingly, the Staff submits that its proposed deadline adheres to, and is consistent with, the Judge's direction and guidance provided in this investigation. The May 24 deadline would also be the approximate mid-point in fact discovery, and should provide sufficient time for Respondents' to conduct their prior art searches. Furthermore, there should be sufficient time

(approximately one and a half months) for the parties to conduct any third party discovery resulting from the Notice of Prior Art.

2. Initial Contention Interrogatory Response Deadlines

The Staff recognizes that the Judge no longer requires that parties propose deadlines for responses to contention interrogatories. That said, the parties have agreed to and proposed deadlines for supplements to contention interrogatories on issues for which the responding party does and does not bear the burden of proof. Respondents also indicated on the parties' meet and confer that they sought to negotiate informal deadlines for responses to contention interrogatories separate from the procedural schedule. Accordingly, to avoid protracted negotiations regarding the content, substance, and dates by which the private parties will exchange their respective responses to contention interrogatories, and to aid the efficiency of the investigation, the Staff believes that setting deadlines for initial responses to burden and non-burden contention interrogatories would be appropriate in this investigation.[1]

With respect to the deadline for initial responses to burden contention interrogatories, in view of the Staff's proposed May 24 deadline for the Notice of Prior Art and the nature of that deadline,[2] the Staff submits that the deadline should also be set at **May 24, 2023**. This proposed deadline is approximately one month before the parties' agreed-upon deadline for supplementation, and should allow sufficient time for the private parties to refine their positions

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[1] The Staff notes that, in recent investigations, parties have proposed, and the Judge has adopted procedural schedules that include deadlines for initial contention interrogatory responses. *See, e.g., Certain Computer Network Security Systems, Related Software, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-1314, Order No. 7 (June 17, 2022) (Attachment A – Adopted Procedural Schedule).

[2] "This should be limited at the outset to no more than 10 pieces of prior art per patent including combinations, with the expectation that the number will be reduced to no more than 3-4 pieces per patent by the close of fact discovery." Order No. 3.

as fact discovery nears its end (*e.g.*, Respondents reducing their pieces of prior art per patent in accordance with Order No. 3).

With respect to the deadline for initial responses to non-burden contention interrogatories, the Staff agrees with Complainant's proposed deadline of **June 9, 2023**. This proposed deadline is nearly two and a half weeks after the initial burden contention interrogatory response deadline, and approximately one month before the parties' agreed-upon deadline for supplementation, and should allow for the private parties to refine their positions as fact discovery comes to a close.

Absent explicit deadlines in the procedural schedule for initial responses to burden and non-burden contention interrogatories, the Staff submits that the private parties are required to provide their initial responses to all contention interrogatories served to date on May 1, 2023[3] and responses to any and all additional contention interrogatories served as fact discovery proceeds within 10 days of service in accordance with Ground Rule 3.4.2 and Commission Rule 210.29(b), and supplement those responses as fact discovery progresses in accordance with Commission Rule 210.27(f).

II. NOTICE OF RELATED PROCEEDINGS AND LITIGATIONS

The following USPTO proceedings and state and federal district court litigations involve the same patents asserted in this Investigation:

A. District Court Litigations

- *Serendia, LLC, et al. v. Sung Hwan E&B Co., LTD.*, 6:21-cv-811 (W.D. Tex.), currently stayed;
- *Serendia, LLC, et al. v. Cartessa Aesthetics, LLC*, 21-cv-4423 (E.D.N.Y.), currently stayed;

[3] Order No. 4 granted the private parties' joint unopposed motion for an extension of time to respond to initial discovery requests to May 1, 2023.

- *Serendia, LLC, et al. v. Aesthetics Biomedical, Inc*., 2:22-cv-15 (D. Ariz.), currently stayed;
- *Serendia, LLC v. Lutronic Aesthetics, Inc.*, 1:23-cv-225 (D. Del.), currently stayed;
- *Serendia, LLC v. Cutera, Inc.*, 1:23-cv-222 (D. Del.), currently stayed;
- *Serendia, LLC v. Cynosure, LLC*, 1:23-cv-223 (D. Del.), currently stayed;
- *Serendia, LLC v. Rohrer Aesthetics, Inc*., 1:23-cv-226 (D. Del.), currently stayed; and
- *Serendia, LLC v. EndyMed Medical, Inc.*, 1:23-cv-224 (D. Del.), currently stayed.

B. USPTO IPR Proceedings

- *Cartessa Aesthetics, LLC v. Serendia, LLC*, PTAB-IPR2022-00594, institution denied;
- *Cartessa Aesthetics, LLC v. Serendia, LLC*, PTAB-IPR2022-00376, institution denied;
- *Cartessa Aesthetics, LLC v. Serendia, LLC*, PTAB-IPR2022-00593, institution denied; and
- *Cartessa Aesthetics, LLC v. Serendia, LLC*, PTAB-IPR2022-00377, institution denied.

Dated: April 24, 2023

Respectfully submitted,

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Exhibit A

Joint Proposed Procedural Schedule

Event	Date(s)		
	Complainant	Respondents	OUII Staff
Parties file their Proposed Procedural Schedule and identify USPTO/PTO Proceedings as well as State and Federal Litigation that is relevant to this Investigation	**April 24, 2023**		
Deadline for Propounding First Set of Interrogatories (All Parties)	April 28, 2023[4]		
Deadline for Propounding First Request for Production of Documents (All Parties; must be same date as for First Set of Interrogatories)	April 28, 2023		
Deadline for Respondent's Objections and Responses to Complainant's First Set of Interrogatories and Request for Production of Documents (Must be the same date as Complainant's due date)	May 1, 2023		
Complainant Files Notice of Patent Priority Dates/Dates of Conception	May 5, 2023		
Respondent Files Notice of Prior Art (This should be limited at the outset to no more than 10 pieces of prior art per patent including combinations, with the expectation that the number will be reduced to no more than 3-4 pieces per patent by the close of fact discovery)	May 10, 2023	June 16, 2023	May 24, 2023
Submit Discovery Committee Report (GR 3.1.1)	**May 10, 2023**		
Parties Exchange List of Patent Claim Terms for Construction	May 12, 2023		
Deadline for Disclosure of Domestic Industry Products (GR 1.13)	May 15, 2023		
Complainant and Respondent Serve Their Proposed Construction of Disputed Claim Terms	May 19, 2023		
Deadline for Having Identified ALL Accused Products and/or Representative Accused Products (Must Be At Least 6 Weeks Before Close of Fact Discovery (Order No. 3))	May 23, 2023		

[4] The Private Parties have already exchanged initial discovery requests.

Event	Date(s)		
	Complainant	**Respondents**	**OUII Staff**
Date for Parties to notify Chambers of the names of all non-parties or third-parties that are known to have discoverable information – send to McNamara337@usitc.gov (Must happen before the first Discovery Management Teleconference per Order No. 3)	May 23, 2023		
Initial deadline for responses to contention interrogatories on issues for which the responding party bears the burden of proof	May 24, 2023	Date not needed	May 24, 2023
File Identification of Expert Witnesses, which should include a statement of their Expertise in the subject matter together with Curriculum Vitae	May 25, 2023		
Staff Serves Its Proposed Construction of Disputed Claim Terms	May 25, 2023		
File Tentative List of Witnesses a Party will call to testify at the Evidentiary Hearing, with an identification of each Witness's relationship to the party	May 25, 2023		
Management Conference (To discuss potential discovery issues/timing, any relevant corollary proceedings) (Likely on Webex)	**May 25, 2023 2:00 p.m.**		
Parties Meet and Confer to Attempt to Limit Claim Terms and Claim Term Disputes and Regarding Whether Any Party Intends to Use an Expert for Markman Purposes	May 26, 2023		
File Joint Claim Construction Chart	May 30, 2023		
Deadline to File Markman Hearing Proposals (Including Final Proposed Markman Exhibit Lists) (Same Date as Joint Claim Construction Chart Filing (Order No. 3)	May 30, 2023		
Parties to Exchange Proposed Markman Exhibit Lists and Exhibits (Except for Expert Declarations and Demonstratives) (GR 1.14.3.1)	June 2, 2023		

Event	Date(s)		
	Complainant	Respondents	OUII Staff
Private Parties File Markman Briefs with each Party's Proposed Construction of Disputed Claim Terms and Explanation of Their Initial Claim Constructions and Expert Declarations (If Applicable). (Note: "plain and ordinary" meaning is not sufficient. Neither is "indefinite" without thorough explanations and citations to intrinsic evidence)	June 6, 2023		
Initial deadline for responses to contention interrogatories on issues for which the responding party does not bear the burden of proof	June 9, 2023	Date not needed	June 9, 2023
Staff Files Markman Brief with Proposed Constructions of Disputed Claim Terms and Explanation of its Initial Claim Constructions	June 13, 2023		
Submit Discovery Committee Report (GR 3.1.1)	**June 9, 2023**		
Deadline for any claim construction depositions	June 16, 2023		
Technology Stipulation Deadline	June 16, 2023		
Date for Parties to File Markman Pre-Hearing Statements including final proposed Markman exhibit lists (GR 1.14.2 and 1.14.3.1)	June 16, 2023		
Markman Hearing (If Ordered) & Management Conference[5] [6]	**Week of June 20, 2023**		
Date for parties to submit final Markman exhibits to ALJ (GR 1.14.4.3)	June 27, 2023		
File Joint Chart Setting Forth Parties' Post-Hearing Claim Constructions (GR 1.14)	June 29, 2023		
Cut-off date for supplements to contention interrogatories on issues for which the responding party bears the burden of proof	June 29, 2023		

[5] A Management Conference will be held at the conclusion of the Markman Hearing, time permitting. Alternatively, a Management Conference will be held on June 26, 2023 at 2:00 pm.

[6] Pursuant to Ground Rule 1.14, the parties are meeting and conferring regarding whether early claim construction is necessary, and will submit proposals upon the ALJ's request.

Event	Date(s)		
	Complainant	Respondents	OUII Staff
Cut-off date for supplements to contention interrogatories on issues for which the responding party does not bear the burden of proof	July 10, 2023		
Submit Discovery Committee Report (GR 3.1.1)	**July 10, 2023**		
Last Day to File Motions to Compel Discovery (The expectation is that these are filed as discovery proceeds, with the last request for intervention pursuant to Ground Rule at least one week before the close of Fact Discovery unless leave is given for a later filing)	July 12, 2023		
Fact Discovery Cutoff and Completion (This includes identification of Tests/Surveys/Data) (No extensions without Leave) (Note: this means that all fact contentions on infringement and invalidity have been exchanged and completed)	**July 12, 2023**		
File Initial Expert Reports	July 18, 2023		
Management Conference (Likely on Webex)	**July 27, 2023**		
File Rebuttal Expert Reports	August 1, 2023		
Submit Discovery Committee Report (GR 3.1.1)	**August 10, 2023**		
Expert Discovery Cutoff and Completion (No extensions without Leave)	**August 15, 2023**		
Date for the parties to file on EDIS and submit to the Administrative Law Judge at McNamara337@usitc.gov, one copy of a statement stating its position on whether or not it intends to offer into evidence any parts of their expert reports as part of a motion, or for any other purpose permitted under the rules (GR 8.5)	August 28, 2023		
Management Conference (Likely on Webex)	**August 29, 2023**		
Last Day to file Summary Determination Motions	**September 1, 2023**		

Event	Date(s)		
	Complainant	**Respondents**	**OUII Staff**
Parties Exchange Hearing Direct Exhibit Lists (Most likely, Tentative)	September 6, 2023		
Parties Exchange Hearing Direct Exhibits[7]	September 11, 2023		
Parties Exchange Hearing Rebuttal Exhibit Lists (Most likely, Tentative)	September 13, 2023		
Parties Exchange Hearing Rebuttal Exhibits	September 15, 2023		
Complainant and Respondent file Pre-Hearing Statements and Pre-Hearing Briefs	September 19, 2023		
Last day to file Motions *in Limine* ("MIL") (Complainant and Staff are each limited to no more than two (2) MILs and HPOs in combination, and Respondents are limited to no more than three (3) MILs and HPOs in combination) without Leave	**September 29, 2023**		
Last day to file High Priority Objections ("HPO") (*See* note for MIL)	**September 29, 2023**		
Staff files Pre-Hearing Statement and Pre-Hearing Brief	October 3, 2023		
File Responses to Motions *in Limine*	**October 6, 2023**		
File Responses to High Priority Objections	**October 6, 2023**		
Parties file Joint Outline of Issues from Pre-Hearing Briefs (GR 7.3)	October 10, 2023		
Attendance at One-day Mediation Session	By October 12, 2023		
Submission of Mediation Report	Within 7 days of Mediation		
File Motions for Receipt of Evidence Without a Witness	October 23, 2023		
Submission of Declarations Justifying Confidentiality of Exhibits	October 27, 2023		
File on EDIS any Stipulations Regarding Exchange of Demonstratives for Evidentiary Hearing and Any Other Stipulations into Which the Parties Enter	October 27, 2023		

[7] The Parties agree that demonstrative exhibits will not be exchanged on this date, but will be provided in a mutually agreed upon procedure to be memorialized in the Parties' October 27 stipulation regarding the exchange of demonstratives.

Event	Date(s)		
	Complainant	**Respondents**	**OUII Staff**
Pre-Hearing Conference (There May Be One or More Conferences Before to Resolve MILS or Other Issues)	**November 1, 2023**		
Evidentiary Hearing (Starting with Tutorials, as Parties Propose)	**November 1-3, 6-7, 2023**		
Last Day to submit Final Exhibits to Box. All Exhibits should be properly labeled (Follow the Ground Rules and Docket Requirements)	**November 13, 2023**		
Staff to file Post-hearing Notice of any changes of position (GR 10.1)	November 14, 2023		
The Private Parties' Replies to any Staff GR 10.1 Notice of change of positions (GR 10.1)	November 21, 2023		
Complainant and Respondent file Initial Post-Hearing Briefs (Only on Issues for Which The Party Bears The Burden Of Proof) and Final Exhibit Lists.	November 29, 2023		
Staff files Initial Post-hearing Brief	December 6, 2023		
Complainant and Respondent file Reply Post-Hearing Briefs (Only on Issues Discussed in the Initial Post-Hearing Brief of an Opposing Party).	December 12, 2023		
Staff files Reply Post Hearing Brief	December 19, 2023		
Parties File Outline of Issues, Tracing Arguments from Pre-Hearing Through Post-Hearing Reply Briefs (Include Arguments That Have Been Dropped, GR 7.3)	December 20, 2023		
Final ID due	**April 4, 2024**		
Target Date	**August 6, 2024**		

CERTIFICATE OF SERVICE

It is hereby certified that copies of the foregoing **THE PARTIES' PROPOSED PROCEDURAL SCHEDULE AND NOTICE OF USPTO/PTO PROCEEDINGS AND STATE AND FEDERAL LITIGATION PURSUANT TO ORDER NO. 3** were served on April 24, 2023 as follows:

The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street, SW, Room 112 Washington, DC 20436	By EDIS
The Honorable MaryJoan McNamara Administrative Law Judge U.S. International Trade Commission 500 E Street, SW, Room 317 Washington, DC 20436	By Email: McNamara337@usitc.gov
Aaron D. Rauh Office of Unfair Import Investigations U.S. International Trade 401 500 E Street, SW, Room 317 Washington, DC 20436	By Email and Box: Aaron.Rauh@usitc.gov
Guy Yonay PEARL COHEN ZEDEK LATZER BARATZ LLP 7 Times Square, 19th Fl. New York, NY 10036 *Counsel for Respondents EndyMed Medical, Ltd. and EndyMed Medical, Inc.*	By Email: EndyMed@PearlCohen.com
Daniel E. Valencia COVINGTON & BURLING LLP One CityCenter, 850 Tenth Street, N.W. Washington, DC 20001 *Counsel for Respondents Ilooda, Co., Ltd. and Cutera, Inc.*	By Email: COV-Ilooda-ITC@cov.com
David M. Airan LEYDIG, VOIT & MAYER, LTD. Two Prudential Plaza 180 N. Stetson Ave, Suite 4900 Chicago, IL 60601-6745	By Email: Leydig-Jeisys-ITC@leydig.com Jeisys-337@bartkowskipllc.com

Paul M. Bartkowski BARTKOWSKI PLLC 6803 Whittier Ave., Suite 200A McLean, VA 22101 *Counsel for Respondent Jeisys Medical Inc. and Cynosure, LLC*	
Richard V. Wells BAKER & MCKENZIE, LLP 815 Connecticut Ave. NW Washington, D.C. 20006 *Counsel for Respondents Lutronic Corporation; Lutronic Aesthetics, Inc. aka Lutronic, Inc.; Lutronic, LLC*	By Email: HOU-Lutronic-ITC@bakermckenzie.com
Lesley McCall Grossberg Ice Miller LLP 1735 Market St., Suite 3900 Philadelphia, PA 19103 *Counsel for Respondents Rohrer Aesthetics, Inc. and Rohrer Aesthetics, LLC*	By Email: RohrerITC@icemiller.com
Ryan B. McCrum JONES DAY 901 Lakeside Avenue Cleveland, OH 44114-1190 *Counsel for Respondents Counsel for Respondents Sung Hwan E&B Co., LTD. d/b/a SHEnB Co. LTD; Cartessa Aesthetics, LLC and Aesthetics Biomedical, Inc.*	By Email: SHEnB-ITC-JD@jonesday.com

/s/ *Erika J. Weinstein*
Erika J. Weinstein
LATHAM & WATKINS LLP