UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

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

ORDER NO. 3: PROPOSED SCHEDULING ORDER

(April 13, 2023)

On April 6, 2023, the Commission instituted this Investigation pursuant to subsection (b) of Section 337 of the Tariff Act of 1930, as amended, to determine:

> whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 2, 5-6, 9-14, 16-17, 19, and 22 of the '836 patent; claims 1-5, 7-10, and 15 of the '379 patent; claims 1-10 of the '444 patent; claims 1-2, 4-5, 8-9, 11-13, and 16-17 of the '536 patent; claims 1 and 6-15 of the '774 patent; and claims 1, 5-7, 9-10, and 12-19 of the '812 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337[.][1]

88 Fed. Reg. 20551-53 (Apr. 6, 2023).

The Notice of Investigation ("NOI") names as complainant: Serendia, LLC of Lake Forest, CA ("Serendia" or "Complainant"). *Id*. at 20552. The NOI names as respondents: Sung Hwan E&B Co., LTD., d/b/a SHEnB Co. LTD. of Seoul, Korea; Aesthetics Biomedical, Inc. of

[1] The asserted patents are U.S. Patent No. 9,480,836 ("the '836 patent"), U.S. Patent No. 10,058,379 ("the '379 patent"), U.S. Patent No. 11,406,444 ("the '444 patent"), U.S. Patent No. 9,320,536 ("the '536 patent"), U.S. Patent No. 9,775,774 ("the '774 patent"), and U.S. Patent No. 10,869,812 ("the '812 patent").

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Phoenix, AZ; Cartessa Aesthetics of Melville, NY; Lutronic Corporation of Gyeonggi-do, Korea; Lutronic Aesthetics, Inc. AKA Lutronic, Inc. of Billerica, MA; Lutronic, LLC of Billerica, MA; Ilooda Co., Ltd. of Gyeonggi-do, Korea; Cutera, Inc. of Brisbane, CA; Jeisys Medical Inc. of Seoul, Korea; Cynosure, LLC of Westford, MA; Rohrer Aesthetics, LLC of Homewood, AL; Rohrer Aesthetics, Inc. of Homewood, AL; EndyMed Medical Ltd. of Caesarea, Israel; EndyMed Medical, Ltd. of New York, NY; and EndyMed Medical Inc. of Freehold, NJ (collectively, "Respondents"). *Id*.

Commission Investigative Staff ("Staff," and with Complainant and Respondents, the "Parties") is a party in this Investigation. *Id.*

Target Date

Based upon a review of the Complaint and the NOI, and taking into account my commitments in other instituted investigations, I have determined that a target date of **16-months** is appropriate. The target date is therefore **August 6, 2024**. Based on this target date, the final initial determination on violation ("ID") in this Investigation is due no later than **April 4, 2024**. The proposed Procedural Schedule is set forth in **Attachment A** hereto.

Filings with OALJ

The OALJ is not accepting paper filings/copies, CD's, flash drives, and the like.

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

Commission proceedings and public access to the USITC building has resumed. The Commission uses WEBEX as its secure video platform. The Hearing most likely will be

conducted in-person. This will be discussed at a Management Conference. Management Conferences most likely will be held by WEBEX.

Pre-Hearing and Evidentiary Hearing

The Hearing is scheduled for **November 1-3 and November 6-7, 2023** in a Courtroom to be announced closer to the Hearing date. At my discretion, a Pre-Hearing Conference (or more than one) to resolve outstanding Motions *in Limine* ("MIL") and High Priority Objections ("HPO") and other outstanding motions and issues is likely to be to held by telephone within two (2) to three (3) weeks before the Hearing, if possible. A final Pre-Hearing Conference will commence in the same location as the Hearing and on the first day of the Hearing, **November 1, 2023**.

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

Complainant is limited to two (2) total MILs and/or HPOs in combination. Respondents as a group are limited to three (3) total MILs and/or HPO's in combination. Staff is limited to two (2) total MILs and/or HPOs in combination. A request for leave and an approval of additional MILs and/or HPOs must be granted prior to filing additional MILs and/or HPOs. MILs and/or HPOs styled as a single motion but are in fact omnibus in nature may be denied automatically without prejudice with a request for refiling, or denied in part. Motions for Receipt of Evidence without a Sponsoring Witness will be treated separately.

Direct testimony will be taken live, or in-person, during the Hearing, unless leave is

requested by motion and is granted for an alternative pursuant to Ground Rule 8.4. Basic background information about a witness or the issues (no other substance) may be considered as part of an acceptable witness statement if leave is granted. Whether other testimony may be provided in a witness statement will be determined later but it is not likely unless exigent circumstances exist, and then, with leave. Witness Statements are allowed rarely, even for experts located outside the United States.

As discussed in Ground Rule 1.14.4.1, opening statements are required. Closing statements are not. However, they are helpful and encouraged. Paper copies of binders/exhibits should not be provided at Hearings. Courtesy paper copies of demonstrative slides are appreciated.

Changes to Ground Rules

Please read the Ground Rules and follow them.

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

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

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

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

each page the name of the party that filed the document along with the title of the document.

Chambers and Dockets require that certain documents be filed on BOX before they are transmitted by Chambers to Dockets for filing. The Parties will each be sent a link to BOX before those hearings (always before the Evidentiary Hearing) where exhibits must be transmitted to BOX. Each party will be expected to notify Nicole Muhammad, my Program Support Specialist, of one individual who will be responsible for the filings on BOX. Chambers does not accept FTP or other links from law firms. Please check with Dockets procedures for the bit size of exhibits and documents that can be uploaded.

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

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

Other Instructions/Contact

If Case/Discovery Management Conferences will be held by telephone, the Parties should jointly submit one e-mail to Chambers through McNamara337@usitc.gov at least 24 hours before containing: (1) the names of the speaker and listener for each party with the identity of the party they represent;[2] (2) the name of the court reporter; and (3) the call-in telephone number and passcode. As is implied, for telephone conferences, one of the Parties is responsible for the court

[2] Each party is limited to one (1) speaker and one (1) listener unless otherwise permitted.

reporter.

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

Other Issues

Parties should notify Chambers of the names of all non-parties or third-parties that are known to have discoverable information in this Investigation by a filing a Notice on EDIS before the first Discovery Management Teleconference, or as soon as can be determined. A copy of the same should be sent to Chambers through McNamara337@usitc.gov.

As the Investigation proceeds closer to the Hearing, the Parties should advise Chambers if they need additional days or fewer days for the Hearing. The Parties are urged to think about the amount of time that they may need as soon as the case starts to narrow and eliminate patents/claims or prior art references.

NEXT Advocates: Nurturing Excellence in Trial Advocates

The Private Parties are encouraged to give less experienced attorneys an opportunity to argue, whether in a *Markman* Hearing, during the Hearing, or, as an incentive for participation in the program OALJ is now sponsoring, at some other oral argument as may be requested and possibly allowed. (*See* G.R. 11.). The Parties may request the same, for example on a summary determination motion, or on an issue that may be disposed of before the Hearing, if warranted and it is scheduled. A less experienced attorney who is arguing need not be identified, but we

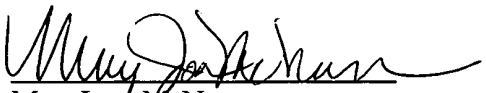
will note the law firms who are participating in the program. A request for a short oral argument on an issue the Parties jointly agree upon should be filed on EDIS with a pledge that less experienced attorneys from each party will be participating as a presenter. This can apply to a *Markman* hearing, to a summary determination motion, or another motion.

Contact

Please note that in the event a party needs to contact Chambers for an emergency intervention or request which they have filed on EDIS (and even if they have not), unless otherwise notified, they should copy Ms. Jae B. Lee, jae.lee@usitc.gov, and McNamara337@usitc.gov. If documents are being filed on EDIS, they also should be sent to McNamara337@usitc.gov.

Communications with my attorney-advisors and program assistant, whether oral or written, may not be cited in pleadings or papers. Letters should be addressed to the administrative law judge.

SO ORDERED.



MaryJoan McNamara
Administrative Law Judge

ATTACHMENT A TO ORDER NO. 3

Inv. No. 337-TA-1356

PROPOSED PROCEDURAL SCHEDULE

Event	Date(s)
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)	
Deadline for Propounding First Request for Production of Documents (All Parties; must be same date as for First Set of Interrogatories)	
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)	
File Identification of Expert Witnesses, which should include a statement of their Expertise in the subject matter together with Curriculum Vitae	
Complainant Files Notice of Patent Priority Dates/Dates of Conception	
Parties Exchange List of Patent Claim Terms for Construction	
Deadline for Disclosure of Domestic Industry Products (Per Ground Rule 1.13)	
Deadline for Having Identified ALL Accused Products and/or Representative Accused Products	Must Be At Least 6 Weeks Before Close of Fact Discovery

Event	Date(s)
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)	
Management Conference (To discuss potential discovery issues/timing, any relevant corollary proceedings) (Likely on Webex)	May 25, 2023 2:00 p.m.
Complainant and Respondent provide Each Other with Their Proposed Construction of Disputed Claim Terms	
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	
Parties Meet and Confer to Attempt to Limit Claim Terms and Claim Term Disputes	
File Joint Claim Construction Chart	
Parties to Exchange Proposed *Markman* Exhibit Lists and Exhibits (Except for Expert Declarations and Demonstratives) (Per Ground Rule 1.14.3.1)	
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)	
Deadline to File *Markman* Hearing Proposals (Including Final Proposed *Markman* Exhibit Lists)	Same Date as Joint Claim Construction Chart Filing
Markman Hearing (If Ordered) & Management Conference[1]	Week of June 20, 2023

[1] 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.

Event	Date(s)
File Joint Chart Setting Forth Parties' Post-Hearing Claim Constructions (Per Ground Rule 1.14)	
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
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)	
Technology Stipulation Deadline	
Management Conference (Likely on Webex)	July 27, 2023
Exchange of Initial Expert Reports (Send copies to McNamara337@usitc.gov)	
Exchange of Rebuttal Expert Reports (Send copies to McNamara337@usitc.gov)	
Expert Discovery Cutoff and Completion (No extensions without Leave)	August 15, 2023
Management Conference (Likely on Webex)	August 29, 2023
Last Day to file Summary Determination Motions	September 1, 2023
Management Conference (Likely on Webex)	TBD

Event	Date(s)
Parties Exchange Hearing Exhibit Lists (Most likely, Tentative)	
File Motions for Receipt of Evidence Without a Witness	
Complainant and Respondent file Pre-Hearing Statements and Pre-Hearing Briefs	
Staff files Pre-Hearing Statement and Pre-Hearing Brief	
Parties file Joint Outline of Issues from Pre-Hearing Briefs (Per Ground Rule 7.3)	
Submission of Declarations Justifying Confidentiality of Exhibits	
Attendance at One-day Mediation Session[2]	
Submission of Mediation Report	
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
File Responses to Motions *in Limine*	October 6, 2023
File Responses to High Priority Objections	October 6, 2023
File on EDIS any Stipulations Regarding Exchange of Demonstratives for Evidentiary Hearing and Any Other Stipulations into Which the Parties Enter	

[2] For questions that pertain to the mediation program, the parties should refer to the Revised Users' Manual for Commission Mediation Program, available at http://www.usitc.gov.

Event	Date(s)
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
Complainant and Respondent file Initial Post-Hearing Briefs (Only on Issues for Which The Party Bears The Burden Of Proof) and Final Exhibit Lists.	December 1, 2023
Complainant and Respondent file Reply Post-Hearing Briefs (Only on Issues Discussed in the Initial Post-Hearing Brief of an Opposing Party).	December 8, 2023
Parties File Outline of Issues, Tracing Arguments from Pre-Hearing Through Post-Hearing Reply Briefs (Include Arguments That Have Been Dropped, Per Ground Rule 7.3)	
Final ID due	**April 4, 2024**
Target Date	**August 6, 2024**