

UNITED STATES INTERNATIONAL TRADE COMMISSION

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In the Matter of

Investigation No.

CERTAIN SOFT PROJECTILE LAUNCHING

337-TA-1325

DEVICES, COMPONENTS THEREOF,

AMMUNITION, AND PRODUCTS

CONTAINING SAME

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1 UNITED STATES INTERNATIONAL TRADE COMMISSION
 2 Washington, D.C.
 3 BEFORE THE HONORABLE MARYJOAN McNAMARA
 4 Administrative Law Judge

5 -----x
 6 In the Matter of Investigation No.
 7
 8 CERTAIN SOFT PROJECTILE LAUNCHING 337-TA-1325
 9 DEVICES, COMPONENTS THEREOF,
 10 AMMUNITION, AND PRODUCTS
 11 CONTAINING SAME

12 -----x
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 14 International Trade Commission
 15 500 E Street, S.W.
 16 Washington, D.C.

17
 18 Evidentiary Hearing
 19 Wednesday, May 17, 2023
 20 Volume I

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 22 The parties met pursuant to notice of the
 23 Administrative Law Judge at 9:30 a.m. Eastern.

24
 25 Reported by: Linda S. Kinkade RDR CRR RMR RPR CSR

1 A P P E A R A N C E S:

2

3 Counsel for Complainant Hasbro, Inc.:

4 FISH & RICHARDSON P.C.

5 1000 Maine Avenue, SW

6 Washington, DC 20024

7 (202) 783-5070

8 Ruffin B. Cordell, Esq.

9 Linhong Zhang, Esq.

10 Jack R. Wilson, Esq.

11 Irene Hwang, Esq.

12 Benjamin Thompson, Esq.

13

14 -and-

15 FISH & RICHARDSON P.C.

16 1180 Peachtree Street, NE

17 Atlanta, Georgia 30309

18 (404) 892-5005

19 Brian P. Boyd, Esq.

20

21

22

23

24

25 CONTINUED ON FOLLOWING PAGE

1 A P P E A R A N C E S (continued):

2

3 -and-

4 Counsel for Complainant Hasbro, Inc.:

5 FISH & RICHARDSON P.C.

6 One Marina Park Drive

7 Boston, Massachusetts 02210

8 (617) 542-5070

9 Jeffrey Shneidman, Esq.

10 Autumn Hwang, Esq.

11 Irene Hwang, Esq.

12

13

14 Counsel for Respondents Splat-R-Ball, LLC, Daisy

15 Manufacturing Company, and S-Beam Precision Products Ltd.:

16 KIRKLAND & ELLIS LLP

17 1301 Pennsylvania Avenue, NW

18 Washington, DC 20004

19 (202) 389-5000

20 Paul F. Brinkman, P.C., Esq.

21 Atifah Safi, Esq.

22

23

24

25 CONTINUED ON FOLLOWING PAGE

1 A P P E A R A N C E S (continued):

2

3 -and-

4 Counsel for Respondents Splat-R-Ball, LLC, Daisy

5 Manufacturing Company, and S-Beam Precision Products Ltd.:

6 KIRKLAND & ELLIS LLP

7 300 North LaSalle

8 Chicago, Illinois 60654

9 (312) 862-2000

10 Gianni Cutri, P.C., Esq.

11 Brian A. Verbus, Esq.

12 Jake Rambeau, Esq.

13

14 -and-

15 KIRKLAND & ELLIS LLP

16 555 California Street

17 San Francisco, California 94104

18 (415) 439-1400

19 Adam R. Alper, P.C., Esq.

20

21

22

23

24

25 CONTINUED ON FOLLOWING PAGE

1 A P P E A R A N C E S (continued):

2 -and-

3 Counsel for Respondents Splat-R-Ball, LLC, Daisy

4 Manufacturing Company, and S-Beam Precision Products Ltd.:

5 KIRKLAND & ELLIS LLP

6 555 South Flower Street

7 Los Angeles, California 90071

8 (213) 680-8400

9 Michael W. De Vries, P.C., Esq.

10 Drew Morrill, Esq.

11

12 -and-

13 KIRKLAND & ELLIS LLP

14 609 Main Street

15 Houston, Texas 77002

16 (713) 836-3600

17 Daniel P. Gross, Esq.

18

19 -and-

20 KIRKLAND & ELLIS LLP

21 60 East South Temple

22 Salt Lake City, Utah 84111

23 (801) 877-8100

24 Laura Kelley Uhlenhuth, Esq.

25

1 A P P E A R A N C E S (continued):

2

3 Counsel for Respondents Prime Time Toys Ltd., Prime Time
4 Toys LLC & Easebon Services Ltd.:

5 AMSTER ROTHSTEIN & EBENSTEIN LLP

6 90 Park Avenue

7 New York, New York 10016

8 (212) 336-8098

9 Brian A. Comack, Esq.

10 Kenneth P. George, Esq.

11 Chester Rothstein, Esq.

12

13 -and-

14

15 POLSINELLI PC

16 1401 Eye Street, NW

17 Washington, DC 20005

18 (202) 783-3300

19 Daniel F. Smith, Esq.

20

21

22

23

24

25 CONTINUED ON FOLLOWING PAGE

1 A P P E A R A N C E S (continued):

2

3 For the Office of Unfair Import Investigations:

4 U.S. INTERNATIONAL TRADE COMMISSION

5 500 E Street, SW

6 Washington, DC 20436

7 (202) 205-2000

8 Todd P. Taylor, Esq.

9 Investigative Attorney

10 Margaret D. Macdonald, Esq.

11 Director

12

13

14

15

16

17

18

19

20

21

22

23

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P R O C E E D I N G S

(In session at 9:30 a.m.)

JUDGE MCNAMARA: Good morning everyone. Please be seated. It's good to see you all. I'm really looking forward to this trial. We've had some interesting turns of event in the last 24 hours. I gather that one of the additional Defendants -- or Respondents has settled.

So we are here this morning on a much smaller group of Respondents. We'll see where it goes.

So what I'm going to do first is just remind you of a few things. Again, it has been so long since some of you have been in a courtroom, and, again, it is just really wonderful to see you in person. But we are here on the trial, and what I would like to start with is with Complainants' counsel.

Would you kindly introduce yourselves?

MR. CORDELL: Good morning, Your Honor. Ruffin Cordell from Fish & Richardson.

JUDGE MCNAMARA: Good morning. I saw you a couple of months ago fleetingly.

MR. CORDELL: They don't let me out much. But I'm joined this morning by my colleagues Brian Boyd, Ben Thompson, Linhong Zhang, Jack Wilson, Jeff Shneidman, Autumn Hwang and Irene Hwang. And we're ready to proceed.

JUDGE MCNAMARA: Do you have any clients with

1 you?

2 MR. CORDELL: You're right, thank you, the most
3 important thing. Yes. Ms. Sardiaa Leney is our in-house
4 counsel representative, and Mr. Nick Tino is our corporate
5 representative.

6 JUDGE MCNAMARA: Thank you. Good morning to
7 everybody. Welcome.

8 All right. I assume that some of your experts
9 are going to sit in for the opening.

10 MR. CORDELL: They are here and I'll introduce
11 them during the opening.

12 JUDGE MCNAMARA: That's great. Thank you.

13 First, on behalf of the Respondents -- and I
14 understand Splat-R-Ball Respondents settled within the last
15 24 hours.

16 MR. CORDELL: That's correct, Your Honor.

17 JUDGE MCNAMARA: Good morning, Mr. Brinkman.

18 MR. BRINKMAN: Good morning, Your Honor. I am
19 counsel for Splat-R-Ball Respondents. We're here. We're
20 hoping that we see you fleetingly, as Mr. Cordell mentioned.

21 JUDGE MCNAMARA: Nice way to put it.

22 MR. BRINKMAN: We're here, but we're going to
23 turn the show over to the PTT Respondents.

24 And if you'd like me to introduce everybody who
25 came in, I brought them all along because everybody wanted

1 to see the courtroom because there are a lot of folks who
2 have never been in the ITC courtroom before and came along,
3 but we probably won't be staying very long.

4 JUDGE MCNAMARA: All right. If you would like to
5 introduce them, please do so. I mean, you did a lot of work
6 to get here.

7 MR. BRINKMAN: We did, Your Honor. Gianni Cutri
8 next to me has probably done the most work. We have Brian
9 Verbus, and I think you know Adam Alper and Mike De Vries.

10 JUDGE MCNAMARA: I do, yes. Good morning. It's
11 been a long time.

12 MR. BRINKMAN: We have -- Drew Morrill is here,
13 Jake Rambeau is here, Dan Gross is right here, Atifah Safi
14 and Laura Uhlenhuth, all from Kirkland & Ellis. We're here,
15 and until 7:00 this morning we were all ready to jump right
16 in.

17 JUDGE MCNAMARA: It must be a good feeling.

18 MR. BRINKMAN: It's an interesting feeling. With
19 us is Keith Higginbotham, who is CEO with the company who
20 signed the settlement this morning.

21 JUDGE MCNAMARA: So it goes.

22 And on behalf of the PTT Respondents, good
23 morning.

24 MR. GEORGE: Good morning, Your Honor. My name
25 is Kenneth George. I'm with Amster Rothstein & Ebenstein,

1 and with me here today is Brian Comack.

2 JUDGE MCNAMARA: Good morning.

3 MR. GEORGE: Also from that firm. And we have
4 Dan Smith from the Polsinelli firm.

5 JUDGE MCNAMARA: Good morning.

6 MR. GEORGE: And I have two client
7 representatives in the back, Francis Chia and Veronica Wong.

8 JUDGE MCNAMARA: Good morning. Welcome.

9 MR. GEORGE: And one of my other partners,
10 Chester Rothstein, is here.

11 Now you asked Mr. Ruffin if he was ready to go,
12 and he said yes. I am not ready to go. This was a complete
13 surprise to me. I just learned about it about two hours
14 ago. And we had divided up responsibilities, and we had
15 worked on certain things and not worked on other things.
16 We're not prepared to go this morning. I'm requesting an
17 extension until Monday.

18 I will say, Your Honor, that we plan to put on a
19 shorter case, but we're just not in a position to put it on
20 today. And I was handed by Dan Smith a decision in
21 337-TA-493, Order Amending the Procedural Schedule, where
22 basically the same thing happened, and I think the trial was
23 extended for over two weeks.

24 We're not asking for that. The witnesses are
25 here, the experts are here, but we do need until Monday to

1 be prepared to put this case on.

2 JUDGE MCNAMARA: Let me first turn to Staff and
3 introduce Staff, and then I guess we better talk and see
4 what kind of conversation we will have and what will happen.

5 MR. TAYLOR: Good morning, Your Honor. Todd
6 Taylor representing the Office of Unfair Import
7 Investigations. Also here is Margaret Macdonald. And
8 Mr. David Lloyd will be here tomorrow, if there is a
9 tomorrow.

10 JUDGE MCNAMARA: All right. So before I get
11 started with anything else, I think we have to deal with the
12 question that was raised by Mr. George.

13 Mr. Cordell, what's your thinking? I know you
14 probably have not had an opportunity to really talk about
15 this.

16 MR. CORDELL: Mr. George actually approached me
17 before the hearing this morning. Originally his request was
18 to have a one-day continuance, and I think, after conferring
19 with his colleagues, he has now pushed it back to Monday.

20 We were okay with one day. We think that's
21 appropriate. We understand the players have changed quite a
22 bit, although we also understand that, for example,
23 Gel Blaster settled, what, two weeks ago. It's not uncommon
24 that this would happen. But we're sympathetic. We don't
25 want to force him to do anything that he doesn't feel ready

1 to do, although the Amster firm is a great firm and we have
2 every confidence in them.

3 We would oppose going all the way to Monday,
4 however. We've got witness issues. We've got our whole
5 entourage gathered. I didn't introduce everybody. We have
6 scheduling issues. We need to wrap this up on Tuesday, as
7 Your Honor specified.

8 We take Mr. George at his word. He tells us he's
9 not calling the fact witnesses that Kirkland had marshalled
10 and that will shorten the case, and we're appreciative of
11 that. But we're a little mindful that Tuesday is Tuesday,
12 and, if we wait until Monday, that seems to be an awfully
13 short trial. So we would ask that we give them a one-day
14 continuance and we come back again tomorrow and go forward.

15 JUDGE MCNAMARA: Mr. Taylor, did Mr. George talk
16 to you at all about this?

17 MR. TAYLOR: Yes, Your Honor. They informed me
18 this morning, and we had some discussions.

19 JUDGE MCNAMARA: What's your thinking?

20 MR. TAYLOR: I don't know exactly how the
21 Respondents split up their case. I'm not privy to that
22 information. But I believe, in view of this morning's
23 circumstances, I believe one day is definitely reasonable.
24 But without more information, it's --

25 JUDGE MCNAMARA: I think that's right.

1 All right. So, Mr. George, would you care to
2 explain how the case was divided up? And then there would
3 also be, as -- you might want to think about whether or not
4 some of the witnesses' deposition designations might be
5 added to those that have already been admitted into
6 evidence. Again, I prefer live testimony, but if there is a
7 way to do this to get us back on track, that, again, gives
8 you some leeway but doesn't necessarily go to Monday, maybe
9 we can find some solutions.

10 MR. GEORGE: Right. How the case was done,
11 Kirkland had a very large team of 12 lawyers on this case,
12 and, to be perfectly frank, they did the lion's share of the
13 work. We were there in a supporting role. It was just
14 really two of us.

15 And so we're really not in a position to move
16 forward. It really puts us in a really terrible position,
17 Your Honor.

18 As far as the witnesses, there were going to be
19 three live witnesses, Steve Spangler, Ellen Brooks, and Ms.
20 Peterson, I believe, and all of their testimony is already
21 in by deposition. And I think we're not going to call them.
22 We would just go with the deposition testimony.

23 So really the case is going to come down to the
24 experts. And we have our main expert, our invalidity
25 expert, Joel Delman. We have Dr. Reitman, who I think is

1 going to play a much smaller role than she would have if
2 Splat-R-Ball was still in the case. We're going to cut her
3 testimony down. And then we have Charles Taylor, and,
4 again, I think his testimony is going to be cut down as
5 well.

6 But just to give you an idea, we provided
7 cross-examination questions to them. They did the outlines.
8 We don't even have the outlines back. We're at a tremendous
9 disadvantage, you know, at this point.

10 One day, Your Honor, respectfully, I don't think
11 is going to do it. I understand schedules. I would say at
12 least we would need two days, until Friday morning, and
13 that's pushing it for us.

14 JUDGE MCNAMARA: So let's talk a little bit more
15 about this. Has Kirkland -- who is in charge of the deck
16 slides, for example?

17 MR. GEORGE: That's the whole thing. We've had
18 discussions this morning, and, you know, we have to go back
19 to Kirkland, we have to get everything. We don't even have
20 a graphics person. They hired the graphics person. I was
21 told this morning that maybe he is not going to work for us.
22 This is really a terrible position that we've been put in at
23 the last minute with absolutely no notice.

24 JUDGE MCNAMARA: So before you speak, would you
25 identify yourself, just so the record is clear? I know who

1 you are.

2 MR. CUTRI: Your Honor, this is Gianni Cutri on
3 behalf of Splat-R-Ball Respondents. I'm trying to put
4 myself where you are and just want to figure out a solution
5 to get this all resolved.

6 Maybe I could offer the following. I think
7 Mr. Delman, the technical expert, is sort of the main part
8 of the PTT case that is proposed to go forward, like, in the
9 main. I know that we're working with -- we were working --
10 with the Complainants on a stipulation that would shorten --
11 would have shortened Mr. Delman's testimony substantially.
12 At the urging of Mr. Taylor, he pointed out that there's not
13 a lot of dispute with respect to certain of the limitations
14 being in the prior art.

15 JUDGE MCNAMARA: There is not.

16 MR. CUTRI: And so I think we're very close
17 there. Mr. George, who was working with Mr. Delman over the
18 past couple days, can confirm that that presentation will
19 become an hour or so shorter.

20 Mr. George -- to answer your question about who
21 has been doing what with respect to Mr. Delman, the past two
22 days it's been Mr. George and Mr. Comack, along with one of
23 my colleagues preparing him. I have been predominantly
24 ready to do the opening. I think Mr. George is very much
25 correct that to ask him to do the opening on short order

1 would be a huge lift.

2 I'm just offering those as kind of a perspective.
3 And if you subtract out Mr. Spangler, Ms. Peterson,
4 Mr. Brooks, and Mr. Cleveland, who were the fact witnesses,
5 subtract out at least half day, maybe a day, by the time
6 we're done with all the logistics.

7 I mention all that because this may not be a
8 five-day trial anymore. I don't think it is. I think it's
9 a three and a half maybe. And so I'll just offer you that.

10 In terms of getting Mr. Delman suited up and
11 ready, he is an excellent witness, and I think that that's
12 something that could happen given Mr. George's familiarity
13 with that, with that witness in particular.

14 And we'll, of course, if they need assistance --
15 they worked on Mr. Delman's slides. We're going to give
16 them those slides. That is not an issue. We are going to
17 strongly encourage our graphics person to sign on and do
18 what would make your life, your life in particular, easier.

19 JUDGE MCNAMARA: Well, I am not so concerned
20 about me. I have read everything that has come in so far.
21 I am more concerned, again, about making sure we have a
22 cohesive, coherent trial and that everyone's due process
23 rights are protected.

24 I know what the graphics look like. I was hoping
25 to see also some exhibits coming in with the projectiles.

1 In any event, there are other questions I have.
2 I looked at some of the affirmative defenses, and many of
3 them, I will be quite blunt, seemed quite thin. And I am
4 talking about unclean hands, I am talking about estoppel,
5 inequitable conduct. I think that there were additional
6 affirmative defenses as well that seemed not to have much
7 evidence supporting them.

8 So I guess my question also is how much of that
9 could be cut down, cut back. And any of that testimony that
10 I suspect was going to be live could, again, either the
11 defenses be withdrawn, if there is not enough information to
12 support the elements, and/or cut it back again to possible
13 witness designations, deposition designations.

14 MR. GEORGE: If I may, Your Honor?

15 JUDGE MCNAMARA: Sure.

16 MR. GEORGE: This is Kenneth George again. Most
17 of those defenses, I think, are going to go away now, and
18 there were defenses -- there were a couple of them that I
19 think Splat-R-Ball's counsel was going to proceed with, and
20 I don't think we're going to do it.

21 But, again, I just found out about this two hours
22 ago, so I need time to get my arms around this case.

23 JUDGE MCNAMARA: I do understand that, but I also
24 have to take into consideration previous scheduling.

25 Maybe, Mr. Cordell, you can help me with this in

1 terms of what kind of accommodation can be made on travel or
2 witnesses, let's say, if we were to start Friday morning.

3 MR. CORDELL: My only worry, Your Honor, is
4 then -- we do have a couple of witnesses that we thought
5 would go on and off today and we would release, but we
6 understand that everybody has got to accommodate some.

7 My big worry is just having enough time to
8 complete the trial. I wonder if maybe midday Thursday
9 wouldn't be a good compromise.

10 JUDGE MCNAMARA: Mr. George, I would be certainly
11 willing to do that. That gives you a little more time.
12 And, again, I think -- my sense is, again, if some of these
13 affirmative defenses will be withdrawn, that's a matter of
14 just, you know, filing a one-liner, we're withdrawing them,
15 or just agreeing on deposition designations. That's fast.

16 And then it seems to me the big part really are
17 the invalidity experts, to a certain extent maybe the expert
18 who will be contesting infringement, but, to be quite
19 honest, I think they have a hard row to hoe.

20 MR. GEORGE: Your Honor, the other thing that --
21 this is Ken George again.

22 The other thing that Mr. Cutri brought up was the
23 stipulation. And if we can get that stipulation that we
24 sent to you yesterday, if we can get that signed, that's
25 going to cut a huge amount of time out of Mr. Delman's

1 testimony.

2 I personally think we could complete the trial if
3 we started Friday morning based on my view of how, you know,
4 what we're going to get rid of and what we're going to
5 shorten. As I said, if we got that stipulation, that would
6 go a long way to that as well.

7 JUDGE MCNAMARA: So that would mean --
8 Go ahead, Mr. Cordell.

9 MR. CORDELL: There are parts of the stipulation
10 that we can't accept, Your Honor, so that's -- although
11 we're happy to sit down and work out stipulations galore to
12 the extent that we can shorten the process, that would be
13 good.

14 One suggestion that I did have is we could
15 perhaps do the prehearing conference now, and that would
16 take care of whatever issues that would otherwise occupy
17 time and then start after lunch on Thursday. That would
18 give us a nice running head start.

19 JUDGE MCNAMARA: Well, that might work, but here
20 is the thing. I think we handled all of the pretrial
21 motions. I think we handled all of the motions for request
22 for admission into evidence without a sponsoring witness.
23 I'm not sure what remains.

24 MR. CORDELL: Your Honor, as a patent lawyer,
25 there's always something that remains. I always have

1 issues.

2 JUDGE MCNAMARA: It's like The Remains of the
3 Day.

4 MR. CORDELL: That's what my wife tells me, I
5 have issues.

6 The things that are weighing on our minds
7 primarily have to do with the issues that Your Honor has
8 already decided. So you entered in Order 37, I believe,
9 Summary Determination of Infringement. Then yesterday, late
10 yesterday, we entered a stipulation as to the technical
11 prong of domestic industry as to all asserted claims.

12 That obviously shortens everything. But
13 Respondents have petitioned for review of Order 37. And so
14 we really just kind of wanted to get a little guidance. I
15 think all the parties wanted Your Honor's views on whether
16 we should spend any time putting in evidence on those issues
17 or not.

18 JUDGE MCNAMARA: Mr. Taylor, let me come to you
19 first. What's your thinking? And would you please --

20 MR. TAYLOR: I'm sorry, Your Honor. The Zoom --

21 JUDGE MCNAMARA: I'm well aware. I sat in my
22 house in bare feet. I'm not bare-footed today. My
23 preference might be.

24 MR. TAYLOR: Your Honor, the parties reached -- I
25 believe the Respondents agreed to stipulate to domestic

1 industry technical prong in the sense that means the Staff
2 is not challenging it. There are no -- I don't believe
3 there's any facts attached to the stipulation showing they
4 satisfied the domestic industry technical prong.

5 So I believe Your Honor may want that evidence
6 into the record. Somehow it's not attached to the
7 stipulation. How you get that evidence in, it's up to
8 Your Honor.

9 JUDGE MCNAMARA: Well, here is the thing. Here
10 is another thought I had. So I think that is a good idea.
11 I think that might be able -- well, it would still have to
12 come in live, I think, at this point. But, again, if a
13 solution could be worked out, I am amenable.

14 Here is another thought I had. The Commission
15 has a certain period of time in which to review
16 infringement. Much as I hate to do this, maybe we could put
17 on the invalidity case and the economic prong case and then
18 wait to see what the Commission is going to do on
19 infringement and bring you back for part of the -- for the
20 infringement.

21 But I am not sure of any other way to do this
22 that would preserve everybody's rights and make sure that we
23 stuck more or less to a schedule. Some of the procedural
24 schedule might change now, maybe the date of the ID for sure
25 depending on the dates that I could give you for the

1 infringement case. But, again, that date might go away
2 depending on what the Commission does.

3 MR. CORDELL: And I think that's likely,
4 Your Honor.

5 JUDGE MCNAMARA: Well, let me just put it this
6 way. In eight years I have only -- I think we have only
7 issued two MSDs on infringement. One was a trial balloon
8 for me because I really didn't know which way the Commission
9 might go on a molecular structure, and so I raised that as a
10 balloon. We haven't done one since. So our odds are pretty
11 good is what I would say, but no one is ever sure.

12 MR. CORDELL: I think that's a perfectly, not
13 only acceptable, but that's a great idea to schedule
14 something short, if we needed it.

15 The only wrinkle is that tech DI. Now that's a
16 stipulation. So there would be no Petition for Review. I
17 guess I'm interested in what the Staff would like to see in
18 terms of factual support.

19 JUDGE MCNAMARA: Sure. Go ahead. I'd love to
20 hear it.

21 MR. TAYLOR: Your Honor, it's not the Staff who
22 is looking for the evidence. I believe Your Honor would
23 have to make a determination.

24 JUDGE MCNAMARA: I would. I'd like to know a
25 little bit more about tech DI. I mean, if it is a clear

1 stipulation onto which everyone has signed and there are no
2 issues, can it just be turned into an MSD?

3 MR. CORDELL: I don't want to --

4 JUDGE MCNAMARA: Motion for Summary
5 Determination.

6 MR. CORDELL: I don't want to presage my opening
7 statement, Your Honor, but what I was going to tell you as
8 part of the tech DI case was that their expert has said --
9 well, at least I had a slide in here. Their expert has said
10 that tech DI rises and falls --

11 JUDGE MCNAMARA: With infringement, yes.

12 MR. CORDELL: So it would be that terse. It's
13 pretty straightforward.

14 JUDGE MCNAMARA: Well, I think I have to hear
15 from Mr. George on this, because there are also some rights
16 that the Respondents have and certainly in terms of any kind
17 of addendum or any way of presenting the technical DI.

18 What is your thinking, Mr. George?

19 MR. GEORGE: This is Ken George.

20 Again, the infringement and tech DI are
21 interwoven, so could we put -- you know, wait to see what
22 the Commission does and then do both of them later, if we
23 have to or not?

24 JUDGE MCNAMARA: What do you think, Mr. Cordell?

25 MR. CORDELL: I think that would be wonderful.

1 JUDGE MCNAMARA: I think that would work.

2 Mr. Taylor?

3 MR. TAYLOR: Yes, Your Honor, that's fine with
4 the Staff.

5 JUDGE MCNAMARA: Okay. So now the question
6 remains could we start Friday morning on the other
7 components of the case, which would include -- which would
8 be left with invalidity and economic prong, and then
9 whatever defenses remain that you're not actually
10 withdrawing because of --

11 MR. GEORGE: Thank you, Your Honor. I don't
12 think -- again, it's a little too new for me, but I don't
13 think -- I don't think there will be much else. I think
14 it's going to be invalidity. It's going to be invalidity
15 and the other part of the DI case.

16 JUDGE MCNAMARA: Okay. Mr. Taylor?

17 MR. TAYLOR: I believe a lot of the defenses were
18 the Gel Blaster defenses.

19 JUDGE MCNAMARA: They were.

20 MR. TAYLOR: So they are not in the case, I don't
21 believe, anymore.

22 JUDGE MCNAMARA: They may not be. The question
23 is the extent to which the other parties signed on. And I
24 am not really sure about that one without seeing some case
25 law.

1 There are times when the defenses can also be
2 maintained by the other parties. I think we looked at the
3 responses, and I'm not sure that all of the affirmative
4 defenses were raised by Splat-R-Ball and the PTT
5 Respondents, but we have to take another look and make sure
6 that we're on firm grounds on that. Obviously it's always
7 easier for us if you withdraw them and realize that the
8 evidence is pretty thin, but we would have to take another
9 look.

10 MR. GEORGE: Your Honor, this is Ken George
11 again. I don't see us putting forward any of the
12 Gel Blaster defenses at all.

13 JUDGE MCNAMARA: Okay.

14 MR. GEORGE: I actually don't see us doing
15 anything except invalidity and the other part of the DI.
16 The only issue I'm wrestling with, I don't have an answer
17 for you yet, but it's not a big issue, is we still have one
18 claim that's left, claim 14.

19 JUDGE MCNAMARA: Yes.

20 MR. GEORGE: And that, frankly, is the only claim
21 that's left on infringement. Even if we were to do that,
22 and I'm not sure we still will, that would take about five
23 minutes.

24 JUDGE MCNAMARA: So that would also be up to
25 Mr. Cordell, that one claim limitation that's left.

1 MR. CORDELL: Yes, Your Honor. We are planning
2 on presenting claim 14.

3 JUDGE MCNAMARA: Okay. Mr. Taylor, any thoughts?

4 MR. TAYLOR: No, Your Honor.

5 JUDGE MCNAMARA: I think I caught you off guard
6 there.

7 All right. Couldn't we put that over again to
8 the infringement case?

9 MR. CORDELL: I mean, we could. It's really at
10 Your Honor's --

11 JUDGE MCNAMARA: I think it makes sense to do
12 that, because, again, we don't know what will happen in the
13 interim.

14 MR. CORDELL: My only concern is that we will
15 then be sending the case up without claim 14, if they
16 affirm.

17 JUDGE MCNAMARA: That's true.

18 MR. CORDELL: I think we would like to have claim
19 14 in the case.

20 JUDGE MCNAMARA: All right. So the next question
21 is can we start Friday morning and still cover what needs to
22 be covered.

23 MR. CORDELL: I've just taken a poll of our
24 witnesses, and I think we can do it, but obviously we need
25 to be disciplined, and that's --

1 JUDGE MCNAMARA: Well, that's nothing new to
2 you-all, seriously.

3 MR. CORDELL: We do try, Your Honor.

4 To that end, could I raise one more housekeeping
5 matter, which is exhibits?

6 JUDGE MCNAMARA: Sure.

7 MR. CORDELL: Your Honor's prior practice is, at
8 the end of every day, the parties meet and confer, we come
9 up with a list. If there are disputes, we hash them out the
10 next morning.

11 Is that the procedure you would like us to
12 follow?

13 JUDGE MCNAMARA: Sure. I think it might be
14 easiest all around. It gives everybody an opportunity to
15 confer and make sure that they are in agreement or not in
16 agreement, and we can take them up the next day.

17 Will that work for you-all again with this
18 modified schedule?

19 MR. GEORGE: Yes, it will, Your Honor. This is
20 Mr. George again.

21 JUDGE MCNAMARA: Thank you.

22 MR. CORDELL: One last issue, Your Honor. In
23 prior cases we have had at least a practice that, in order
24 to have an exhibit admitted, we need to actually, not only
25 put it on a slide, but read it into the record. Does

1 Your Honor have a preference?

2 JUDGE MCNAMARA: I think at this point, if
3 everybody agrees to those exhibits, you can make a statement
4 when the slide comes in that the parties have agreed upon
5 the exhibits, and then you don't have to read them into the
6 record. They become part of the exhibit list. They can
7 just become part of the submission. And that would
8 streamline things extraordinarily also in terms of time.

9 MR. CORDELL: It would. Thank you.

10 JUDGE MCNAMARA: Are you in agreement with that,
11 Mr. George?

12 MR. GEORGE: Yes, I am, Your Honor.

13 JUDGE MCNAMARA: Okay. Mr. Taylor?

14 MR. TAYLOR: Yes, Your Honor.

15 JUDGE MCNAMARA: All right. So to recap, we'll
16 start Friday morning at 9:30. And then it looks, again, as
17 though we'll end on Tuesday, so that gives you three full
18 days. The case will be limited -- well, the case will have
19 the one claim.

20 Are you prepared for that, Mr. George, to deal
21 with that now, I mean within this three-day period?

22 MR. GEORGE: Yes, Your Honor.

23 JUDGE MCNAMARA: All right. That's good. And
24 then what we'll do is, on Friday, rather, on Tuesday, I'll
25 propose some dates for you-all to come back for the

1 infringement case, and we will select a date before we even
2 all leave so that you can confer with your witnesses and
3 make sure their schedules are clear.

4 We'll come up with a date. We'll revise the
5 procedural schedule, but I'll wait until we know what that
6 date is for the infringement case.

7 As I understand, I will see a modified -- or I
8 will see a stipulation at least on the Delman testimony. I
9 may see a withdrawal of the affirmative defenses. I should
10 see a withdrawal of the affirmative defenses, I think, but
11 that is up to you also to check. And I think that should
12 then cover it.

13 MR. GEORGE: Thank you, Your Honor.

14 JUDGE MCNAMARA: Does that work, Mr. George?

15 MR. GEORGE: It does. Thank you, Your Honor.

16 JUDGE MCNAMARA: Mr. Cordell?

17 MR. CORDELL: Yes, Your Honor.

18 MR. TAYLOR: Yes, Your Honor.

19 JUDGE MCNAMARA: All right. Are there any other
20 pretrial issues that needed to be dealt with? I thought we
21 had taken care of just about all of them.

22 MR. TAYLOR: Just one point, Your Honor.

23 Ms. Macdonald reminded me that the Commission actually may
24 not meet their deadline but --

25 JUDGE MCNAMARA: They may not. You know what, we

1 will be prepared. Whatever happens, we'll do it, and they
2 will understand that the schedule in this case, then, is
3 going to be thrown off in part because of this. We will do
4 what we have to do.

5 But I would rather protect your rights and I
6 would rather not have to put on a whole infringement case
7 when it may not be necessary. So that is what makes sense
8 to me.

9 MR. CORDELL: Understood. Thank you.

10 JUDGE MCNAMARA: All right. Then I will see
11 you-all -- at least you-all got a glimpse of the courtroom.
12 So you now have creative visualization about where you're
13 going to stand and where you're going to be and how it is
14 going to work.

15 Is there anything else before we adjourn?

16 MR. CORDELL: Not from Complainants, Your Honor.
17 Thank you.

18 JUDGE MCNAMARA: Great.

19 MR. GEORGE: No, Your Honor, not from
20 Respondents.

21 JUDGE MCNAMARA: Mr. Taylor?

22 MR. TAYLOR: No, Your Honor, unless you wanted to
23 see one of the products.

24 JUDGE MCNAMARA: I would, and then we'll go. I
25 think Anita bought one, but we were hoping to try one out.

1 MR. CORDELL: Your Honor, if you wanted to see a
2 real product, I have a NERF. So what you're holding in your
3 hand there are the dehydrated --

4 JUDGE MCNAMARA: Yes.

5 MR. CORDELL: -- SAPs. You are holding, I bet,
6 five thousand in your hand. They are larger than a grain of
7 sand but not much.

8 JUDGE MCNAMARA: All right.

9 MR. CORDELL: And mine is actually
10 battery-operated. If you would like to fire it, you may.

11 JUDGE MCNAMARA: Maybe not with all of you here.
12 I am not sure of my aim. So maybe I'll wait and we'll do it
13 at another point and we'll take care of it then. But thank
14 you. I appreciate the offer. I am learning to shoot.

15 MR. CORDELL: These are remarkable. And,
16 particularly, if you are just shooting at a wall, they are
17 very, very safe.

18 JUDGE MCNAMARA: That's what I have read, but you
19 never know.

20 All right. Then I will see you bright and
21 early -- well, I will see you at 9:30 on Friday morning.
22 Thank you.

23 (Whereupon, the proceedings concluded at 10:04 a.m.)

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TITLE: IN THE MATTER OF CERTAIN SOFT PROJECTILE LAUNCHING
DEVICES, COMPONENTS THEREOF, AMMUNITION, AND PRODUCTS
CONTAINING SAME
INVESTIGATION NO.: 337-TA-1325
HEARING DATE: May 17, 2023
LOCATION: Courtroom B
NATURE OF HEARING: Evidentiary Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceedings of the U.S. International Trade Commission.

Date: May 17, 2023

Signed:
ss// *Lois Shome Roberts*

Signature of the Contractor or the Authorized Contractor's Representative

I hereby certify that I am not the court reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission against the aforementioned court reporter's notes and recordings for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

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