

S E R V E D
November 24, 2015
FEDERAL MARITIME COMMISSION

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DOCKET NO. 15-02

COMBUSTION STORE LIMITED

v.

UNIGROUP WORLDWIDE, INC.

NOVEMBER 24, 2015, SCHEDULING ORDER

On November 6, 2015, the parties filed the Proposed Joint Discovery Plan required by 46 C.F.R. § 502.201(h). On November 19, 2015, the parties appeared through counsel for a telephonic scheduling conference to discuss the proposal. Complainant Combustion Store Limited was represented by attorney Sean C. Griffin. Respondent UniGroup Worldwide, Inc., was represented by attorneys C. Jonathan Benner and Scott W. McMickle. An audio recording was made of the conference and has been sent to counsel. The Commission will not create a transcript of the conference unless it determines a transcript is needed.

The parties exchanged initial disclosures on October 26, 2015, and have served written discovery. The parties anticipate taking up to eight depositions. Fact witnesses are located in several different parts of the world, including Great Britain, Singapore, and the United States. Therefore, the parties believe that factual discovery cannot be completed until March 18, 2016. The parties believe that expert witnesses may be necessary on both questions of liability and damages. Therefore, the following schedule is entered.

March 18, 2016	Complete factual discovery. Written discovery must be served in advance of this date so timely responses are due on or before March 18, 2016. Depositions must be completed by this date. To accommodate the parties's schedules and account for unforeseen circumstances, the parties may by agreement extend this for up to one week without seeking an order from the Commission.
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March 18, 2016	The parties must file a joint status report stating whether one or both parties believe that an oral evidentiary hearing is necessary and the reason or reasons that an oral hearing is necessary.
April 18, 2016	Complainant must disclose expert testimony. 46 C.F.R. § 502.201(d).
May 18, 2016	Respondent must disclose expert testimony. 46 C.F.R. § 502.201(d).
June 1, 2016	Parties must complete expert-related discovery.
June 24, 2016	Complainant must file brief, proposed findings of fact, and appendix.
July 15, 2016	Respondent must file brief, response to Complainant's proposed findings of fact, Respondent's proposed findings of fact, and appendix.
July 29, 2016	Complainant may file reply brief and response to Respondent's proposed findings of fact.

If it is determined that an oral evidentiary hearing is necessary, the briefing schedule may be revisited.

FORM REQUIREMENTS FOR DOCUMENTS.

A. Stipulations.

The parties may, by stipulation, agree upon any facts involved in the proceeding. 46 C.F.R. § 502.162. The parties are expected to attempt to narrow the issues and to shorten the proceeding by stipulations. Stipulations must be signed by the parties. This document must set forth stipulations in numbered paragraphs. Each paragraph must be limited as nearly as practicable to a single factual proposition. The parties must provide an electronic copy of the Stipulations in a word-processing format *to the Office of Administrative Law Judges*.

B. Proposed Findings of Fact.

This document must set forth proposed findings of fact in numbered paragraphs. Each paragraph must be limited as nearly as practicable to a single factual proposition. Each factual proposition must be followed by an exact citation to evidence that the party contends will support the proposed finding of fact; *i.e.*, a page number in the Appendix.¹ See 46 C.F.R. § 502.221. The

¹ Parties must designate specific facts and provide the court with their location in the record. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 775 (9th Cir. 2002). "General references [to evidence] without page . . . numbers are not sufficiently specific." *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003).

party filing Proposed Findings of Fact must provide an electronic copy of the Proposed Findings of Fact in a word-processing format to all parties *and to the Office of Administrative Law Judges*.

C. Response to Proposed Findings of Fact.

This document must set forth verbatim each proposed finding of fact to which it responds, then admit or deny the proposed finding. Each proposed finding of fact that the responding party denies must be followed by an exact citation to evidence that the responding party contends will rebut the evidence the proposing party claims supports the proposed finding of fact. The party filing a Response to Proposed Findings of Fact must provide an electronic copy of the Response in a word-processing format to all parties *and to the Office of Administrative Law Judges*.

D. Appendix.²

The documentary evidence on which a party bases its Proposed Findings of Fact must be included in an Appendix in the following format:

1. The cover of the appendix must identify the party or parties that prepared the appendix; *e.g.*, “Complainants’ Appendix.”
2. The appendix must begin with a table of contents identifying each document. The documents must be numbered sequentially beginning with 001. The table of contents must identify the appendix page at which each document begins.
3. Each page of the appendix must be numbered sequentially. The first page of the following document must be assigned the next number after the last page of the previous document; *e.g.*, if the last page of document 001 is 17, the first page of document 002 must be 18.
4. Confidential information in the appendix must be treated as set forth in paragraphs 18 through 23 of the Initial Order.
5. In addition to the hard copy, the parties should file PDF versions of their appendices with each document in a separate, sequentially numbered sub-folder corresponding to the document number in the appendix.

² The parties can see examples of the format required for the Proposed Findings of Fact (“Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact”) and the Appendix (“Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact, Appendix”) in the proceeding *Clutch Auto, Ltd. v. International Touch Consolidator, Inc.*, FMC No. 1880(F), accessed from the Commission’s web site through “Docket Activity Logs.”

6. Each party must ensure that all documents in its appendix are legible.
7. The parties are instructed, to the extent practicable, to cite to a document in an appendix already in the record rather than include the same document in its own appendix. For instance, if Respondents contend that a document included in Complainants' appendix rebuts the evidence Complainants claim supports a proposed finding of fact, Respondents should cite to Complainants' appendix rather than include a second copy of the same document in its own appendix.
8. The parties should include in the appendix only those pages necessary to identify the document and support its proposed fact. For instance, if support for a party's proposed fact is found on pages 79 and 80 of a deposition transcript, the party should include the cover sheet, pages 79 and 80, and only those preceding and following pages necessary for context, not the entire deposition transcript.
9. If a party includes documents in a language other than English in its appendix, Commission Rule 7 provides:

Every document, exhibit, or other paper written in a language other than English and filed with the Commission or offered in evidence in any proceeding before the Commission under this part or in response to any rule or order of the Commission pursuant to this part, must be filed or offered in the language in which it is written and must be accompanied by an English translation thereof duly verified under oath to be an accurate translation.

46 C.F.R. § 502.7. Unless the document has already been translated by another party, the party who wants to use the document must supply the translation.

10. The parties must avoid including multiple copies of the same document in the appendix.

E. Brief.

A party's brief must meet the requirements of Commission Rule 221, 46 C.F.R. § 502.221, with the exception that the proposed findings of fact required by section 502.221(d) must be included in the Proposed Findings of Fact described above. The pages of the Proposed Findings of Fact do not count toward the page limitation stated in Commission Rule 221(f). The party filing a brief must

provide an electronic copy of the brief in a word-processing format *to the Office of Administrative Law Judges.*

F. Confidential Information.

The parties are reminded of the requirements set forth in paragraphs 18 through 23 of the Initial Order governing the filing of information that a party claims is confidential.

G. Electronic Copies of Documents in a Word-Processing Format.

Electronic copies of documents in a word-processing format should be provided by email or on a portable electronic storage device. The parties are directed to consult with each other to determine the most practicable way to send electronic copies to each other. The parties are directed to send the electronic copy to the Office of Administrative Law Judges at the following email address – judges@fmc.gov – or send a portable electronic storage device directly to the Office of Administrative Law Judges.



Clay G. Guthridge
Administrative Law Judge