Rules of the
U.S. Court of International Trade

Effective November 1, 1980
(As amended, Nov. 25, 2008, eff. Jan. 1, 2009)

P R E F A C E

This volume contains the rules prescribing the practice and procedure in the United States Court of International Trade, successor to the United States Customs Court.

The Rules of the United States Court of International Trade, necessary to implement the Customs Court Acts of 1980, are styled, numbered and arranged to the maximum extent practicable in conformity with the Federal Rules of Civil Procedures. Additions, deletions and modifications to and from the Federal Rules of Civil Procedure have been made where required.
Pursuant to Title 28 U.S.C. § 2641, the Federal Rules of Evidence shall apply to all civil actions in the Court of International Trade except as provided in section 2639 or in section 2641(b) of that Title, or in the Rules of the Court.

The principal statutory provisions pertaining to the United States Court of International Trade are contained in the following sections of Title 28 of the United States Code:

Organization	Chapter 11	Sections 251 to 257
Jurisdiction	Chapter 95	Sections 1581 to 1585
Procedure	Chapter 169	Sections 2631 to 2647

Practice comments are included following certain rules to which they relate. The practice comments, prepared by the clerk of the court, are intended solely to provide information about the content and processing of papers filed in the office of the clerk. They do not represent, nor can they be used as, official interpretations of the rules.

TINA POTUTO KIMBLE
Clerk of the Court

UNITED STATES COURT

OF

INTERNATIONAL TRADE

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CLERK OF THE COURT

TINA POTUTO KIMBLE

CLERK'S OFFICE BUSINESS HOURS

8:30 a.m. to 5:00 p.m.
Monday through Friday, except legal holidays
(See Rule 6(a) for legal holidays)

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TITLE I. SCOPE OF RULES; FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in the United States Court of International Trade. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding. When a procedural question arises that is not covered by these rules, the court may prescribe the procedure to be followed in any manner not inconsistent with these rules. The court may refer for guidance to the rules of other courts. The rules are not to be construed to extend or limit the jurisdiction of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 2. One Form of Action

There is one form of action – the civil action.

(As amended, Nov. 25, 2008, eff. Jan. 1, 2009.)

TITLE II. COMMENCING AN ACTION; AMENDING A SUMMONS; SERVICE OF SUMMONS, PLEADINGS, MOTIONS, AND ORDERS

Rule 3. Commencing an Action

(a) Commencement.

A civil action is commenced by filing with the clerk of the court:

(1) A summons in an action described in 28 U.S.C. § 1581(a) or (b);

(2) A summons, and within 30 days thereafter a complaint, in an action described in 28 U.S.C. § 1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930; or

(3) A summons and complaint concurrently in all other actions.

(b) Filing Fee.

When an action is commenced, the plaintiff must pay a $350 filing fee to the clerk of the court, except that:

(1) the plaintiff must pay a $150 filing fee when the action is one described in 28 U.S.C. § 1581(a); and

(2) the plaintiff must pay a $25 filing fee when the action is one described in 28 U.S.C. § 1581(d)(1).

(c) Complaint Fee.

When filing a complaint in an action described in 28 U.S.C. § 1581(a), the plaintiff must pay a $200 fee to the clerk of the court.

(d) Information Statement.

When an action is commenced, the plaintiff must file the original and a sufficient number of copies for service (when service is to be made by the clerk of the court) of a completed Information Statement on the form shown in Form 5 in the Appendix of Forms.

(e) Amending a Summons.

The court may allow a summons to be amended at any time on such terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the amendment is allowed.

(f) Notice to Interested Parties.

In an action described in 28 U.S.C. § 1581(c), the plaintiff, as provided in section 516A(d) of the Tariff Act of 1930, must notify every interested party who was a party to the administrative proceeding of the commencement of the action, by mailing a copy of the summons at the time the action is commenced, or promptly thereafter, by certified or registered mail, return receipt requested, to each such party at the address last known in the administrative proceeding.

When filing a complaint in an action described in 28 U.S.C. § 1581(c), the plaintiff must promptly serve a copy of the complaint, by certified or registered mail, return receipt requested, on every interested party who was a party to the administrative proceeding at the address last known in that proceeding.

(g) Precedence of Action.

Unless the court, on motion for good cause or on its own, determines otherwise in a particular action, the following actions will be given precedence, in the following order, over other actions pending before the court, and expedited in every way:

(1) An action seeking temporary or preliminary injunctive relief;

(2) An action involving the exclusion of perishable merchandise or redelivery of such merchandise;

(3) An action described in 28 U.S.C. § 1581(c) to contest a determination under section 516A of the Tariff Act of 1930;

(4) An action described in 28 U.S.C. § 1581(a) to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930, involving the exclusion or redelivery of merchandise;

(5) An action described in 28 U.S.C. § 1581(b) to contest a decision of the Secretary of the Treasury under section 516 of the Tariff Act of 1930.

(6) Any other action that the court determines, based on motion and for good cause shown, warrants expedited treatment.

(h) Special Rule for Actions Described in 28 U.S.C. §1581(c).

When an action is commenced under 28 U.S.C. § 1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930 by the administering authority and such a determination by the Commission, a party must file a separate summons and complaint with respect to each agency. Also, in an action described in 28 U.S.C. § 1581(c), when the plaintiff files the summons, attorneys for the

plaintiff are required to comply with the procedures set forth in Rule 71(c) by filing of a Business Proprietary Information Certification where appropriate.

(i) Disclosure Statement.

A disclosure statement as provided by Form 13 must be filed by every party to an action, including parties seeking or permitted to intervene, and for each *amicus curiae*. The disclosure statement must be filed with the entry of appearance (or with the summons if no separate notice of appearance is required). If any of the information required changes after the disclosure statement is filed, and before a final judgment is issued, the party or *amicus curiae* must promptly file an amended disclosure statement.

PRACTICE COMMENT: For the appropriate summons form and number of copies to be filed, refer to Forms 1 to 4 of the Appendix of Forms. Information Statement forms, as shown in Form 5, are available upon request from the office of the clerk.

PRACTICE COMMENT: As provided in Section 516A(a)(2) and (3) of the Tariff Act of 1930, a complaint shall be filed within 30 days after the filing of the summons. *See Georgetown Steel v. United States*, 801 F.2d 1308 (*Fed*. Cir. 1986).

Nevertheless, counsel are encouraged to commence any action described in Section 516A(a)(2) or (3) of the Tariff Act of 1930 and 28 U.S.C. § 1581(c) by the concurrent filing of a summons and complaint. This will serve to expedite the prosecution of the action.

When an action is commenced, counsel should contact the Clerk's Office not more than 24 hours prior to filing to obtain a court number and shall endorse that court number on the summons and complaint. Counsel for plaintiff shall be responsible for service of the summons and complaint as prescribed in Rules 4(b), (c), (d) and (e). Under these circumstances, the clerk of the court will not make service of the summons as prescribed in Rule 4(a)(4).

PRACTICE COMMENT: As prescribed by Rule 5(e), a summons or a summons and complaint may be filed by delivery or by mailing. The filing is completed when received, except that when the method of mailing prescribed by Rule 5(f) is used, the summons or summons and complaint are deemed filed as of the date of mailing.

PRACTICE COMMENT: Internal inconsistencies exist within the provisions of the Customs Courts Act of 1980 with respect to the method of commencing customhouse broker license

actions, the kind of action described in 28 U.S.C.§ 1581(g). These actions are included among those actions which, pursuant to 28 U.S.C. § 2632(a), are to be commenced by filing concurrently a summons and complaint with the clerk of the court as prescribed by the rules of the court. The rules of the court require the plaintiff to cause concurrent service of the summons and complaint to be made. (See Rules 3(a) and 4(b).)

The inconsistency pertaining to customhouse broker license actions appears in 19 U.S.C. § 1641(e), which provides that an action is commenced by filing "a written petition" in the court and further provides that a copy of the petition is to be "transmitted by the clerk of the court to the Secretary [of the Treasury] or his designee."

Until such time as the matter is resolved, the preferred procedure to achieve uniformity and consistency and to minimize the ambiguity created by these inconsistent statutory provisions is to follow the provisions in Title 28. (In one unreported case, *James A. Barnhart v. United States*, Court No. 81-3-00328, the court directed plaintiff to comply with the requirements of 28 U.S.C. § 2632(a) by filing a summons and complaint notwithstanding the fact that plaintiff had complied with the requirements of 19 U.S.C. § 1641(e) by filing a petition.)

PRACTICE COMMENT: Although this rule requires that the two agencies subject to suit under 26 U.S.C.§1581(c) are in the first instance the subject of separate summonses and complaints, it does not prohibit consolidation of actions against the two agencies upon an adequate showing of grounds for consolidation.

PRACTICE COMMENT: A party seeking to commence judicial review of an antidumping, countervailing duty, or injury determination regarding a class or kind of merchandise from a signatory to the North American Free Trade Agreement should be aware of the additional notice requirements of 19 U.S.C. § 1516a(g)(3) and (4) and the separate filing requirements of 19 U.S.C. § 1516a(a)(5).

PRACTICE COMMENT: Rule 3(g) lists five types of actions to which the court will give precedence over other actions as a matter of course, and allows the court to give precedence to any other action when a party can demonstrate, upon motion and a showing of good cause, that expedited treatment is warranted. In addition to Rule 3(g), other rules that may bear on scheduling include Rule 16 (Post Assignment Conferences; Scheduling; Management), Rule 40 (Request for Trial) and Rule 78 (Motion Part).

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Sept. 25, 1992, eff. Jan. 1, 1993, Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 1997, eff. Nov. 1, 1997; May 27, 1998, eff. Sept. 1, 1998; Jan. 25, 2000, eff. May 1, 2000; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Sept. 28, 2004, eff. Jan. 1, 2005; Mar. 29, 2005, eff. Oct. 1, 2005; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 3.1. Actions Transferred to the Court of International Trade from a Binational Panel or Committee Pursuant to 19 U.S.C. § 1516a(g)(12)(B) or (D)

(a) Filing of Request for Transfer.

(1) A copy of the request for transfer to the court under 19 U.S.C. § 1516a(g)(12)(B) or (D) must be filed with the clerk of the court simultaneously with the filing of the request for transfer with the United States Secretary (as defined in 19 U.S.C. § 1516a(f)(6)).

(2) When the filing of the request for transfer is made by mail, the mailing must be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(b) Notice to Interested Parties.

On the same day as the filing of a request for transfer, the party requesting transfer must serve a copy of the request, by certified or registered mail, return receipt requested, on every interested party who was a party to the panel or committee review, except if the time period for filing the Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, then service must be on every interested party who was a party to the administrative proceeding.

(c) Intervention of Right.

(1) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12), any person who filed a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 will be treated as an

intervenor in the action if otherwise entitled to intervene as of right under Rule 24 of these rules.

(2) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which a complaint or a Request for an Extraordinary Challenge Committee was filed under NAFTA Article 1904 Panel Rule 39 or NAFTA Extraordinary Challenge Committee Rule 5 and in which the time for filing a Notice of Appearance under NAFTA Article 1904 Panel Rule 40 or NAFTA Extraordinary Challenge Committee Rule 40 has not expired, anyone otherwise entitled to intervene under Rule 24 of these rules will be permitted to intervene. Any motion to intervene must be filed within the amount of unexpired time that remained for filing a Notice of Appearance in the panel or committee proceedings, or 10 days after the date of filing of the request for transfer, whichever is later. Any time periods in which the panel or committee proceedings were stayed should not be counted in computing the time for filing a motion to intervene.

(d) Documents in an Action Transferred under 19 U.S.C. § 1516a(g)(12).

(1) Within 30 days after the date of filing of the request for transfer, the United States Secretary must transfer to the clerk of the court copies of all documents filed in the binational panel review or extraordinary challenge committee review and of all orders and decisions issued by the panel or committee.

(2) If the request for transfer is filed before the Record for Review under NAFTA Article 1904 Panel Rule 41 is filed, the administering authority or the International Trade Commission must, within 40 days after the date of filing of the

request for transfer, file with the clerk of the court the items described in either subdivision (a) or (b) of Rule 73.2 of these rules.

(3) The transfer and filing of documents under paragraphs (1) and (2) of this subdivision (d) must be in accordance with subdivision (c) of Rule 73.2 of these rules. Any documents that were filed under seal pursuant to NAFTA Article 1904 Panel Rule 56 of NAFTA Extraordinary Challenge Committee Rule 30 will be treated in the same manner as a document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested.

(e) Pleadings.

Notwithstanding Rule 7(a) of these rules, in an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which the plaintiff has filed a complaint under NAFTA Article 1904 Panel Rule 39, the plaintiff should not file a new complaint in the action before the court, except that:

(1) if the time for amending a complaint in the panel proceedings had not expired or was stayed prior to the filing of the request for transfer, the plaintiff may file an amended complaint within the additional time that remained for filing an amended complaint in the panel proceedings, and

(2) in all actions, the plaintiff may amend the complaint within 10 days of the date of filing of the request for transfer to allege counts or requests for relief that could not have been alleged before the panel.

(f) Additional Provisions Governing Judgment on an Agency Record.

(1) Except as otherwise provided in this subdivision, the provisions of Rule 56.2 of these rules will govern actions transferred under 19 U.S.C. § 1516a(g)(12).

(2) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12) in which a complaint was filed under NAFTA Article 1904 Panel Rule 39, any proposed judicial protective order must be filed within 21 days after the date of filing of the request for transfer. The procedure for filing the proposed judicial protective order will be in accordance with Rule 56.2(a) of these rules.

(3) In an action transferred to the court under 19 U.S.C. § 1516a(g)(12), the proposed briefing schedule filed under Rule 56.2(a) of these rules must indicate whether briefs were filed in the panel or extraordinary challenge committee proceedings.

(A) If briefs were filed in the panel or extraordinary challenge committee proceedings, the proposed briefing schedule must indicate whether the parties (i) agree that those briefs should be treated as the equivalent of the motion and briefs provided for in Rule 56.2(d) of these rules, (ii) see any reason for the filing of additional briefs, and (iii) agree to time periods for filing any additional briefs.

(B) If briefs were not filed in the panel or extraordinary challenge proceedings, or if the briefs were filed but the parties agree that new briefs should be filed in the court, the proposed briefing schedule must indicate whether the parties (i) agree to the time periods set forth in Rule 56.2(d) of these rules, (ii) agree to time periods other than the periods set forth in Rule 56.2(d) of these rules, or (iii) cannot agree on a time period. If the parties agree that new briefs should be filed, the proposed briefing schedule must

indicate the parties' views as to whether any briefs originally submitted to the panel or extraordinary challenge committee should be stricken from the record.

In the event the parties cannot agree on any of the matters covered by subparagraphs (A) and (B), the parties must indicate the areas of disagreement and set forth the reasons for their respective positions.

(g) Applicability of Other Court Rules.

Unless a provision of this rule or an order of the court otherwise provides, the rules of this court govern actions transferred under 19 U.S.C. § 1516a(g)(12).

PRACTICE COMMENT: Rule 3.1(d) makes reference to former Rule 71(c). Pursuant to the renumbering of the Rules, the former Rule 71 now will be identified as Rule 73.2.

(Added Nov. 29, 1995, eff. March 31, 1996; as amended Sept. 30, 2003, eff. Jan. 1, 2004 Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 4. Service of Summons and Complaint

(a) Summons; Service by the Clerk. In any action required to be commenced by filing a summons only, service of the summons must be made by the clerk of the court as follows:

(1) On the United States, by serving the Attorney General of the United States, by delivering or by mailing a copy of the summons to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) When the action is described in 28 U.S.C. § 1581(a) or (b), the clerk must, in addition to the service prescribed in paragraph (1) of this subdivision (a), also serve the Secretary of the Treasury by mailing a copy of the summons to the director for the customs port in which the protest was denied or in which the liquidation of an entry is contested and to the Assistant Chief Counsel for International Trade Litigation, United States Customs and Border Protection.

(3) When the action is described in 28 U.S.C. § 1581(b), the clerk must, in addition to the service prescribed in paragraphs (1) and (2) of this subdivision (a), also mail a copy of the summons to the consignee or agent of the consignee involved in each entry included in the action.

(4) When the action is described in 28 U.S.C. § 1581(c) and contests a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930, the clerk must, in addition to the service prescribed in paragraph (1) of this subdivision (a), also mail a copy of the summons: to the Secretary, United States International Trade Commission, when a determination of that Commission is contested; and to

the General Counsel, Department of Commerce, when a determination of that Department is contested.

(5) After making service as prescribed in this subdivision (a), the clerk must return a copy of the summons, together with proof of service and a receipt for payment of the filing fee, to the person who filed the summons.

(b) Summons and Complaint; Service by the Plaintiff.

(1) In General. In any action required to be commenced by the concurrent filing of a summons and complaint, the plaintiff must cause service of the summons and complaint to be made in accordance with this rule.

(2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) By a Marshal or Someone Specially Appointed. At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal, or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.

(4) Pro Se Actions. If the plaintiff has failed to make service in a pro se action commenced under 28 U.S.C. § 1581(d), the court may serve the summons and complaint.

(c) Waiving Service.

(1) Requesting a Waiver. An individual, corporation, or association that is subject to service under Rule 4(d), (e), or (g) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that

an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(g), to an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, two copies of the waiver form, and a prepaid means for returning the form;

(D) inform the defendant, using text substantially in the form prescribed in Forms 1A and 1B of the Appendix of Forms, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent – or at least 60 days if sent to the defendant outside any judicial district of the United States – to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) Failure to Waive. If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) Time to Answer After a Waiver. A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent – or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) Results of Filing a Waiver. When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) Jurisdiction and Venue Not Waived. Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

(d) Serving an Individual Within a Judicial District of the United States.

Unless federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed – may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(e) Serving an Individual in a Foreign Country.

Unless federal law provides otherwise, an individual – other than a minor, an incompetent person, or a person whose waiver has been filed – may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction; or

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(f) Serving a Minor or an Incompetent Person.

A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(e)(2)(A), (e)(2)(B), or (e)(3).

(g) Serving a Corporation, Partnership, or Association.

Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(d)(1) for serving an individual; or

(B) by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and – if the agent is one authorized by statute and the statute so requires – by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(e) for serving an individual, except personal delivery under (e)(2)(C)(i).

(h) Serving the United States and its Agencies, Corporations, Officers, or Employees.

(1) United States. To serve the United States, a party must serve the Attorney General of the United States by:

(A) delivering a copy of the summons and complaint to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice; or

(B) sending a copy of each by registered or certified mail, return receipt requested, to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) Agency; Corporation; Officer; or Employee. To serve a United States agency or corporation, or United States officer or employee, a party must serve the United States and also send a copy of the summons and complaint by registered or certified mail, return receipt requested, to the agency, corporation, or officer or employee.

(i) Serving a Foreign, State, or Local Government.

(1) Foreign State. A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. § 1608.

(2) State or Local Government. A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(j) Territorial Limits of Effective Service.

(1) In General. Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where service is made;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States; or

(C) when authorized by a federal statute.

(2) Federal Claim Outside State-Court Jurisdiction. For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any of the state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(k) Proving Service.

(1) Affidavit Required. Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) Service Outside the United States. Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(e)(1), as provided in the applicable treaty or convention, or

(B) if made under Rules 4(e)(2) or (e)(3) by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) Validity of Service; Amending Proof. Failure to prove service does not affect the validity of the service. The court may permit proof of service to be amended.

(l) Time Limit for Service.

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (l) does not apply to service in a foreign country under Rule 4(e) or 4(i)(1).

PRACTICE COMMENT: The clerk is authorized by Rule 4(a) to make service of the summons only in those actions commenced by a summons, i.e., actions described in 28 U.S.C. § 1581(a) or (b), and only those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930. In all other actions, including those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930, the plaintiff is required by Rule 4(b) to effect concurrent service of the summons and complaint.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. April 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 4.1. Serving Other Process

Process – other than a summons under Rule 4 or a subpoena under Rule 45 – must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose. Proof of service must be made under Rule 4(k).

(Added Oct. 5, 1994, eff. Jan. 1, 1995; amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 5. Serving and Filing Pleadings and Other Papers

(a) Service: When Required.

Unless these rules provide otherwise, or by order of the court, all pleadings and other papers must be served on every party:

(b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service in General. A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's house or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address – in which event service is complete upon mailing;

(D) delivering it by overnight delivery service to the last known address of the person served – in which event service is complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the

latest time designated by such service for overnight delivery. "Overnight delivery service" means any delivery service that regularly accepts items for overnight delivery. "Overnight delivery service" does not include any service provided by the U.S. Postal Service (including express, priority or other expedited service), which is to be considered "mail" under subparagraph (B);

(E) leaving it with the clerk of the court if the person has no known address;

(F) sending it by electronic means if the person consented in writing – in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(G) delivering it by any other means by which the person consented in writing – in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) Using Court Facilities: A party may use the court's transmission facilities to make service under Rule 5(b)(2) (F).

(c) Serving Numerous Defendants.

(1) In General. If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading on all parties.

(2) Notifying Parties. A copy of every such order must be served on the parties as the court directs.

(d) Filing.

(1) Required Filings; Certificate of Service. Any paper that is required to be served – together with a certificate of service – must be filed immediately after service, unless otherwise prescribed by these rules or by order of the court. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry on land, and requests for admission.

(2) How Filing is Made – In General. A paper is filed by delivering it :

(A) to the clerk, by:

(i) delivering or sending it to the Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001; or

(ii) by delivering it to the clerk at places other than New York City when the papers pertain to an action being tried or heard at that place; or

(iii) by electronic filing as provided by Rule 5(i); or

(B) to the judge to whom an action is assigned, or a matter referred, if that judge agrees to accept it for filing. The judge must then note the filing date on the paper and promptly send it to the clerk.

(3) Electronic Filing, Signing, or Verification. As provided for in these rules or by court order, the court may allow papers to be filed, signed, or verified by electronic means that are consistent with any technical standards established by the Judicial Conference of the United States. Any rule or order requiring electronic filing must allow reasonable exceptions. A paper filed electronically in compliance with these rules is a written paper for purposes of these rules.

(4) Completion of Filing. Filing is completed when received, except that a paper mailed by certified or registered mail properly addressed to the clerk of the court, with the proper postage affixed and return receipt requested will be filed as of the date of mailing.

(5) Receipt and Acceptance by the Clerk: Upon receipt, the clerk will, as appropriate, date-stamp or otherwise record the date that any paper is submitted for filing, whether or not that paper is accepted for filing. In unassigned actions, the clerk will not accept for filing any paper that does not comply with the rules of the court unless such noncompliance is purely a matter of form. If the rejection of the paper may have jurisdictional consequences, that rejection must be at the direction of the chief judge. In assigned actions, rejection by the clerk must be at the direction of the judge to whom the action is assigned.

A party aggrieved by the clerk's refusal to accept a paper for filing may move to compel acceptance. If a paper initially rejected by the clerk later is accepted for

filing, the date on which the paper initially was stamped shall be considered the date of filing, although the date may be subject to amendment pursuant to this rule.

(e) Filing of Summons and Complaint by Mail. When an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail as prescribed by these rules, the mailing must be by certified or registered mail, return receipt requested, properly addressed to the clerk of the court, with the proper postage affixed.

(f) Proof of Service. Unless these rules or court order otherwise prescribe, papers presented for filing must contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the paper filed. The clerk may, for good cause shown, permit papers to be filed without acknowledgment or proof of service but must require proof to be filed promptly thereafter.

(g) Filings Containing Confidential or Business Proprietary Information. Any paper containing confidential or business proprietary information must identify that information by enclosing it in brackets. A party must file and serve such paper in accordance with any deadline established by these rules or by court order. A non-confidential version in which the confidential or business proprietary information is deleted must accompany a confidential version of a paper. However, when the original paper includes the statement “Bracketing of {Confidential} Proprietary Information Not Final for One Business Day after Date of Filing” on the cover of every document containing confidential or business proprietary information and on each page containing confidential or business proprietary

information, then a party may file and serve the non-confidential version within one day of the filing of that paper, together with a complete revision of the original filing, if necessary, that is identical to the original in all respects except for any bracketing corrections. When the original states that the bracketing is not final for one business day after the date of filing, recipients of the paper may not, until the bracketing is finalized, disclose the contents of the paper to anyone not authorized to receive confidential or business proprietary information in the action.

(h) Electronic Filing.

Papers include both tangible documents as well as any electronically generated medium according to technical specifications that may be adopted by the court. Papers that contain confidential or business proprietary information may not be electronically filed unless the specifications adopted by the court specifically authorize and provide for filing such information electronically.

PRACTICE COMMENT: When the clerk concludes that exigencies so require, he may permit a pleading or paper to be filed by facsimile transmission or similar process. Service by such process may be made with the consent of the party to be served. Certified or registered mail, return receipt requested, must be used, as prescribed in Rule 5(f), when an action is commenced by the filing of a summons only, or the concurrent filing of a summons and complaint, and the filing is made by mail.

PRACTICE COMMENT: When a party is represented in an action by more than one attorney of record, the party shall designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

PRACTICE COMMENT: When service is to be made upon a party represented by an attorney, service shall be made upon the attorney of record, unless otherwise ordered by the court.

PRACTICE COMMENT: When proof of service is made in the form of a statement, as prescribed in Rule 5(g), and the person served is an attorney, the statement shall identify the name of the party represented by the attorney served.

PRACTICE COMMENT: Rule 5(e) of the Federal Rules of Civil Procedure provides that "the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices." By contrast, Rule 5 contains no such limitation. Instead, the responsibilities and limitations of the Clerk of the United States Court of International Trade with respect to the acceptance or rejection of a paper submitted for filing are contained in Rule 5(e), which has no counterpart within the Federal Rules of Civil Procedure.

PRACTICE COMMENT: Rule (h) applies a "one-day lag rule" to a submission containing confidential or business proprietary information. Practitioners should note that this rule does not act to extend any deadline set forth in these rules or by court order. Its only effect on the timing of a submission is to provide one day for a party to prepare a non-confidential version of its submission and to prepare any correction of bracketing of confidential or business proprietary information. This rule does not excuse those filings from other requirements, such as those in Rule 81(h), applicable to a submission containing confidential information. It also requires that all confidential information be contained in brackets.

PRACTICE COMMENT: Included among, but not limited to, the kinds of papers the clerk may refuse to accept for filing are a reply to a response to a non-dispositive motion without leave of court; a pleading that is not accompanied by the appropriate filing fee; discovery documents presented contrary to Rule 5(d); papers that are not signed as required by Rule 11; papers presented by an attorney who is not the attorney of record; and papers presented after the running of periods prescribed by the rules or orders of the court.

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; May 27, 1998, eff. Sept. 1, 1998; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Sept. 28, 2004, eff. Jan. 1, 2005; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 25, 2008, eff. Jan. 1, 2009.)

(Rule 5.1: Reserved)

Rule 5.2. Privacy Protection for Filings Made with the Court

(a) Redacted Filings.

Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

(b) Filings Made under Seal.

The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(c) Protective Orders.

For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(d) Option for Additional Unredacted Filing under Seal.

A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(e) Option for Filing a Reference List.

A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(f) Waiver of Protection of Identifiers.

A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

PRACTICE COMMENT: For transcript redaction procedures and deadlines, please refer to Administrative Order 08-01.

(Added Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) Computing Time.

The following rules apply in computing any time period specified in these rules, any court order, or statute:

(1) Day of the Event Excluded. Exclude the day of the act, event, or default that begins the period.

(2) Exclusions from Brief Periods. Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days.

(3) Last Day. Include the last day of the period unless it is a Saturday, Sunday, legal holiday, or – if the act to be done is the filing of a paper in court – a day on which weather or other conditions make the clerk's office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible.

(4) "Legal Holiday" Defined. As used in these rules, "legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any other day declared a holiday by the President or the Congress of the United States.

(b) Extending Time.

(1) In General: When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect or circumstances beyond the control of the party.

(2) Exceptions: The court must not extend the time to act under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), and 60(b), except as those rules allow.

(c) Motions.

(1) Contents. The motion for extension of time must set forth:

(A) the specific number of additional days requested;

(B) the date to which the extension is to run;

(C) the extent to which the time for the performance of the particular act has been previously extended; and

(D) the reason or reasons on which the motion is based.

(2) Effect. No disposition of the underlying matter will be made until the court acts on the motion for extension of time.

(d) Additional Time after Certain Kinds of Service.

When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D) (E) (F), or (G), 5 days are added after the period would otherwise expire under Rule 6 (a).

(As amended, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; Apr. 28, 1987, eff. June 1, 1987;July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan.1, 1991; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2008, eff. Jan. 1, 2009.)

TITLE III. PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed; Consultation; Oral Argument; Response Time; Show Cause Order; Form of Motions and Other Papers

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) except for an action described in 28 U.S.C. § 1581(c), an answer to a complaint;

(3) an answer to a counterclaim designated as a counterclaim;

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) if the court orders one, a reply to an answer.

(b) Form of Motions and Other Papers.

(1) In General. A request for a court order must be made by motion. The motion must:

(A) be in writing unless made during a hearing or trial;

(B) state with particularity the grounds for seeking the order;

(C) for motions that require consultation between counsel before being made as prescribed by subdivision (f) of this rule, describe the reasonable effort made to reach agreement on the issues involved in the motion through consultation with opposing counsel, without the intervention of the court, and recite the date and time of such consultation, as well as the names of all persons participating;

(D) state the relief sought; and

(E) be accompanied by a proposed order.

(2) Form. The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(c) Oral Argument. On motion of a party, or on its own, the court may direct oral argument on a motion at a time and place designated as prescribed in Rule 77(c). A motion for oral argument on a motion must be filed no later than 20 days after service of the response to the motion, or 20 days after the expiration of the period of time allowed for service of a response.

(d) Time To Respond. Unless otherwise prescribed by these rules, or by order of the court, a response to a motion must be served within 10 days after service of such motion, except that a response to a dispositive motion must be served within 30 days after service of such motion. The movant has 10 days after service of the response to a dispositive motion to serve a reply.

(e) Order To Show Cause. No order to show cause to bring on a motion may be granted except on a clear and specific showing by affidavit of good and specific reasons why procedure other than regular motion is necessary or why the time to respond should be shortened.

(f) Motions; Consultation. Before a motion for an extension of time as prescribed in Rule 6(b), a motion for intervention as prescribed in Rule 24(a), a motion for a preliminary injunction to enjoin the liquidation of entries, a motion for a hearing as prescribed in Rule 56.2(e), a motion for the designation of a test case or suspension as prescribed in Rule 84, or a motion for an order compelling disclosure or discovery as prescribed in Rule 37(a), is

made, the movant must consult with all other parties to the action to attempt to reach agreement, in good faith, on the issues involved in the motion. If the court finds that a party willfully refused to consult, or, having consulted, willfully refused to attempt to reach agreement in good faith, the court may impose such sanctions as it deems proper.

(g) Dispositive Motions Defined. Dispositive motions include: motions for judgment on the pleadings; motions for summary judgment; motions for judgment on an agency record; motions to dismiss an action; and any other motion for a final determination of an action.

PRACTICE COMMENT: A schedule, agreed to by the parties, suitable for attachment to a decision of the court, shall be filed at the time an action is submitted to the court for final determination upon a dispositive motion or upon the conclusion of a trial. The schedule should indicate (1) when one action is involved, the ports of entry, protest and entry numbers, (2) when consolidated actions are involved, the ports of entry, court numbers, protest and entry numbers, and (3) when joined actions are involved, the ports of entry, court numbers, plaintiffs, protest and entry numbers. Cases should be arranged according to port of entry, in numerical order.

PRACTICE COMMENT: When a preliminary injunction ("PI"), temporary restraining order ("TRO"), or show cause order requiring action within a time period shorter than provided for under the Court's Rules is sought in conjunction with the filing of a new action, as practicable, counsel should, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk's Office at 212-264-2971, and, before making service of the pleadings and the motion, obtain a court number from the Case Management Section and endorse it on the pleadings and the motion.

Further, in all other situations when a party is seeking a PI, TRO, or show cause order requiring action within a time period shorter than provided for under the Court's Rules, as practicable, counsel should, at least 24 hours prior to the filing of motion papers, notify the Case Management Section of the Clerk's Office at 212-264-2971.

Further, when notifying the Clerk's Office that a party is seeking a PI, TRO, or show cause order requiring action within a time period shorter than provided for under the Court's Rules, counsel are also encouraged simultaneously, if not sooner, to provide courtesy notice of the intended application to all other parties to the litigation; if any captioned party has not yet appeared through counsel, counsel are encouraged to provide courtesy notice to all relevant parties as identified in USCIT R. 4(a).

PRACTICE COMMENT: Consistent with 28 U.S.C. § 2632(d) and the Federal Rules of Civil Procedure, Rule 7(a) does not list a summons as a pleading. Practitioners should note, however, that in DaimlerChrysler Corp. v. United States, 442 F.3d 1313, 1317-18 (Fed. Cir. 2006), the United States Court of Appeals for the Federal Circuit determined that the summons acts as the initial pleading in an action commenced under 28 U.S.C. § 1581(a).

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 8. General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) New Grounds. A party who wishes the court to consider any new ground in support of a civil action described in 28 U.S.C. § 1581(a) must allege the new ground in accordance with this rule, and, as provided in 28 U.S.C. § 2638, must also allege that the new ground: (1) applies to the same merchandise that was the subject of the protest; and (2) is related to the same administrative decision that was contested in the protest.

(c) Defenses; Admissions and Denials.

(1) In General. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) Denials – Responding to the Substance. A denial must fairly respond to the substance of the allegation.

(3) General and Specific Denials. A party that intends in good faith to deny all the allegations of a pleading — including the jurisdictional grounds — may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) Denying Part of an Allegation. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) Effect of Failing to Deny. An allegation — other than one relating to the amount of damages — is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(d) Affirmative Defenses.

(1) In General. In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

- accord and satisfaction;
- discharge in bankruptcy;
- duress;
- estoppel;
- fraud;
- illegality;

- laches;
- license;
- payment;
- release;
- res judicata;
- statute of frauds;
- statute of limitations; and
- waiver.

(2) Mistaken Designation. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(e) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) In General. Each allegation must be simple, concise, and direct. No technical form is required.

(2) Alternative Statements of a Claim or Defense. A party may set out 2 or more statements of a claim or defense alternately or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) Inconsistent Claims or Defenses. A party may state as many separate claims or defenses as it has, regardless of consistency.

(f) Construing Pleadings. Pleadings must be construed so as to do justice.

PRACTICE COMMENT: For an action described in 28 U.S.C. § 1581(c), the complaint shall contain: (1) a citation to the administrative determination to be reviewed; (2) a statement of the issues presented by the action and (3) a demand for judgment.

(As amended, July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1883; Dec. 18, 2001, eff. Apr. 1, 2002; eff. Apr. 1, 2002; November 25, 2008, eff. January 1, 2009.)

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) In General. Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a party's capacity to sue or be sued;

(B) a party's authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) Raising Those Issues. To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.

(b) Fraud or Mistake; Conditions of Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) Conditions Precedent**.** In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act it suffices to allege that the document was legally issued or the act legally done.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or of a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing the sufficiency of a pleading.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

(As amended, July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 10. Form of Pleadings

(a) Caption; Names of Parties**.** Every pleading must have a caption with the court's name, a title a court number, and a Rule 7(a) designation. The caption of the summons and the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence – and each defense other than a denial –must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(As amended, Dec. 18, 2001, eff. Apr. 1, 2002; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name – or by a party personally if the party is unrepresented. Every pleading, written motion, or other paper of the United States must be signed by an attorney authorized to do so on behalf of the Assistant Attorney General, Civil Division, Department of Justice. A pleading, written motion, or other paper of an agency of the United States, authorized by statute to represent itself in judicial proceedings, must be signed by an attorney authorized to do so on behalf of the agency. Each paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, pleadings or other papers need not be verified or accompanied by affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) Representation to Court. By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after any inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 28, 2004, eff. January 1, 2005; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 12. Defenses and Objections; When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) the United States, or an officer or agency thereof, must serve an answer to the complaint, or to a crossclaim, or a reply to a counterclaim, within 60 days after the service on the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, of the pleading in which the claim is asserted; except that,

(i) in an action described in 28 U.S.C. § 1581(c), no answer must be served or filed, and

(ii) in an action described in 28 U.S.C. § 1581(f), involving an application for an order to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, the answer must be served within 10 days after being served with the summons and complaint. For good cause shown, the court in any action may order a different period of time.

(B) Any other defendant must serve an answer

(i) within 20 days after being served with the summons and complaint, or

(ii) if service of the summons has been timely waived under Rule 4(d), the defendant must serve an answer within 60 days after

the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(C) A party other than the United States or an officer or agency thereof must serve an answer to a counterclaim or crossclaim within 20 days after being served with the pleading that states the counterclaim or crossclaim.

(D) A party must serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

(2) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) insufficient process;

(4) insufficient service of process;

(5) failure to state a claim upon which relief can be granted; and

(6) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(5) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after being served with the pleading.

(g) Joining Motions.

(1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2)-(4) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-(6) – whether made in a pleading or by motion – and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 13. Counterclaim and Crossclaim

(a) Counterclaims. A pleading must state as a counterclaim any claim that – at the time of its service – the pleader has against an opposing party if the claim: (1) involves the imported merchandise that is the subject matter of the civil action, or (2) is to recover on a bond or customs duties relating to such merchandise.

(b) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(c) Counterclaim Against the United States. These rules do not expand the right to assert a counterclaim – or to claim a credit – against the United States or a United States officer or agency.

(d) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(e) Omitted Counterclaim. The court may permit a party to amend a pleading to add a counterclaim if it was omitted through oversight, inadvertence, or excusable neglect, or when justice requires.

(f) Crossclaim Against A Coparty. A pleading may state as a crossclaim any claim by one party against a coparty, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover on a bond or customs duties relating to such merchandise. The crossclaim may include a claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(g) Joining Additional Parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(h) Separate Trials--Separate Judgments. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction so to do, even if the opposing party's claims have been dismissed or otherwise resolved.

(i) Demand for a Complaint.

(1) Regardless of whether a civil action is pending on a Reserve or Suspension Calendar, in a civil action under 28 U.S.C. § 1581(a) or (b), for good cause shown, a defendant who wishes to proceed expeditiously in the action may file a motion demanding that the plaintiff file a complaint.

(2) The motion should include, among other information, (A) the movant's reasons for wanting to proceed at this time, (B) if the movant seeks a time different from that provided in this rule, a proposed timetable within which the plaintiff should file a complaint and the reasons for a different time, and, in a suspended action, other scheduling information that the movant believes necessary to enable the court to issue an order removing a suspended action from a Suspension Calendar, and (C) a description of any counterclaim known to the movant at the time of its motion that the movant intends to assert in its answer.

(3) If the court grants a motion for a demand for a complaint, plaintiff must file its complaint within 30 days after the date of service of the order if plaintiff wishes to continue the action.

(4) If the court enters an order granting a motion for a demand for a complaint and plaintiff does not voluntarily dismiss the action or fails to file a complaint, the clerk will enter an order of dismissal without further direction from the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 25, 2008, eff. Jan. 1, 2009).

Rule 14. Third-Party Practice

(a) When Defendant May Bring in Third Party.

(1) Timing of the Summons and Complaint. A defending party may, as a third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must obtain, by motion, the court's leave if it files the third-party complaint more than 10 days after serving its original answer.

(2) Third-Party Defendant's Claims and Defenses. The person served with the summons and third-party complaint – the "third-party defendant":

(A) will assert any defense against the third-party plaintiff's claim under Rule 12;

(B) will assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any crossclaim against another third-party defendant under Rule 13(f);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiff's claim; and

(D) may also assert any claim against the plaintiff, if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim is to recover on a bond or customs duties relating to such merchandise.

(3) Plaintiff's Claims Against a Third-Party Defendant. The plaintiff may assert against the third-party defendant any claim if (1) the claim involves the imported merchandise that is the subject matter of the civil action, or (2) the claim

is to recover on a bond or customs duties relating to such merchandise. The third-party defendant must then assert any defenses under Rule 12 and any counterclaim under Rule 13(a), and may assert any crossclaim under Rule 13(f).

(4) Motion to Strike, Sever, or Try Separately. Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) Third-Party Defendant's Claim Against a Nonparty. A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course: (A) before being served with a responsive pleading; or (B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading will be made within the time remaining to respond to the original pleading or within 10 days after service of the amended pleading, whichever is later.

(b) Amendments During and After Trial.

(1) Based on an Objection at Trial. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to meet the evidence.

(2) For Issues Tried by Consent. When an issue not raised by the pleadings is tried by the parties' express or implied consent it will be treated in all

respects as if it had been raised in the pleadings. A party may move – at any time – to amend the pleadings to conform them to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4 for serving the summons and complaint, the party to be brought in by amendment: (i) received such notice of action that it will not be prejudiced in defending on the merits; and (ii) knew or should have known that, the action would have been brought against it, but for a mistake concerning the proper party's identity.

(2) Notice to the United States. When the United States or a United States officer or agency is added as a defendant by amendment, the notice requirements of Rule 15(c)(1)(C)(i) and (ii) are satisfied if, during the stated period, process was mailed or delivered to the Attorney-in-Charge, International

Trade Field Office, Commercial Litigation Branch, Department of Justice, or to the agency or officer.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

(As amended, eff. Jan. 1, 1982; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2008, eff. Jan. 1, 2009.)

RULE 16. Postassignment Conferences; Scheduling; Management

(a) Purposes of a Postassignment Conference. In any action, the court may order the attorneys and any unrepresented parties to appear for one or more postassignment conferences for such purposes as:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful activities;

(4) improving the quality of the proceedings for the final disposition of the action through more thorough preparation; and

(5) facilitating settlement.

(b) Scheduling

(1) Scheduling Order. Except as provided in Rule 56.2 or when a judge so orders and provides a statement of reasons and facts on which the order is based, the judge must issue a scheduling order:

(A) after receiving the parties' report under Rule 26(f); or

(B) after consulting with the parties' attorneys and any unrepresented parties at a scheduling conference or by telephone, mail, or other means.

(2) Time to Issue. The judge must issue the scheduling order as soon as practicable, but in no event more than 90 days after the action is assigned.

(3) Contents of the Order.

(A) Required Contents. The scheduling order must limit the time to join other parties, amend the pleadings, complete discovery, and file and hear motions.

(B) Permitted Contents. The scheduling order may:

(i) modify the timing of disclosures under Rules 26(a) and 26(e)(1);

(ii) modify the extent of discovery;

(iii) provide for disclosure or discovery of electronically stored information;

(iv) include any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after information is produced;

(v) set dates for conferences before submission of the action for final disposition, a final postassignment conference, and trial or submission of a dispositive motion; and

(vi) include other appropriate matters.

(4) Modifying a Schedule. A schedule may be modified only for good cause and with the judge's consent.

(c) Attendance and Matters for Consideration at a Postassignment Conference.

(1) Attendance. A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a postassignment conference. If

appropriate, the court may require that a party or its representative be present or reasonably available by other means to consider possible settlement.

(2) Matters for Consideration. At any postassignment conference, the court may consider and take appropriate action on the following matters:

(A) formulating and simplifying the issues, and eliminating frivolous claims or defenses;

(B) amending the pleadings if necessary or desirable;

(C) obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence;

(D) avoiding unnecessary proof and cumulative evidence, and limiting the use of testimony under Federal Rule of Evidence 702;

(E) determining the appropriateness and timing of summary adjudication under Rule 56;

(F) controlling and scheduling discovery, including orders affecting disclosures and discovery under Rule 26 and Rules 29 through 37;

(G) identifying witnesses and documents, scheduling the filing and exchange of any briefs, and setting dates for further conferences and for submission of the action for final disposition;

(H) referring matters to a master;

(I) settling or using extrajudicial procedures to resolve the dispute;

(J) determining the form and content of the scheduling or other postassignment conference order;

(K) disposing of pending motions;

(L) adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(M) ordering a separate trial under Rule 42(b) of a claim, counterclaim, crossclaim, third-party claim, or particular issue;

(N) ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law under Rule 50(a) or a judgment on partial findings under Rule 52(c);

(O) establishing a reasonable limit on the time allowed to present evidence;

(P) accessing confidential or privileged information, including business proprietary information, contained in an administrative record, which is the subject of the action; and

(Q) facilitating in other ways the just, speedy, and inexpensive disposition of the action.

(d) Orders. After any conference under this rule, the court should issue an order reciting the action taken. This order controls the course of the action unless the court modifies it.

(e) Final Postassignment Conference and Orders. The court may hold a final postassignment conference to formulate a plan for submission of the action for final disposition. The conference must be held as close to the submission of the action for

final disposition as is reasonable, and must be attended by at least one of the attorneys on behalf of each of the parties and any unrepresented parties. The court may modify the order issued after a final postassignment conference only to prevent manifest injustice.

(f) Sanctions.

(1) In General. On motion or on its own, the court may issue any just orders, including those authorized by Rule 37(b), if a party or its attorney:

(A) fails to appear at a scheduling or other postassignment conference;

(B) is substantially unprepared to participate — or does not participate in good faith — in the conference; or

(C) fails to obey a scheduling or other postassignment conference order.

(2) Imposing Fees and Costs. Instead of or in addition to any other sanction, the court must order the party, its attorney, or both to pay the reasonable expenses — including attorney's fees — incurred because of any noncompliance with this rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

PRACTICE COMMENT: The attorneys for the parties and any unrepresented parties are expected to consult prior to a postassignment conference. The consultations should pertain to such matters as: access to the confidential portions of the administrative record, if any; the definition of the issues; whether discovery is necessary or permissible; and, the establishment of a proposed discovery schedule, if it is agreed that discovery will be conducted.

PRACTICE COMMENT: A party may seek expedited consideration under Rule 3(g). For possible applicability of other scheduling rules, see practice comment to Rule 3(g).

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 16.1. Court-Annexed Mediation

At any time during the pendency of an action before the United States Court of International Trade, any judge or three-judge panel of the court may refer the action for mediation. The matter will be referred to a judge of the court who is not assigned to the action to be mediated, who has consented to serve as a Judge Mediator in the action, and who is not otherwise disqualified to serve in accordance with Title 28 U.S.C. § 455 and the Canons of Judicial Ethics.

At any time, but not less than 30 days prior to the scheduled date for the filing of: a motion for summary judgment; a motion pursuant to USCIT Rules 56.1 or 56.2; or trial (whichever first occurs), any party may move for the referral to mediation of an action pending before the court.

The USCIT Guidelines for mediation set forth in full the procedures to be followed in actions referred to mediation. The Judge Mediator and all parties and counsel participating in a session of mediation are bound by the confidentiality provisions set forth in the Guidelines. The Guidelines will have the same force and effect as the provisions of this Rule.

(Added Sept. 30, 2003; eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

TITLE IV. PARTIES

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity To Sue or Be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases, capacity to sue or be sued shall be determined by the law of the appropriate state except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by 28 U.S.C. §§ 754 and 959(a).

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a

representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002.)

Rule 18. Joinder of Claims and Remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party, except that in an action described in 28 U.S.C. § 1581(a), a party may join claims only if they involve a common issue.

(b) Joinder of Remedies. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons To Be Joined if Feasible. A person shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (A) as a practical matter impair or impede the person's ability to protect that interest, or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) of this rule cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) of this rule who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 21. Misjoinder and Non-joinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

(As amended Dec. 18, 2001, eff. Apr. 1, 2002.)

Rule 22. Interpleader

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of a cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by Title 28 U.S.C. §§ 1335, 1397, and 2361. Actions under those provisions shall be conducted in accordance with these rules.

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 23. Class Actions

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or (B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually

controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action To Be Maintained--Notice--Judgment--Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3) of this rule, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2) of this rule, whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3) of this rule, whether or not favorable to the class, shall include and specify or

describe those to whom the notice provided in subdivision (c)(2) of this rule was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988.)

Rule 23.1. Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In an action described in 28 U.S.C. § 1581(c), a timely application shall be made no later than 30 days after the date of service of the complaint as provided for in Rule 3(f), unless for good cause shown at such later time for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; or (2) under circumstances in which by due diligence a motion to intervene under this subsection could not have been made within the 30-day period. Also, in an action described in 28 U.S.C. § 1581(c), at the time a party's application for intervention is made, attorneys for that party are required to comply with the procedures set forth in Rule 73.2 (c) by filing of a Business Proprietary Information Certification where appropriate.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. Except in an action described in 28 U.S.C. § 1581(c), a person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. § 2403. A party challenging the constitutionality of legislation should call the attention of the court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

In an action described in 28 U.S.C. § 1581(c), an interested party who was a party to the proceeding in connection with which the matter arose and who desires to intervene pursuant to subparagraph (a) shall, after consultation in accordance with Rule 7(b), serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state (1) whether the application for intervention has been consented to by the parties, and (2) the grounds in support of the motion. When the applicant for intervention seeks to intervene on the side of the plaintiff, the motion shall state the applicant's standing, and shall state the administrative determination to be reviewed and the issues that the intervenor desires to litigate. When the applicant for intervention seeks to intervene on the side of the defendant, the motion shall state the applicant's standing. If no objection has been filed within 10 days after service of the motion, or if the motion has been consented to by all of the parties, the clerk of the court may order the requested relief.

PRACTICE COMMENT: To provide information to assist a judge in determining whether there is reason for disqualification upon the grounds of a financial interest, under 28 U.S.C. § 455, a completed "Disclosure Statement" form, available upon request from the office of the clerk, must be filed by certain corporations, trade associations, and others appearing as parties, intervenors,

or *amicus curiae*. A copy of the "Disclosure Statement" form is shown in Form 13 of the Appendix of Forms.

PRACTICE COMMENT: Intervention in this court, whether as of right or permissive, is subject to the statutory provisions of 28 U.S.C. § 2631(j). See Jazz Photo Corporation v. United States, 439 F.3d 1344 (Fed. Cir. 2006); Ontario Forest Industries Assoc. v. United States, 30 CIT __, 444 F. Supp. 2d 1309 (2006).

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 71 now will be identified as Rule 73.2.

(As amended, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Jan. 25, 2000, eff. May 1, 2000; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007; eff. Jan. 1, 2008.)

Rule 25. Substitution of Parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and shall be served on the parties as provided in Rule 5 and upon the persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

(d) Public Officers; Death or Separation From Office.

(1) When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002.)

RULE 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures. Except in categories of proceedings specified in Rule 26(a)(1)(E), or to the extent otherwise stipulated or directed by order, a party must, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(E) The following categories of proceedings are exempt from initial disclosure under Rule 26(a)(1):

(i) an action for review on an administrative record;

(ii) an action brought without counsel by a person in custody of the United States, a state, or a state subdivision;

(iii) an action to enforce or quash an administrative summons or subpoena;

(iv) an action by the United States to recover benefit payments;

(v) a proceeding ancillary to proceedings in other courts; and

(vi) an action to enforce an arbitration award.

These disclosures must be made at or within 14 days after the Rule 26(f) conference unless a different time is set by stipulation or court order, or unless a party objects during the conference that initial disclosures are not appropriate in the circumstances of the action and states the objection in the Rule 26(f) discovery plan. In ruling on the objection, the court must determine what disclosures–if any–are to be made, and set the time for disclosure. Any party first served or otherwise joined after the Rule 26(f) conference must make these disclosures within 30 days after being served or joined unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by paragraph (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall be accompanied by a written report prepared and signed by the witness. The

report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(C) These disclosures shall be made at the times and in the sequence directed by the court. In the absence of other directions from the court or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (2)(B), within 30 days after the disclosure made by the other party. The parties shall supplement these disclosures when required under subdivision (e)(1).

(3) Pretrial Disclosures. In addition to the disclosures required by Rule 26(a)(1) and (2), a party must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under Rule 26(a)(3)(B), and (ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under Rule 26(a)(3)(C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

(4) Form of Disclosures. Unless the court orders otherwise, all disclosures under Rule 26(a)(1) through (3) must be made in writing, signed and served.

(5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45 (a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order the discovery of any matter relevant to the subject matter

involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii) and (iii).

(2) Limitations.

(A) By order, the court may alter the limits in these rules on the number of depositions and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36.

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(C) The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the

issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required

under subdivision (a)(2)(B), the deposition shall not be conducted until after the report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert of a party who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and (ii) with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials.

(A) Information Withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Information Produced. If Information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or

destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery. Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when authorized under these rules or by order or agreement of the parties, a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f). Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

(e) Supplementation of Disclosures and Responses. A party who has made a disclosure under subdivision (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the court or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subdivision (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Conference of Parties; Planning for Discovery. Except in categories of proceedings exempted from initial disclosure under Rule 26(a)(1)(E), or when otherwise ordered, the parties must, as soon as practicable after the filing of a complaint, and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), confer to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for disclosures required by Rule 26(a)(1), to discuss any issues relating to preserving discoverable information, and to develop a proposed discovery plan that indicates the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

(4) any issues relating to claims of privilege or of protection as trial-preparation material, including – if the parties agree on a procedure to assert such claims after production – whether to ask the court to include their agreement in an order;

(5) what changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and

(6) any other orders that should be entered by the court under Rule 26(c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order that the parties or attorneys attend the conference in person. If necessary to comply with its expedited schedule for Rule 16(b) conferences, the court may (i) require that the conference between the parties occur fewer than 21 days before the scheduling conference is held or a scheduling order is due under Rule 16(b), and (ii) require that the written report outlining the discovery plan be filed fewer than 14 days after the conference between the parties, or excuse the parties from submitting a written report and permit them to report orally on their discovery plan at the Rule 16(b) conference.

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1) Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party

constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law:

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

PRACTICE COMMENT: Rule 26(a)(2) requires disclosure of certain information concerning expert witnesses. Practitioners who are familiar with Fed. R. Civ. P. 26(a)(2) should note that Rule 26(a)(2) is more expansive. The Federal Rule only applies to a witness who is retained or specially employed to testify as an expert, including any employee of a party whose duties "regularly involve giving expert testimony." The CIT rule makes no distinction among experts, whether they are outside experts specially retained by a party, in-house employees whose duties regularly involve giving expert testimony, or employees who do not routinely testify as experts, but do so in a specific case.

PRACTICE COMMENT: Rule 26(f) requires the parties to confer "as soon as practicable after the filing of a complaint, and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)...." However, time permitting, parties may frequently find it more practical to confer after the answer has been filed.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 26(h) now will be identified as Rule 26.1.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008.)

Rule 26.1. Costs

All costs, charges, and expenses incident to taking depositions shall be borne by the party making application for the same unless otherwise provided for by stipulation or by order of the court.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 26(h) now will be identified as Rule 26.1.

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

RULE 27. Depositions Before Action or Pending Appeal

(a) Before Action.

(1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in this court may file a verified petition. The petition shall be entitled in the name of the petitioner and shall show: (1) that the petitioner expects to be party to an action cognizable in this court but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it, (4) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. At least 20 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. The notice shall be served in the manner provided in Rule 4. If that service cannot with due diligence be made on an expected adverse party, the court may order service by publication or otherwise. The court must appoint an attorney to represent persons not served in the manner provided by Rule 4 and to cross-examine the deponent if an unserved person is not otherwise represented. Rule 17(c) applies if any expected adverse party is a minor or is incompetent.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter

of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the court may make orders of the character prescribed by Rules 34 and 35.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, it may be used in any other action involving the same subject matter subsequently brought, in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment or before the taking of an appeal if the time therefor has not expired, the court may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take depositions, upon the same notice and service thereof as if the action was pending. The motion shall show (1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each; (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character prescribed by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in court.

(c) Perpetuation by Action. This rule does not limit the power of this court to entertain an action to perpetuate testimony.

(As amended July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 27, 2007, eff. Jan. 1, 2008.)

RULE 28. Persons Before Whom Depositions May Be Taken

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the court. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

(b) In Foreign Countries. Depositions may be taken in a foreign country (1) pursuant to any applicable treaty or convention, or (2) pursuant to a letter of request (whether or not captioned a letter rogatory), or (3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States, or (4) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate. It is not a requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed, "To the Appropriate Authority in [here name country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee, of such attorney or counsel, or is financially interested in the action.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; Aug. 29, 2000, eff. Jan. 1, 2001.)

RULE 29. Stipulations Regarding Discovery Procedure

Unless otherwise directed by the Court, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34 and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Aug. 29, 2000, eff. Jan. 1, 2001.)

RULE 30. Depositions Upon Oral Examination

(a) When Depositions May Be Taken; When Leave Required.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the United States and be unavailable for examination in this country unless deposed before that time.

(b) Notice of Examination: General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included

in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time, and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Federal Rules of Evidence except Rules 103 and 615. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record

the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection during a deposition must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under Rule 30(d)(4).

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person or other circumstance, impedes or delays the examination.

(3) If the court finds that any impediment, delay, or other conduct has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(4) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it may be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition must be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that

the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and Delivery by Officer; Exhibits; Copies.

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness, must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the

recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing, or its receipt by such party, to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002.)

RULE 31. Deposition Upon Written Questions

(a) Serving Questions; Notice.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties,

(A) a proposed deposition would result in more than ten depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined has already been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d).

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provision of Rule 30(b)(6).

(4) Within 14 days after the notice and written questions are served, a party may serve cross-questions upon all other parties. Within 7 days after being served with cross-

questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer To Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of Filing. When the deposition is filed, or received by the party taking it, that party shall promptly give notice thereof to all other parties.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 2000, eff. Jan. 1, 2001.)

RULE 32. Use of Depositions in Court Proceedings[3]

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by Federal Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist

[3]As provided in 28 U.S.C. § 2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. §§ 2639 and 2641(h) or the rules of this court.

as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Federal Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were than present and testifying.

(c) Form of Presentation. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or non-stenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

(d) Effect of Errors and Irregularities in Depositions.

(1) As to notice. All errors and irregularities in the notice for taking deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to disqualification of officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to taking of deposition.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at the time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath of affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time

allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(As amended July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001)

RULE 33. Interrogatories to Parties

(a) Availability. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d).

(b) Answers and Objections.

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope: Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the rules of evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application

of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a postassignment conference or other later time.

(d) Option To Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Aug. 29, 2000, eff. Jan. 1, 2001, Nov. 27, 2007, eff. Jan. 1, 2008.)

RULE 34. Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information – including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data compilations stored in any medium from which information can be obtained – translated, if necessary, by the respondent into reasonably usable form, or to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request shall set forth, either by individual item or by category, the items to be inspected and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or

forms for producing electronically stored information, stating the reasons for the objection. If objection is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts. If objection is made to the requested form or forms for producing electronically stored information – or if no form was specified in the request – the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Unless the parties otherwise agree, or the court otherwise orders:

(1) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;

(2) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and

(3) a party need not produce the same electronically stored information in more than one form.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1. 1993; August 29, 2000, eff. January 1, 2001; Nov. 27, 2007, eff. Jan. 1, 2008.)

Rule 35. Physical and Mental Examinations of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including the results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report, the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same

mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examiner or the taking of a deposition of an examiner in accordance with the provisions of any other rule.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

RULE 36. Requests for Admission

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation, requests for admission may not be served before the time specified in Rule 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefore shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a post assignment conference or at a designated time prior to trial. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a post assignment scheduling or conference order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

(As amended, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006; eff. Jan. 1, 2007.)

RULE 37. Failure To Make Disclosure or Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Motion.

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(2) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(3) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard,, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure To Comply With Order: Sanctions. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court. If a party or an officer, director, or managing agent of a party or person designated under

Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35 or if a party fails to obey an order entered under Rule 26(f), the court may make such orders in regard to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

(5) Where a party has failed to comply with an order Rule 35(a) requiring the party to produce another for examination, such orders as are listed in paragraphs (1), (2) and (3) of this subdivision (b), unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1), or to amend a prior response to discovery as required by Rule 26(e)(2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or in a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under Rule 37(b)(1), (2) and (3) and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (A) the request was held objectionable pursuant to Rule 36(a), or (B) the admission sought was of no substantial importance, or (C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (D) there was other good reason for the failure to admit.

(d) Failure of Party To Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the

interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subdivisions (b)(1), (b)(2) and (b)(3) of this rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) [Abrogated]

(f) Electronically Stored Information. Absent exceptional circumstances, the court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

(g) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the development and submission of a proposed discovery plan as required by Rule 26(f), the court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 27, 2007; eff. Jan. 1, 2008.)

TITLE VI. TRIALS

Rule 38. Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to the issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(c) Demand; Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(d) Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002.)

Rule 39. Trial by Jury or by the Court

(a) By Jury. When trial by jury has been demanded as prescribed by Rule 38, the action shall be so designated. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury, or (2) the court upon motion or on its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

(b) By the Court. Issues not demanded for trial by jury as prescribed by Rule 38 shall be tried by the court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by a jury of any or all issues.

(C) Advisory Jury and Trial by Consent. In all actions not triable of right by a jury the court upon motion or on its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of the parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule 40. Request for Trial

(a) Request. At any time after issue is joined in an action, unless the court otherwise directs, any party who desires to try an action shall: (1) confer with the opposing party or parties to attempt to reach agreement as to the time and place of trial, and (2) serve upon the opposing party or parties, and file with the court, a request for trial which shall be substantially in the form set forth in Form 6 in the Appendix of Forms. The request shall be served and filed at least 30 days prior to the requested date of trial, or upon a showing of good cause, at a reasonable time prior to the requested date of trial. A party who opposes the request shall serve and file its opposition within 10 days after service of the request, unless a shorter period is directed by the court. In all instances where a trial is requested to be held at a location other than or in addition to the courthouse at One Federal Plaza, New York, New York, all other parties shall serve and file a response within 10 days after the service of the request, unless a shorter period is directed by the court.

(b) Designation. The court shall designate the date and place for trial, as prescribed in Rule 77(c)(1) or (2), and shall give reasonable notice thereof to the parties.

(c) Premarking Exhibits. All exhibits and documents which are intended to be introduced in evidence are to be marked for identification and exhibited to opposing counsel prior to trial or court proceeding.

PRACTICE COMMENT: To implement the authority conferred upon the chief judge by 28 U.S.C. §§ 253(b) and 256(a), and for the convenience of parties, there is set out in the instructions for Form 6, in the Appendix of Forms, the procedures to be followed in connection with trials or oral arguments of dispositive motions at places other than New York City.

PRACTICE COMMENT: A schedule, agreed to by the parties, suitable for attachment to a decision of the court, shall be filed at the time an action is submitted to the court for final determination upon a dispositive motion or upon the conclusion of a trial. The schedule should indicate (1) when one action is involved, the ports of entry, protest and entry numbers, (2) when consolidated actions are involved, the ports of entry, court numbers, protest and entry numbers, and (3) when joined actions are involved, the ports of entry, court numbers, plaintiffs, protest and entry numbers. Cases should be arranged according to port of entry, in numerical order.

PRACTICE COMMENT: A party may seek expedited consideration under Rule 3(g). For possible applicability of other scheduling rules, see practice comment to Rule 3(g).

(As amended Oct. 3, 1990, eff. Jan. 1, 1991 Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal; Effect Thereof.

(1) By Plaintiff--By Stipulation. Subject to the provisions of Rule 23(e), of Rule 56.2, of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without order of court (A) by filing a notice of dismissal which shall be substantially in the form set forth in Form 7 of the Appendix of Forms at any time before service by the adverse party of an answer or motion for summary judgment, whichever occurs first, or (B) by filing a stipulation of dismissal, which shall be substantially in the form set forth in Form 8 of the Appendix of Forms, signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision (a), an action shall not be dismissed by the plaintiff unless upon order of the court, and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal; Effect Thereof.

(1) Actions on the Reserve Calendar or the Suspension Disposition Calendar are subject to dismissal for lack of prosecution at the expiration of the applicable period

of time as prescribed by Rules 83 and 85.

(2) Actions commenced pursuant to 28 U.S.C. § 1581(c) by the filing of a summons only are subject to dismissal for failure to file a complaint at the expiration of the applicable period of time prescribed by 19 U.S.C. § 1516a.

(3) Whenever it appears that there is a failure of the plaintiff to prosecute, the court may upon its own initiative after notice, or upon motion of a defendant, order the action or any claim dismissed for lack of prosecution.

(4) For failure of the plaintiff to comply with these rules or with any order of the court, a defendant may move that the action or any claim against the defendant be dismissed.

(5) Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, operates as an adjudication on the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subdivision (a)(1) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; Jan. 25, 2000, eff. May 1, 2000; Dec. 18, 2001, eff. Apr.1, 2002.)

Rule 42. Consolidation; Separate Trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated under a consolidated complaint; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

(As amended Dec. 18, 2001, eff. Apr.1, 2002.)

Rule 43. Taking of Testimony*

(a) Form. In every trial, the testimony of witnesses shall be taken in open court, unless a federal law, these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court provide otherwise. The court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location.

(b) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence on Motions. When a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(d) Interpreters. The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

(e) Documents Specially Admissible.

(1) Reports--Depositions--Affidavits. In addition to other admissible evidence, when the value of merchandise or any of its components is in issue, reports or depositions of consuls, customs officers, and other officers of the United States and depositions and affidavits of other persons whose attendance cannot reasonably be had may be admitted in evidence, as provided in 28 U.S.C. § 2639(c), when served upon the opposing party in accordance with this rule.

(2) Service. A copy of any report, deposition or affidavit described in paragraph (1) of this subdivision (e), which is intended to be offered in evidence, shall be served on the opposing party with the request for trial. A party other than the party serving the request for

trial shall serve a copy of any report, deposition or affidavit which that party intends to offer in evidence upon the opposing party within 15 days after service of the request for trial. Timely service of copies of such documents may be waived or the time extended upon consent, or by order of the court for good cause shown.

(3) Objections. Objections to the admission of such documents in evidence may be made at the trial.

(4) Pricelists--Catalogs. When the value of merchandise is in issue, pricelists and catalogs may be admitted into evidence when duly authenticated, relevant, and material.

PRACTICE COMMENT: The availability of contemporaneous transmission per Rule 43(a) is in addition to other provisions of law and rules regarding the receipt of testimony and evidence in the court. See, e.g. 28 U.S.C. §§ 256 (trials outside New York), 2639(c) (special evidence rules), and 2641 (confrontation of witnesses, inspection of evidence). These provisions may be factors in determining whether the court will permit the reception of testimony from a different location.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 14, 1997, eff. Jan. 1, 1998.)

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*As provided in 28 U.S.C. § 2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. § 2639 and 2641(b), or the rules of the court.

Rule 44. Proof of Official Record

(a) Authentication.

(1) Domestic. An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary

if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 45. Subpoena

(a) Form; Issuance.

(1) Every subpoena shall

(A) state the name of the court; and

(B) state the title of the action, and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subdivisions (c) and (d) of this rule.

A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2) A subpoena must issue as follows:

(A) for attendance at a trial or hearing, from the court;

(B) for attendance at a deposition, from the court, stating the method for recording the testimony; and

(C) for production, inspection, copying, testing, or sampling, if separate from a subpoena commanding a person's attendance, from the court.

(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney admitted to practice before the Court of International Trade as an officer of the court may also issue and sign a subpoena on behalf of the court.

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within 100 miles of the place of the deposition, hearing, trial, production, inspection, copying, testing, or sampling specified in the subpoena. When a statute of the United States provides therefor, or when the interest of justice may require, the court upon proper application and cause shown may authorize the service of a subpoena at any other place. A subpoena directed to a witness in a foreign country who is a national or resident of the United States shall issue under the circumstances and in the manner and be served as provided in Title 28, U.S.C. § 1783.

(3) Proof of service when necessary shall be made by filing with the clerk of the court a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises – or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3)(A) On timely motion, the court shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C)(1). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis

for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (C)(3)(A).

(As amended June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 27, 2007, eff. Jan. 1, 2008.)

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary, it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 47. Jurors

(a) Examination of Jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as it deems proper.

(b) Peremptory Challenges. The court shall allow the number of peremptory challenges provided by 28 U.S.C. § 1870.

(c) Excuse. The court may for good cause excuse a juror from service during trial or deliberation.

(As amended July 21, 1986, eff. Oct. 1, 1986; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 48. Number of Jurors--Participation in Verdict

The court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the court pursuant to Rule 47(c). Unless the parties otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.

(As amended July 21, 1986, eff. Oct. 1, 1986; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 49. Special Verdicts and Interrogatories

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is

likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

(As amended July 28, 1988, eff. Nov. 1, 1988.)

Rule 50. Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings

(a) Judgment as a Matter of Law.

(1) In General. If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against that party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) Motion. A Motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for New Trial.

If the court does not grant a motion for judgment as a matter of law made under subdivision (a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 30 days after the entry of judgment – or if the motion addresses a jury issue not decided by a verdict – no later than 30 days after the jury was discharged. The movant may alternatively request a new trial or join a motion for a new trial under Rule 59.

In ruling on a renewed motion, the court may:

(1) if a verdict was returned:

(A) allow the judgment to stand,

(B) order a new trial, or

(C) direct entry of judgment as a matter of law; or

(2) if no verdict was returned:

(A) order a new trial; or

(B) direct the entry of judgment as a matter of law.

(c) Same; Conditional Rulings on Grant of Motion for Judgment as a Matter of Law.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall Rule 50-2 also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 30 days after the entry of the judgment.

(d) Same; Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment,

nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

PRACTICE COMMENT: Rule 50 has been amended to conform to the new Rule 50 under the Federal Rules of Civil Procedure, which went into effect on December 1, 1991. The time for filing a motion for a new trial in the court, 30 days, is governed by 28 U.S.C. § 2646. To avoid confusion and inefficiency, Rule 50(b) provides the same 30-day filing period for any motion filed thereunder. In contrast, Rule 50(b) of the Federal Rules of Civil Procedure, provides a 10-day period. However, motions for new trials in courts in which the Federal Rules of Civil Procedure apply are not subject to 28 U.S.C. § 2646. The same comment is applicable to Rule 5O(c)(2).

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 27, 2007, eff. Jan. 1, 2008.)

Rule 51. Instructions to Jury; Objection

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002.)

Rule 52. Findings by the Court; Judgment on Partial Findings

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of this court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court.

(b) Amendment. Upon motion of a party, or upon its own motion, made not later than 30 days after the date of entry of the judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made an objection in this court to such findings or has made a motion to amend them or a motion for judgment.

(c) Judgment on Partial Findings. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by

findings of fact and conclusions of law as required by subdivision (a) of this rule.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995.)

Rule 53. Masters

(a) Appointment and Compensation. The court, with the concurrence of a majority of all the judges, may appoint one or more standing masters, and a judge, to whom an action is assigned, may appoint a special master therein. As used in these rules, the word "master" includes a referee, an auditor, an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court, as the court may direct. The master shall not retain the master's report as security for the master's compensation, but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master

may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Federal Rules of Evidence for a court sitting without a jury.

(d) Proceedings.

(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subject to the consequences, penalties, and remedies provided in Rules 37 and 45.

(3) Statement of Accounts. When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus

submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(e) Report.

(1) Contents and Filing. The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and serve on all parties notice of the filing. In an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) In Non-Jury Actions. In an action to be tried without a jury, the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 7. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing the master's report, a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Aug. 29, 2000, eff. Jan. 1, 2001.)

TITLE VII. JUDGMENT

Rule 54. Judgment; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.

(b) Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief – whether as a claim, counterclaim, crossclaim, or third-party claim – or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

(c) Demand for Judgment; Relief to be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Costs; Attorney's Fees.

(1) Costs Other than Attorney's Fees. Unless a federal statute, these rules, or a court order provides otherwise, costs – other than attorney's fees – should be allowed to the prevailing party. But costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law.

The clerk may tax costs on 1 day's notice. On motion served within the next 5 days, the court may review the clerk's action.

(2) Attorney's Fees.

(A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(C) Proceedings. The court must, on a party's or a class member's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c). The Court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a).

(D) Special Procedures; Reference to a Master. The court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a).

(E) Exceptions. Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under 28 U.S.C. § 1927.

PRACTICE COMMENT: The USCIT Guidelines for Bill of Costs set forth in full the procedures to be followed when a prevailing party files a Bill of Costs pursuant to Rule 54(d)(1). The Guidelines shall have the same force and effect as the provisions of this Rule. The failure of a prevailing party either to timely file a Bill of Costs or to comply with these Guidelines shall constitute a waiver of any claim for costs.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 5, 1994, eff. Jan. 1, 1995; Sept. 30, 2003, eff. Jan. 1, 2004; May 25, 2004, eff. Sept. 1, 2004; Nov. 25 , 2008, eff. Jan. 1, 2009.)

Rule 54.1. Attorney's Fees and Expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412(d)

(a) Time for Filing. The court may award attorney's fees and expenses where authorized by law. Applications must be filed within 30 days after the court enters final judgment.

(b) Content of Application. Each application for attorney's fees and expenses under subdivision (a) must include citations to the authority authorizing the award, and must indicate how the prerequisites for an award have been fulfilled. In addition, each application must include a statement, under oath, specifying:

(1) the nature of each service rendered;

(2) the amount of time expended in rendering each type of service; and

(3) the customary charge for each type of service rendered.

(c) Response and Reply. The responding party has 30 days from the date of service of the application to file a response. No other papers or briefs will be allowed, except as the court, on its own, directs.

PRACTICE COMMENT: An application for attorney's fees and expenses under this rule shall be substantially in the form set forth in Form 15 of the Appendix of Forms.

PRACTICE COMMENT: Pursuant to the renumbering of the USCIT Rules, the former Rule 68 now will be identified as Rule 54.1.

(Added Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 55. Default Judgment

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment. In all cases the party must apply to the court for a default judgment.

When the plaintiff's claim is for a sum certain or for a sum that can be made certain by computation, the court – on the plaintiff's request with an affidavit showing the amount due – must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 10 days before the hearing. The court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when to enter or effectuate judgment, it needs to:

(1) conduct an accounting;

(2) determine the amount of damages or other relief;

(3) establish the truth of an allegation by evidence; or

(4) investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).

(d) Judgment Against the United States. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

(As amended July 28, 1988, eff. Nov. 1, 1988; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 56. Summary Judgment

(a) By a Claiming Party. A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim. The motion may be filed at any time after:

(1) the expiration of the initial time within which to file an answer; or

(2) the opposing party serves a motion for summary judgment.

(b) By a Defending Party. A party against whom relief is sought may move at any time, with or without supporting affidavits, for summary judgment on all or part of the claim.

(c) Serving the Motion; Proceedings. A hearing on a motion may be requested as prescribed by Rule 7(c). The motion must be served at least 10 days before the day set for the hearing. An opposing party may serve opposing affidavits before the hearing day. The judgment sought should be rendered if the pleadings, discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

(d) Case Not Fully Adjudicated on the Motion.

(1) Establishing Facts. If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts – including items of damages or other relief – are not

genuinely at issue. The facts so specified must be treated as established in the action.

(2) Establishing Liability. An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages or other relief.

(e) Affidavits; Further Testimony.

(1) In General. A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn certified copy must be attached to or served with the affidavit, except that all papers and documents which are part of the official record of the action pursuant to Title IX of these rules may be referred to in an affidavit without attaching copies, and will be considered by the court without additional certification. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits.

(2) Opposing Party's Obligation to Respond. When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must – by affidavits or as otherwise provided in this rule – set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

(f) When Affidavits Are Unavailable. If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) deny the motion;

(2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or

(3) issue any other just order.

(g) Affidavit Submitted in Bad Faith. If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt.

(h) Annexation of Statement.

(1) On any motion for summary judgment, there must be annexed to the motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried. Failure to submit this statement may constitute grounds for denial of the motion.

(2) The papers opposing a motion for summary judgment must include correspondingly numbered paragraphs responding to the numbered paragraphs in the statement of the movant, and if necessary, additional paragraphs including a separate, short and concise statement of additional material facts as to which it is contended that there exists a genuine issue to be tried.

(3) All material facts set out in the statement required to be served by the movant will be deemed admitted unless controverted by the statement required to be served by the opposing party.

(4) Each statement by the movant or opponent pursuant to Rule 56(h)(1) and (2), including each statement controverting any statement of material fact, will be followed by citation to evidence which would be admissible.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Jan. 25, 2000, eff. May 1, 2000; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 56.1. Judgment on an Agency Record for an Action Other Than That Described in 28 U.S.C. § 1581(c)

(a) Motion for Judgment. After issue is joined in any action in which a party believes that the determination of the court is to be made solely on the basis of the record made before an agency, that party may move for judgment in its favor on all or any part of the agency determination.

(b) Cross-Motions. When a motion for judgment on an agency record is filed by a party, an opposing party may not file a cross-motion for judgment on an agency record. If the court determines that judgment should be entered in favor of an opposing party, it may enter judgment in favor of that party, even without a cross-motion.

(c) Briefs.

(1) In addition to the other requirements prescribed by these rules, the briefs submitted on the motion, either contesting or supporting the agency determination, must include a statement setting out in separate numbered paragraphs:

(A) The administrative determination to be reviewed with appropriate reference to the Federal Register; and

(B) The issues of law presented together with the reasons for contesting or supporting the administrative determination, specifying how the determination may be arbitrary, capricious, an abuse of discretion, not otherwise in accordance with law, unsupported by substantial evidence; or, how the determination may be unwarranted by the facts to the extent that the agency may not have considered facts which, as a matter of law, should or should not have been properly considered.

(2) The brief must include the authorities relied on and the conclusions of law deemed warranted by the authorities. All references to the administrative record must be made by citing the portions of the record to the factual or legal issues raised. Citations must be by page number of the transcript, if any, and by specific identification of exhibits together with the relevant page number.

(d) Time to Respond. A response to a motion for judgment on an agency record must be served within 30 days after service of the motion. The movant must serve a reply within 10 days after service of the response to the motion. No other papers or briefs will be allowed, except by leave of court.

(e) Hearing. By motion of a party, or on its own, the court may direct oral argument on a motion for judgment on an agency record at a time and place designated as prescribed in Rule 77(c).

(f) Partial Judgment. After considering a motion filed under this rule, the court may grant judgment in whole or in part in favor of any party.

PRACTICE COMMENT: An action in which the determination of the court is to be made solely upon the basis of a record made before an agency shall be submitted for determination pursuant to this rule unless the court otherwise directs.

PRACTICE COMMENT: As required by Rule 81(l), a reply brief in an action submitted for determination pursuant to this rule shall be confined to rebutting matters contained in the brief of the responding party.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 56.2. Judgment on an Agency Record for an Action Described in 28 U.S.C. § 1581(c)

(a) Proposed Briefing Schedule and Joint Status Report. The judge may modify the following procedures as appropriate in the circumstances of the action, or the parties may suggest modification of these procedures. Retention of or access to business proprietary information in the administrative record is governed by Rule 73.2(c).

Any motion to intervene as of right must be filed within the time and in the manner prescribed by Rule 24. Any motion for a preliminary injunction to enjoin the liquidation of entries that are the subject of the action must be filed by a party to the action within 30 days after service of the complaint, or at such later time, for good cause shown. Notwithstanding the first sentence of this paragraph, an intervenor must file a motion for a preliminary injunction no earlier than the date of filing of its motion to intervene and no later than 30 days after the date of service of the order granting intervention, or at such later time, but only for good cause shown. Prior to the filing of the motion, the movant must consult with all other parties to the action in accordance with Rule 7(b). No later than 30 days after the filing of the record with the court, the parties, including proposed intervenors, must file with the clerk (1) a Joint Status Report, and (2) a proposed briefing schedule. The Joint Status Report must be signed by counsel for all parties and set out answers to the following questions, although separate views may be set out on any point on which the parties cannot agree:

1. Does the court have jurisdiction over the action?

2. Should the case be consolidated with any other case, or should any portion of the case be severed, and the reasons for such severance?

3. Should further proceedings in this case be deferred pending consideration of another case before the court or any other tribunal and the reasons for such deferral?

4. Should the court be aware of any other information at this time?

The proposed briefing schedule must indicate whether the parties (1) agree to the time periods set out in Rule 56.2(d), (2) agree to time periods other than the periods set out in Rule 56.2(d), or (3) cannot agree on a time period. If the parties cannot agree on a time period, the parties indicate the areas of disagreement and set out the reasons for their positions. After the Joint Status Report and proposed briefing schedule are filed, the judge promptly should enter a scheduling order.

(b) Cross-Motions. When a motion for judgment on an agency record is filed by a party, an opposing party may not file a cross-motion for judgment on an agency record. If the court determines that judgment should be entered in an opposing party's favor, it may enter judgment in that party's favor, notwithstanding the absence of a cross-motion.

(c) Briefs.

(1) In addition to the other requirements of these rules, the briefs submitted on the motion, either contesting or supporting the agency determination, must include a statement setting out in numbered paragraphs: (A) the administrative determination sought to be reviewed with appropriate reference to the Federal Register; and (B) the issues of law presented together with the reasons for contesting or supporting the administrative determination, specifying how the determination may be arbitrary, capricious, an abuse of discretion, not otherwise in accordance with law, unsupported by substantial evidence; or, how the determination may be unwarranted by the facts to the extent that the agency may

or may not have considered facts which, as a matter of law, should have been properly considered.

(2) The brief must include the authorities relied on and the conclusions of law deemed warranted by the authorities. All references to the administrative record must be made by citing the portions of the record relevant to the factual or legal issues raised. Citations must be by page number of the transcript, if any, and by specific identification of exhibits together with the relevant page number. The brief also must include a table of contents and a table of authorities.

(3) Within 3 days of the date of filing of a brief, the submitting party must file an appendix containing a copy of those portions of the administrative record cited in the brief.

(d) Time to Respond. Unless the scheduling order otherwise provides, a motion for judgment on an agency record must be served within 60 days after the date of service of the scheduling order. Responsive briefs must be served within 60 days after the date of service of the brief of the movant. The movant has 25 days after service of the response to the motion to serve a reply. No other papers or briefs are allowed, except by leave of court.

(e) Hearing. On motion of a party, subject to the time limitations in Rule 7(c), or on its own, the court may direct oral argument on a motion for judgment on an agency record at a time and place designated in Rule 77(c). The movant, after consultation with all other parties to the action, should request a hearing date that is not more than 30 days after the date of service of the reply memorandum, except for good cause shown as to why the hearing should be scheduled on a later date.

(f) Partial Judgment. After considering a motion filed under this rule, the court may grant judgment in whole or in part in any party's favor.

(g) Voluntary Dismissal --Time Limitation. In an action described in 28 U.S.C. § 1581(c), a plaintiff desiring to voluntarily dismiss its action under Rule 41(a)(1)(A), must file a notice of dismissal within 30 days after the date of service of the complaint. If the plaintiff desires to dismiss its action more than 30 days after the date of service of the complaint, a stipulation of dismissal must be filed in accordance with Rule 41(a)(1)(B), or if circumstances warrant intervention by the court, in accordance with Rule 41(a)(2).

PRACTICE COMMENT: Provided its requirements are followed, Rule 5(g) allows for the filing of a non-confidential version of a brief provided for in this rule, and a confidential version correcting the designation of business proprietary information in the original submission, one business day after the original filings under this rule.

(Added Sept. 25, 1992, eff. Jan. 1, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995; May 27, 1998, eff. Sept, 1998; Jan. 25, 2000, eff. May 1, 2000; May 25, 2004, eff. Sept. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

(As amended Dec. 18, 2001, eff. Apr.1, 2002; Sept. 28, 2004, eff. January 1, 2005; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 58. Entering Judgment

(a) Judgments. Subject to the provisions of Rule 54(b), a judgment, decree or final order must be entered upon every final decision from which an appeal lies.

(b) Separate Document. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney's fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(c) Entering Judgment.

(1) Without the Court's Direction. Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when:

(A) the jury returns a general verdict;

(B) the court awards only costs or a sum certain; or

(C) the court denies all relief.

(2) Court's Approval Required. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when:

(A) the jury returns a special verdict or a general verdict with answers to written questions; or

(B) the court grants other relief not described in this subdivision (c).

(d) Time of Entry. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs:

(A) it is set out in a separate document; or

(B) 150 days have run from the entry in the civil docket.

(e) Request for Entry. A party may request that judgment be set out in a separate document as required by Rule 58(b).

(f) Cost or Fee Awards. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 58.1. Stipulated Judgment on Agreed Statement of Facts–General Requirements

An action described in 28 U.S.C. § 1581(a) or (b) may be stipulated for judgment, at any time without brief or complaint or formal amendment of any pleading, by filing with the clerk of the court a stipulation for judgment on agreed statement of facts, signed by the parties or their attorneys, together with a proposed stipulated judgment. The proposed stipulated judgment on agreed statement of facts must be substantially in the form set forth in Form 9 of the Appendix of Forms.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 59. New Trial; Rehearing; Altering or Amending a Judgment

(a) In General.

(1) Grounds for New Trial or Rehearing. The court may, on motion, grant a new trial or rehearing on all or some of the issues -- and to any party -- as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion. A motion for a new trial or rehearing must be served and filed not later than 30 days after the entry of the judgment or order.

(c) Time to Serve Affidavits. When a motion for a new trial or rehearing is based on affidavits, they must be filed with the motion. The opposing party has 10 days after being served to file opposing affidavits; but that period may be extended for up to 20 days, either by the court for good cause or by the parties' stipulation. The court may permit reply affidavits.

(d) New Trial on the Court's Initiative or for Reasons not in the Motion. No later than 30 days after the entry of judgment, or order, the court, on its own, may order a new trial

or rehearing for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial or rehearing, for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be served no later than 30 days after the entry of the judgment.

PRACTICE COMMENT: Rule 59(b) provides for a 30-day period within which to move for a new trial or rehearing. In contrast, Rule 59(b) of the Federal Rules of Civil Procedure provides for a 10-day period. The lengthier period is required by 28 U.S.C. § 2646, a statute not applicable to the district courts.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Oct. 3, 1990, eff. Jan. 1, 1991; Dec. 18, 2001, eff. Apr.1, 2002; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 60. Relief from a Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial or rehearing under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time – and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit the court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 28, 2004, eff. January 1, 2005; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence -- or any other error by the court or a party -- is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

(As amended Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exception for Injunctions. Except as stated in this rule or as otherwise ordered by the court, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after its entry. But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction is not stayed after being entered even if an appeal is taken.

(b) Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment -- or any proceedings to enforce it -- pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or rehearing or to alter or amend a judgment; or

(4) under Rule 60, for relief from a judgment or order.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights. If the judgment appealed from is rendered by a three-judge panel, the order must be made either:

(1) by that court sitting in open session; or

(2) by the assent of all its judges, as evidenced by their signatures.

(d) Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) Stay without Bond on an Appeal by the United States, Its Officers, or Its Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the United States, its officers, or its agencies or on an appeal directed by a department of the federal government.

(f) Stay According to State Law. In any state in which a judgment is a lien on the judgment debtor's property, the judgment debtor is entitled to the same stay of execution the state court would give.

(g) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its judges or justices:

(1) to stay proceedings – or suspend, modify, restore, or grant an injunction – while an appeal is pending; or

(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(h) Stay with Multiple Claims or Parties. The court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

PRACTICE COMMENT: The court-ordered exception to the 30-day automatic stay under subdivision (a) is intended to permit timely enforcement of judgments in cases involving perishable merchandise, or where time is otherwise shown to be of the essence.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct 1, 1986; July 28, 1988, eff. Nov.1,1988; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 63. Judge's Inability to Proceed

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 77(e)(5) now will be identified as Rule 63, and the former Rule 63 now will be identified as Rule 86.2. New Rule 63 conforms to Rule 63 of the Federal Rules of Civil Procedure.

(As amended July 28, 1988, eff. Nov. 1, 1988; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 64. Seizure of Person or Property

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the appropriate state law existing at the time the remedy is sought, subject to the following qualifications: (1) any existing statute of the United States governs to the extent to which it is applicable; (2) the action in which any of the foregoing remedies is used shall be commenced and prosecuted pursuant to these rules. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies, however designated, and regardless of whether the remedy by the appropriate state procedure is ancillary to an action or must be obtained by an independent action.

Rule 65. Injunctions

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless

the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof. The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002.)

Rule 65.1. Security; Proceedings Against Sureties

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known. The bond, stipulation, or other undertaking must be secured by a corporate surety holding a certificate of authority from the Secretary of the Treasury. Except as otherwise provided by law, where the amount has been fixed by a judge, all bonds, stipulations, or other undertakings, shall be approved by the judge.

PRACTICE COMMENT: Circular No. 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," is published annually, as of July 1, in the Federal Register, under Fiscal Service, Bureau of Government Financial Operations. Interim changes in the circular are published in the Federal Register as they occur. Copies of the circular may be obtained from: Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226, Telephone: (202) 634-5010.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr.1, 2002.)

Rule 66. Receivers Appointed by Federal Courts

An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the administration of estates by receivers or by other similar officers appointed by the court shall be in accordance with the practice heretofore followed in the courts of the United States or as provided in rules promulgated by the district courts. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

Rule 67. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of Title 28 U.S.C. §§ 2041, 2042 and 2043; or any like statute. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; Dec. 18, 2001, eff. Apr.1, 2002.)

Rule 67.1. Deposit in Court Pursuant to Rule 67

(a) Order for Deposit-Interest Bearing Account. Whenever a party seeks a court order for money to be deposited by the clerk in an interest-bearing account, the party shall file, by delivery or by mailing by certified mail, return receipt requested, the proposed order with the clerk or financial deputy who will inspect the proposed order for proper form and content and compliance with this rule prior to signature by the judge for whom the order is prepared. The proposed order shall be substantially in the form set forth in Form 16-1, 16-2, 16-3, 16-4 or 16-5 of the Appendix of Forms.

(b) Orders Directing Investment of Funds by Clerk. Any order obtained by a party or parties in an action that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the court pursuant to 28 U.S.C. § 2041 shall include the following:

(1) the amount to be invested;

(2) the name of the depository approved by the Treasurer of the United States as a depository in which funds may be deposited;

(3) a designation of the type of account or instrument in which the funds shall be invested;

(4) wording which directs the clerk to deduct from the income earned on the investment a fee, consistent with that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office, whenever such income becomes available for deduction from the investment so held and without further order of the court.

(Added Oct. 3, 1990, eff. Jan. 1, 1991; as amended, Mar. 1, 1991, eff. Mar. 1, 1991; Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 68. Offer of Judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof, and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 68 now will be identified as Rule 54.1. New Rule 68 conforms to Rule 68 of the Federal Rules of Civil Procedure.

(Added Oct. 3, 1984, eff. Jan. 1, 1985; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 69. Execution

(a) In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which execution is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which execution is sought.

(b) Against Certain Public Officers. When a judgment has been entered against a collector or other officer of revenue under the circumstances stated in Title 28 U.S.C. § 2006, and when the court has given the certificate of probable cause for the officer's act as provided in that statute, execution shall not issue against the officer or the officer's property but the final judgment shall be satisfied as provided in such statute.

(As amended July 28, 1988, eff. Nov. 1, 1988; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 28, 2004, eff. January 1, 2005.)

TITLE IX. FILING OF OFFICIAL DOCUMENTS

Rule 70. [Reserved]

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 70 now will be identified as Rule 73.1.

(As amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 71. Process in Behalf of and Against Persons not Parties

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 71 now will be identified as Rule 73.2. New Rule 71 conforms to Rule 71 of the Federal Rules of Civil Procedure.

(As amended July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Nov. 14, 1997, eff. Jan. 1, 1998; Jan. 25, 2000, eff. May 1, 2000; Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 72. [Reserved]

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 72 now will be identified as Rule 73.3. New Rule 72 is "Reserved."

(As amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 73. Time for Filing Documents--Notice of Filing

(a) Time. Upon motion of a party for good cause shown, or upon its own initiative, the court may shorten or extend the times for filing prescribed in Rules 73.1, 73.2, or 73.3.

(b) Notice. The clerk shall give notice to all parties of the date on which the record is filed.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rules 70, 71 and 72 now will be identified as Rules 73.1, 73.2 and 73.3, respectively.

(As amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 73.1. Documents in an Action Described in 28 U.S.C. § 1581 (a) or (b)

Upon service of the summons on the Secretary of Homeland Security, the appropriate customs officer shall forthwith transmit the following items, if they exist, to the clerk of the court, as part of the official record of the civil action:

(1) consumption or other entry and the entry summary;

(2) commercial invoice;

(3) special customs invoice;

(4) copy of protest or petition;

(5) copy of denial, in whole or in part, of the protest or petition;

(6) importer's exhibits;

(7) official and other representative samples;

(8) any official laboratory reports; and

(9) copy of any bond relating to the entry.

If any of the items do not exist in a particular action, an affirmative statement to that effect shall be transmitted to the clerk of the court as part of the official record.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 70 now will be identified as Rule 73.1. New Rule 70 is “Reserved.”

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 73.2. Documents in an Action Described in 28 U.S.C. § 1581 (c) or (f)

(a) Actions Described in 28 U.S.C. § 1581(c). Unless the alternative procedure prescribed by subdivision (b) of this rule is followed, in an action described in 28 U.S.C. § 1581(c), within 40 days after the date of service of the complaint on the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission, the administering authority or the Commission shall file with the clerk of the court the items specified in paragraphs (1) and (2) of this subdivision (a), if they exist, and the certified list specified in paragraph (3) of this subdivision (a), as part of the official record of the civil action.

(1) A copy of all information presented to or obtained by the administering authority or the Commission during the course of the administrative proceedings, including all governmental memoranda pertaining to the case and the record of ex parte meetings required to be maintained by section 777(a)(3) of the Tariff Act of 1930.

(2) A copy of the determination and the facts and conclusions of law upon which such determination was based, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(3) A certified list of all items specified in paragraphs (1) and (2) of this subdivision.

(b) Alternative Procedure in an Action Described in 28 U.S.C. § 1581(c). As an alternative to the procedures prescribed in subdivision (a) of this rule in an action described in 28 U.S.C. § 1581(c):

(1) Within 40 days after the date of service of the complaint upon the administering authority or the International Trade Commission, the administering authority or the Commission may file with the clerk of the court a certified list of all items described in subdivisions (a)(1) and (a)(2) of this rule, along with a copy of the determination and the facts and conclusions of law upon which such determination was based. The Commission shall in addition file a copy of its staff report of information received in the investigation. If

either agency uses this alternative procedure, it shall serve on the parties notice of that fact in conjunction with service of the certified list.

(2) The agency shall retain the remainder of the record. All parts of the record shall be a part of the record on review for all purposes.

(3) At any time, the court may order any part of the record retained by the agency to be filed. A motion by a party to have the agency file a retained part of the record shall set forth reasons why the submission of appendices required by Rule 56.2(c) is insufficient to fairly present the relevant portions of the record to the court.

(c) Confidential or Privileged Information in an Action Described in 28 U.S.C.§ 1581(c)

(1) In an action described in 28 U.S.C. § 1581(c), any document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested and that is required to be filed with the clerk of the court, shall be filed under seal. Any such document, comment, or information shall be accompanied by a non-confidential description of the nature of the material being transmitted. For the purposes of this rule and Rule 81(h), the term “confidential information” includes business proprietary information as defined in 19 U.S.C. § 1677f(c).

(2) An attorney or consultant may retain or otherwise have access to business proprietary information in the administrative record in an action described in 28 U.S.C. § 1581(c) if: (i) the attorney or consultant timely files with the court a Business Proprietary Information Certification which shall be substantially in the form set forth in Form 17 of the Appendix of Forms making each of the certifications therein required or (ii) the court issues an order granting the attorney or consultant access to such information. Upon meeting either of these requirements, the attorney or consultant shall retain or have access to business proprietary information pursuant to the terms of the Appendix on Access to Business Proprietary Information.

(3) A Business Proprietary Information Certification for an attorney or consultant representing or retained on behalf of a party or applicant for intervention is timely if it is filed: (i) at the time the summons or application for intervention is filed, as applicable or (ii) at any other time if the party or applicant for intervention is, at the time of filing, represented by an attorney who retains or has access to business proprietary information pursuant to this rule.

(4) When an attorney or consultant has access to business proprietary information in an action pursuant to subdivision (2) and (i) the attorney terminates the attorney's appearance in the action, (ii) the consultant ceases to be retained for purposes of the action, (iii) the time period for appealing a final judgment in the action has expired without the filing of a notice of appeal or (iv) all appeals of the action have concluded, the attorney or consultant shall promptly file with the court and serve upon parties a Notice of Termination of Access to Business Proprietary Information which shall be substantially in the form set forth in Form 18 of the Appendix of Forms, certifying that the attorney or consultant meets the requirements therein. Such notice shall also be mailed to: Secretary, United States International Trade Commission, when a determination of that Commission is contested; and to APO Unit, United States Department of Commerce, when a determination of that Department is contested.

(5) If filed fewer than 31 days after the date of service of the complaint, any Certification under subdivision (2) or other request for access to business proprietary information, in addition to being served upon all parties to the action, shall be served on any interested party described in Rule 3(f) that has not become a party to the action as of the time of service.

(d) Documents in an Action Described in 28 U.S.C. § 1581(f). In an action described in 28 U.S.C. § 1581(f), within 15 days after the date of service of the summons and complaint on the administering authority or the International Trade Commission, the administering authority or the Commission shall file, with the clerk of the court, under seal, the confidential information involved, together with pertinent parts of the record, which shall be accompanied by a nonconfidential description of the nature of the information being filed, as part of the official court record of the action.

(e) Documents Filed-Copies. Certified copies of the original papers in the agency proceeding may be filed.

(f) Filing of the Record With the Clerk of the Court-What Constitutes. The filing of the record shall be as prescribed by subdivision (a) of this rule, unless the alternative procedure prescribed by subdivision (b) of this rule is followed. In the latter event, the filing of the certified list and the part of the record filed pursuant to subdivision (b) shall constitute filing of the record.

PRACTICE COMMENT: The court has established Security Procedures for Safeguarding Confidential Information in the Custody and Control of the Clerk. These procedures apply to confidential information or privileged information received by the court and may include: trade secrets, commercial or financial information, and information provided to the United States by foreign governments or foreign businesses or persons. These procedures do not pertain to national security information.

Section 11(a) of Security Procedures regulates the transmittal of confidential information to and from the clerk by governmental agencies and private parties. A copy of Section 11(a) is available upon request from, and is posted in the Office of the Clerk.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 71 now will be identified as Rule 73.2. New Rule 71 conforms to Rule 71 of the Federal Rules of Civil Procedure.

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 73.3. Documents in All Other Actions Based Upon the Agency Record

(a) Documents Furnished in All Other Actions Based Upon the Agency Record. Unless the alternative procedure prescribed by subdivision (b) of this rule is followed, in all actions in which judicial review is upon the basis of the record made before an agency, other than those actions described in Rules 73.1 and 73.2, within 40 days after the service of the summons and complaint upon the agency, the agency shall file with the clerk of the court the items specified in paragraphs (1), (2) and (3) of this subdivision (a), if they exist, and the certified list specified in paragraph (4) of this subdivision (a), as part of the official record of the civil action.

(1) A copy of the contested determination and the findings or report upon which such determination was based.

(2) A copy of any reported hearings or conferences conducted by the agency.

(3) Any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action. The agency shall identify and file under seal any document, comment, or other information obtained on a confidential basis, including a non-confidential description of the nature of such confidential document, comment or information.

(4) A certified list of all items specified in paragraphs (1), (2) and (3) of this subdivision (a).

(b) Stipulations. The parties may stipulate that fewer documents, comments, or other information than those specified in subdivision (a) of this rule shall be filed with the clerk of the court. The agency shall retain the remainder of the record. All parts of the record shall be part of the record on review for all purposes. Upon request to the agency by a party, or by the court, at any time, any part of the record retained by the agency shall be filed by the agency with the clerk

of the court forthwith, notwithstanding any prior stipulation or designation under this subdivision.

(c) Documents Filed-Copies. Certified copies of the original papers in the agency proceeding may be filed.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 72 now will be identified as Rule 73.3. New Rule 72 is "Reserved."

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended May 25, 2004, eff. Sept. 1, 2004.)

Rule 74. Admission to Practice*

(a) Qualifications. An attorney of good moral character who has been admitted to practice before the Supreme Court of the United States, the highest court of any state, the District of Columbia, a territory or possession, any United States court of appeals, or any United States district court, and is in good standing therein, may be admitted to practice before this court.

(b) Procedure.

(1) An applicant for admission must file with the clerk a completed application, on the form shown in Form 10 of the Appendix of Forms, to be provided by the clerk.

(2) The applicant must be admitted either (A) on oral motion by a member of the bar of this court or of the Supreme Court of the United States, before a judge of this court who will administer the following oath:

> I, _____, do solemnly swear (or affirm) that I will faithfully conduct myself as an attorney and counselor at law of this court uprightly and according to law, and that I will support the Constitution of the United States, so help me God.

or (B) on the filing of a certificate of a judge or of the clerk of any of the courts specified in subdivision (a) of this rule dated within 90 days of the application stating

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*An attorney admitted to practice before the United States Customs Court will be considered to be admitted to practice before the United States Court of International Trade.

that the applicant is a member of the bar of such court and is in good standing therein.

(3) The applicant must pay to the clerk a fee of $50, and will be entitled to a certificate of admission. The clerk, as trustee, must deposit the fee in a special account in a bank designated by the court and must make expenditures from the special account as directed by the court. This application fee is waived for all attorneys in the employ of the United States government.

(4) If the application is made pursuant to section (b)(2)(A), above, and the sponsoring attorney making the motion has not known the applicant for more than one year, then the application must also be submitted with a certificate of a judge or of the clerk of any of the courts specified in subdivision (a) of this rule dated within 90 days of the application stating that the applicant is a member of the bar of such court and is in good standing therein.

(c) Admission of Foreign Attorneys. An attorney, barrister, or advocate who is qualified to practice at the bar of the court of any foreign state which extends a like privilege to members of the bar of this court may be specially admitted for purposes limited to a particular action. The applicant will not, however, be authorized to act as attorney of record. In the case of such an applicant, the oath will not be required and there will be no fee. Such admission will be granted only on motion of a member of the bar of this court.

(d) Pro Hac Vice Applications. An attorney who is eligible for admission to practice under subdivision (a) of this rule, and who has been retained to appear in a particular action by a legal services program may, on written application and in the discretion of the court, be permitted to specially appear and participate in the particular action. A pro hac vice

applicant must state under penalty of perjury (i) the attorney's residence and office address, (ii) the court to which the applicant has been admitted to practice and the date of admission thereof, (iii) that the applicant is in good standing and eligible to practice in said court, (iv) that the applicant is not currently suspended or disbarred in any other court, and (v) if the applicant has concurrently or within the year preceding the current application made any pro hac vice application to this court, the title and the number of each action wherein such application was made, the date of the application, and whether or not the application was granted. If the pro hac vice application is granted, the attorney is subject to the jurisdiction of the court with respect to the attorney's conduct to the same extent as a member of the bar of this court, and no application fee is required.

(e) Renewal Registration.

(1) In addition to the initial admission, there will be a renewal registration and a $50 renewal registration fee. This fee and registration will be due on June 1, 2009 and every 5 years thereafter unless deferred by the court. Failure to remit this fee will result in the removal of the non-paying attorney from the court’s bar roll, without prejudice to an application for admission as a new member. Should the payment of this renewal fee present a significant financial hardship, an attorney may request, via an application to the chief judge, that the registration fee be waived. Attorneys admitted in the year that this renewal fee is collected and the year prior are exempt from this fee.

(2) Although government attorneys must submit their renewal registration, renewal registration fees are waived for all attorneys in the employ of the United States government.

(f) Attorney Discipline.

(1) Definitions. For purposes of this Rule:

(A) "serious crime" is any felony or lesser crime that reflects adversely on the attorney's honesty, trustworthiness, or fitness as an attorney in other respects, or any crime, a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime;"

(B) "discipline" will include:

(i) disbarment, suspension, probation, public reprimand, private admonition or transfer to inactive status, and

(ii) by stipulation or on court order, assessment of the costs of the proceedings, including, but not limited to, the fees and expenses of disciplinary counsel and staff, costs of investigations, service of process, witness fees and stenographic services.

(C) "misconduct" will include:

(i) acts or omissions, individually or in concert with any other person or persons, that violate or attempt to violate the rules of the bar of the state in which an attorney is licensed to practice. If the attorney is licensed to practice in more than one jurisdiction, the rules to be applied will be those of the admitting jurisdiction in which the attorney principally practices; provided, however, that if particular conduct

clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction will be applied to that conduct.

(ii) violation of subdivision (e)(3)(A) of this rule.

(2) Disciplinary Proceedings For Misconduct.

(A) On filing of a complaint alleging that an attorney admitted to practice before the court has engaged in misconduct, the clerk must refer the matter to the chief judge who may:

(i) determine that the complaint merits no further action;

(ii) forward a copy of the complaint to the attorney and request a response within a time certain;

(iii) initiate formal disciplinary proceedings; or

(iv) take other appropriate action.

Failure to file a response to the complaint will constitute an admission of its factual allegations. Where the attorney files a response to the complaint, the chief judge may take any of the actions in section (4)(A)(i), (iii), or (iv).

(B) To initiate formal disciplinary proceedings, the chief judge will enter an order directing the attorney to show cause within 30 days after service of the order why the attorney should not be disciplined. If the attorney fails to respond timely to the order to show cause, the chief judge will enter a further order imposing appropriate discipline.

(C) If the attorney files a response to the order to show cause, the chief judge will assign the matter to a single judge (other than a complainant judge) for an evidentiary hearing. If the attorney fails to appear when specifically so ordered by the judge in a disciplinary proceeding, the attorney will be deemed to have admitted the factual allegations which were to be the subject of such hearing and/or stipulated to any motion or recommendation to be considered at such hearing. Disciplinary proceedings for misconduct will be conducted as in any civil action before the court. The court's decision must be based on clear and convincing evidence and supported by written findings of fact and conclusions of law.

(D) Disciplinary proceedings for misconduct will be public in any action which the chief judge assigns to a single judge, provided however, that prior to such assignment, the chief judge may, for good cause shown, authorize the clerk to produce, disclose, release, inform, report or testify regarding any information, reports, investigations, documents, evidence or transcripts in the clerk's possession. In order to protect the interests of a complainant, witness, third-party, or the attorney, the chief judge, or the single judge to whom any action has been assigned may, on application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential.

(3) Attorneys Convicted of Crimes.

(A) On filing of a certified copy of a judgment of conviction demonstrating that an attorney admitted to practice before the court has been convicted of a serious crime in another court, the clerk of the court must serve a notice to the attorney containing:

(i) a copy of the judgment of conviction; and

(ii) an order directing the attorney to show cause within 30 days after service of the notice why the attorney should not be suspended by the court.

The clerk must serve the notice regardless of the circumstances of the conviction or the pendency of an appeal. If the attorney fails timely to file a response to the notice, the clerk must promptly enter an order of suspension, pending further action by the court. If the attorney files a response to the notice, the clerk must refer the matter to the chief judge for assignment to a single judge.

(B) For purposes of any hearing requested on an attorney's response to the notice from the clerk, a certified copy of a judgment of conviction constitutes conclusive evidence that the attorney committed the crime and the sole issue in any hearing will be the nature and extent of the discipline to be imposed by the court, provided that a final order of discipline will not be entered until all appeals from the conviction are concluded.

(4) Discipline Imposed By Other Courts.

(A) On any change in an attorney's status or public disciplinary action taken in any other jurisdiction in which an attorney is admitted to practice, an attorney admitted to practice before the court must promptly inform the clerk of the court of such action. Failure to so inform the clerk will constitute misconduct.

(B) On filing of a certified copy of a judgment or order demonstrating that an attorney admitted to practice before the court has been disciplined by another court, resigned with charges pending before the bar of another court, or transferred to inactive status, the clerk of the court must serve a notice to the attorney containing:

(i) a copy of the judgment or order; and

(ii) an order requiring the attorney to show cause within 30 days after service of the notice why the court should not impose the identical discipline.

If the attorney fails timely to file a response to the notice, the clerk must enter an order imposing the identical discipline in the court. If the attorney files a response to the notice from the clerk, the clerk must refer the matter to the chief judge for assignment to a single judge for formal disciplinary proceedings.

(C) A final adjudication in another court that an attorney has committed misconduct will conclusively establish the misconduct. However, if the attorney's response demonstrates that:

(i) the procedure in the other court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(ii) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject;

(iii) the imposition of the same discipline by the court would result in injustice; or

(iv) the misconduct established is deemed by the court to warrant different discipline,

the court will enter an appropriate order. If the discipline imposed in the other court has been stayed, any reciprocal discipline imposed in the court will likewise be deferred until the stay is lifted or expires.

(5) Appointment of Disciplinary Counsel. If it becomes necessary to investigate, prosecute or defend disciplinary proceedings under this rule, the chief judge or the judge to whom the case is assigned, may appoint one or more members of the bar of the court to serve as counsel. Once appointed, counsel may not resign except on leave of court. On good cause shown, disciplinary counsel may cause subpoenas to issue, returnable before the judge presiding over the disciplinary matter.

(6) Readmission/Reinstatement.

(A) On filing of a petition for readmission by a disbarred attorney or reinstatement by a suspended attorney, the clerk must refer the matter to the

chief judge for consideration or for assignment to a single judge for hearing and determination. The petition must demonstrate by clear and convincing evidence that:

(i) the attorney has the requisite character and fitness to practice law; and

(ii) the relief requested will not be detrimental to the integrity and standing of the bar of the court or the administration of justice, or subversive to the public interest.

The court may provide for readmission or reinstatement on appropriate terms and conditions.

(B) No petition for readmission or reinstatement will be filed within one year following an adverse decision on a petition for readmission or reinstatement filed by or on behalf of the same attorney.

(7) Service of Disciplinary Notices and Orders. The clerk must serve notices or orders issued under this rule by mailing a copy by certified mail, restricted to the addressee, return receipt requested, and by first class mail, to the last known address of the attorney. Every attorney admitted to practice before the court must timely inform the clerk of the court of any change of address.

(8) Duties of the Clerk. If it appears that an attorney who has been disciplined for misconduct by the court is admitted to practice law before another court, the clerk must serve the clerk of such other court a certified copy of the order of discipline, as well as the last known office and residence address of the attorney. The clerk must likewise notify the National Lawyer Regulatory Data Bank of the

American Bar Association when an attorney admitted to practice before this court has been disciplined.

PRACTICE COMMENT: Pursuant to Rule 75, government attorneys may appear on behalf of the United States without being admitted to practice before the court. For ease of administration of the court's rolls, the court prefers that government attorneys apply for admission. The admission fee for these government attorneys is waived. As attorneys in the employ of the United States government are exempt from admission fees, they will not receive a certificate upon their admission to the U.S. Court of International Trade because the court incurs an expense in printing these certificates. If a U.S. government attorney would like a certificate, a request can be submitted to the court's attorney admissions section, along with a check in the amount of $50.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Mar. 25, 1998, eff. July 1, 1998; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 75. Practice; Appearance; Substitution of Attorneys; Withdrawal of Attorney; Notification of Changes

(a) Practice. Only an attorney admitted to the bar of the court may practice before the court, except that individuals may represent themselves in an action. An attorney who is employed or retained by the United States, or an agency or officer thereof, may enter an appearance, file pleadings, and practice in this court in cases in which the United States or the agency or officer is a party.

(b) Appearances.

(1) Except for an individual (not a corporation, partnership, organization or other legal entity) appearing *pro se*, each party and any *amicus curiae* must appear through an attorney authorized to practice before the court. When a summons contains the name, address and telephone number of an attorney, the attorney shall be recognized as the attorney of record, and no separate notice of appearance shall be required of the attorney: Provided, however, that an attorney representing the United States, or an agency or officer thereof, who is not otherwise admitted to practice before the court, shall serve a separate notice of appearance as prescribed by paragraph (2) of this subdivision.

(2) In all other instances, an attorney authorized to appear in an action shall serve a separate notice of appearance for each action. The notice shall be substantially in the form as set forth in Form 11 of the Appendix of Forms. An appearance may be made by an individual attorney or a firm of attorneys. If the appearance is made by a firm, the individual attorney(s) responsible for the litigation shall be designated.

(c) Substitution of Attorneys. A party who desires to substitute an attorney may do so by serving a notice of substitution upon the prior attorney of record and the other parties. The notice shall be substantially in the form as set forth in Form 12 of the Appendix of Forms. If the prior attorney of record wishes to be heard by the court on the substitution, that attorney may, by motion, request such relief as that attorney deems appropriate.

(d) Withdrawal of Attorney. The appearance of an attorney of record may be withdrawn only by order of the court, upon motion served upon the attorney's client and the other parties.

(e) Notification of Changes. Whenever there is any change in the name of an attorney of record, the attorney's address or telephone number, a new notice of appearance for each action shall be promptly served upon the other parties and filed with the court. The notice shall be substantially in the form as set forth in Form 11 of the Appendix of Forms. Unless and until an attorney of record files a new notice of appearance as prescribed in this subdivision, service of all papers shall be made upon the attorney of record at the last known address.

PRACTICE COMMENT: When a party is represented in an action by more than one attorney of record, the party shall designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party.

(As amended July 21, 1986, eff. Oct. 1, 1986; July 20, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; August 29, 2000, eff. Jan. 1, 2001; Sept. 28, 2004, eff. January 1, 2005.)

Rule 76. *Amicus Curiae*

The filing of a brief by an *amicus curiae* may be allowed upon a motion made as prescribed by Rule 7, or at the request of the court. The brief may be conditionally filed with the motion. The motion for leave shall identify the interest of the applicant and shall state the reasons why an *amicus curiae* is desirable. An *amicus curiae* shall file its brief within the time allowed the party whose position the amicus curiae brief will support unless the court for cause shown shall grant leave for later filing. In that event the court shall specify within what period an opposing party may answer. A motion of an *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.

PRACTICE COMMENT: To provide information to assist a judge in determining whether there is reason for disqualification upon the grounds of a financial interest, under 28 U.S.C. § 455, a completed "Disclosure Statement" form, available upon request from the office of the clerk, must be filed by certain corporations, trade associations, and others appearing as parties, intervenors, or *amicus curiae*. A copy of the "Disclosure Statement" form is shown in Form 13 of the Appendix of Forms.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982.)

TITLE XI. THE COURT AND CLERK

Rule 77. Sessions of the Court

(a) When Court Is Open. The court is considered always open and in continuous session for transacting judicial business on all business days throughout the year. Emergency matters may be presented to and heard by the court at any time.

(b) Place for Trial and Other Proceedings. Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, with or without the attendance of the clerk or other court official.

(c) Place of Trials or Hearings.

(1) In New York City. The judge to whom a case is assigned may designate the date of any trial or hearing to be held in, or continued to, New York City.

(2) Other Than New York City. The chief judge may, as authorized by 28 U.S.C. §§ 253(b) and 256(a), designate the place and date of any trial or hearing to be held at, or continued to, any place other than New York City within the jurisdiction of the United States.

(3) Foreign Countries. The chief judge may, as authorized by 28 U.S.C. § 256(b), authorize a judge to preside at any evidentiary hearing in a foreign country.

(d) Photography, Tape Recording and Broadcasting. The taking of photographs, or the use of recording devices in the courtroom or its environs, or radio or television

broadcasting from the courtroom or its environs, in connection with judicial proceedings is prohibited. A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

Environs as used in this rule include: (1) the entire United States Court of International Trade Courthouse at One Federal Plaza, New York, New York; and (2) any place within the jurisdiction of the United States where a judge may preside at a trial or hearing pursuant to 28 U.S.C. § 256(a).

(e) Assignment and Reassignment of Cases.

(1) Assignment to Single Judge. All cases will be assigned by the chief judge to a single judge, except as prescribed in paragraph (2) of this subdivision (e).

(2) Assignment to Three-Judge Panel. A case may be assigned by the chief judge to a three-judge panel either on motion, or on the chief judge's own initiative, when the chief judge finds that the case raises an issue of the constitutionality of a federal statute, a proclamation of the President, or an Executive order; or has broad or significant implications in the administration or interpretation of the law.

(3) Time of Assignment. Cases are assigned by the chief judge at any time on the chief judge's own initiative or on motion for good cause shown.

(4) Reassignment. A case may be reassigned by the chief judge on the death, resignation, retirement, illness or disqualification of the judge to whom it was assigned, or on other special circumstances warranting reassignment.

(f) Judge and Court; Defined. The word "judge" as used in these rules means the single judge or three-judge panel to whom a case is assigned or a matter is referred. The word "court" as used in these rules means, unless the context of a particular rule clearly indicates otherwise, the single judge or three-judge panel to whom a case is assigned or a matter is referred.

PRACTICE COMMENT: To implement the authority conferred upon the chief judge by 28 U.S.C. §§ 253(b) and 256(a), and for the convenience of parties, there is set out in the instructions for Form 6, in the Appendix of Forms, a list of tentative dockets and the procedures to be followed in connection with trials or oral arguments of dispositive motions at places other than New York City.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 77(e)(5) now will be identified as Rule 63, and the former Rule 63 now will be identified as Rule 86.2. New Rule 63 conforms to Rule 63 of the Federal Rules of Civil Procedure.

(As amended Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 77.1. Judicial Conference

(a) Purpose. The chief judge is authorized to summon annually the judges of the court to a judicial conference, at a time and place the chief judge designates, for the purpose of considering the business of the court and improvements in the administration of justice in the court. The chief judge will preside at the conference.

(b) Composition. All members of the bar of this court may be members of the conference and participate in its discussions and deliberations.

(c) Registration Fee. A registration fee will be paid by attendees of the conference, and will be applied to the payment of expenses of the conference, as approved by the judge.

(Added July 21, 1986, eff. Oct. 1, 1986**;** as amended Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 78. Motion Part

(a) Motion Part - Establishment. A Motion Part is established for hearing and determining all motions in cases that have not been assigned to a judge or proceedings that are not otherwise provided for in these rules.

(b) Motion Part - Referral. The clerk must refer motions ready for disposition to the Motion Part judge for hearing and determination. The Motion Part judge will: determine the motion; or refer the motion to another judge who previously determined a related motion in the case; or refer the matter to the chief judge with a recommendation that the case be assigned to another judge.

(c) Motion Part - Emergency Matters.

(1) An emergency matter is one which, because of special circumstances, requires extraordinary priority and immediate disposition.

(2) The Motion Part judge will be available, on call, to hear and determine an emergency matter at any time.

(3) The clerk will refer to the Motion Part judge any emergency matter arising in an unassigned case, or in an assigned case when the assigned judge is unavailable.

(4) The Motion Part judge will dispose of the emergency matter only to the extent necessary to meet the emergency, and the case will otherwise be retained for disposition by the judge to whom the case has been or will be assigned.

(5) If the Motion Part judge decides that an emergency matter should not be determined, for lack of emergency or other reason, the judge must refer the matter for determination in the ordinary course.

PRACTICE COMMENT: A party may seek expedited consideration under Rule 3(g). For possible applicability of other scheduling rules, see practice comment to Rule 3(g).

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 79. Records Kept by the Clerk

(a) Civil Docket.

(1) In General. The clerk must keep a record known as the "civil docket" for each case. The clerk must enter each civil case in the docket. Cases must be assigned consecutive file numbers, which must be noted in the docket where the first entry is made.

(2) Items to be Entered. The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;

(B) process issued, and proofs of service or other returns showing execution; and

(C) appearances, orders, verdicts, and judgments.

(3) When a jury trial has been properly demanded or ordered, the clerk must enter the word "jury" in the docket.

(b) Judgments and Orders. The clerk will keep a copy of every final judgment and appealable order in the "Judgment and Order Book" in which there should be filed, in serially-numbered chronological sequence in looseleaf binders, a correct copy of every final judgment or appealable order, together with all opinions, decisions, or findings of fact and conclusions of law on which it is based, and any other order that the court directs to be kept. Every such final judgment or appealable order must, from time to time but no less frequently than annually, be permanently bound.

(c) Notices of Orders or Judgments.

(1) Immediately on the entry of an order the clerk must serve a notice of the entry, together with a copy of the order and any accompanying memorandum, by delivery or mail in the manner prescribed in Rule 5 on each party who is not in default for failure to appear, and should make a note in the docket of the delivery or mailing. Any party may in addition serve a notice of such entry in the manner prescribed in Rule 5 for the service of papers.

(2) Immediately on the entry of a judgment the clerk shall serve a notice, together with a copy of the judgment, opinion, decision, or findings of fact and conclusions of law on which it is based, by delivery or mail in the manner provided for in Rule 5 on each party who is not in default for failure to appear, and, if appropriate, the port director of the customs port in which the case arose, and must make a note in the docket of the delivery or mailing. Any party may in addition serve a notice of such entry in the manner prescribed in Rule 5 for the service of papers.

(3) Lack of notice of the entry by the clerk does not affect the time to appeal or relieve, or authorize the court to relieve, a party for failure to appeal within the time allowed, except as permitted in Rule 4(a) of the Federal Rules of Appellate Procedure or by the rules of the United States Court of Appeals for the Federal Circuit.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993; Aug. 29, 2000, eff. Jan. 1, 2001; Sept. 30, 2003, eff. Jan. 1, 2004**;** Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 80. Papers, Exhibits and Other Material

(a) Custody and Control. All papers, exhibits and other material filed with or transmitted to the court must be retained by the clerk of the court, under the clerk's custody and control except when required by the court. When requested by an attorney for a party, papers, exhibits and other material may be transmitted by the clerk to an appropriate customs officer. Notice of the request must be given to all other parties by the party filing the request.

(b) Inspection. Any person may inspect all papers, exhibits and other material in a case except where restricted by statute or by court order. Unless otherwise directed by the court, entry papers, invoices and laboratory reports will be available only to the party to whose merchandise the papers, invoices and reports relate, or to the attorney of record for that party, or to an attorney for the United States, or an officer of United States Customs and Border Protection.

(c) Withdrawal of Papers, Exhibits, and Other Materials.

(1) Any person may withdraw the papers, exhibits and other material, which that person is authorized to inspect as prescribed in subdivision (b) of this rule, to a designated place in the court. The papers, exhibits and other material must be returned to the office of the clerk no later than the close of business on the day of withdrawal. On request of a party, the clerk may permit papers, exhibits and other material to be withdrawn to a designated place in the offices of the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice, for not more than 30 days, provided that they

must be returned immediately to the office of the clerk on notice from the clerk.

(2) Whenever any person withdraws papers, exhibits and other material, that person must sign and leave with the clerk a receipt describing what has been withdrawn.

(d) Return and Removal. When a judgment or order of the court has become final, papers, exhibits, and other material transmitted to the court pursuant to 28 U.S.C. § 2635, must be returned by the clerk, together with a copy of the judgment or order, to the agency from which they were transmitted. All exhibits must be removed from the custody of the clerk by the party who filed them within 60 days after the judgment or order of the court has become final. A party who fails to comply with this requirement must be notified by the clerk that, if the exhibits are not removed within 30 days after the date of the notice, the clerk may dispose of them as the clerk may see fit. Any expense or cost pertaining to the removal of exhibits as prescribed by this rule must be borne by the party who filed them.

(e) Reporting of Proceedings. Each session of the court and every other proceeding designated by court order must be recorded verbatim by shorthand, mechanical means, electronic sound recording, or any other method, as prescribed by regulations promulgated by the Judicial Conference of the United States and subject to the discretion and approval of the judge. Proceedings to be recorded include: all proceedings in open court unless the parties, with the approval of the judge, agree specifically to the contrary; and such other proceedings as a judge may direct, or as may be required by rule or court order, or as may be requested by any party to the proceeding. The court reporter or other individual designated to produce the record

must attach an official certificate to the original shorthand notes or other original records so taken and promptly file them with the clerk of the court who must preserve them in the public records of the court for not less than 10 years.

(f) Transcript of Proceedings. The court reporter or other individual designated to produce the record must transcribe and certify such parts of the record of proceedings as may be required by rule or court order or direction of a judge. On the request of any party to the proceeding which has been so recorded, who has agreed to pay the fee, or of a judge of the court, the court reporter or other individual designated to produce the record must promptly transcribe the original records of the requested parts of the proceedings and attach to the transcript an official certificate, and deliver the certified transcript to the clerk of the court for the public records of the court. The certified transcript in the Office of the Clerk must be open during office hours to inspection by any person without charge, except where restricted by statute or court order.

(g) Fees. Except as otherwise provided by the rules, the clerk must collect in advance from the parties such fees for services as are consistent with the "Judicial Conference Schedule of Additional Fees for the United States District Courts."

(1) Reproductions. Reproductions of original records may be given to any person who is authorized to inspect original records as prescribed in subdivision (b) of this rule.

(2) Transcripts. The clerk of the court may require any party requesting a transcript to prepay the estimated fee in advance except for transcripts that are to be paid for by the United States.

PRACTICE COMMENT: From time to time, the Judicial Conference of the United States establishes fees for services performed by the clerk. The rates applicable at any time are available upon request from, and are posted in the Office of the Clerk.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Dec. 29, 1982, eff. Jan. 1, 1983; July 28, 1988, eff, Nov. 1, 1988**;** Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 81. Papers Filed; Conformity; Form, Size, Copies

(a) Conformity Required. All papers filed with the court must be produced, duplicated, and filed in conformity with these rules as to means of production, methods of duplication, form and size, and number of copies.

(b) Means of Production. All papers must be plainly and legibly typewritten or otherwise produced by any duplicating or copying process.

(c) Caption and Signing. All papers must bear a caption in conformity with Rule 7 and must be signed in conformity with Rule 11.

(d) Numbering of Pages. The pages of each paper must be numbered consecutively, commencing with the number 1.

(e) Designation of Originals. When multiple copies of a paper are filed, one must be designated as the original by the party.

(f) Pleadings and Other Papers. Unless otherwise provided by these rules, all papers must be filed in duplicate, only the original of which need be signed. Pleadings and other papers must be 8½ by 11 inches in size, with typed matter not exceeding 6½ by 9½ inches, and with type size of 12 points or larger, including type used in footnotes. Pages must be numbered on the bottom and bound or attached on the top margin. Typed matter must be double spaced except footnotes, which may be single spaced, quoted material, which may be indented and single spaced, and titles, schedules, tables, graphs, columns of figures, and other interspersed material which are more readable in a form other than double spaced.

(g) Status of Case. Papers filed after a case has been commenced must identify, with respect to each case affected by the papers, the court number

assigned to the case, the court calendar on which the case is listed; and, if the case has been assigned, the name of the judge to whom the case has been assigned or reassigned.

(h) Confidential Information.

(1) If a party considers it necessary to refer in a pleading or other paper to confidential or privileged information, two sets of the pleadings or other papers must be filed.

(A) Confidential Set. One set of the pleadings or other papers must be labeled "Confidential" on the cover page and be filed with the clerk of the court. In addition, each page containing confidential material must bear a legend so indicating; however, in a case where Rule 73.2(c) is applicable, the label “Business Proprietary” may be used instead.

(B) Nonconfidential Set. The second set of pleadings or other papers must be labeled "Nonconfidential" on the cover page and be filed with the clerk of the court. In addition, each page of the "nonconfidential" set from which confidential or privileged information has been deleted must bear a legend so stating.

(2) Each party to the case must be served with one copy of the "nonconfidential" pleading or other paper, and, when permitted by an applicable protective order, one copy of the "confidential" pleading or other paper, in accordance with Rule 5.

(3) Non-Availability to the Public. The "confidential" set of pleadings or other papers filed with the court will be available only to authorized court personnel and will not be made available to the public.

(i) Briefs or Memoranda. A brief or memorandum must be filed in duplicate and must be 8½ by 11 inches in size. Pages must be numbered on the bottom portion thereof and bound or attached on the left margin. Typed matter must be double spaced, except quoted material which may be indented and single spaced, and except titles, schedules, tables, graphs, columns of figures, and other interspersed material which are more readable in a form other than double spaced.

(j) Movant's Brief or Memorandum. A brief or memorandum of the movant must contain under proper headings and arranged in the following order:

(1) a table of contents;

(2) a table of statutes, regulations, and cases cited, giving the volume and page in the official editions where they may be found, and arranging the cases in alphabetical order;

(3) in a case involving a specific importation, a brief description of the merchandise, country of origin and of exportation, date of exportation, date of entry, and port of entry;

(4)(A) in cases involving classification, the verbatim paragraph or paragraphs or item or items of the tariff statute under which the merchandise was assessed, and the verbatim paragraph or paragraphs or item or items under which it is claimed that the

merchandise is properly dutiable, together with any other verbatim pertinent statutory provisions or regulations; (B) in cases involving valuation, the statutory basis of appraisement and the unit of value at which the merchandise was appraised, and the claimed statutory basis of value and unit of value, together with the verbatim pertinent statutory provisions;

(5) the questions presented for decision, including all subsidiary questions involved; when a brief is filed under Rule 56.2, the issues must be presented in accordance with Rule 56.2(c)(1)(B), and need not be restated under this paragraph (5);

(6) a concise statement of facts relevant to the issues with a specific citation to the page or pages in the record or exhibits supporting each such material fact;

(7) a summary of argument, which must be a succinct, but accurate and clear, condensation of the contentions made in the body of the brief;

(8) an argument, exhibiting clearly the contentions of the party with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, exhibits, and pages of the record relied on;

(9) a short conclusion stating the relief sought.

(k) Responding Party's Brief or Memorandum. A brief or memorandum of a responding party must conform to the requirements prescribed in subdivision (j) of this rule, except that no statement of the facts need be made beyond what may be considered necessary to correct any inaccuracies or omissions in the

movant's brief, and except that items (3), (4) and (5) need not be included unless a responding party is dissatisfied with their presentation by the movant.

(l) Reply Brief or Memorandum. A reply brief or memorandum must be confined to rebutting matters contained in the brief of a responding party.

(m) General. A brief or memorandum must be concise, logically arranged, and free from burdensome, irrelevant, immaterial, pejorative and scandalous matter. A brief or memorandum not complying with this rule may be disregarded by the court.

PRACTICE COMMENT: All decisions of the United States Court of International Trade are published in: slip opinion form, the Customs Bulletin, and the official reports of the United States Court of International Trade. Certain decisions will also be published in the Federal Supplement or the Federal Rules Decisions. Decisions are also available on the LEXIS and WESTLAW electronic databases and those issued beginning in 1999 may be viewed on the website of the United States Court of International Trade, www.cit.uscourts.gov.

The rules of citation for papers filed in the court are as follows:

1. Slip Opinions

When citing a slip opinion, one should cite the slip opinion number, together with the volume number of the official reports, if available, and full date of publication. This form is used until the opinion appears in full in the United States Court of International Trade Reports (CIT).

Examples

Timken Co. v. United States, 26 CIT , Slip Op. 02-30 (Mar. 20, 2002);

OR, LEXIS or WESTLAW citation,

Arbon Steel & Service Co. v. United States, Slip Op. 02-8,
2002 Ct. Int'l Trade LEXIS 7 (CIT Jan. 24, 2002).

Arbon Steel & Service Co. v. United States, Slip Op. 02-8,
2002 WL 100627 (CIT Jan. 24, 2002).

2. Published Opinions

After an opinion appears in the official CIT reports, Federal Supplement (F. Supp. or F. Supp. 2d), or Federal Rules Decisions (F.R.D.), the slip opinion is no longer used, and the citation is to the official reports, and unofficial reports, if available, together with the year of publication. One should not cite the Customs Bulletin and Decisions in any event.

Example

JCM, Ltd. v. United States, 23 CIT 121 (1999).

If the opinion is also published in F. Supp., F. Supp. 2d or F.R.D., citation of these reporters should follow the citation of the official reports.

Examples

Ludvig Svensson (U.S.) Inc. v. United States, 23 CIT 573, 62 F. Supp. 2d 1171 (1999);

NOT, 23 CIT 573, Slip Op. 99-82, 62 F. Supp. 2d 1171 (1999).

3. Customs Court Opinions

The form of citation for opinions of the United States Customs Court remains the same.

Examples

Labay Int'l, Inc. v. United States, 83 Cust. Ct. 152, C.D. 4834 (1979);

OR, if there is a F. Supp. or F.R.D. cite,

Alberta Gas Chems., Inc. v. United States, 84 Cust. Ct. 217, C.R.D. 483 F. Supp. 303 (1980).

4. Abstracts

Abstracts of decisions not supported by an opinion should be numbered, published, and cited. These abstracts include decisions and judgments on agreed statements of facts, on motions for summary

judgments, and on motions for judgments on the pleadings in only classification and valuation cases.

Examples

Uniroyal, Inc. v. United States, 84 Cust. Ct. 275, Abs. P80/59 (1980);

Nichimen Co. v. United States, 1 CIT 234, Abs. R81/20 (1981).

5. Decisions of the Board of General Appraisers

Citation of the decisions of the Board of General Appraisers should be as follows:

Example

In re Pickhardt & Kuttroff, T.D. 20,728, 1 Treas. Dec. 373 (1897).

6. Court of Customs Appeals Opinions

Citation of the opinions of the Court of Customs Appeals (Ct. Cust. App.) should be as follows:

Example

Kahlen v. United States, 2 Ct. Cust. App. 206 (1911).

7. Court of Customs and Patent Appeals

Citation of opinions of the Court of Customs and Patent Appeals (CCPA) should be as follows:

Examples

Coro, Inc. v. United States, 41 CCPA 215, C.A.D. 554 (1954);

OR, if there is an F.2d cite,

United States v. Mobay Chem. Corp., 65 CCPA 53, C.A.D. 1206, 576 F.2d 368 (1978).

8. Court of Appeals for the Federal Circuit

Customs and trade cases adjudged in the United States Court of Appeals for the Federal Circuit should be cited by F.2d or F.3d, if therein, otherwise cite to official reporter. Decisions are also available on the LEXIS and WESTLAW electronic databases.

Examples

Ciba-Geigy Corp. v. United States, 223 F.3d 1367 (Fed. Cir. 2000).

OR, if the F.3d is not available,

American Silicon Techs. v. United States, Appeal No. 02-1033 (Fed. Cir. Oct. 22, 2001);

NOT, American Silicon Techs. v. United States, Appeal No. 02-1033, Slip Op. (C.A.F.C. Oct. 22, 2001).

9. Statutes

Citation of statutes of the United States should include both the popular name of the act and the title and section of the United States Code.

a) Citation of a statute as it appears in a sentence in text.

Example

Plaintiff moves for certification pursuant to section 222(3) of the Trade Act of 1974, 19 U.S.C. § 2272(3) (1982).

b) Citation standing alone.

Example

Trade Act of 1974, § 222(3), 19 U.S.C. § 2272(3) (1982).

10. Rules

Citation of the rules of this court and its predecessor court, the Customs Court, should be as follows:

a) Rules of the United States Court of International Trade

Example

USCIT R. 56

b) Rules of the United States Customs Court

Example

Cust. Ct. R. 4.6

11. Miscellaneous

Ellipsis (. . .)

Pursuant to Rule 5.3 of A Uniform System of Citation, when a word or words are omitted from quoted material it should be indicated by an ellipsis (. . .), and not asterisks (***).

12. Code of Federal Regulations

Cite final federal administrative rules and regulations to the Code of Federal Regulations, which is abbreviated “C.F.R.”

Example:

19 C.F.R. § 353.58 (1994).

13. Federal Register

Cite determinations in antidumping and countervailing duty matters to the Federal Register.

Examples:

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, 63 Fed. Reg. 56,623 (Dep’t Commerce Oct. 22, 1998) (initiation of countervailing duty investigation).

Certain Hot-Rolled Steel Products from Brazil and Russia, 64 Fed. Reg. 46,951 (ITC Aug. 27, 1999) (final determination).

14. International Trade Administration - Unpublished Decision Memoranda

Federal Register notices with unpublished decision memoranda are available on the official ITA website. These unpublished memoranda are also available on both LEXIS and WESTLAW databases. LEXIS includes decision memoranda as addendums to the Federal Register Notice, and

WESTLAW links to decision memoranda from the Federal Register Notice.

Example:

Decision Memorandum, A-201-802, ARP 9-98 (Mar. 15, 2000), available at http://ia.ita.doc.gov/frn/summary/2000mar.htm;

15. International Trade Commission Decisions

When citing International Trade Commission decisions, cite by product name and country, ITC Publication number, number of the case or investigation, and month and year of issue in parentheses. Recent ITC decisions are available on the official ITC website and also on both LEXIS and WESTLAW databases.

Examples:

Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, USITC Pub. 3016, Inv. Nos. 731-TA-741-743 (Feb. 1997);

Automotive Replacement Glass Windshields from China, USITC Pub. No. 3494, No. 731-TA-922 (Mar. 2002), available at http://www.usitc.gov/webpubs.htm;

Uranium from Kazakhstan, USITC Pub. 3213, Inv. No. 731-TA-539-A (July 1999), available at 1999 ITC LEXIS 467.

16. Customs Rulings

When citing U.S. Customs Headquarters Rulings or National Commodity Specialist Division in New York Rulings cite by HQ or NY number and month, day and year in parentheses. Include citation to LEXIS or WESTLAW if available.

Examples:

HQ 963396 (Mar. 28, 2000);

NYRL 810328 (Sept. 8, 1999);

HQ 963396 (Mar. 28, 2000), available at 2000 WL 683703.

For further rules of citation, reference may be made to The Bluebook: A Uniform System of Citation (Columbia L. Rev. et al. ed., 18th ed. Harvard Rev. Assn.

2005) [Bluebook]. For punctuation, capitalization, abbreviations, and other matters of style, reference may be made to the U.S. Government Printing Office Style Manual. Assistance in citing recent decisions of this court may be obtained from the court librarian (212) 264-2816.

PRACTICE COMMENT: The court has established Security Procedures For Safeguarding Confidential Information in the Custody and Control of the Clerk. These procedures apply to confidential information or privileged information received by the court and may include: trade secrets, commercial and financial information, and information provided to the United States by foreign governments or foreign businesses or persons. These procedures do not pertain to national security information.

Section 11(a) of the Security Procedures regulates the transmittal of confidential information to and from the clerk by government agencies and private parties. A copy of Section 11(a) is available upon request from, and is posted in the office of the clerk.

PRACTICE COMMENT: Compliance with Rule 81 is encouraged because it will facilitate review of papers by the court. Pursuant to Rule 5(e), the clerk may refuse to accept any paper presented for filing because it does not comply with the procedural requirements of the rules or practice of the court. Additionally, a judge may reject nonconforming papers or take other appropriate action if it is determined that such action is warranted.

PRACTICE COMMENT: Rule 5(h) contains requirements for designation of business proprietary and other confidential information and the form of notification required when a party desires to delay filing a non-confidential version of a submission by one business day.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Nov. 29, 1995, eff. Mar. 31, 1996; May 1, 1998, eff. Sept. 1, 1998; Jan. 25, 2000, eff. May 1, 2000; Dec. 18, 2001, eff. Apr.1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; May 25, 2004, eff. Sept. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 82. Clerk's Office Hours; Clerk's Orders

(a) Clerk's Office Hours; Clerk's Orders. The clerk's office – with a clerk or deputy on duty – must be open between 8:30 a.m. and 5:00 p.m. on all days except Saturdays, Sundays, and legal holidays as set forth in Rule 6, at:

Office of the Clerk of the Court
United States Court of International Trade
One Federal Plaza
New York, New York 10278-0001
(212) 264-2800

(b) Motions, Orders and Judgments. Subject to the court's power to suspend, alter, or rescind the clerk's action for good cause, the clerk may dispose of the following motions and sign the following orders and judgments without submission to the court:

(1) Motions on consent in unassigned cases extending the time within which to plead, move or respond.

(2) Motions on consent in unassigned cases for the discontinuance or dismissal of the case.

(3) Orders of dismissal on notice as prescribed by Rules 41(a)(1) and 41(b)(3).

(4) Orders of dismissal for lack of prosecution as prescribed by Rules 83(c) and 85(d).

(5) Consent motions to intervene as of right made within the 30-day period provided in Rule 24(a).

(6) Orders of dismissal for failure to file a complaint as prescribed by Rule 13(i)(4).

(7) Orders of dismissal for failure to file a complaint as prescribed by Rule 41(b)(2).

(8) Disciplinary orders to show cause as prescribed by Rule 74(e)(3)(A)(ii) and (4)(B)(ii).

(9) Orders on Bill of Costs as prescribed by Rule 54(d)(1).

(c) Clerk--Definition. The words "clerk" or "clerk of the court" as used in these rules include a deputy clerk designated by the clerk to perform services of the kind provided for in these rules.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan 1, 1995; Nov. 29, 1995, eff. March 31, 1996; Nov. 14, 1997, eff. Jan. 1, 1998; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. April 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; May 25, 2004, eff. Sept. 1, 2004; Nov. 25, 2008, eff. Jan. 1, 2009.)

Rule 82.1. [Reserved]

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 82.1 now will be identified as Rule 86.1. New Rule 82.1 is "Reserved."

(Added Dec. 18, 2001, eff. Apr.1, 2002; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

TITLE XII. COURT CALENDARS

Rule 83. Reserve Calendar

(a) Reserve Calendar. A Reserve Calendar is established on which an action described in 28 U.S.C. § 1581(a) or (b) is commenced by the filing of a summons shall be placed when the action is commenced. An action may remain on the Reserve Calendar for an 18-month period. The applicable 18-month period shall run from the last day of the month in which the action is commenced until the last day of the 18th month thereafter.

(b) Removal. An action may be removed from the Reserve Calendar upon: (1) assignment, (2) filing of a complaint, (3) granting of a motion for consolidation pursuant to Rule 42, (4) granting of a motion for suspension under a test case pursuant to Rule 84, or (5) filing of a stipulation for judgment on agreed statement of facts pursuant to Rule 58.1.

(c) Dismissal for Lack of Prosecution. An action not removed from the Reserve Calendar within the 18-month period shall be dismissed for lack of prosecution and the clerk shall enter an order of dismissal without further direction from the court unless a motion is pending. If a pending motion is denied and less than 10 days remain in which the action may remain on the Reserve Calendar, the action shall remain on the Reserve Calendar for 10 days from the date of entry of the order denying the motion.

(d) Extension of Time. For good cause shown why the action was not removed within the 18-month period, the court may grant an extension of time for the action to remain on the Reserve Calendar. A motion for an extension of time shall be made at least 30 days prior to the expiration of the 18-month period.

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 84. Suspension Calendar

(a) Suspension Calendar. A Suspension Calendar is established on which an action described in 28 U.S.C. §§ 1581(a) and (b) may be suspended, by order of the court, pending the final determination of a test case.

(b) Test Case Defined. A test case is an action, selected from a number of other pending actions all involving a significant issue of fact or question of law that is the same, and which is intended to proceed first to final determination to serve as a test of the right to recovery in the other actions. A test case may be so designated by order of the court upon a motion for test case designation after issue is joined.

(c) Motion for Test Case Designation. A party who intends that an action be designated a test case shall: (1) consult with all other parties to the action in accordance with Rule 7(b), and (2) serve upon the other parties, and file with the court a motion requesting such designation. The motion for test case designation shall include a statement that the party: (1) intends to actively prosecute the test case once designated, and (2) has other actions pending before the court that involve the same significant issue of fact or question of law as is involved in the test case and that it will promptly suspend under the test case. In any instance in which the consent of all other parties has not been obtained, a non-consenting party shall serve and file its response within 10 days after service of the motion for test case designation, setting forth its reasons for opposing.

(d) Suspension Criteria. An action may be suspended under a test case if the action involves a significant issue of fact or question of law which is the same as a significant issue of fact or question of law involved in the test case.

(e) Motion for Suspension. A motion for suspension shall include, in addition to the requirements of Rule 7, (1) the title and court number of the action for which suspension is requested, (2) the title and court number of the test case, and (3) a statement of the significant

issue of fact or question of law alleged to be the same in both actions.

(f) Time. A motion for suspension may be made at any time, and may be joined with a motion for designation of a test case as prescribed by subdivision (c) of this rule.

(g) Effect of Suspension. An order suspending an action shall stay all further proceedings and filing of papers in the suspended action unless the court otherwise directs.

(h) Removal From Suspension. A suspended action may be removed from the Suspension Calendar only upon a motion for removal. A motion for removal may be granted solely for the purpose of moving the action toward final disposition. An order granting a motion for removal shall specify the terms, conditions and period of time within which the action shall be finally disposed.

(As amended Sept. 25, 1992, eff. Jan. 1, 1993; Aug. 29, 2000, eff. Jan. 1, 2001.)

Rule 85. Suspension Disposition Calendar

(a) Suspension Disposition Calendar. A Suspension Disposition Calendar is established on which an action which was suspended under a test case shall be placed after the test case is finally determined, dismissed or discontinued.

(b) Time--Notice. The court shall notify the parties when a test case has finally been determined, dismissed or discontinued. After consultation with the parties, the court shall then enter an order providing for a period of time for the removal of an action from the Suspension Disposition Calendar.

(c) Removal. An action may be removed from the Suspension Disposition Calendar upon: (1) filing of a complaint, (2) filing of a demand for an answer when a complaint previously was filed, (3) granting of a motion for consolidation pursuant to Rule 42, (4) granting of a motion for suspension under another test case pursuant to Rule 84, (5) filing of a stipulation for judgment on an agreed statement of facts pursuant to Rule 58.1, (6) granting of a dispositive motion, (7) filing of a request for trial, or (8) granting of a motion for removal.

(d) Dismissal for Lack of Prosecution. An action not removed from the Suspension Disposition Calendar within the established period shall be dismissed for lack of prosecution, and the clerk shall enter an order of dismissal without further direction of the court, unless a motion is pending. If a pending motion is denied and less than 10 days remain in which the action may remain on the Suspension Disposition Calendar, the action shall remain on the Suspension Disposition Calendar for 10 days from the date of entry of the order denying the motion.

(e) Extension of Time. For good cause shown why the action was not removed within the period established by the court for the Suspension Disposition Calendar, the court may grant an extension of time for the action to remain on the Suspension Disposition Calendar. A motion for an extension of time shall be made at least 30 days prior to the expiration of the established period. (As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 86. Reserved

(As amended Oct. 3, 1984, eff. Jan. 1, 1985; Sept. 25, 1992, eff. Jan. 1, 1993.)

Rule 86.1. Judge's Directive

A judge may regulate practice in any manner consistent with federal law and the rules of the court adopted under 28 U.S.C. § 2633(b). No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law or these rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 82.1 now will be identified as Rule 86.1. New Rule 82.1 is "Reserved."

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 86.2. Contempt

A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Rule 37(b), shall be commenced by the service of a motion or order to show cause. The affidavit upon which the motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon the contemnor's attorney; otherwise service shall be made personally, in the manner provided for the service of a complaint. If an order to show cause is sought, such order, may upon necessity shown therefor, embody a direction to a United States marshal to arrest the alleged contemnor and hold him in bail in an amount fixed by the order, conditioned for the contemnor's appearance at the hearing, and further conditioned that the alleged contemnor will be thereafter amenable to all orders of the court for surrender.

If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, the alleged contemnor shall, upon demand therefor, be entitled to have oral evidence taken thereon, either before the court or before a master appointed by the court. When by law such alleged contemnor is entitled to a trial by jury, the alleged contemnor shall make written demand therefor on or before the return day or adjourned day of the application; otherwise the alleged contemnor will be deemed to have waived a trial by jury.

In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered (1) reciting or referring to the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the court, which fine shall include the damages found,

and naming the person to whom such fine shall be payable; (4) stating any other conditions, the performance whereof will operate to purge the contempt; and (5) directing the arrest of the contemnor by a United States marshal, and confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. The order shall specify the place of confinement. No party shall be required to pay or to advance to the marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of nonpayment of the fine for a period exceeding 6 months. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

In the event the alleged contemnor shall be found not guilty of the charges, the alleged contemnor shall be discharged from the proceeding.

PRACTICE COMMENT: Pursuant to the renumbering of the Rules, the former Rule 63 now will be identified as Rule 86.2.

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

Rule 87. Forms

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

(Added Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 88. Title

These rules may be known and cited as the Rules of the United States Court of International Trade.

(Added Oct. 3, 1984, eff. Jan. 1, 1985.)

Rule 89. Effective Date

(a) Effective Date of Original Rules. These rules shall take effect on November 1, 1980, the effective date of the Customs Courts Act of 1980. They govern all proceedings in actions commenced thereafter and then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work an injustice, in which event the former procedure applies. However, when a party is required or has been requested prior to the effective date of these rules to perform an act, pursuant to the Rules of the United States Customs Court in effect prior to the effective date of these rules, the act may still be performed in accordance with the rules in effect prior to the effective date of these rules.

(b) Effective Date of Amendments. The amendments adopted by the court on November 4, 1981, shall take effect on January 1, 1982. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(c) Effective Date of Amendment. The amendment adopted by the court on December 29, 1982, shall take effect on January 1, 1983. It governs all proceedings in actions brought after it takes effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court its application in a particular action pending when the amendment takes effect would not be feasible or would work injustice, in which event the former procedure applies.

(d) Effective Date of Amendments.

(1) The amendments adopted by the court on October 3, 1984, shall take effect on January 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except as provided for in paragraph (2) of this subdivision.

(2)(A) Rule 16 shall apply to all actions assigned on or after the effective date of these amendments and may apply to any action assigned before the effective date at the discretion of the judge to whom the action is assigned.

(B) As to pending actions, the amendments apply, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure applies.

(e) Effective Date of Amendments. The amendments adopted by the court on June 19, 1985, shall take effect on October 1, 1985. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(f) Effective Date of Amendments. The amendments adopted by the court on July 21, 1986, shall take effect on October 1, 1986. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(g) Effective Date of Amendments. The amendments adopted by the court on December 3, 1986, shall take effect on March 1, 1987. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(h) Effective Date of Amendments. The amendments adopted by the court on April 28, 1987, shall take effect on June 1, 1987. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(i) Effective Date of Amendments. The amendments adopted by the court on July 28, 1988, shall take effect on November 1, 1988. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(j) Effective Date of Amendments. The amendments adopted by the court on October 3, 1990, shall take effect on January 1, 1991. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular

action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(k) Effective Date of Amendments. The amendments adopted by the court on March 1, 1991, shall take effect on March 1, 1991. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(l) Effective Date of Amendments. The amendments adopted by the court on September 25, 1992, shall take effect on January 1, 1993. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(m) Effective Date of Amendments. The amendments adopted by the court on October 5, 1994, shall take effect on January 1, 1995. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(n) Effective Date of Amendment. The amendment to the court's Schedule of Fees adopted June 1, 1995 shall take effect on June 1, 1995. It shall govern all proceedings in actions brought after it takes effect and also all further proceedings in actions then pending,

except to the extent in the opinion of the court its application in a particular action pending when the amendment takes effect would not be feasible or would work injustice, in which event the former schedule applies.

(o) Effective Date of Amendments. The amendments adopted by the court on November 29, 1995 shall take effect on March 31, 1996. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(p) Effective Date of Amendments. The amendments adopted by the court on August 29, 1997 shall take effect on November 1, 1997. They govern all proceedings in actions brought after they take effect.

(q) Effective Date of Amendments. The amendments adopted by the court on November 14, 1997 shall take effect on January 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(r) Effective Date of Amendments. The amendments adopted by the court on March 25, 1998 shall take effect on July 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the

amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(s) Effective Date of Amendments. The amendments adopted by the court on May 27, 1998 shall take effect on September 1, 1998. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(t) Effective Date of Amendments. The amendments adopted by the court on January 25, 2000 shall take effect on May 1, 2000. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(u) Effective Date of Amendments. The amendments adopted by the court on August 29, 2000 shall take effect on January 1, 2001. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(v) Effective Date of Amendments.

(1) The amendments adopted by the court on December 18, 2001 shall take effect on April 1, 2002. They govern all proceedings in actions brought

after they take effect and also all further proceedings in actions then pending, except as provided for in paragraph (2) of this subdivision, and except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(2) The amendments to Rule 26 shall apply to all pending actions on the effective date, except those commenced under 28 U.S.C. §1581(a) or (b) in which case the provisions of the Rule shall apply only to those actions in which a complaint is filed after the effective date.

(w) Effective Date of Amendments. The amendments adopted by the court on September 30, 2003 shall take effect on January 1, 2004. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(x) Effective Date of Amendments. The amendments adopted by the court on May 25, 2004 shall take effect on September 1, 2004. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(y) Effective Date of Amendments. The amendments adopted by the court on September 28, 2004 shall take effect on January 1, 2005. They govern all proceedings in

actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(z) Effective Date of Amendments. The amendments adopted by the court on March 29, 2005 shall take effect on October 1, 2005. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(aa) Effective Date of Amendments. The amendments adopted by the court on November 29, 2005 shall take effect on January 1, 2006. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(bb) Effective Date of Amendments. The amendments adopted by the court on March 21, 2006 shall take effect on April 10, 2006. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(cc) Effective Date of Amendments. The amendments adopted by the court on November 28, 2006 shall take effect on January 1, 2007. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(dd) Effective Date of Amendments. The amendments adopted by the court on November 27, 2007 shall take effect on January 1, 2008. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect

would not be feasible or would work injustice, in which event the former procedure applies.

(ee) Effective Date of Amendments. The amendments adopted by the court on November 25, 2008 shall take effect on January 1, 2009. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent in the opinion of the court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedure applies.

(Added Nov. 4, 1981, eff. Jan. 1, 1982; and amended Dec. 29, 1982, eff. Jan. 1, 1983; Oct. 3, 1984, eff. Jan. 1, 1985; June 19, 1985, eff. Oct. 1, 1985; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Apr. 28, 1987, eff. June 1, 1987; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Mar. 1, 1991, eff. Mar. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; June 1, 1995, eff. June 1, 1995; Nov. 29, 1995, eff. Mar. 31, 1996; Aug. 29, 1997, eff. Nov. 1, 1997; Nov.14, 1997, eff. Jan. 1, 1998; Mar. 25, 1998, eff. July, 1998; May 27, 1998, eff. Sept. 1, 1998; Jan. 25, 2000, eff. May 1, 2000, Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002; Sept. 30, 2003, eff. Jan. 1, 2004; May 25, 2004, eff. Sept. 1, 2004; Sept. 28, 2004, eff. Jan. 1, 2005; Mar.

29, 2005, eff. Oct. 1, 2005; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006; Nov. 28, 2006, eff. Jan. 1, 2007; Nov. 27, 2007, eff. Jan. 1, 2008; Nov. 25, 2008, eff. Jan. 1, 2009.)

GUIDELINES - BILL OF COSTS - RULE 54(d)(1)

1. Within thirty (30) days after the expiration of the time allowed for appeal of a final judgment, whether or not an appeal has been filed, the prevailing party shall serve on the attorney for the adverse party and file with the clerk of court the original and one copy of a Bill of Costs and Disbursements (Form 21), together with a certificate of service.

2. Any Bill of Costs shall precisely set forth each item thereof, and shall be verified by the attorney for the applicant, stating that: the items are correct; the services were actually and necessarily performed; and the disbursements were necessarily incurred in the action or proceeding. Counsel shall attach to the verified Bill of Costs copies of all invoices in support of the request for each item.

3. Counsel are directed to 28 U.S.C. § 1927 regarding counsel's liability for excessive costs.

4. The failure of a prevailing party either to timely file a Bill of Costs, or to comply with these Guidelines, shall constitute a waiver of any claim for costs.

5. If a party objects to the Bill of Costs or any item claimed by a prevailing party, that party shall state its objection in a motion for disallowance of costs with a supporting brief within ten (10) days after the filing of the Bill of Costs. Within five (5) days thereafter, the prevailing party may file a response motion and brief.

6. After the clerk or his designee has entered an order on the Bill of Costs, counsel for either party may, within five (5) days, file a motion to review the action of the clerk and request review by the court. Once the court has ruled on the motion filed by any party, and the matter of costs has been determined, those costs shall be included in the judgment and shall be paid directly to the prevailing party. These costs are not processed through the office of the clerk. To record payment, counsel may file a Notice of Satisfaction of Costs (Form 22).

7. The clerk or his designee shall tax costs even if the case is appealed, unless a stay pending appeal has been granted by the court. In the event of a stay, counsel shall be responsible to advise the clerk at the conclusion of all appellate proceedings that costs may be taxed.

8. Authority for the clerk to tax costs is found at:
   - 28 U.S.C. § 1920 (taxation of costs);
   - 28 U.S.C. § 1821 (per diem and mileage generally);
   - 28 U.S.C. § 1921 (fees of United States Marshals Service);
   - 28 U.S.C. § 1922 (witness fees);
   - 28 U.S.C. § 1923 (docket fees and costs of briefs);
   - 28 U.S.C. § 1924 (verification of bill of costs);
   - USCIT R. 54(d)(1)
   - USCIT R. 82(b)

(Added May 25, 2004, eff. Sept. 1, 2004.)

GUIDELINES FOR COURT-ANNEXED MEDIATION

Mediation is a flexible, non-binding dispute resolution procedure in which a neutral third party, the mediator, facilitates negotiations between the parties to assist them with settlement. A hallmark of mediation is its capacity to help parties expand traditional settlement discussions and broaden resolution options, often going beyond the legal issues in controversy. Mediation sessions are confidential and structured to help parties communicate, to clarify their understanding of underlying interests and concerns, probe the strengths and weaknesses of legal positions, explore the consequences of not settling and generate settlement options. The mediator, who may meet jointly or separately with the parties, serves as a facilitator and does not issue a decision or make findings of fact.

Judges of the United States Court of International Trade are available throughout the pretrial phase of all litigation to conduct judge-hosted sessions of mediation. A judge may serve as the Judge Mediator in any case referred for mediation, provided it is not a case in which he or she is the presiding judge, and he or she is not otherwise disqualified to serve in accordance with Title 28 U.S.C. §455 and the Canons of Judicial Ethics.

These Guidelines are intended to govern the procedures for Court-Annexed Mediation unless otherwise ordered by the assigned judge or Judge Mediator.

I. REFERRAL

Any judge may make an Order of Referral to Court-Annexed Mediation in any case assigned to him or her. The Order may be in response to a consent motion from all the parties which requests mediation, in response to a motion from one or more parties, or may be issued *sua sponte* by the assigned judge.

The original Order of Referral to Court-Annexed Mediation will be filed with the Clerk's Office and copies served upon the parties. A copy of the Order also all will be provided to the judge who has agreed to serve as Judge Mediator in the case.

The Order of Referral will provide for a maximum number of days within which the parties must complete the mediation process. All proceedings (including motion practice and discovery) shall be stayed for a period of ninety (90) days from the date of the Order of Referral, unless the judge assigned, on the judge's own initiative or upon a motion of a party, for good cause shown, provides for a longer or shorter stay, or limits the scope of the stay.

A Form "Order of Referral to Court-Annexed Mediation" is attached to these Guidelines as **Form - M1**.

II. PROCEEDINGS AFTER REFERRAL

(A) Submission of Position Papers and Documents.

Within fifteen (15) days of the Order of Referral, counsel for each party shall prepare and submit to the Judge Mediator confidential memoranda of no more than ten (10) pages, which shall:

1. Identify the person with actual authority to negotiate a settlement of the case;

2. State the relevant facts in the action;

3. State the key legal issues in the action;

4. Identify what discovery would improve the prospects for settlement;

5. State the pertinent factors relating to settlement;

6. State the party's initial settlement position; and

7. Identify the names of all counsel and other persons who are expected to attend any scheduled mediations; such identification will include the title of each such person, and: a) in the case of a party who is an individual, whether such person will be attending as a representative of that individual or in some other capacity (e.g., witness, assistant), or b) in the case of a party who is an entity, whether the person is appearing as counsel of record or as an attorney (or another representative) with authority to recommend a settlement or in some other capacity (e.g., witness, assistant).

Copies of the confidential memoranda submitted directly to the Judge Mediator should not be served on opposing counsel, are not to be filed with the Clerk's Office, and are not to be of record in the action.

(B) Mediation Sessions.

Within thirty (30) days of the Order of Referral, the Judge Mediator will notify the parties of the time, date, and place of the mediation session and whether it will be conducted in person, telephonically, or by videoconference. Unless the Judge Mediator directs otherwise, except in the case of a party who is an individual, all sessions of mediation must be attended by counsel of record and an attorney (or another representative) with authority to recommend a settlement (who may be one and the same). In the case of a party who is an individual, unless excused by the judge or Judge Mediator, the individual or a representative who has actual authority to settle the action shall attend. The Judge Mediator may meet with counsel and the parties jointly or ex parte. The Judge Mediator may conduct one or more sessions of mediation.

(C) Confidentiality of Mediation Proceedings.

All statements made at and all materials shared or submitted by a party during a session of mediation shall be confidential, unless during the course of the mediation a party, its representative or its counsel agrees that anything submitted in confidence to the Judge Mediator by or on behalf of that party may be disclosed to another party, its representative or counsel, in furtherance of the mediation (provided that such disclosure is not also the subject of any specially agreed upon confidentiality terms).

Except as provided for above, the Judge Mediator shall not discuss with or disclose to the assigned judge or anyone else the statements made or information developed during the mediation process. The attorneys and other persons attending the mediation are likewise prohibited from disclosing statements made or information developed during the mediation process. The parties are prohibited from using any information obtained in the mediation process in any motion or argument to any court. The sessions of mediation shall be considered compromise negotiations under Rule 408 of the Federal Rules of Evidence. Notwithstanding the foregoing, the bare fact that a settlement has or has not been reached as a result of mediation shall not be considered confidential. Nothing in this provision, however, shall preclude any party or other person from obtaining, outside of the mediation proceedings, any matter which a party may lawfully obtain through independent means, such as discovery, any matter which is not otherwise privileged, regardless of whether the party or person learned about the existence of such information from the mediation proceedings, unless the information was expressly disclosed after an agreement that precludes such discovery.

Additionally, notwithstanding the foregoing, nothing shall preclude the court, when the interests of justice may require, such as to prevent the commission of a crime, to order, after notice and hearing, that any confidential information be disclosed for such limited purposes.

(D) Settlement.

No party shall be bound by statements or actions at a session of mediation unless a settlement or other written agreement is reached. If an agreement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement. The agreement shall be signed by all parties and their respective counsel (who may be one and the same when counsel have been authorized to sign on behalf of a party). If such an agreement includes a dismissal, in whole or in part, of the action, then

the parties will file an appropriate dismissal, pursuant to Rule 41, or stipulated judgment, pursuant to Rule 58.1. Such papers will be filed with the court within thirty (30) days after the settlement or other written agreement is signed or the action will be returned to the active calendar, unless such period is extended by the judge assigned to the action on the judge's own initiative or upon motion filed by a party, for good cause shown.

(E) Report of Mediation.

Upon conclusion of the mediation process, the Judge Mediator shall file promptly a Report of Mediation which indicates whether the action has settled in whole or in part. The original Report of Mediation will be filed with the Clerk's Office and copies served upon the parties. A copy of the Report also all will be provided to the referring judge assigned to the action.

A Form "Report of Mediation" is attached to these Guidelines as **Form - M2**.

(F) Extensions of Deadlines and Modification of Terms of Stay.

Nothing contained in these guidelines precludes the judge assigned to the action (or the Judge Mediator, as to a deadline relating to the planning or conducting of the mediation once the action has been referred to a Judge Mediator) from extending the time periods set forth in these guidelines, unless such extension will result in the time allowed for the mediation to extend beyond the time period of the stay set forth in these guidelines. In that event, such extension may only be granted by the judge assigned to the action or by the Judge Mediator in consultation with and with the concurrence of the judge assigned to the action. Extensions may be allowed by the judge or the Judge Mediator, on the judge's or Judge Mediator's own initiative or upon motion of a party, for good cause shown. Further, nothing in these guidelines precludes the judge assigned to the action, at any time, upon the judge's own initiative, pursuant to the recommendation of the Judge Mediator, or upon motion of a party, for good cause shown, from determining that the action should not be stayed pending the completion of mediation, or from excluding certain activities that a party may be permitted or required to perform from the stay, or from otherwise modifying the terms or length of the stay so as to facilitate the conduct of the mediation or to avoid undue delay or hardship in the final determination of the action.

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended May 25, 2004, eff. Sept. 1, 2004.)

SCHEDULE OF FEES

(Effective November 1, 1988, as amended Nov. 28, 2006; eff. Jan. 1, 2007.)

As provided by 28 U.S.C. § 2633(a) and the Rules of the United States Court of International Trade, the following are fees to be charged for services provided by the Court. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 5 and 6 of Additional Fees. No fees under this schedule shall be charged to federal agencies or programs, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

Filing Fees - Rule 3(b)

1. For filing an action other than one commenced under 28 U.S.C.§ 1581(a) or (d)(1) $350.00

2. For filing a summons in an action commenced under 28 U.S.C. § 1581(a) $150.00

3. For filing an action commenced under 28 U.S.C. § 1581(d)(1). . . . . $ 25.00

4. For filing a complaint in an action commenced under 28 U.S.C. § 1581(a) on or after November 1, 1997 . . . . . $200.00

5. For filing an appeal in the U.S. Court of International Trade to the U.S. Court of Appeals for the Federal Circuit $455.00

Attorney Admission Fees - Rule 74(b)(3)

For the original admission of an attorney to practice, including a certificate of admission . . . . . $ 50.00

Additional Fees - Rule 80(g)

The clerk shall collect in advance from the parties fees for miscellaneous services as are consistent with the "Judicial Conference Schedule of Additional Fees for the United States District Courts." The additional fees that are applicable to the court are as follows:

1. For filing or indexing any paper not in a case or proceeding for which a case filing fee has been paid (e.g., filing a petition to perpetuate testimony pursuant to Rule 27, the filing of letters rogatory or letters of request, and the registering of a judgment pursuant to 28 U.S.C. § 1963) . . $ 39.00

2. For every search of the records of the court for each case searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access. The court has adopted guidelines consistent with those promulgated by the Judicial Conference of the United States to provide guidance in the application of this fee. The Guidelines are attached to this Schedule of Fees . . . . . $ 26.00

3. For certification of any document or paper, whether the certification is made directly on the document or by separate instrument . . . . . $ 9.00

4. For exemplification of any document or paper . . . . . $ 18.00

5. For reproducing any record or paper, including paper copies made from either original documents; or microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access . . . . . $.50

6. For reproduction of recordings of proceedings, regardless of the medium, including the cost of materials. This fee shall apply to the United States if the reproduction of the recording is available electronically . . . . . $ 26.00

7. For each microfiche sheet of film or microfilm jacket copy of any court record, where available . . . . . $ 5.00

8. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court . . . . . $ 45.00

9. For a check paid into the court which is returned for lack of funds . . . . . $ 45.00

10. For a duplicate certificate of admission or certificate of good standing . . . . . $ 15.00

11. For handling registry funds, a charge shall be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

SEARCH FEE GUIDELINES

The following guidelines reflect, to the maximum extent possible, (1) the duty of the clerk's office to provide access to the court's records, and (2) the efficient use of the limited resources available in the clerk's office. These guidelines attempt to strike a fair balance between these two competing concerns. In addition, the guidelines are intended to be consistent with the search fee applicable to the other federal courts.

The guidelines are meant to inform the clerk's discretion, not to limit it. Thus, the guidelines are not meant to be hard-and-fast rules on the application of the search fee; rather, they are meant to be parameters within which the clerk's office may operate.

Guideline No. 1

Any information which is easily retrieved, with a minimum expenditure of time and effort, will be considered a non-chargeable "retrieval," as opposed to a chargeable search. A search fee will not be charged for a single request for basic information readily retrievable through an automated database. A request of this nature will be considered a "retrieval" and will not be considered a "search."

The advent of the automated database has greatly diminished the resource strain on the clerk's office when retrieving basic information about a case. Basic information is defined as any information which is easily retrievable from an automated database or from the front of a docket sheet. Basic information which may be retrieved without a search fee may include: (1) the name of a party when the case number is provided; (2) the number of a case when the plaintiff or defendant is known; (3) the date a summons or complaint was filed when the case number is provided; (4) the name of a party's attorney when the case number is provided; (5) the status of the case generally when the case number is provided.

The public is encouraged to come to the court to conduct searches for information, and to utilize the court's automated database. Within limits, the clerk's office will assist those attempting to use the docket sheets or computers placed for the public's use.

If the request is made by telephone, and does not require a written response, no charge will be imposed if it is a single request and can be answered easily by examining a docket sheet or through the automated database.

Guideline No. 2

A search fee will be charged for any request for which accurate court number and docket information is not provided by the requestor and which therefore requires a physical search of the court's records.

A request for information where documents or pleadings are not identified by the requestor, with accurate and complete court number and docket information, and which therefore requires a *physical* search of the court's records (whether automated or hard copy) will be considered a "search" which is properly chargeable.

Guideline No. 3

With limited exceptions, a fee will be charged for all written search requests which require a written response.

A written request is defined as any search request made in writing which requires a written response. Because of the time and resources which must be expended in order to respond to a written request, such a request will be considered a search which is subject to the fee, even if the request is for basic information which may be obtained from an automated database or the docket sheet. An exception is the situation where a written request for "basic" information (as defined above), can be responded to by having the clerk's office staff provide a handwritten response on the requestor's letter (as opposed to requiring a separate document in response) and where the requestor has provided a self-addressed, stamped return envelope. In this situation, the time and effort involved do not warrant the imposition of the search fee.

The search fee should be included with the request, and the clerk's office will not process a written request until the search fee is received.

Guideline No. 4

Where requested information is available on an automated database, a requestor seeking information via the telephone may be required to utilize that database, instead of having a court employee conduct the information retrieval.

Much basic information which is sought may be retrievable by a requestor through an automated database without the need for any direct communication with a court employee. In order to maximize the utility of the court's automated database and minimize the expenditure of court personnel time, the court may require a requestor to use that database. This guideline is applicable when users can reasonably be expected to avail themselves of that particular service.

Guideline No. 5

When an automated database is available, a computer terminal with suitable data protection will be made available for use by the public. When a computer terminal is available for use by the public, the court may adopt the policy set forth in Guideline No. 4 for in-person requests for basic information, i.e., the clerk's office may require an in-person requestor to utilize the public computer terminal rather than having a clerk's office employee retrieve the information.

Guideline No. 6

Requests for archived documents shall be charged only the archive retrieval fee and not the additional search fee.

Item 8 of the court's Schedule of Additional Fees provides that a fee shall be charged for retrieval of a record from any place that such record may be archived. The Schedule of Fees does not refer to any additional fee for such retrieval, and the court did not contemplate two separate fees (one for the request and one for the retrieval) to be charged when a particular document is off-site.

However, the search fee may be charged to an individual who makes a request to the clerk's office for box, location, and accession information of a document in order to conduct his or her own search of the Records Center. In such a case, a physical search of the court's records would be necessary in order to obtain the information, and a search fee would be appropriate.

In order to reduce the time involved in responding to these types of requests, and also to make this information more accessible to the public, the court may automate this information or make a duplicate accession number book available to the public.

Guideline No. 7

The clerk has the general authority to refuse to conduct searches which are unreasonable or unduly burdensome.

The clerk of court has the responsibility of being responsive to parties in interest in cases pending in the court. However, this does not mean that either the public or government agencies have an unfettered right to make unreasonable or unduly burdensome demands upon the resources and personnel of the clerk's office. The clerk will refuse to conduct searches which would require a disproportionate expenditure of time and/or resources, and will encourage entities making such requests to conduct their own search of court records. This includes a request for information which, instead of comprising a single request, includes a list of numerous names or items to be searched. Such requestor will be encouraged to utilize the court's automated database to obtain the desired information.

This procedure applies to federal agencies as well. Although search and copying fees are waived for federal agencies, the clerk is not required to accommodate search or copy requests from such agencies which are unduly burdensome or time-consuming. Because of the volume of requests that often comes from federal agencies, the court may invite or encourage federal agencies (or a local representative), to come into the court to conduct their own searches and will allow them to use court copy facilities.

A P P E N D I X I

S E A R C H F E E G U I D E L I N E S

I n t r o d u c t i o n

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The clerk has the general authority to refuse to conduct searches which are unreasonable or unduly burdensome.

The clerk of court has the responsibility of being responsive to parties in interest in cases pending in the court. However, this does not mean that either the public or government agencies have an unfettered right to make unreasonable or unduly burdensome demands upon the resources and personnel of the Clerk's Office. The clerk will refuse to conduct searches which would require a disproportionate expenditure of time and/or resources, and will encourage entities making such requests to conduct their own search of court records. This includes a request for information which, instead of comprising a single request, includes a list of numerous names or items to be searched. Such requestor will be encouraged to utilize the court's automated database to obtain the desired information.

This procedure applies to federal agencies as well. Although search and copying fees are waived for federal agencies, the clerk is not required to accommodate search or copy requests from such agencies which are unduly burdensome or time-consuming. Because of the volume of requests that often comes from federal agencies, the court may invite or encourage federal agencies (or a local representative), to come into the court to conduct their own searches and will allow them to use court copy facilities.

APPENDIX II

ADVISORY NOTE

The court, consistent with the policy of the Judicial Conference of the United States, has prescribed a fee for electronic access to court data, as set forth in the court's Schedule of Fees. The schedule provides that the court may exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. Exemptions will be granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to this information in electronic form. It is not intended to provide a means by which the court would exempt all users.

The court has determined that the following persons and classes of persons are exempt from the electronic public access fees: pro-se plaintiffs in trade adjustment assistance actions; indigents; bankruptcy case trustees; not-for-profit organizations and voluntary ADR neutrals.

APPENDIX ON ACCESS TO BUSINESS PROPRIETARY INFORMATION PURSUANT TO RULE 73.2(c)

Unless amended by order of the court, the following terms shall govern access pursuant to Rule 73.2 (c) to Business Proprietary Information contained on the administrative record for a proceeding subject to review by the court under 28 U.S.C. § 1581(c).

A. Definitions.

1. "Action" means an action described in 28 U.S.C. § 1581(c) and any appeals of such an action.

2. "Access to business proprietary information" includes the retention of Business Proprietary Information received by an attorney or consultant in the course of the administrative proceeding that gave rise to an action or the receipt or use of Business Proprietary Information in an action, regardless of whether Business Proprietary Information appears in submissions to the court.

3. "Agency" means either the United States International Trade Commission or the United States Department of Commerce, whichever issued the particular administrative determination that gave rise to the action.

4. "Authorized Attorney" means an attorney described in Rule 73.2 (c)(2).

5. "Authorized Consultant" means a consultant described in Rule 73.2 (c)(2).

6. "Business Proprietary Information" means all business proprietary information as defined in 19 U.S.C. § 1677f(c) that is contained in the administrative record of the agency proceeding underlying the action, an index of which record is filed with the court.

7. "Commission" means the United States International Trade Commission.

8. "Department" means the United States Department of Commerce.

9. "Document" means documents in the traditional sense as well as computer diskettes and other media.

B. Applicability. These terms shall take effect with regard to an attorney or consultant upon the attorney or consultant's filing of a Business Proprietary Information Certification which shall be substantially in the form set forth in Form 17 of the Appendix of Forms or upon the entry of an order of this court granting the attorney or consultant access to Business Proprietary Information in the action.

C. Access to Information. The agency will make Business Proprietary Information available to an authorized attorney within twenty (20) days of the service of the certified list of all items described in Rule 73.2 (a)(1) and (2). The agency may make documents available either by providing the

authorized attorney with a complete copy of the record or by allowing the inspection and copying, during the agency's regular business hours, of any documents containing Business Proprietary Information that were not previously made available to the authorized attorney. (The phrase "documents not previously made available" includes documents for which a party waived service during the underlying administrative proceeding.) The agency may charge a reasonable fee for copies of any materials.

An authorized consultant shall have access to information as provided by the authorized attorney who has assumed direction and control over the authorized consultant's handling of Business Proprietary Information.

The agency shall not be required to make available any privileged document.

D. Disclosure of Information. Unless otherwise provided in this Appendix, individuals who have access to Business Proprietary Information pursuant to Rule 73.2 (c) and this Appendix shall not disclose Business Proprietary Information to anyone (including, without limitation, any officer, shareholder, director, or employee of any of the parties in the action), other than to the court, authorized court personnel, attorneys representing the defendant, and to authorized attorneys and authorized consultants. An authorized attorney or authorized consultant may use the Business Proprietary Information only for issues relating to the agency in the action, in administrative proceedings resulting from an order of the court remanding the matter to the agency, or in an appeal of a decision rendered by the court in the action. In the event of the consolidation of actions arising from determinations of the Commission and the Department, nothing in this Appendix shall be read to require or allow the use of Business Proprietary Information from the records of one agency in argumentation related to the decision of the other agency or the service upon one agency of documents containing Business Proprietary Information from the record of the other.

With respect to Business Proprietary Information which was originally submitted by a party to the action, nothing in Rule 73.2 (c) or this Appendix shall prevent an attorney for that party from disclosing that information or using that information in any way, so long as such disclosure or use does not result in the disclosure of another party's Business Proprietary Information to anyone not authorized under Rule 73.2 (c) and this Appendix to have access to Business Proprietary Information.

E. Office Personnel. An authorized attorney or authorized consultant may disclose Business Proprietary Information to office personnel who are actively assisting in the action and are employed by or supervised by him or her and under his or her direction and control. The authorized attorney charged with direction and control of the authorized consultant shall assume responsibility for compliance with the terms of Rule 73.2 (c) and this Appendix by all office personnel described in this paragraph. An authorized consultant shall assume responsibility for compliance with the terms of Rule 73.2 (c) and this Appendix by all of his or her own office personnel. All office personnel authorized to see the Business Proprietary Information shall comply with the terms of Rule 73.2 (c) and this Appendix, and shall, before having access to any business proprietary documents, sign a statement of recognition that he or she is bound by the terms of Rule 73.2 (c) and this Appendix, that the information is proprietary, and that such information will not be disclosed to anyone other than authorized personnel within the firm. Such statements of recognition shall be retained by an authorized attorney, but need not be filed with the court or served upon the parties.

F. Authorized Consultants. An authorized consultant shall have access to Business Proprietary

Information in an action only under the direction and control of an authorized attorney, who shall assume responsibility for compliance with the terms of Rule 73.2 (c) and this Appendix by such authorized consultant, and subject to the terms of Rule 73.2 (c) and this Appendix. Consultants include non-attorneys such as economists, accountants and computer specialists.

As to any consultant who is subject to the agency's administrative protective order issued in the proceeding that gave rise to the action whom an authorized attorney considers necessary to preparation of the case in the action, the authorized attorney shall file with the court a Business Proprietary Information Certification which shall be substantially in the form set forth in Form 17 of the Appendix of Forms executed by the consultant.

As to any consultant not described in the preceding paragraph whom an authorized attorney considers necessary to preparation of the case in the action, the authorized attorney shall, prior to seeking consent for the filing of such a Certification, provide counsel for the parties with the curriculum vitae of the proposed consultant. If all counsel consent, the authorized attorney shall then file such a Certification, executed by the proposed consultant, with the court. If all counsel do not consent, access to Business Proprietary Information for the consultant may be sought by motion.

G. Filing and marking of documents. Any document, including without limitation any brief or memorandum, that is filed with the court in the action that contains any Business Proprietary Information shall be conspicuously marked in accordance with Rule 81(h) and any Business Proprietary Information shall be appropriately marked by bracketing. Arrangements shall be made with the clerk of the court to retain such documents under seal, permitting access only to the court, authorized court personnel, attorneys representing the agency, and to individuals authorized by this Appendix to have access to such documents. The party filing any document referenced in this paragraph shall also file, in accordance with Rule 81(h) and serve on the parties in accordance with Rule 5(h), a version of such document from which all of the Business Proprietary Information shall have been deleted.

H. Service. Any document containing Business Proprietary Information shall be served on all parties whose counsel are authorized to have access to such document pursuant to Rule 73.2 (c) and this Appendix in a wrapper conspicuously marked on the front "Business Proprietary – to be opened only by (authorized attorney for that party)." If served by mail, the business proprietary document shall be placed within two envelopes, the inner one sealed and marked "Business Proprietary Information – to be opened only by (name of authorized attorney)," and the outer one sealed and not marked as containing Business Proprietary Information. Parties not authorized to have access to any such document pursuant to Rule 73.2 (c) and this Appendix shall be served in accordance with Rule 81(h) with a copy of the document from which all Business Proprietary Information shall have been deleted.

I. Safeguarding Business Proprietary Information. The individuals covered by Rule 73.2 (c) and this Appendix shall review the procedures for the protection of Business Proprietary Information listed in the agency administrative protective orders on the administrative record and comply with such procedures for the duration of the action.

J. Oral proceedings. Authorized attorneys shall endeavor to avoid the unnecessary use of Business Proprietary Information in any oral proceeding before the court. If an authorized attorney for any party in the action finds it necessary to refer to Business Proprietary Information in any oral

proceeding before the court, such attorney shall notify the court and all other counsel of record as soon as the necessity becomes apparent and propose whatever mechanism may be available and appropriate to prevent disclosure of Business Proprietary Information to persons other than those authorized by this Appendix.

K. Breach of the terms of this Appendix. The individuals covered by Rule 73.2 (c) and this Appendix shall promptly report any breach of the provisions of this Appendix to the court, to counsel for the Agency, and to counsel for the party whose Business Proprietary Information is involved. The individuals covered by Rule 73.2 (c) and this Appendix shall take all reasonable steps to remedy the breach and shall cooperate fully in any investigation of the breach undertaken by the court.

L. Termination of Access to Business Proprietary Information. An authorized attorney or authorized consultant shall cease to have access to Business Proprietary Information subject to this Appendix upon the filing of a Notice of Termination pursuant to Rule 73.2 (c). A former authorized attorney or authorized consultant remains bound by his or her obligation to abide by the terms of Rule 73.2 (c) and this Appendix and may not divulge Business Proprietary Information that he or she learned during the action or in the underlying administrative proceeding to any person.

M. Effect of this Appendix. This Appendix shall have the force and effect of a judicial protective order as to any person who has or has had access to Business Proprietary Information pursuant to this Appendix.

PRACTICE COMMENT: The Appendix on Access to Business Proprietary Information makes reference to Rule 71. Pursuant to the renumbering of the Rules, the former Rule 71 now will be identified as Rule 73.2.

Added Jan. 25, 2000, eff. May 1, 2000; and amended Aug. 29, 2000, eff. Jan. 1, 2001;
Sept. 30, 2003, eff. Jan. 1, 2004.)

APPENDIX OF FORMS

CONTENTS

General Instructions

Specific Instructions

Complaint Allegations

Form		Applicable Rule
1	Summons in 28 U.S.C. § 1581(a)	Rule 3(a)(1)
1A	Notice of Lawsuit and Request for Waiver of Service of Summons	Rule 4(d)(2)
1B	Waiver of Service of Summons	Rule 4(d)(2)
2	Summons in 28 U.S.C. § 1581(b)	Rule 3(a)(1)
3	Summons in 28 U.S.C. § 1581(c)	Rule 3(a)(2)
4	General Summons	Rule 3(a)
5	Information Statement	Rule 3(b)
6	Request for Trial	Rule 40(a)
7	Notice of Dismissal	Rule 41(a)(1)(A)
7A	Notice of Dismissal	Rule 41(a)(1)(A)
8	Stipulation of Dismissal	Rule 41(a)(1)(B)
8A	Stipulation of Dismissal	Rule 41(a)(1)(B)
9	Stipulated Judgment on Agreed Statement of Facts	Rule 58.1
10	Application for Admission	Rule 74(b)
11	Notice of Appearance	Rule 75(b)(2)
12	Notice of Substitution of Attorney	Rule 75(c)
13	Disclosure of Corporate Affiliations and Financial Interest	Practice Comments to Rules 3, 24, 76
14	[Reserved]	
15	Application for Fees and Other Expenses Pursuant to the Equal Access to Justice Act	Rule 54.1
16-1	Order [For Day-of-Deposit to Day-of-Withdrawal]	Rule 67.1
16-2	Order [For Money Market or Management]	Rule 67.1
16-3	Order [For Certificate of Deposit]	Rule 67.1
16-4	Order [For Treasury Bills]	Rule 67.1
16-5	Order [For Return of Money]	Rule 67.1
17	Business Proprietary Information Certification	Rule 73.2(c)
18	Notice of Termination of Access to Business Proprietary Information	Rule 73.2(c)
19	Report of Parties' Planning Conference	Rule 26(f)
20	Subpoena	Rule 45
21	Bill of Costs	Rule 54(d)(1)
22	Satisfaction of Costs	Rule 54(d)(1)
M-1	Order of Referral to Mediation	Rule 16.1
M-2	Order of Report of Mediation	Rule 16.1

GENERAL INSTRUCTIONS

1. The forms contained in this Appendix of Forms are intended for use as samples, except for those forms which, when required are to be obtained from the office of the clerk, *viz.,* Forms 5, 10 and 13.

2. No attempt is made to furnish a manual of forms; and the forms are limited in number. For other forms, reference may be made when appropriate to the Appendix of Forms to the Federal Rules of Civil Procedure.

3. Except when otherwise indicated, each pleading and other paper must have a caption similar to that of the summons, with the designation of the particular paper substituted for the word, "Summons."

4. In the caption of the summons and of the complaint, all parties must be named; but in other pleadings and papers, it is sufficient to name the first party on either side, with an appropriate indication of other parties.

5. A motion must contain a designation below the caption indicating the nature of the motion, e.g., "DEFENDANT'S MOTION FOR SUMMARY JUDGMENT." A response to a motion, or a reply to a response when allowed, must contain a similar designation.

6. Papers filed after an action is commenced must set out to the right of the caption: the court number assigned to the action; the court calendar (Reserve, Suspension, or Suspension Disposition Calendar) on which the action is listed; and, if the action has been assigned, the name of the judge to whom it is assigned.

7. Each pleading or other paper is to be signed in the attorney's individual name by at least one attorney of record. The attorney's name is to be followed by the attorney's mailing address and telephone number. If the attorney of record is a firm of attorneys, the firm name, the name of the individual attorney responsible for the litigation, must appear on every pleading or other paper. A party represented by more than one attorney of record must designate only one attorney of record to serve, file and receive service of pleadings and other papers on behalf of the party. If an individual is not represented by an attorney, the signature, mailing address, and telephone number of the individual are required in place of those of an attorney.

8. When a summons, pleading or other paper includes a schedule of actions, the schedule must:

a. not list both assigned and unassigned actions;
b. not include actions assigned to more than one judge;
c. list the actions in numerical order;
d. indicate the court calendar, if any, in which the action is pending; and
e. list the protest or customs numbers in numerical order.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 1

This form of summons is to be used only in those actions described in 28 U.S.C. § 1581(a).

The summons must be filed together with a $150 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

The summons form (copies of which may be obtained from the office of the clerk) consists of three pages. The first page is to be completed with the required information pertaining to the denied protest. The second page is to be completed with the required information pertaining to the administrative decision contested in the action. The third page is to be completed with a schedule of protests, listed in numerical order, when more than one denied protest is included in the action.

When the action includes protests denied at one port of entry, the original and four copies of the summons must be filed. When the action includes protests denied at more than one port of entry, an additional copy of the summons must be filed at the same time for the protests denied at each such additional port of entry.

(As amended July 23, 1993, eff. July 23, 1993; Nov. 29, 2005, eff. Jan. 1, 2006.)

Form 1A

A Notice of Lawsuit and Request for Waiver of Service of Summons which, as previously prescribed by Rule 4(d), shall be addressed directly to a defendant and sent by first-class mail or other reliable means. The defendant shall be allowed a reasonable period of time to return the waiver (Form 1B).

Plaintiff shall provide the defendant with a stamped and addressed return envelope. Plaintiff also shall provide the defendant with a copy of the waiver for defendant's records.

Upon receipt of the signed waiver, plaintiff shall file the waiver with the court.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district in the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 1B

A Waiver of Service of Summons which, as prescribed in Rule 4(d), shall be returned to a plaintiff who has requested a defendant to waive service.

If a defendant, after being notified on an action and asked to waive service fails to do so, that defendant will be required to bear the cost of service unless good cause can be shown for its failure to sign and return the waiver.

If the waiver is timely returned by the defendant, that defendant, if located within any judicial district of the United States, is not required to serve an answer until 60 days after the date on which the request for the waiver was sent.

(Added October 5, 1994, eff. Jan. 1, 1995.)

Form 2

This form of summons is to be used only in those actions described in 28 U.S.C. § 1581(b).

The summons must be filed together with a $350 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

The summons form (copies of which may be obtained from the office of the clerk) consists of two pages. The first page is to be completed with the required information pertaining to the entry involved in the action. The second page is to be completed with the required information pertaining to the administrative decisions contested in the action.

When one action includes entries involving one consignee and one port of entry, the original and five copies of the summons must be filed. When the action includes entries involving more than one consignee or more than one port of entry, an additional copy of the summons must be filed at the same time for each such additional consignee and each such additional port of entry.

(As amended July 23, 1993, eff. July 23, 1993; December 18, 2001, eff. April 1, 2002; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006.)

Form 3

This form of summons is to be used only in those actions described in 28 U.S.C. § 1581(c). It is to be used both: (1) when the action is commenced by filing a summons only (i.e., to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930; and (2) when the action is commenced by filing concurrently a summons and a complaint (i.e., to contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930).

The summons must be filed with a $350 filing fee, a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13).

When the clerk of the court is required to make service of the summons (i.e., those actions commenced by filing a summons only), the original and one copy of the summons must be filed with an additional copy for each defendant to be served; and the back of the summons must list the complete name and mailing address of each defendant to be served.

When the plaintiff is required to make service of the summons (i.e., those actions commenced by filing concurrently a summons and a complaint), the original and one copy of the summons must be filed with proof of service. Before making service of the summons, plaintiff must obtain a court number from the office of the clerk and endorse the number on the summons. For this purpose, a court number may be assigned to the action and obtained by telephone request, but in no event shall a court number be obtained from the office of the clerk more than 24 hours prior to the service of the summons.

(As amended July 21, 1986, eff. Oct. 1, 1986; July 23, 1993, eff. July 23, 1993; Aug. 29, 2000, eff. Jan.1, 2001; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006.)

Form 4

This form of summons is to be used in all actions other than those actions in which the form of summons to be used is Form 1, 2, or 3.

The original and one copy of the summons must be filed with proof of service, a $350 filing fee, except that a $25 filing fee shall be paid when the action is one described in 28 U.S.C. § 1581(d)(1), a completed Information Statement (Form 5), and a completed Disclosure of Corporate Affiliation and Financial Interest (Form 13). Before making service of the summons, plaintiff must obtain a court number from the office of the clerk and endorse the number on the summons. For this purpose, a court number may be assigned to the action and obtained by telephone request, but in no event shall a court number be obtained from the office of the clerk more than 24 hours prior to the service of the summons.

(As amended July 23, 1993, eff. July 23, 1993; December 18, 2001, eff. April 1, 2002; Nov. 29, 2005, eff. Jan. 1, 2006; Mar. 21, 2006, eff. Apr. 10, 2006.)

Form 5

The Information Statement, which must be filed when an action is commenced, is a form available from the office of the clerk. The original and a sufficient number of copies for service (when service is to be made by the office of the clerk) of the completed Information Statement must be filed.

(As amended Aug. 29, 2000, eff. Jan. 1, 2001; Nov. 29, 2005, eff. Jan. 1, 2006.)

Form 6

The original and one copy of a Request for Trial must be filed after service as prescribed in Rule 40(a).

After receipt of a Request for Trial and any opposition to the request, the court will designate the date and place for trial. As prescribed in Rule 77(c), the judge to whom the action is assigned will designate the date of the trial to be held at, or continued to, New York City; and the chief judge will designate the place and date of the trial to be held at, or continued to, any place other than New York City.

After receipt of a request for a trial at a place other than New York City and any opposition to the request, the chief judge may issue an order. The order, which will set the place and date of, and designate a judge to preside at, the trial will be issued to the parties by the clerk of the court at least 15 days before the scheduled date, or such shorter time as the chief judge may deem reasonable.

(As amended July 23, 1993, eff. July 23, 1993.)

Form 7

In an action commenced under 28 U.S.C. § 1581(a), 1581(b) or 1582, a Notice of Dismissal which, as prescribed by Rule 41(a)(1)(A), may be filed by plaintiff at any time before service of an answer or motion for summary judgment, must be substantially in the form set forth in Form 7, and must include for each action noticed for dismissal: the court number; and the name of the plaintiff. In addition, in an action commenced under section 1581(a) or (b), the plaintiff is to include the protest number and the entry number, if applicable. In an action commenced under section 1582, the plaintiff also shall include the claim number, if applicable.

A Notice of Dismissal may include, on an attached schedule, more than one action.

(As amended July 23, 1993, eff. July 23, 1993; Dec. 18, 2001, eff. Apr.1, 2002.)

Form 7A

In an action commenced other than under 28 U.S.C. § 1581(a), 1581(b) or 1582, a Notice of Dismissal which, as prescribed by Rule 41(a)(1)(A), may be filed by plaintiff at any time before service of an answer or motion for summary judgment, must be substantially in the form set forth in Form 7A, and must include for each action noticed for dismissal the court number and the name of the plaintiff.

(As added Dec. 18, 2001, eff. Apr.1, 2002.)

Form 8

In an action commenced under 28 U.S.C. § 1581(a), 1581(b) or 1582, a Stipulation of Dismissal which, as prescribed by Rule 41(a)(1)(B), may be filed by plaintiff, must be substantially in the form set forth in Form 8, and must include for each action stipulated for dismissal: the court number; and the name of the plaintiff. In addition, in an action commenced under section 1581(a) or (b), the plaintiff is to include the protest number and the entry number, if applicable. In an action commenced under section 1582, the plaintiff also shall include the claim number, if applicable.

A Stipulation of Dismissal may include, on an attached schedule, more than one action.

(As amended July 23, 1993, eff. July 23, 1993; Dec. 18, 2001, eff. Apr.1, 2002.)

Form 8A

In an action commenced other than under 28 U.S.C. § 1581(a), 1581(b) or 1582, a Stipulation of Dismissal which, as prescribed by Rule 41(a)(1)(B), may be filed by plaintiff, must be substantially in the form set forth in Form 8, and must include for each action stipulated for dismissal the court number and the name of the plaintiff.

(As added Dec. 18, 2001, eff. Apr.1, 2002.)

Form 9

As prescribed in Rule 58.1, an action described in 28 U.S.C. § 1581 (a) or (b) may be stipulated for judgment on an agreed statement of facts.

The proposed stipulated judgment on agreed statement of facts shall be substantially in the form set forth in Form 9, with appropriate additions and deletions if the action does not involve valuation or classification. The proposed stipulated judgment on agreed statement of facts shall be filled out in accordance with the Endnotes found following Form 9.

(Added July 23, 1993, eff. July 23, 1993; amended Mar. 25, 1998, eff. July 1, 1998)

Form 10

An Application for Admission to Practice which, as prescribed by Rule 74(b)(1),must be completed and filed with the clerk of the court. The application must be on Form 10, which can be obtained from the Office of the Clerk of the Court. The application must include the name, the residential and office address of the applicant, and the name and address of the applicant's employer, among other essential contact information. Additionally, the application must include information pertaining to the applicant's bar admissions, good standing, and suspension and disbarment proceedings, if any.

An application may be made by (1) written motion or (2) oral motion. When the application is made upon written motion, it must be accompanied by a certificate of a judge or a clerk of any of the courts specified in Rule 74(a). The certificate must have been issued no earlier than 90 days prior to the date of the application and must state that the applicant is a member in good standing of the bar of that court.

When the application is made upon oral motion, the applicant must file the statement of the sponsoring attorney, who is a member of the bar of this court or of the bar of the Supreme Court of the United States. In addition, if the sponsoring attorney has known the applicant for less than one year, the applicant must include a certificate of a judge or a clerk of any of the courts specified in Rule 74(a), which was issued no earlier than 90 days prior to the date of the application and which must state that the applicant is a member in good standing of the bar of that court. When the application is made by oral motion, the attorney is not admitted to the Court until the oath specified in Rule 74(a) is administered. The applicant is required to sign a declaration, under penalties of perjury, that the statements made by the applicant are true and correct.

(As amended July 23, 1993, eff. July 23, 1993; Mar. 25, 1998, eff. July 1, 1998; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 28, 2006, eff. Jan. 1, 2007; Nov. 25, 2008, eff. Jan. 1, 2009.)

Form 11

A Notice of Appearance which, as prescribed by Rule 75(b)(2), shall be served by an attorney authorized to appear in the action. The attorney shall serve a separate notice for each action. The notice shall be served in all instances except those specified in Rule 75(b)(1). The notice shall be substantially in the form set forth in Form 11.

An appearance may be made by an individual attorney or by a firm of attorneys. If an appearance is made by a firm of attorneys, the individual attorney responsible for the litigation shall be designated. The notice should include the name of the attorney, and the name, address and telephone number of the firm.

Whenever there is any change in the name of an attorney of record, the attorney's address or telephone number, a new notice of appearance for each action shall be promptly served upon the other parties and filed with the court. The notice shall be substantially in the form as set forth in Form 11.

(As added July 23, 1993, eff. July 23, 1993.)

Form 12

A Notice of Substitution of Attorney which, as prescribed by Rule 75(c), must be served by the party desiring to substitute an attorney. The service must be to the prior attorney of record and to all other parties. The notice shall be substantially in the form set forth in Form 12.

The notice should include the name of the substituted attorney, the prior attorney of record, and shall be signed by the substituting party. The notice also shall include a notice of appearance by the substituted attorney.

(As added July 23, 1993, eff. July 23, 1993.)

Form 13

A Disclosure of Corporate Affiliation and Financial Interest which, as prescribed by 28 U.S.C. § 455, must be made when a corporation is a party to any action and the corporation as a subsidiary or affiliate of any publicly owned American or foreign corporation not named in the action. The attorney of record must notify the clerk of the court in writing of the identity of the parent or affiliate corporation and the relationship of the party and the parent or affiliate corporation.

A Disclosure must be made in all actions described in 28 U.S.C. § 1581. In an action described in 28 U.S.C. § 1581(a) or (b), the attorney of record for the plaintiff also shall notify the clerk of the court in writing of the identity of the ultimate consignee or real party in interest if different from the named plaintiff.

A Disclosure must be made when a trade association is a party to the action. The attorney for the trade association shall notify the clerk of the court in writing of the identity of each publicly-owned American or foreign member of the trade association.

If any trade association or corporate party seeks to intervene or appear as *amicus curiae*, the entity's attorney is also required to comply with the notification requirements set forth above.

The required disclosure notification shall be made on Form 13. The form will be provided by the office of the clerk of the court when the first pleading or other paper is filed by a party or when a motion to intervene or appear as *amicus curiae* is filed.

(As added July 23, 1993, eff. July 23, 1993.)

Form 14 [Reserved]

(As added July 23, 1993, eff. July 23, 1993; and amended Oct. 5, 1994, eff. Jan. 1, 1995.)

Form 15

An Application for Attorney's Fees and Other Expenses Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and Rule 54.1, must be filed within 30 days after the date of entry by the court of a final judgment.

The Application for Attorney's Fees and Expenses shall be substantially in the form set forth in Form 15. As prescribed by Rule 54.1, the application shall contain a citation to the authority which authorizes an award. The application shall indicate the manner in which the prerequisites for an award have been fulfilled. Each application shall also contain a statement, under oath, which specifies (1) the nature of each service rendered; (2) the amount of time expended in rendering each type of service; and (3) the customary charge for each type of service rendered.

(Added July 23, 1993, eff. July 23, 1993; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Forms 16-1 through 16-5

An Order of Deposit and Investment directing the clerk to deposit money in an interest-bearing account, which as prescribed by Rule 67.1, shall be filed by delivery or by certified mail, return receipt requested, which the clerk or financial deputy who will inspect the proposed order for proper form and content prior to signature by the judge for whom the proposed order was prepared. The proposed order shall be substantially in the form set forth in Form 16-1, 16-2, 16-3, 16-4, or 16-5.

Any proposed order that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the court pursuant to 28 U.S.C. § 2401 also shall contain all information in accordance with Rule 67.1(b).

(Added July 23, 1993, eff. July 23, 1993; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 17

As provided in Rule 73.2(c), the filing of a properly executed Business Proprietary Information Certification with the court entitles an attorney representing a party in an action brought pursuant to 28 U.S.C. § 1581(c) to have access to business proprietary information in the administrative record. Further, as also provided in Rule 73.2(c), the filing of a properly executed Business Proprietary Information Certification (including the required additional certifications as detailed in Form 17) entitles a non-attorney consultant to have access to business proprietary information in such an action. The Business Proprietary Information Certification shall be substantially in the form set forth in Form 17. Assuming that the properly executed Certification is timely filed, obtaining the consent of the other parties is not necessary for individuals who were subject to the administrative protective order in the underlying proceeding. Form 17 and the provisions referred to in the form are designed specifically for use in an action brought pursuant to 28 U.S.C. § 1581(c), and are not intended for use in other actions.

(Added Jan. 25, 2000, eff. May 1, 2000; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 18

As provided in Rule 73.2(c), in an action brought pursuant to 28 U.S.C. § 1581(c) in which a party has access to business proprietary information, a Notification of Termination of Access to Business Proprietary Information Pursuant to Rule 73.2(c) is to be utilized to inform the court and the other parties of the attorneys and consultants whose access to business proprietary information has been terminated. As also provided in Rule 73.2(c), the removal of parties from access to business proprietary information is, to the extent practicable, to be a matter of notice. Use of a standard form is intended to facilitate that process and further ease the burden on any parties who are subject to the terms of Rule 73.2(c) and the Appendix on Access to Business Proprietary Information Pursuant to Rule 73.2(c). The Notification of Termination of Access to Business Proprietary Information Pursuant to Rule 73.2(c) shall be substantially in the form set forth in Form 18.

(Added Jan. 25, 2000, eff. May 1, 2000; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 19

Rule 26(f) requires the parties to confer "as soon as practicable after the filing of a complaint, and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)..., and submi[t] to the court within 14 days after the conference a written report...." Form 19 illustrates the type of report the parties are expected to submit to the court, and it can be used as a checklist of items to be discussed at the conference.

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

COMPLAINT ALLEGATIONS

The forms of allegations set out below are intended to indicate the allegations which should be included in the particular civil actions.

Actions Described in 28 U.S.C. § 1581 (a) or (b)

(a) General: The complaint in a civil action should set forth:

(1) a statement of the basis of the court's jurisdiction;

(2) a statement of plaintiff's standing in the action;

(3) a statement that the protest was timely filed;

(4) a statement, when appropriate, that all liquidated duties have been paid;

(5) a description of the merchandise involved;

(6) a specification of the contested customs decision or decisions; and

(7) a demand for judgment for the relief which plaintiff seeks.

(b) Value: If the contested customs decision involves the value of merchandise, the complaint should also set forth:

(1) the date and country of exportation;

(2) a statement of the appraised value or values;

(3) a statement of the claimed statutory basis or bases of value;

(4) a statement of the amount or amounts of the unit value claimed to be the correct value or values, or a statement of how the claimed value may be computed; and

(5) concise allegations of plaintiff's contentions of fact and law in support of the above.

(c) Classification: If the contested customs decision involves the classification of merchandise, the complaint should also set forth:

(1) the item number of the Tariff Schedules of the United States, or the heading or subheading of the Harmonized Tariff Schedules of the United States, including all modifications and amendments thereof, under which the merchandise was classified, and the rate of duty imposed;

(2) the tariff description and the item number of the Tariff Schedules of the United States, or the heading or subheading of the Harmonized Tariff Schedules of the United States, including all modifications and amendments thereof, under which the merchandise is claimed to be properly subject to classification, and the rate of duty claimed to be applicable; and

(3) concise allegations of plaintiff's contentions of fact and law in support of the above.

(d) Other: If the contested customs decision involves any other administrative decision, the complaint should also set forth:

(1) a statement of the nature of the alleged error in the decision; and

(2) concise allegations of plaintiff's contentions of fact and law in support of plaintiff's position.

(As amended July 23, 1993, eff. July 23, 1993.)

TRANSCRIPT ORDER FORM

Submitted to: Clerk of the Court, United States Court of International Trade

COURT NO.:_____ **CASE CAPTION** _____

DATE(S) OF PROCEEDING	TRIAL OR HEARING	REPORTER OR ECRO	JUDGE
_____	_____	_____	_____
_____	_____	_____	_____

TYPE OF TRANSCRIPT	COST PER PAGE (Original)	First Copy to Each Party	Each Add'l Copy To Same Party
[ ] Ordinary Transcript (30 day) A transcript to be delivered within thirty (30) calendar days after receipt of an order.	$3.65	$ .90	$ .60
[ ] 14-Day Transcript A transcript to be delivered within fourteen (14) Calendar days after receipt of an order.	$4.25	$ .90	$ .60
[ ] Expedited Transcript (7 day) A transcript to be delivered within (7) calendar days after receipt of an order.	$4.85	$ .90	$ .60
[ ] Daily Transcript Transcript to be delivered after adjournment and before the usual opening hour of the Court on the following morning whether or not it actually is a Court day.	$6.05	$1.20	$ .90
[ ] Hourly Transcript Transcript to be delivered within (2) hours after receipt of order.	$7.25	$1.20	$ .90
[ ] Realtime Transcript A draft unedited transcript produced to be delivered electronically during proceedings or immediately following adjournment.	$3.05	$1.20	$ .90

Note: Daily, Hourly & Realtime transcription services require that arrangements be made for such services at least one week prior to actual proceedings

TRANSCRIPT ORDERED BY:

FIRM NAME: _____

ADDRESS: _____

TELEPHONE NO.: _____ ATTORNEY FOR: _____

SIGNATURE: _____ PRINTED NAME: _____

[ ] Cost of transcript being shared. See Additional trancript order form(s).

NOTE: THE TRANSCRIPT SERVICE WILL SEND YOU A COPY OF THE TRANSCRIPT WITH AN INVOICE. PAYMENT MUST BE MADE DIRECTLY TO THE TRANSCRIPTION SERVICE.

(THIS SECTION TO BE COMPLETED BY COURT)

1. **The transcript was ordered [ ] by mail [ ] FAX [ ] or in person on: _____.**

2. **Number of trial/hearing days ____: Estimated number of transcript pages ___ .**

3. **Estimated cost _____ for [ ] Ordinary, [ ] Expedited, [ ] Daily,.[ ] Hourly.**

4. **Estimated completion date _____.**

5. **Date forwarded to Transcription service _____.**

6. **If expedited transcript ordered, Federal Express or DHL Airbill No. _____ .**

DATE: _____ COURT REPORTER/ECRO: _____ .

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 1**

Plaintiff, **v.** **UNITED STATES,** **Defendant.**

S U M M O N S

TO: The Attorney General and the Secretary of Homeland Security:

PLEASE TAKE NOTICE that a civil action has been commenced pursuant to 28 U.S.C. § 1581(a) to contest denial of the protest specified below (and the protests listed in the attached schedule).

/s/ Tina Potuto Kimble
Clerk of the Court

PROTEST

Port of Entry:	Date Protest Filed:
Protest Number:	Date Protest Denied:
Importer:	
Category of Merchandise:	

ENTRIES INVOLVED IN ABOVE PROTEST

Entry Number	Date of Entry	Date of Liquidation	Entry Number	Date of Entry	Date of Liquidation

Port Director,

Address of Customs Port in Which Protest was Denied

Name, Address and Telephone Number of Plaintiff's Attorney

CONTESTED ADMINISTRATIVE DECISION

Appraised Value of Merchandise		
	Statutory Basis	Statement of Value
Appraised:		
Protest Claim:		

Classification, Rate or Amount				
	Assessed		Protest Claim	
Merchandise	Paragraph or Item Number	Rate	Paragraph or Item Number	Rate

Other

State Specifically the Decision [as Described in 19 U.S.C. § 1514(a)] and the Protest Claim:

The issue which was common to all such denied protests:

Every denied protest included in this civil action was filed by the same above-named importer, or by an authorized person in the importer's behalf. The category of merchandise specified above was involved in each entry of merchandise included in every such denied protest. The issue or issues stated above were common to all such denied protests. All such protests were filed and denied as prescribed by law. All liquidated duties, charges or exactions have been paid, and were paid at the port of entry unless otherwise shown.

_____

Signature of Plaintiff's Attorney

_____

Date

SCHEDULE OF PROTESTS

_____
Port of Entry

Protest Number	Date Protest Filed	Date Protest Denied	Entry Number	Date of Entry	Date of Liquidation

Port Director of Customs,

If the port of entry shown above is different from the port of entry shown on the first page of the summons, the address of the Port Director for such different port of entry must be given in the space provided.

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007.)

FORM 1A

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: _____(A)*_____
as _____(B)___ of _____(C)_____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States Court of International Trade and has been assigned Court Number __(D)__

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive the signed copy of the waiver within __(E)___ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Rules of the Court of International Trade and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the reverse side (or at the foot) of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this ___ day of _____,_____

_____
Signature of Plaintiff's Attorney or Unrepresented Plaintiff

PRACTICE COMMENT: The waiver of service provision under Rule 4(d) does not apply to the United States government. Practitioners also should be aware that failure to waive service in the appropriate circumstances may result in the assessment of the costs of service of a summons and complaint.

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*Notes:
(A) Name of individual defendant (or name of officer or agent of corporate defendant)
(B) Title, or other relationship of individual to corporate defendant
(C) Name of corporate defendant, if any
(D) Court Number of action
(E) Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

(Added Oct. 5, 1994, eff. Jan. 1, 1995; Nov. 14, 1997, eff. Jan.1, 1998.)

FORM 1B

UNITED STATES COURT OF INTERNATIONAL TRADE

W A I V E R O F S E R V I C E O F S U M M O N S

TO: _____
(name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of _____, which is
(caption of action)
Court Number _____ in the United States Court of International Trade.
(docket number)
I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____, or within
(date request was sent)
90 days after that date if the request was sent outside the United States.

_____ _____
Date Signature

Printed/typed name:_____

[as _____]
[of _____]

To be printed on reverse side of the waiver form or set forth at the foot of the form:

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the court lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

(Added Oct. 5, 1994, eff. Jan. 1, 1995 and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 2**

Plaintiff, v. UNITED STATES, Defendant.

S U M M O N S

TO: The Attorney General, the Secretary of Homeland Security and _____, Party in Interest.

PLEASE TAKE NOTICE that a civil action has been commenced pursuant to 28 U.S.C. § 1581(b) to contest a decision of the Secretary of the Treasury made pursuant to section 516(c) of the Tariff Act of 1930 [19 U.S.C. § 1516(c)].

/s/Tina Potuto Kimble
Clerk of the Court

E N T R Y

Port of Entry	Entry Number	Date of Entry	Date of Liquidation	Date of Mailing of Notice of Liquidation
Description of Merchandise		Name and Address of Consignee or Agent		

Port Director,

Address of Customs Port
From Which Notice Was Given

Name, Address and Telephone Number
of Plaintiff's Attorney

CONTESTED DECISION

Appraised Value of Merchandise	
Statutory Basis	Statement of Value
Appraised:	
Claim:	

Classification and Rate			
Assessed		Claim	
Item Number	Rate	Item Number	Rate

Signature of Plaintiff's Attorney

Date

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007).

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 3**

Plaintiff, v. UNITED STATES, Defendant.	**S U M M O N S**

TO: The Attorney General, the Department of Commerce, and/or the United States International Trade Commission:

PLEASE TAKE NOTICE that a civil action has been commenced pursuant to 28 U.S.C. § 1581(c) to contest the determination described below.

/s/Tina Potuto Kimble
Clerk of the Court

---

1. _____
(Name and standing of plaintiff)

2. _____
_____
_____
(Brief description of contested determination)

3. _____
(Date of determination)

4. _____
(If applicable, date of publication in Federal Register of notice of contested determination)

Name, Address and Telephone Number
of Plaintiff's Attorney

_____
Signature of Plaintiff's Attorney

_____
Date

SEE REVERSE SIDE

SERVICE OF SUMMONS BY THE CLERK

If this action, described in 28 U.S.C. § 1581(c), is commenced to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930, the action is commenced by filing a summons only, and the clerk of the court is required to make service of the summons. For that purpose, list below the complete name and mailing address of each defendant to be served.

(As amended July 21, 1986, eff. Oct. 1, 1986; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007).

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 4**

Plaintiff, v. UNITED STATES, Defendant.	**S U M M O N S**

TO: The Above-Named Defendant:

You are hereby summoned and required to serve upon plaintiff's attorney, whose name and address are set out below, an answer to the complaint which is herewith served upon you, within 20* days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

/s/Tina Potuto Kimble
Clerk of the Court

Name, Address and Telephone Number
of Plaintiff's Attorney

_____
Signature of Plaintiff's Attorney

_____
Date

* If the United States or an officer or agency thereof is a defendant, the time to be inserted as to it is 60 days, except that in an action described in 28 U.S.C. § 1581(f) the time to be inserted is 10 days.

(As amended Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007).

UNITED STATES COURT OF INTERNATIONAL TRADE

INFORMATION STATEMENT

(*Place an "X" in applicable [ ]*)

PLAINTIFF: _____ **ATTORNEY** (*Name, Address, Telephone No.*):	**PRECEDENCE** If the action is to be given precedence under Rule 3(g), indicate the applicable paragraph of that section: [ ] (1) [ ] (3) [ ] (5) [ ] (2) [ ] (4) [ ] (6)

CONSTITUTIONAL ISSUE - 28 U.S.C. § 255

If this action raises an issue of the constitutionality of an Act of Congress, a proclamation of the President or an Executive order, check this box: [ ]

J U R I S D I C T I O N

28 U.S.C. § 1581(a) - Tariff Act of 1930, Section 515 - 19 U.S.C. § 1515

[ ] Appraisal [ ] Classification [ ] Charges or Exactions [ ] Vessel Repairs
[ ] Exclusion [ ] Liquidation [ ] Drawback
[ ] Refusal to Reliquidate [ ] Rate of Duty [ ] Redelivery

28 U.S.C. § 1581(b) - Tariff Act of 1930, Section 516 - 19 U.S.C. § 1516

[ ] Appraisal [ ] Classification [ ] Rate of Duty

28 U.S.C. § 1581(c) - Tariff Act of 1930, Section 516A(a)(1), (a)(2) or (a)(3) - 19 U.S.C. §1516a (*Provide a brief description of the administrative determination you are contesting, including the relevant* ***Federal Register*** *citation(s) and the product(s) involved in the determination. For Section 516A(a)(1) or (a)(2), cite the specific subparagraph and clause of the section.*)

Subparagraph and Clause _____ Agency_____

Federal Register Cite(s)_____

Product(s)

28 U.S.C. § 1581(d) - Trade Act of 1974 - 19 U.S.C. §§ 2273, 2341, 2401b

[ ] U.S. Secretary of Labor [ ] U.S. Secretary of Commerce [ ] U.S. Secretary of Agriculture

28 U.S.C. § 1581(e) - Trade Agreements Act of 1979, Section 305(b)(1) - 19 U.S.C. § 2515
(*Provide a brief statement of the final determination to be reviewed.*)

28 U.S.C. § 1581(f) - Tariff Act of 1930, Section 777(c)(2) - 19 U.S.C. § 1677f(c)(2)

Agency: [ ] U.S. International Trade Commission [ ] Administering Authority

28 U.S.C. § 1581(g) - Tariff Act of 1930, Section 641 - 19 U.S.C. § 1641 - or Section 499 - 19 U.S.C. § 1499

[ ] Sec. 641(b)(2) [ ] Sec. 641(b)(3) [ ] Sec. 641(c)(1) [ ] Sec. 641(b)(5)
[ ] Sec. 641(c)(2) [ ] Sec. 641(d)(2)(B) [ ] Sec. 499(b)

(Continued on reverse side)

J U R I S D I C T I O N
(Continued)

28 U.S.C. § 1581(h) - Ruling relating to:

[ ] Classification [ ] Valuation [ ] Restricted Merchandise
[ ] Rate of Duty [ ] Marking [ ] Entry Requirements
[ ] Drawbacks [ ] Vessel Repairs [ ] Other: _____

28 U.S.C. § 1581(i) - (*Cite any applicable statute and provide a brief statement describing jurisdictional basis.*)

28 U.S.C. § 1582 - Actions Commenced by the United States

[ ] (1) Recover civil penalty under Tariff Act of 1930:
[ ] Sec. 592 [ ] Sec. 593A [ ] Sec. 641(b)(6)
[ ] Sec. 641(d)(2)(A) [ ] Sec. 704(i)(2) [ ] Sec. 734(i)(2)
[ ] (2) Recover upon a bond
[ ] (3) Recover customs duties

R E L A T E D C A S E (S)

To your knowledge, does this action involve a common question of law or fact with any other action(s) previously decided or now pending?

	PLAINTIFF	COURT NUMBER	JUDGE
[ ] Decided:			
[ ] Pending:			

(Attach additional sheets, if necessary.)

(As amended, eff. Jan. 1, 1985; Jan. 25, 2000, eff. May 1, 2000; May 25, 2004, eff. Sept. 1, 2004; Nov. 29, 2005, eff. Jan. 1, 2006; Nov. 28, 2006, eff. Jan. 1, 2007.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 6**

Plaintiff, v. Defendant.

Court No.:

REQUEST FOR TRIAL

PLEASE TAKE NOTICE that plaintiff (defendant) desires to try this action. It is requested that trial be held on or about _____
(date)
at _____.
(place)

Plaintiff (defendant) has conferred with the opposing party [parties] concerning the requested date and place of trial.

1. Allegation that all parties concur in the request, or names of the party or parties who do not concur.

2. Allegation that party requesting trial has completed discovery, or will complete discovery before the requested date of trial.

3. Statement of reasons why trial has been requested at the date and place set forth in the request.

4. Estimate of the number of witnesses and the time required by the party filing the request for examination of its witnesses.

Dated: _____ _____
Attorney

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

(As amended May 25, 2004, eff. Sept. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 7**

Plaintiff, v. Defendant.	Court No. and Attached Schedule

NOTICE OF DISMISSAL

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 41(a)(1)(A) of the Rules of the United States Court of International Trade, hereby dismisses the action(s) listed on the attached schedule.

Dated: _____

_____
Attorney for Plaintiff

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

Schedule to Notice of Dismissal

Court Number(s)	Plaintiff(s) Name	Protest Number(s) or Claim Number(s) (if applicable)	Entry Number(s) (if applicable)

Order of Dismissal

The actions listed on the schedule set forth above, having been voluntarily noticed for dismissal by plaintiff, are dismissed.

Dated: _____

Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

(As amended Dec. 18, 2001, eff. Apr.1, 2002.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 7A**

Plaintiff, v. Defendant.	Court No.

NOTICE OF DISMISSAL

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 41(a)(1)(A) of the Rules of the United States Court of International Trade, hereby dismisses this action.

Dated: _____

_____
Attorney for Plaintiff

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

Order of Dismissal

This action, having been voluntarily noticed for dismissal by plaintiff, is dismissed.

Dated: _____ Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

Schedule to Notice of Dismissal

Court Number(s)	Plaintiff(s) Name

Order of Dismissal

This action and those listed on the schedule set forth above, having been voluntarily noticed for dismissal by plaintiff, are dismissed.

Dated: _____

Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

(As added Dec. 18, 2001, eff. Apr. 1, 2002.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 8**

Plaintiff, v. Defendant.	Court No.

STIPULATION OF DISMISSAL

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 41(a)(1)(B) of the Rules of the United States Court of International Trade, having filed a stipulation of dismissal signed by all parties who have appeared in this action and those actions listed on the attached schedule hereby dismisses this action and those listed on the attached schedule.

Dated: _____

_____
Attorney for Plaintiff

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

_____
Attorney for Defendant

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

Schedule to Stipulation of Dismissal

Court Number	Plaintiff(s) Name	Protest Number(s) or Claim Number(s) (if applicable)	Entry Number(s) (if applicable)

Order of Dismissal

This action and those listed on the schedule set forth above, having been voluntarily stipulated for dismissal by all parties having appeared in the action, are dismissed.

Dated: _____

Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

(As amended Dec. 18, 2001, eff. Apr.1, 2002.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 8A**

Plaintiff, v. Defendant.	Court No.

STIPULATION OF DISMISSAL

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 41(a)(1)(B) of the Rules of the United States Court of International Trade, having filed a stipulation of dismissal signed by all parties who have appeared in this action and those actions listed on the attached schedule hereby dismisses this action and those listed on the attached schedule.

Dated: _____

_____
Attorney for Plaintiff

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

_____
Attorney for Defendant

_____
Street Address

_____
City, State and Zip Code

_____
Telephone No.

Schedule to Stipulation of Dismissal

Court Number(s)	Plaintiff(s) Name

Order of Dismissal

This action and those listed on the schedule set forth above, having been voluntarily stipulated for dismissal by all parties having appeared in the action, are dismissed.

Dated: _____

Clerk, U. S. Court of International Trade

By: _____
Deputy Clerk

(As added Dec. 18, 2001, eff. Apr.1, 2002.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 9**

Plaintiff[s], v. THE UNITED STATES, Defendant.	COURT NO[S]. ,[etc.**[1]**] See attached Schedule[s]**[2]** Before: (Insert name of Judge if assigned) Port[s]: [List applicable port[s] of entry]**[3]**

STIPULATED JUDGMENT ON AGREED STATEMENT OF FACTS

[This action] [These actions], as prescribed by Rule 58.1 of the Rules of the United States Court of International Trade, [is] [are] stipulated for judgment on the following agreed statement of facts in which the parties agree that:

1. The protest[s] involved here [was] [were] filed and the action[s] involved here [was] [were] commenced within the time provided by law, and all liquidated duties, charges or exactions have been paid prior to the filing of the summons(es).

2. The imported merchandise covered by the [entry] [entries] set forth on Schedule ["A"] ["B"], [4] attached, consists of [(Describe imported merchandise. The description should be sufficiently specific to enable the Bureau of Customs and Border Protection to identify the stipulable articles. Appropriate general terms or inclusion of descriptions on Schedule may be used.)]

3. The imported merchandise was classified by the Bureau of Customs and Border Protection or its predecessor, U.S. Customs Service, as [(describe)] under [(insert pertinent tariff provision[s])] at the rate[s] of [(insert tariff rate[s])] [, depending upon the date of entry].[5]

4. The stipulable imported merchandise is classifiable as [(describe)] under [(insert pertinent tariff provision[s]) at the rate[s] of [(insert tariff rate[s])] [, depending upon the date of entry].[6]

5. The imported merchandise, covered by the entries set forth on the attached schedule, which have been marked with the letter[s] [("A")] [and] [("B")][7] and initialed ____ [8] by _____[9], of the Bureau of Customs and Border Protection, [10] is stipulable in accordance with this agreement.

6. Any refunds payable by reason of this judgment are to be paid with any interest provided for by law.

7. All other claims and non-stipulable entries[11] are abandoned.

Court No[s]. [insert
lead number [etc.])].
See attached Schedule[s]

Respectfully submitted,

By: _____
Attorney[s] for Plaintiff[s]
[(Insert name of firm, address &
telephone number)]

Assistant Attorney General
Civil Division

By: _____
[(Insert name of Attorney in Charge)]
Attorney in Charge
International Trade Field Office

By: _____
[(Insert name of applicable DOJ attorney)][12]
Dept. of Justice, Civil Division
Commercial Litigation Branch
26 Federal Plaza
New York, New York 10278
Tel.: (212) 264-9230
Attorneys for the United States

IT IS HEREBY ORDERED that [this action] [these actions] [is] [are] decided and this final judgment is to be entered by the Clerk of this Court; the appropriate Bureau of Customs and Border Protection officials shall [reliquidate the] [entry] [entries] [and][13] make refund in accordance with the stipulation of the parties set forth above.

_____
Judge [insert name]

Date: _____

SCHEDULE [A] [B] TO STIPULATED JUDGMENT[14]

Port: [(insert port of entry)]

File or Assignment	Court #	Protest #	Entry #	Description of Merchandise[15]

(Date Summons Filed)[16]

E N D N O T E S

Endnotes are for guidance in preparation of document and are not part of the final document. Material in brackets should be selected and/or modified depending on whether singular or plural text, et cetera, is applicable, and inserted into the text of the document; the brackets themselves are ordinarily not part of the final document.

1. If more than one case.

2. The Schedule should contain, the court number[s], the date[s] of the filing of the summons[es], the protest number[s] and the entry number[s]. The civil actions should be arranged in ascending order, and the name of the Judge assigned, and/or reserve or suspension file in which the case resides, should be set forth.

3. If more than one port of entry is covered by a single stipulated judgment ("stipulation") covering a civil action, separate pages of the schedule (see n. 2) should be used for listing each different port and its applicable entries and protests. Civil actions involving different ports of entry should not normally be combined on a single stipulation, since the need to consider the entries at the ports involved will usually delay the stipulation until all ports respond; in such instances, it is preferable that separate stipulations be prepared.

4. See n. 3.

5. If appropriate, as an addition or an alternative:

> 3. The imported merchandise was appraised by the Bureau of Customs and Border Protection or its predecessor, U.S. Customs Service, upon the basis of [(describe and insert statutory provision[s])] at a value of [(describe)].
>
> The use of the term "Bureau of Customs and Border Protection"or its predecessor, "U.S. Customs Service," is preferable over any attempt to specify which agency took the action. Responsibility for the implementation of the court's judgment, as provided for later in the stipulation, now rests with the Bureau of Customs and Border Protection.

6. If appropriate, as an addition or an alternative:

> 4. Plaintiff claims that the imported merchandise should be appraised upon the basis of [(describe and insert statutory provision[s]) at a value of . . . (describe)].

7. Different letters should be used if the entries were previously marked on a different stipulation with the letter "A" or if the stipulation covers merchandise stipulated under more than one tariff provision and/or at different appraised values. More than one letter is required to distinguish merchandise stipulable under different provisions or at different appraised values.

8. Initials to be inserted by the Government.

9. See n. 8. Name of person to be inserted by the Government.

10. If appropriate, insert:

> is the same [similar] in all material respects as the merchandise in [(insert complete case citation)] and,

11. In the event the civil action[s] covered by the stipulation include[s] non-stipulable entries (e.g., no stipulable merchandise, untimely entries, increased duties not timely paid), such entries should be clearly marked with an asterisk [*] on each page on which they appear, including schedules, with the footnote: "*All claims arising from this entry are abandoned."

12. To be completed by either plaintiff's or defendant's counsel.

13. In most instances the parties will prefer that the refund be effectuated by having the entry[ies] reliquidated; in other instances the parties may agree that a refund should be made without the necessity of reliquidation.

14. See nn. 2 and 3.

15. [(See paragraph 2 of stipulated judgment and include if necessary. Otherwise omit.)]

16. To be inserted below each separate court number.

(As amended, eff. Jan. 1, 1982; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 30, 2003, eff. Jan. 1, 2004.)

FORM 10

UNITED STATES COURT OF INTERNATIONAL TRADE
Office of the Clerk
Admissions Office - Room 299
One Federal Plaza, New York, NY 10278-0001
Telephone: 212-264-2812

APPLICATION FOR ADMISSION TO PRACTICE

PART I - COMPLETED BY APPLICANT

I, _____, hereby apply for admission to practice before the United States Court of International Trade and make the following statements:

1. I reside at:
Residence Address: _____
City: _____ State: _____ Zip: _____County:_____

2. My office contact information is:
Affiliation/Firm: _____
Title (if any): _____ Firm Telephone: _____
Address: _____ Suite/Floor: _____
City: _____ State: _____ Zip: _____
County: _____ E-Mail: _____
Direct Telephone: _____ Fax:_____

3. I hereby certify that I am a member in good standing and eligible to practice before the following courts:

Title of Court	Date of Admission
_____	_____
_____	_____
_____	_____
_____	_____

Have you ever been censured, disbarred or suspended from practice before any court? (Check the applicable answer).

No ❑ (If you answer no, proceed to question 4).

Yes ❑ (If you answer yes, check the applicable answer to the following questions, and attach a separate statement explaining the nature of such actions or proceedings):

Are there any disciplinary proceedings presently pending against you? Yes ❑ No ❑

I did ❑ did not ❑ resign while disciplinary proceedings were pending.

I verify that I am attaching a separate statement explaining the nature of the proceedings. ❑

4. I have enclosed my $50 admission fee.

5. If this application is not submitted upon oral motion, or if submitted upon oral motion and the sponsoring attorney making the motion has not known me for more than one year, I enclose a certificate of a judge or of the clerk of any court specified in USCIT Rule 74 stating that I am a member of the bar of such court and am in good standing therein.
❑ (Check, if applicable) A "certificate of good standing," dated not more than ninety (90) days prior to this application, is attached.

(*Continued on Page 2)*

6. **I, _____, do solemnly swear (or affirm) that I will faithfully conduct myself as an attorney and counselor-at-law of this Court, uprightly and according to law, and that I will support the Constitution of the United States, so help me God.**

I have read and am familiar with the *Rules of the United States Court of International Trade*.

I declare under the penalty of perjury that the foregoing is true and correct.

***Date:* _____ *Signature of Applicant:* _____**

or, if signed outside the United States of America,

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

***Date:* _____ *Signature of Applicant:* _____**

PART II - COMPLETED BY SPONSORING ATTORNEY (if applicable)

I, _____(*insert name of sponsoring attorney)*, a member of the bar of this Court or of the Supreme Court of the United States, move the admission to practice before this Court of _____(*insert name of applicant)*.

I have known the applicant since _____(*insert approximate month and year*) and consider the applicant to be a person of good moral character and in every way qualified to practice as a member of the Bar of this Court.

I have read the application for admission, and, to the best of my knowledge and belief, the statements therein are true.

_____ _____

Signature of Sponsoring Attorney ***Address***

PART III - COMPLETED BY JUDGE

Application for Admission approved on (*date*) _____, at (*place*) _____.

***Signature of Judge*: _____**

(As amended Jan. 1, 1996, eff. Jan. 1, 1996; March 25, 1998, eff. July 1, 1998; Sept. 30, 2003, eff. Jan. 1, 2004; Nov. 28, 2006, eff. Jan. 1, 2007; Nov. 25, 2008, eff. Jan. 1, 2009.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 11**

Plaintiff, v. Defendant.

Court No.:

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that, pursuant to Rule 75(b) of the Rules of the United States Court of International Trade, the undersigned appears as attorney for _____ [plaintiff or defendant], in this action and requests that all papers be served upon him. [The individual attorney, in the undersigned firm, or corporate law department, who is responsible for the litigation is _____.]

Dated: _____ _____
Attorney

_____
Firm

_____
Street Address

_____
City, State and Zip Code

_____
Telephone Number

(As amended May 25, 2004, eff. Sept. 1, 2004.)

Form 12-1

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 12**

Plaintiff, v. Defendant.	Court No.

NOTICE OF SUBSTITUTION OF ATTORNEY

PLEASE TAKE NOTICE that _____ has been substituted as attorney of record for plaintiff [defendant] in this action in place of _____.

Dated: _____

_____
Plaintiff [Defendant]

By: _____

* * * * * * * * * *

PLEASE TAKE FURTHER NOTICE that the undersigned hereby appears in this action as attorney for _____ _____, the plaintiff [defendant] herein, and requests that all papers in connection therewith be served upon him. [The individual attorney, in the undersigned firm, or corporate law department, responsible for the litigation is _____.]

Dated: _____

_____
Attorney

_____
Street Address

_____
City, State and Zip Code

By:_____
New Attorney of Record

FORM 13

UNITED STATES COURT OF INTERNATIONAL TRADE
One Federal Plaza
New York, New York 10278

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

This notification is submitted by_____
(Name of attorney of record)
on behalf of _____in the
matter of _____ v._____,
Court No. _____.

1. If this statement is submitted on behalf of a corporate party, that entity shall identify below all of its publicly-owned companies, any publicly-held company that has a 10% or greater ownership interest in the entity, and any publicly-owned affiliate of the entity, and describe the relationship between the party and each identified company.

_____
_____
_____

2. Indicate whether the party on whose behalf this Form is being filed is[ ] or is not [ ] the real party in interest. If not, identify below the real party in interest.

_____
_____
_____

3. If this statement is submitted on behalf of a trade association, identify below each publicly-owned member of the trade association. (Attach additional pages if necessary.)

_____
_____
_____

_____ _____
(Signature of Attorney) (Date)

SEE REVERSE SIDE

(Added Nov. 4, 1981, eff. Jan. 1, 1982; as amended Dec. 18, 2001, eff. Apr.1, 2002; Sept. 28, 2004, eff. January 1, 2005.)

INSTRUCTIONS FOR USE

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST*

1. When a corporation is a party to any action, the attorney for the party shall notify the clerk of the court in writing of the identity of all publicly-owned companies owned by the party, any publicly-held company that has a 10% or greater ownership interest in the entity and any publicly-owned affiliate of the entity and the relationship between the party and each identified company.

2. The attorney for the party on whose behalf the form is filed shall, in addition to the information required in paragraph 1, notify the clerk of the court in writing of the identity of the real party in interest if different from the named party.

3. When a trade association is a party to an action, the attorney for the trade association shall notify the clerk of the court in writing of the identity of each publicly-owned member of the trade association.

4. The notification required of a corporate party or trade association also shall be made by the attorney for any corporation or trade association seeking to intervene, or appear as *amicus curiae*, in any action.

5. The required notification shall be made on a Disclosure Statement form (on the reverse) to be provided by the clerk of the court when the first pleading or other paper is filed by a party or when a motion to intervene or appear as *amicus curiae* is filed. In accordance with Rule 3(i), if any the information required changes after the form is filed, and before a final judgment is issued, the attorney for the party or *amicus curiae* must promptly file an amended form.

*See generally: 28 U.S.C. § 455.

FORM 14. RESERVED

(Added Oct. 3, 1984, eff. Jan. 1, 1985, and amended June 19, 1985, eff. Oct. 1, 1985; Oct. 5, 1994, eff. January 1, 1995.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 15**

Plaintiff, v. Defendant.	Before: Court No.

APPLICATION
FOR FEES AND OTHER EXPENSES PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT
28 U.S.C. § 2412(d), Title II of Public Law 96-481,
94 STAT. 2325 and Rule 54.1.

1. Name of Applicant: _____

2. Government Agency involved in claim: _____

3. Showing of Prevailing Party Status (28 U.S.C. § 2412(d)(1)(B)).

   Is court order attached? ____YES ____NO

4. Showing of Eligibility (28 U.S.C. § 2412(d)(2)(B)).

   Is net worth information attached? ____YES ____NO

5. Enter allegation that Government position was not substantially justified (28 U.S.C. § 2412(d)(1)(B)).

_____

6. For each amount claimed, please attach itemization information indicating service provided, date, hours, and rate (28 U.S.C. § 2412(d)(2)(A)).

	Amount Claimed
A. Attorney Fees	$_____
B. Study	_____
C. Analysis.	_____
D. Engineering Report.	_____
E. Test.	_____
F. Project	_____
G. Expert Witness Fees	_____
H. Other Fees and Expenses--Specify	
1. _____	_____
2. _____	_____
3. _____	_____
I. Total Fees and Expenses	$_____

_____

_____
Attorney for Applicant

_____
Name of Law Firm

_____
Street Address

_____
City, State and Zip Code

_____
Telephone Number

Date: _____

(Added Oct. 3, 1984, eff. Jan. 1, 1985; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

FORM 16. [Reserved]

(Added Oct. 3, 1990, eff. Jan. 1, 1991; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-1**

Plaintiff,

v.

Defendant.

Court No.:

ORDER [FOR DAY-OF-DEPOSIT TO DAY-OF-WITHDRAWAL]

Upon the application of _____, it is hereby

ORDERED that the application to deposit money with the court, to wit,

_____ be, and it is hereby granted; and it is further
[amount in words ($)]

ORDERED that the Clerk of the Court, as soon as business allows, accepts a check in the amount of _____

($_____) payable to, "Clerk of the Court, U.S. Court of International Trade", to be invested in a Day-of-Deposit to Day-of-Withdrawal Account. This investment will be subject to Department of the Treasury Circular Number 176; and it is further

ORDERED that the Clerk of the Court shall deduct from income earned on registry funds invested in interest-bearing account or instruments, a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee shall be withdrawn at the time the distribution of the investment principal is made, without further order of the court; and it is further

ORDERED that the Clerk of the Court shall serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED: _____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-2**

Plaintiff, v. Defendant.

Court No.:

ORDER [FOR MONEY MARKET OR MANAGEMENT]

Upon the application of _____, it is hereby

ORDERED that the application to deposit money with the court, to wit,

_____ be, and it is hereby granted; and it is further
[amount in words ($)]

ORDERED that the Clerk of the Court, as soon as business allows, accepts a check in the amount of _____ ($_____) payable to, "Clerk of the Court, U.S. Court of International Trade", to be invested in a Money (Market or Management) Account at the rate of interest then obtaining. This investment will be subject to Department of the Treasury Circular Number 176; and it is further

ORDERED that the Clerk of the Court shall deduct from income earned on registry funds invested in interest-bearing account or instruments, a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee shall be withdrawn at the time the distribution of the investment principal is made, without further order of the court; and it is further

ORDERED that the Clerk of the Court shall serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED: _____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-3**

Plaintiff,

v.

Defendant.

Court No.:

ORDER [FOR CERTIFICATE OF DEPOSIT]

Upon the application of _____, it is hereby

ORDERED that the application to deposit money with the court, to wit,

_____ be, and it is hereby granted; and it is further
[amount in words ($)]

ORDERED that the Clerk of the Court, as soon as business allows, accepts a check in the amount of _____ ($_____)

payable to, "Clerk of the Court, U.S. Court of International Trade", for the purchase of a ____- day Certificate of Deposit at the rate of interest then obtaining; and it is further

ORDERED that upon maturity of said certificate of deposit, the principal amount plus accrued interest shall be automatically reinvested until further order of the court. The initial investment and subsequent reinvestments will be subject to Department of the Treasury Circular Number 176; and it is further

ORDERED that the Clerk of the Court shall deduct from income earned on registry funds invested in interest-bearing account or instruments, a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee shall be withdrawn at the time the distribution of the investment principal is made, without further order of the court; and it is further

ORDERED that the Clerk of the Court shall serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED: _____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-4**

Plaintiff,

v.

Defendant.

Court No.:

ORDER [FOR TREASURY BILLS]

Upon the application of_____, it is hereby

ORDERED that the application to deposit money with the court, to wit,

_____ be, and it is hereby granted; and it is further
[amount in words ($)]

ORDERED that the Clerk of the Court, as soon as business allows, accepts a check in the amount of _____ ($_____)

payable to, "Clerk of the Court, U.S. Court of International Trade", for the purchase of ___ - day interest bearing Treasury Bills; and it is further

ORDERED that the Clerk of the Court shall deposit all accrued interest into an interest-bearing U.S. Court of International Trade savings account at _____ until further order of the Court; and it is further

ORDERED that the Clerk of the Court shall deduct from income earned on registry funds invested in interest-bearing account or instruments, a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The fee shall be withdrawn at the time the distribution of the investment principal is made, without further order of the court; and it is further

ORDERED that the Clerk of the Court shall serve a signed copy of the order on the Clerk of the Court and on the Fiscal Operations Manager of the Court.

DATED: _____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM 16-5**

Plaintiff, v. Defendant.

Court No.:

ORDER [FOR RETURN OF MONEY]

Upon the application of _____ , it is hereby

ORDERED that the sum of _____
[amount in words ($)]

deposited with the Clerk of the Court on _____ as security pursuant to
[date]

_____ ,

be returned, with interest earned to date, to _____
[name and address of recipient]

_____ ; and it is further

ORDERED that the Clerk of the Court shall serve a signed copy of the order on the Fiscal Operations Manager of the Court.

DATED: _____ _____
New York, New York Judge

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 17

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Court No.

BUSINESS PROPRIETARY INFORMATION CERTIFICATION

_____ certifies that

1. I am

   ☐ an attorney at the law firm of _____; or an attorney in the corporate legal department of _____, and I have read and am familiar with the Rules of the United States Court of International Trade.

   ☐ a consultant employed by _____.

2. I represent, or am retained by or on behalf of

   ☐ a party to this action,

   ☐ an interested party that has filed a motion to intervene in this action, which is identified below:
   _____.

3. I was

   ☐ granted access to business proprietary information subject to an administrative protective order in the administrative proceeding which gives rise to this action.

   ☐ not subject to an administrative protective order in the administrative proceeding which gives rise to this action. All parties to this action and interested parties who are entitled to service of this Certification pursuant to Rules 5 and 73.2(c)(5) of the United States Court of International Trade are listed below:

Party	Attorney	Date of Contact

Each of these parties or interested parties has been contacted; none has objected to my access to proprietary information in this action subject to the Appendix on Access to Business Proprietary Information Pursuant to Rule 73.2(c) to the Rules of the United States Court of International Trade.

4. I am

☐ (for attorneys) not involved in competitive decision making for the interested party I represent.

☐ (for consultants) independent of all parties in this action.

5. I have read and agree to be bound by the terms of the Appendix on Access to Business Proprietary Information Pursuant to Rule 73.2(c) to the Rules of the United States Court of International Trade.

_____
[Attorney or consultant]

_____

_____

_____
[Address and Telephone Number]

Date: _____

Form 17-3

ADDITIONAL CERTIFICATIONS FOR ACCESS TO BUSINESS PROPRIETARY INFORMATION BY NON-ATTORNEY CONSULTANTS

1. Certification by the consultant:

In this action, my access to business proprietary information will be under the direction and control of _____, an attorney at the law firm of _____, who has provided the following certification.

_____
[Consultant]
_____
_____
_____
[Address and Telephone Number]

Date:_____

(2) Certification by the attorney who is responsible for the direction and control of the consultant's access to business proprietary information:

I am an attorney at the law firm of _____ and am admitted to practice before the United States Court of International Trade. I have met the criteria for access to business proprietary information under Rule 73.2(c) of the Rules of the United States Court of International Trade. I will exercise direction and control over the access to business proprietary information by the consultant who submits this Certification, and agree to assume responsibility for the consultant's compliance with the terms of Rule 73.2(c) and the Appendix on Access to Business Proprietary Information Pursuant to Rule 73.2(c) of the Rules of the United States Court of International Trade.

_____
[Attorney]
_____
_____
_____
[Address and Telephone Number]

Date:_____

(Added Jan. 25, 2000, eff. May 1, 2000; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 18

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Court No.

NOTIFICATION OF TERMINATION OF ACCESS TO BUSINESS PROPRIETARY INFORMATION PURSUANT TO RULE 73.2(c)

_____ declares that (check one)

1) TERMINATION BY AN INDIVIDUAL

☐ I am an attorney/consultant representing or retained on behalf of _____ _____ in this action. I hereby give notice that I am no longer involved in the litigation in this action and, therefore, I have terminated my access to Business Proprietary Information in this action. I certify that I have not retained any documents, including copies of documents, work papers, notes or records in electronic media, containing Business Proprietary Information, except as may be authorized by the court or agency for use in the following action(s) or administrative proceeding(s):

_____ _____
[Name of proceeding] [Case or investigation no.]

OR

2) TERMINATION BY A FIRM

☐ I am an attorney representing _____ in this action. I hereby give notice that, because of the termination of all litigation in this action or otherwise, I have terminated the access to Business Proprietary Information by myself, the other attorneys and staff of my firm, and any consultants whose access to Business Proprietary Information under Rule 73.2(c) and the Appendix on Access to Business Proprietary Information Pursuant to Rule 73.2(c) is subject to the direction and control of myself or a member of my firm. I certify that all documents, including copies of documents, work papers, notes, and records in electronic media, containing Business Proprietary Information subject to Rule 73.2(c) and the Appendix on Access to Business Proprietary Information Pursuant to Rule 73.2(c) in this action have been destroyed, except as may be authorized by the court or agency for use in the following action(s) or administrative proceeding(s):

_____ _____
[Name of proceeding] [Case or investigation no.]

I recognize that I remain bound by the terms of the Appendix on Access to Business Proprietary Information Pursuant to Rule 73.2(c) to the Rules of the United States Court of International Trade, and that I may not divulge the Business Proprietary Information that I learned during this action or in the administrative proceeding that gave rise to this action to any person.

_____
[Attorney or consultant]

_____

_____

_____
[Address and Telephone Number]

Date: _____

Added Jan. 25, 2000, eff. May 1, 2000; and amended Sept. 30, 2003, eff. Jan. 1, 2004.)

Form 19

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Court No.

Report of Parties' Planning Conference

1. Pursuant to Rule 26(f), a conference was held on (date) at (place) and was attended by:

(name) for plaintiff(s)

(name) for defendant(s) (party name)

2. Discovery Plan. The parties jointly propose to the court the following discovery plan: [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

Discovery will be needed on the following subjects: {brief description of subjects on which discovery will be needed).

All discovery commenced in time to be completed by (date). [Discovery on (issue for early discovery) to be completed by (date).]

Maximum of ___ interrogatories by each party to any other party. [Responses due ___ days after service.]

Maximum of ___ requests for admission by each party to any other party. [Responses due ___ days after service.]

Maximum of ___ depositions by plaintiff(s) and ___ by defendant(s).

Each deposition [other than of _____] limited to maximum of ___ hours unless extended by agreement of parties.

Reports from experts under Rule 26(a)(2) due:

from plaintiff(s) by (date)

from defendant(s) by (date)

Supplementations under Rule 26(e) due (time(s) or interval(s)).

3. Other Items. [Use separate paragraphs or subparagraphs as necessary if parties disagree.]

The parties [request] [do not request] a conference with the court before entry of the scheduling order.

The parties request a pretrial conference in (month and year).

Plaintiff(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.

Defendant(s) should be allowed until (date) to join additional parties and until (date) to amend the pleadings.

All potentially dispositive motions should be filed by (date).

Settlement [is likely] [is unlikely] [cannot be evaluated prior to (date)] [may be enhanced by use of the following alternative dispute resolution procedure: [_____].

Final lists of witnesses and exhibits under Rule 26(a)(3) should be due

from plaintiff(s) by (date)

from defendant(s) by (date)

Parties should have ___ days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).

The case should be ready for trial by (date) [and at this time is expected to take approximately (length of time)].

[Other matters.]

Date: _____

(Added Aug. 29, 2000, eff. Jan. 1, 2001; and amended Sept. 30, 2003 eff. Jan. 1, 2004.)

S U B P O E N A

United States Court of International Trade

v.	: : : : : :	COURT NUMBER:

TO:

☐ YOU ARE COMMANDED to appear in the United States Court of International Trade at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Rule 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	

(See Rule. 45(c) , (d), and (e) on Reverse)

PROOF OF SERVICE		
SERVED	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45 (c), (d), and (e):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

(As amended June 19, 1985, eff. Oct. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Oct. 3, 1990, eff. Jan. 1, 1991; Sept. 25, 1992, eff. Jan. 1, 1993; Sept. 30, 2003, eff. Jan. 1, 2004.

United States Court of International Trade

BILL OF COSTS

V.

Court Number:

Judgment having been entered in the above entitled action _____ against _____ ,
Date

the Clerk is requested to tax the following as costs:

Fees of the Clerk . . . . . $ _____

Fees for service of summons and subpoena . . . . . _____

Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case. _____

Fees and disbursements for printing . . . . . _____

Fees for witnesses (itemize on reverse side) . . . . . _____

Fees for exemplification and copies of papers necessarily obtained for use in the case . . . . . _____

Docket fees under 28 U.S.C. §1923 . . . . . _____

Costs as shown on Mandate of Court of Appeals . . . . . _____

Compensation of court-appointed experts . . . . . _____

Compensation of interpreters and costs of special interpretation services under 28 U.S.C. §1828 . . . . . _____

Other costs (please itemize) . . . . . _____

TOTAL $ _____

SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill was mailed today with postage prepaid _____ .

Signature of _____

Name of _____

For _____ Date: _____
Name of Claiming Party

Costs are taxed in the amount _____ and included in the judgment.

_____ By: _____ _____
Clerk of Court Deputy Clerk Date

WITNESS FEES (computation, cf. 28 U.S.C. §1821 for statutory fees)

NAME AND RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
					TOTAL		

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:
"Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

Counsel are directed to the following provisions of the Rules:

Rule 6(c)

"Whenever a party has the right or obligation to do some act or take some proceeding within a prescribed or allowed period after the service of a pleading, motion or other paper upon the party, and the service is made by mail, 5 days shall be added to the prescribed or allowed period."

Rule 54 (d)

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs, other than attorneys' fees, shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Rule 58(d) (In Part)

"Entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs ***"

(Added May 25, 2004, eff. Sept. 1, 2004.)

UNITED STATES COURT OF INTERNATIONAL TRADE FORM 22-1

Plaintiff, v. Defendant.	Court No.

SATISFACTION OF COSTS

Pursuant to USCIT Rule 54(d)(1) and the Guidelines thereunder, an Order of Costs was entered against _____ on _____. That on the ___ day of _____, _____, counsel for _____ paid to counsel for _____ the sum of _____ in full satisfaction of the costs assessed in this action.

_____
(Signature)
Attorney for:

_____

_____
(Address)
_____

_____

DATED:

(Added May 25, 2004, eff. Sept. 1, 2004.)

Form M-1-1

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM M-1**

Plaintiff, v. Defendant.

Court No.:

ORDER OF REFERRAL TO MEDIATION

Upon consideration of all papers filed in this action, it is hereby

ORDERED that, pursuant to Rule 16.1, this action is referred to mediation. Judge _____ has agreed to serve as the Judge Mediator and will facilitate all sessions of mediation. The parties have a maximum of _____ days in which to conclude the mediation process. This action shall be stayed for a period of ninety (90) days or until the mediation process is concluded, whichever first occurs; and it is further

ORDERED that unless a settlement is reached within the mediation period and a Stipulation of Dismissal or Stipulated Judgment filed, which disposes of the action with respect to all parties and all claims, the stay shall be lifted, and this action shall be returned to the active calendar without further direction from the Court.

_____
(Name)
Assigned Judge

DATED:
New York, New York

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

Form M-2-1

UNITED STATES COURT OF INTERNATIONAL TRADE **FORM M-2**

Plaintiff, v. Defendant.

Court No.:

REPORT OF MEDIATION

That pursuant to the Order of Referral dated _____ in this action, I served as Judge Mediator for the mediation process between the parties in this action. The process was concluded on _____;

___ The mediation resulted in a settlement of all issues;

___ The mediation resulted in a partial settlement;

___ The mediation did not result in a settlement;

_____
(Name)
Judge Mediator

DATED:
New York, New York

(Added Sept. 30, 2003, eff. Jan. 1, 2004.)

Chambers Procedures

1. Communications

(A) Communications with Chambers, other than filings, should be made in writing. Counsel are not to call the Judges' law clerks or executive assistants/secretaries, except to initiate conference calls. Counsel may contact the Judges' Case Manager (see list on Courts website, www.cit.uscourts.gov) by telephone with specific procedural questions. Counsel are advised to consult the Rules of the United States Court of International Trade prior to any request or inquiry.

(B) Counsel shall serve copies of communications with Chambers on all parties to the litigation.

2. Briefs and Appendices

(A) Format.

(1) Pursuant to Rule 81(f), briefs shall be in font type no smaller than 12 point, and shall be double-spaced with one inch margins. Briefs filed other than by using the Courts CM/ECF System shall simultaneously also be filed in an electronic medium (3.5 diskette or CD-ROM) in WordPerfect format.

(2) Each document attached to a brief or appendix submitted in non-electronic form shall have an identifying tab with the name of the document on the face of the tab. When submitted in electronic form, the attachment shall include a separator/cover page bearing a legend on its face describing the document, e.g., Tab A and the name of the document.

(3) Non-electronic briefs and appendices in trade cases shall be color-coded by covers as follows:

Government - red
Domestic parties - blue
Respondents before agency - green

(B) Page Limitations. Movant's and respondent's briefs shall not exceed 30 pages in length, except in trade cases which shall not exceed 40 pages. Reply briefs in all cases shall not exceed 15 pages. These limitations do not include Appendices and Tables of Authorities and Contents. No brief which exceeds these requirements may be filed without prior written approval of the Court, leave for which will be freely given upon good cause shown.

(C) Citations.

(1) Pursuant to Rule 56.2(c), all citations to the record shall be supported by the attachment of copies from the record, a Table of Authorities and a separate Table of Exhibits.

(2) For all other cases, citations to the record, if any, shall be supported by the attachment of copies.

(3) Citations for the text shall be contained in the text rather than in footnotes.

(4) Counsel, once they become aware of any error in citation or otherwise in a brief, appendix or attachment thereto that they have filed, shall advise the Court of the error via an Errata Memorandum, which shall be served on all parties to the litigation.

3. Attorneys

Pursuant to Rules 75(b) and (e), notices of appearance must be filed as required. All counsel must ensure that the Clerk's Office possesses an up-to-date record of counsel's address and telephone number. Where a change occurs, counsel must alert the Clerk's Office of any change in firm name, address or telephone number immediately. The placement of any change on documents filed with the Court is not sufficient.

4. Pleadings, Motions and Other Papers

(A) Courtesy Copies. Courtesy copies of submissions to the Court shall not be sent to the Clerk's Office or to Chambers. This shall not prohibit a Judge, when exigencies require, from requesting a courtesy copy of an expedited filing. The transmission of a courtesy copy to Chambers will not affect the filing date of the submission.

(B) Bindings. Pursuant to Rule 81(f), pleadings, papers, and documents shall be bound or attached on the top left-hand margin by a staple, or paper or butterfly/binder clip and shall not be solidly bound. In the alternative, where necessary, submissions may be made in three-ring binders.

C) Orders. A signature page must contain the Court Number and sufficient text so that the page is identifiable with the order. A Judge will not sign any order for which the signature line is separate from the text of the document.

5. Time limits for oral arguments

A Judge may establish time limits for oral arguments prior to the argument and shall so advise the parties accordingly.

6. Extensions of Time

See Rule 6(b).

7. Changes to transcripts

Any proposed change to a transcript shall be made by written motion.

8. Scheduling Letters, Rule 16 and Rule 56.2 Scheduling Orders, and Post-Assignment Orders

Draft letters and scheduling and post-assignment orders shall continue to be provided by each Chamber as it deems appropriate.

UNITED STATES COURT OF INTERNATIONAL TRADE

In re ELECTRONIC FILING PROCEDURES	**ADMINISTRATIVE ORDER** **No. 02-01**

WHEREAS, Rules 1, 5, 79 and 80 of the Rules of the U.S. Court of International Trade and 28 U.S.C. §§ 251, 258, 451, 452, 1651, 2632 and 2633 authorize the Court to enter all appropriate orders respecting practices and procedures for filing, signing, verifying and providing public access to Court documents; and

WHEREAS, this Administrative Order is intended to be applied and interpreted in connection with the Court's Case Management/Electronic Case Files (CM/ECF) System and the Case Management/Electronic Case Files (CM/ECF) User's Manual for Electronically Filing Case Events (the "ECF User's Manual") which, together with this Administrative Order, shall be termed the "Electronic Filing Procedures" or "EFPs"; and

WHEREAS, the Court has formulated the EFPs with the assistance of the Court's Advisory Committee, and has solicited and considered public comment on the proposed procedures; and

WHEREAS, consistent with the EFPs, the Court has established a World Wide Website at **www.cit.uscourts.gov** ("USCIT Website") with the technological capacity to provide public access to all contents of that Website, including all electronically-filed documents, and to permit direct electronic filing of documents on that Website, and

WHEREAS, the EFPs make adequate provision for filing, notice and service of documents and proceedings in actions before the Court, consistent with the requirements of the Rules of the Court; and

WHEREAS, the EFPs provide a means for counsel of record and unrepresented parties to sign documents electronically; and

WHEREAS, the EFPs require the Clerk's Office to provide adequate procedures for electronic filing of documents on behalf of persons who are not able to access the USCIT Website; and

WHEREAS, the EFPs require the Clerk's Office to provide adequate public access to the records and dockets of the Court, in accordance with applicable statutes, and the Rules or Orders of the Court including access for persons who are not able to access the USCIT Website;

NOW, THEREFORE, IT IS ORDERED as follows:

1. Actions Subject to the EFPs.

(a) All actions commenced in accordance with Rule 3(a) of the Rules of the Court shall be subject to the EFPs of the Court, unless the Court has ordered that the action not be subject to the EFPs pursuant to section (b) of this paragraph.

(b) Upon motion of any party for good cause shown, or upon its own initiative, the Court may terminate or modify application of the EFPs in any action.

(c) A party who is not represented by an attorney and who is permitted by the Rules of the Court to appear without an attorney must file all documents in paper form, unless such party is permitted to become a Registered CM/ECF User pursuant to paragraph 2(b).

2. Registration as a CM/ECF User and Assignment of Passwords.

(a) Any attorney admitted to practice before the Court, or who is authorized to appear, pursuant to Rule 75(a) of the Rules of the Court, on behalf of the United States or an agency or officer thereof, may register to become a "Registered CM/ECF User" of the Court's CM/ECF System. Registration shall be accomplished with a non-electronic "CM/ECF User Registration Form" prescribed by the Clerk, which shall require identification of the name, law firm or agency, address, telephone number and Internet e-mail address(es) of the attorney ("e-mail address(es) of record"), together with a declaration that the attorney is admitted to practice before the Bar of the Court or is a government attorney authorized to practice before the Court under Rule 75(a) of the Rules of the Court.

(b) The Court may permit a party to a pending action who is not represented by an attorney and who is permitted by the Rules of the Court to appear without an attorney to become a Registered CM/ECF User solely for purposes of the action. Registration shall be by non-electronic filing of the CM/ECF User Registration Form prescribed by the Clerk. If during the course of the action, the party retains an attorney who appears on the party's behalf, the appearing attorney shall advise the Clerk to terminate the party's registration as a CM/ECF User upon the attorney's appearance.

(c) Each attorney of record to an action is obligated to become a Registered CM/ECF User, unless the Court has otherwise ordered in accordance with paragraph 1(b) of this Order.

(d) CM/ECF User Registration Forms shall be mailed or delivered to the Office of the Clerk of the Court, United States Court of International Trade, One Federal Plaza, New York, New York 10278-0001.

(e) Every Registered CM/ECF User shall immediately notify the Clerk of any change in the information provided in the User's registration. Notification shall be made by filing a Notice of Change of CM/ECF User Information.

(f) Each Registered CM/ECF User shall, upon registration, be issued a User Identification Designation ("User ID") and a Password by the Clerk. The Clerk shall maintain a confidential record of issued User IDs.

(g) Each Registered CM/ECF User shall maintain as confidential, except as expressly provided in subparagraph (i), the User ID and Password issued by the Clerk. Upon learning of the compromise of the confidentiality of the Password, the Registered CM/ECF User shall immediately notify the Clerk, who will issue the User a new Password.

(h) The Clerk may at any time issue and transmit by secure means a new Password to any Registered CM/ECF User. A Registered CM/ECF User may at any time obtain a new Password upon request to the Clerk by following procedures set forth in the ECF User's Manual.

(i) A Registered CM/ECF User may authorize another person to file a document using the User ID and Password of the Registered CM/ECF User, and the Registered CM/ECF User shall retain full responsibility and shall be treated as a signatory under the Rules of the Court for any document so filed.

(j) The USCIT Website shall include for each action subject to the EFPs a current list of the e-mail addresses of record maintained by the Clerk. Each attorney of record shall promptly serve notice upon all parties of any change in such person's e-mail Address of Record for the purposes of the action, and shall file notice of such change with the Court, in the manner

prescribed by Rule 75(e) of the Rules of the Court, and shall file a Notice of Change of CM/ECF User Information.

3. Electronic Filing of documents.

(a) Except as otherwise ordered by the Court, all pleadings and other documents required to be filed with the Clerk shall be filed electronically on the USCIT Website pursuant to the EFPs, except for summonses and original complaints referred to in Rule 3 of the Rules of the Court; original third party complaints; original complaints filed pursuant to 28 U.S.C. §1581(b); Notices of Appeal filed in accordance with Rule 3 of the Rules of the United States Court of Appeals for the Federal Circuit; a request for transfer to the Court from a binational panel or committee pursuant to 19 U.S.C. § 1516a(g)(12)(B) or (D); filings containing confidential, business proprietary or classified information as described in subparagraph (b) below; and certain documents described in subparagraph (g) below. Electronic filing may be made only by a Registered CM/ECF User, or by a person authorized by a Registered CM/ECF User pursuant to paragraph 2(i) of this Order.

(b) Notwithstanding any other provision of the EFPs, no document containing confidential, business proprietary or classified information shall be filed electronically. A party filing a document that contains confidential, business proprietary or classified information shall file such document non-electronically in accordance with the Rules of the Court. Public versions of such documents shall be filed electronically in accordance with the requirements and limitations of this Order.

(c) Every document filed electronically shall be signed for the purposes of Rule 11 of the Rules of the Court by one or more attorneys of record (each "Rule 11 Signatory") pursuant to

paragraph 4(a) of this Order. For each Rule 11 Signatory, the document shall provide such Signatory's name, law firm or agency, address, telephone number and e-mail address(es) of record, and shall identify the Rule 11 Signatory as such.

(d) Electronic transmission of a document to the USCIT Website consistent with the EFPs, together with the receipt by the person making the filing of a Notice of Electronic Filing from the Court as provided in Paragraph 5 of this Order, shall constitute filing of the document for all purposes under the Rules of the Court, except as provided in subsections (b), (g) and (h) of this paragraph, and shall constitute entry of that document on the docket kept by the Clerk pursuant to Rules 58 and 79 of the Rules of the Court. A document filed electronically shall be deemed filed at the date and time stated on the Notice of Electronic Filing from the Court.

(e) When a document has been filed electronically, the official document of record is the electronic recording of the document as stored by the Court, and the filing party shall be bound by the document as filed, unless amended by order of the Court. A party wishing to correct a filing shall file a motion for errata after seeking consent from all parties, in accordance with the provisions of Rule 7(b) of the Rules of the Court. A motion for errata shall list each correction, including the page number for each correction, and shall provide a complete copy of the corrected document, or indicate that the corrections are minor. The motion shall also include a proposed order either permitting the substitution of the complete corrected copy or ordering the corrections deemed made without physical substitution because the corrections are minor. The corrected filing shall become the official document of record and the filing date will remain the date of the filing of the original electronic filing. When a motion for errata is made upon consent

of all parties in an unassigned case, the Clerk may dispose of the motion as if such motion were expressly listed in Rule 82(b) of the Rules of the Court.

(f) A document properly and timely submitted and filed in non-electronic form pursuant to Rule 5 of the Rules of the Court shall be deemed filed on the date of such non-electronic filing. Subsequent electronic submission of the same document shall not be deemed to change the date of original filing of that document.

(g) Documents, portions of documents or sets of documents that are not readily convertible to electronic form, or which are more appropriately filed as physical exhibits, as described in the ECF User's Manual, may be filed in paper form and must be accompanied by a Notice of Manual Filing. Likewise, documents, portions of documents or sets of documents that are in electronic form but exceed certain technical parameters may be filed on electronic media, as provided in the Users' Manual and must be accompanied by a Notice of Manual Filing. Where a portion of a document is filed electronically and another portion is filed in paper form, or on electronic media, the latest filing date and time of the multiple portions will be used to determine compliance with applicable deadlines.

(h) Nothing in the EFPs shall be interpreted to permit material required to be filed under seal to be filed by any means other than under physical seal.

4. Signatures.

(a) A document filed with the Court electronically shall be deemed to be signed by a person (the "Signatory") when the document identifies the person as a Signatory and the filing complies with subparagraph (b), (c) or (d). When the document is filed with the Court in accordance with any of these methods, the filing shall bind the Signatory as if the document (or the document to which the filing refers, in the case of a Notice of Endorsement filed pursuant to subparagraph (d)) were physically signed and filed, and shall function as the Signatory's signature, whether for purposes of Rule 11 of the Rules of the Court, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(b) In the case of a Signatory who is a Registered CM/ECF User as described in paragraph 2, such document shall be deemed signed, regardless of the existence of a physical signature on the document, provided that such document is filed using the User ID and Password of the Signatory. The page on which the physical signature would appear if filed in non-electronic form must be filed electronically, but need not be filed in an optically scanned format displaying the signature of the Signatory. In such cases, the electronically filed document shall indicate an "electronic signature", e.g., "s/Jane Doe".

(c) In the case of a Signatory who is not a Registered CM/ECF User, or who is a Registered CM/ECF User but whose User ID and Password will not be utilized in the electronic filing of the document, such document shall be deemed signed and filed when the document is physically signed by the Signatory, the document is filed electronically, and the signature page is filed in optically scanned form pursuant to and consistent with the EFPs.

(d) In the case of a stipulation or other document to be signed by two or more persons, the following procedure shall be used:

(1) The filing party shall initially confirm that the content of the document is acceptable to all persons required to sign the document and shall indicate in the document that such confirmations have been made. To the extent practicable, the filing party shall obtain the physical signatures of all parties on the document.

(2) The filing party shall then file the document electronically, indicating the original signatures that have been obtained, e.g., "s/Jane Doe," "s/John Doe," etc., and the signatures that will be provided through Notices of Endorsement.

(3) The filing party or attorney shall retain the hard copy of the document containing the original signatures until one year after the final disposition of the action in which it was filed.

(4) In the case of any person required to sign the document but for whom the filing party does not obtain a physical signature, such person shall file a Notice of Endorsement of the document. The document shall be deemed fully executed upon the filing of any and all such Notices of Endorsement.

5. Notice of Electronic Filing.

Upon electronic filing of a pleading or other document, a Notice of Electronic Filing will be sent by the Clerk to all e-mail address(es) of record in the action. Such Notice shall provide, at a minimum, the electronic docket number and the title of the document filed, and shall provide the date and time filed.

6. Service

(a) Except as provided in subparagraph (b), all documents required to be served shall be served in non-electronic form in accordance with Rule 5 of the Rules of the Court and receipt of a Notice of Electronic Filing shall not constitute service.

(b) In the case of an attorney or other person who has filed in a particular action a "Notice of Consent to Electronic Service", in a form to be prescribed by the Court, the Notice of Electronic Filing described in paragraph (5) of this Order shall constitute service on that attorney or other person.

(c) The filing of the Notice of Consent to Electronic Service in a particular action constitutes consent to electronic service of all documents in that action, as provided herein, as a fully adequate and timely substitute for service otherwise permitted pursuant to Rule 5 of the Rules of the Court.

(d) Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other document upon that person, and such document is filed and served electronically pursuant to the EFPs, five days shall be added to the prescribed period.

(e) Notwithstanding any provision of this Order, where the Rules of the Court require that any document be served but not filed, or that any document be served and filing of that document be delayed, service of that document shall be in non-electronic form. Any subsequent filing of such previously-served document shall be accomplished in the manner

prescribed by this Order, and the document need not be re-served upon parties who were previously served.

7. Docket

The USCIT Website shall denote in a separate electronic document for each action subject to the EFPs the filing of any document by or on behalf of a party and the entry of any order or judgment by the Court, regardless of whether such document was filed electronically. The record of those filings and entries for each case shall be consistent with Rule 79 of the Rules of the Court and shall constitute the docket for purposes of that Rule.

8. Notice and Entry of Orders and Judgments.

The Clerk shall file electronically all orders, decrees, judgments, and proceedings of the Court in accordance with the EFPs which shall constitute entry of the order, decree, judgment or proceeding on the docket kept by the Clerk pursuant to Rules 58 and 79 of the Rules of the Court. Upon the entry of an order or judgment in an action subject to the EFPs, the Clerk shall transmit by e-mail to all e-mail address(es) of record in the action a notice of the entry of the order or judgment and shall make a note of the transmission in the docket. Transmission of the notice of entry shall constitute notice as required by Rule 79(c) of the Rules of the Court, but shall not constitute service of such notice unless the party has consented to electronic service under paragraph 6(b) of this Order.

9. Technical Failures.

(a) The Clerk shall deem the USCIT CM/ECF System to be subject to a technical failure on a given day if the CM/ECF System is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon in New York, New

York on that day. The Clerk shall provide notice of all such technical failures on the CM/ECF Help Desk line, 866-450-1859, which persons may telephone in order to learn the current status of the CM/ECF System. The Clerk shall maintain records of the nature and duration of all such technical failures. Filings due that day, which were not filed due solely to such technical failures, shall become due the next business day. Such delayed filings shall be rejected unless accompanied by a declaration or affidavit attesting to the filing person's failed attempts to file electronically at least two times after 12:00 noon in New York, New York, separated by at least one hour on that day due to such technical failure. A declaration or affidavit shall not be required if, on the day a filing is due, a notice is posted on the Court's Website or on the Court's CM/ECF Help Desk line indicating that the CM/ECF System is not available on that day for a period of one hour or more after 12:00 noon in New York, New York.

(b) If a Notice of Electronic Filing is not received from the Court following transmission of a document for filing, the document will not be deemed filed. The person filing must attempt to re-file the document electronically until such a Notice is received, consistent with the provisions of subparagraph (a) permitting delayed filings.

(c) If, within one business day after filing a document electronically, the party filing the document discovers that the version of the document available for viewing on the USCIT Website does not conform to the document as transmitted upon filing, the filing party shall contact the Clerk, who will either ensure that the document is properly posted as filed or direct the party to re-transmit the document, which shall be marked "Re-transmitted". This provision (and the designation "re-transmitted") shall not be used for filing a motion for errata as set forth in paragraph 3(e) of this Order.

10. Copyright and Other Proprietary Rights.

(a) The USCIT Website shall bear a prominent notice as follows: "The contents of each filing in the electronic case files on the USCIT Website may be subject to copyright and other proprietary rights (with the exception of the opinions, memoranda and orders of the Court). It is the user's obligation to determine and satisfy copyright or other use restrictions when publishing or otherwise distributing material found in the electronic case files. Transmission or reproduction of protected items beyond that allowed by fair use requires the written permission of the copyright owners. Users must make their own assessments of rights in light of their intended use."

(b) By consenting to the EFPs, each party or other person and their counsel shall be deemed to consent to all uses of the filed materials consistent with the notice set forth in subparagraph (a).

(c) By producing discovery materials in an action subject to electronic filing, or by filing any material in the action electronically or otherwise, each party or subpoenaed non-party or other non-party so producing or filing, and all of the counsel to such persons, shall be deemed to consent to all uses of such materials by all parties to the action solely in connection with and for the purposes of the action, including the electronic filing in the action (by a party who did not originally file or produce such materials) of portions of such excerpts, quotations, or selected exhibits from such discovery materials or other filed materials as part of motion documents, pleadings or other filings with the Court which must refer to such excerpts, quotations, etc.

11. Protective Order.

In connection with discovery or the filing of any material, other than those items specifically exempted from electronic filing in subparagraph 3(a) or (b) of this Order, any person may apply by motion for an order prohibiting the electronic filing in the action of certain specifically-identified materials on the grounds that such materials are subject to copyright, other proprietary rights, privacy interests, or other specifically-identified interests and that electronic filing in the action is likely to result in substantial prejudice to those rights or interests. A motion for such an order shall be filed not less than five days before the materials to which the motion pertains are due to be produced or filed with the Court. Any material not filed electronically pursuant to such an order shall be filed with the Clerk and served as if the action were not subject to the EFPs. Nothing in this paragraph shall be construed to change the standard for the issuance of a protective order respecting confidentiality in an action subject to the EFPs.

12. Miscellaneous Provisions.

(a) The Clerk shall establish procedures to permit pleadings and other documents to be presented for electronic filing at the Court. The Clerk shall also provide for public access to all public electronic Court records. Facilities and equipment made available to permit access to the USCIT Website may not be used for any other purpose.

(b) Until such time as the United States Court of Appeals for the Federal Circuit provides notice to the Court that public access to the USCIT Website obviates or modifies any need for transmittal of the record on appeal of any action subject to the EFPs as to which a notice of

appeal to that Court of Appeals has been filed, when required, the Clerk shall deliver to the Court of Appeals, at that Court's election, either a complete non-electronic copy of the record on appeal or an electronic reproduction of that record on appeal as such record is reflected in the USCIT Website.

(c) This Administrative Order and the ECF User's Manual shall be posted on the USCIT Website in a location that may be reached from the home page of that Website via one or more highly visible and easily found hyperlinks and shall be posted prominently in and otherwise made available in the Office of the Clerk. Any amendments to the EFPs shall be similarly posted and published.

(d) The effective date of this Administrative Order and the ECF User's Manual is April 1, 2002 and may be amended by the Court from time to time on the Court's own initiative. This Administrative Order shall apply to all proceedings in actions brought after its effective date and all further proceedings in actions then pending, except actions in which a complaint was filed prior to the effective date of this Order.

For the Court:

By: Tina Potuto Kimble
Clerk of the Court

Dated: April 1, 2002, amended Nov. 28, 2006, eff. Jan. 1, 2007
New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

In re PRACTICE BY STUDENTS ENROLLED IN AN APPROVED LAW SCHOOL CLINICAL PROGRAM	**ADMINISTRATIVE ORDER** **No. 06-01**

1. A law student, upon compliance with this Administrative Order, and under supervision of an attorney, may appear on behalf of any party.

2. To appear, the student shall:

(a) be duly enrolled in a law school approved by the American Bar Association;

(b) be a participant in a clinical program approved by that law school;

(c) have successfully completed at least three semesters of legal studies;

(d) be certified by either the law school dean or authorized designee as qualified to provide the legal representation permitted by this Administrative Order. This certification may be withdrawn by the certifier at any time by mailing a notice to the Clerk of the Court, without notice or hearing and without the showing of cause;

(e) be introduced to the Court by an attorney admitted to practice before this Court;

(f) neither seek nor receive any compensation or remuneration of any kind from the client. This provision is not intended to affect the ability or right of an attorney, legal aid bureau or law school clinical program, to seek attorney fees, expenses or costs from any adverse party, which may include compensation for student services;

(g) certify in writing that he or she has read and will comply with the American Bar Association Model Code of Professional Responsibility; and

(h) certify in writing that he or she has read the Rules of the United States Court of International Trade, the evidentiary rules relevant to the action or proceeding in which he or she is appearing, and this Administrative Order.

3. The law student may:

(a) appear as counsel in Court or at other proceedings, accompanied by the supervising attorney, when written consent of the client, the supervising attorney, and the assigned judge have been filed with the Clerk of the Court; and

(b) prepare and sign motions, petitions, answers, briefs and other documents in connection with any matter in which he or she has met the conditions of Section 3(a) above; provided that each such document also shall be signed by the supervising attorney.

4. The attorney who supervises a student shall:

(a) be a member of the bar of the United States Court of International Trade;

(b) be a participant in a student clinical program as defined by the law school;

(c) assume personal professional responsibility for the student's work;

(d) assist the student to the extent necessary;

(e) appear with the student in all proceedings before the Court;

(f) indicate in writing his or her consent to supervise the student; and

(g) sign any motions, petitions, answers, briefs, and other documents in connection with any matter in which a student appears as counsel in Court or at other proceedings.

5. The judge's consent for the student to appear may be withdrawn without notice or hearing and without the showing of cause. The withdrawal of consent by a judge shall not be construed to reflect on the character or ability of the student.

6. Forms for certifying compliance with this Administrative Order shall be available in the Office of the Clerk of the Court. Completed forms shall be filed with the Clerk of the Court.

7. This Administrative Order shall take effect on February 1, 2006 and may be amended by the Court from time to time on the Court's own initiative. This Administrative Order shall apply to all proceedings in actions brought after its effective date and all further proceedings in actions then pending.

For the Court:

By: _____
Tina Potuto Kimble
Clerk of the Court

Dated: January 24, 2006, amended Sept. 25, 2007, eff. Jan. 1, 2008
New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Before: , Judge Court No.

LAW STUDENT APPEARANCE FORM

1. Law Student Certification

I, _____, certify that:
(Name of Student)

(a) I am duly enrolled in _____ law school and am a participant in that school's approved clinical program in accordance with Section 2(b) of the Administrative Order for Student Practice of the United States Court of International Trade.

(b) I am receiving no compensation from the client in accordance with Section 2(f) of the Administrative Order for Student Practice of the United States Court of International Trade.

(c) I have read and will comply with the American Bar Association Model Code of Professional Responsibility.

(d) I have read the Rules of the United States Court of International Trade and evidentiary rules relevant to the action or proceeding in which I am appearing.

(e) I have read the provisions of the Administrative Order for Student Practice of the United States Court of International Trade.

_____ _____
(date) (Signature of Student)

2. Certification of Law School Dean or his/her Authorized Designee

I certify that this student:

(a) has successfully completed at least three semesters of legal studies and is a participant in an approved clinical program;

(b) is qualified, to the best of my knowledge, to provide the legal representation permitted by this Administrative Order; and

(c) that _____, who will serve as supervising attorney, is a participant in a clinical program approved by this school.

_____ (date)

_____ (Signature of Dean or Authorized Designee)

_____ (Position of Above)

3. Consent of Supervising Attorney

As a member of the bar of the United States Court of International Trade, I will:

(a) assume personal professional responsibility for this student's work;
(b) assist this student to the extent necessary;
(c) appear with this student in all proceedings before the court;
(d) sign all documents as required by Sections 3(b) and 4(g) of the Administrative Order for Student Practice of the United States Court of International Trade.

_____ (date)

_____ (Signature of Attorney)

4. Consent of the Judge

I authorize this student:

(a) to appear in Court or other proceedings on behalf of the above client; and
(b) to prepare documents on behalf of _____.
(Name of Client)

_____ _____
(date) (Signature of Judge)

UNITED STATES COURT OF INTERNATIONAL TRADE

Plaintiff, v. Defendant.	Before: , Judge Court No.

CONSENT OF CLIENT

I, _____, authorize _____ to appear on my behalf (insert name of plaintiff), in the above-captioned action or proceeding, in accordance with the Administrative Order for Student Practice of the United States Court of International Trade. I have been provided with a copy of the Administrative Order and am familiar with its provisions.

_____
(Name of Plaintiff)

_____ _____
(date) (Signature)

UNITED STATES COURT OF INTERNATIONAL TRADE

In re THREE JUDGE PANELS	:	ADMINISTRATIVE ORDER
	:	No. 07-01

1. Order of Precedence.

The chief judge shall be the presiding judge. In the absence of the chief judge, the presiding judge shall be that judge most senior in regular active service in accordance with 28 U.S.C. § 258(b).

2. Oral Argument.

(a) Determination in Panel Cases. If it is requested by at least one judge, oral argument shall be ordered.

(b) Notice to Counsel. The clerk shall notify counsel, no fewer than ten days prior thereto, of the date a case is to be orally argued. At that time, the clerk shall also inform the parties of any time limitations placed on oral argument by the panel.

3. Motion Practice.

Motions generally shall be granted or denied by the presiding judge if they are administrative and unrelated to the disposition of the case, unless that judge believes reference to the entire panel is appropriate. In lieu of the presiding judge, the panel may assign the task of deciding procedural motions to another panel member. Motions related to scheduling cases for argument shall always be referred to the entire panel.

4. Post-Decision Matters.

(a) A motion for reconsideration shall be referred to the panel.

(b) A motion to amend the judgment of the court shall be referred to the panel.

(c) A remand from the Federal Circuit shall be referred to the panel that decided the matter.

5. Reassignment to a Single Judge.

Cases shall be assigned to three judge panels by the chief judge in accordance with 28 U.S.C. § 255(a). Every effort shall be made to avoid repetitive scheduling of panels composed of the same judges. If a panel makes a decision in a case disposing of the issue or issues that initially gave rise to the need for a three judge panel, the panel may ask the chief judge to reassign the remaining issues in the case to a single judge from the panel.

For the Court:

By: Tina Potuto Kimble
Clerk of the Court

Dated: December 26, 2007
New York, New York

UNITED STATES COURT OF INTERNATIONAL TRADE

In re E-GOVERNMENT ACT OF 2002 AND PRIVACY REDACTION	:	**ADMINISTRATIVE ORDER** **No. 08-01**

Parties and counsel are not to include sensitive information in any document filed with the Court unless such inclusion is necessary and relevant to the case. In accordance with Court of International Trade Rule 5.2, if sensitive information must be included in a filing, personal data identifiers must be partially redacted from the filing, regardless of the form, i.e., paper or electronic media. Social Security numbers are to be redacted to show only the last four digits; birth dates are to contain only the year of birth; individuals known to be minors are to be referred to with initials; and financial numbers are to be redacted to the last four digits. It is important to remember that any sensitive information not otherwise protected will be available over the Internet via the Court's CM/ECF System. See Administrative Order No. 02-01.

Pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347, Dec. 17, 2002), Section 205(c)(3), as amended (Pub. L. No. 108-281, August 2, 2004), a party or counsel intending to file one or more documents containing the personal identifiers specified above may file a "reference list" with the Court that would include the complete version of each personal data identifier and a corresponding partially redacted version of each identifier. This list will be maintained under seal and may be amended by a party as a matter of right.

The list is intended to serve as a type of "key." The redacted version would be used in lieu of, and be construed to refer to, the complete identifier in subsequent filings in the case.

It is the responsibility of counsel and the parties to be sure that all filings comply with the Court's Rules, orders, or notices regarding the redaction of personal data identifiers or other sensitive information. The Office of the Clerk will not review counsel's filings for redaction. In the case of a transcript filed by a court reporter, each party's attorney[1] is required to review the transcript for information that is to be redacted under this Order. Within seven calendar days of a court reporter's delivery of the transcript to the Clerk of Court, an attorney must file a notice with the Court of the attorney's intent to request redaction of such information from the transcript. An attorney is responsible for reviewing the opening and closing statements made on behalf of the party the attorney represents, any statements made by the party, and the testimony of any witnesses called by the party. If no notice is filed during this seven-day period, the Court may assume that redaction of personal data is not necessary and may make the transcript available to the public, through electronic or other means.

Once an attorney has filed a notice of intent to request redaction, the attorney has 21 calendar days from the transcript's delivery to the Clerk to review the transcript and submit to the court reporter a list of the places in the transcript where the personal data to be redacted appears. The court reporter or transcriber must redact the identifiers, as directed by the party. During this time period, an attorney also could, by motion, request

[1] Or, in the case of an unrepresented party, the party should perform the tasks these procedures assign to attorneys.

that additional information be redacted, and no remote electronic public access to the transcript is to be allowed until the Court has ruled on any such motion.

The court reporter must, within 31 calendar days of the delivery of the transcript to the Clerk of Court, perform the requested redactions, and file a redacted version of the transcript with the Clerk of Court. The original unredacted electronic transcript will be retained by the Clerk of Court.

Finally, parties and counsel are advised to exercise caution and follow the requirements of USCIT R. 81(h) when filing a document that contains other sensitive personal information, or confidential, business proprietary, privileged, or classified information.

For the Court:

/S/

By: Tina Potuto Kimble
Clerk of the Court

Dated: May 2, 2008, amended Nov. 25, 2008, eff. Jan. 1, 2009.