

Proposed Amendments to Administrative Order No. 02-01

UNITED STATES COURT OF INTERNATIONAL TRADE

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In re ELECTRONIC FILING PROCEDURES :  
AND SUBMISSION OF CONFIDENTIAL :  
INFORMATION :  
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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 the public** 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 “**CM/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](http://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 provide adequate procedures for the safeguarding of documents that contain Confidential Information (including Business Proprietary Information) and access to and use of such documents in conjunction with Rule 73.2(c); 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~~ **to the 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 **Filer** pursuant to paragraph 23(b).

2. Registration as a CM/ECF User and Assignment of Passwords. **Access to Confidential Information.**

**Unless amended by a subsequent order of the Court, this Administrative Order governs access to all Confidential Information filed in any action, including access to Business Proprietary Information (as defined in 19 U.S.C. § 1677f(b)) pursuant to Rule 73.2(c) in an action commenced under 28 U.S.C. § 1581(c). For all actions filed under 28 U.S.C. § 1581(c), the terms of this Order covering access to Confidential Information will take effect with regard to a non-government attorney or consultant upon the filing of a Business Proprietary Certification, substantially in the form set forth in Form 17 of the Appendix of Forms; for government attorneys, the terms regarding access will take effect upon the filing of an entry of appearance. In all other cases, access to Confidential Information will take effect upon the entry of a judicial protective order.**

3. Registration as a CM/ECF User, Assignment of Passwords, Notification Requirement of Changes in Information, Authorization for Filing Using User ID and Password of Registered CM/ECF User or Confidential Information Filer .

(a) **(i) Types of Registration:** Anyone may register to become a “Registered CM/ECF User” on the Court’s CM/ECF System. A Registered CM/ECF User will have access to all public documents maintained in the Court’s CM/ECF system. Any attorney admitted to practice before the Court may register to become a “Registered CM/ECF User Filer” on the Court’s CM/ECF System. Registration shall **A Registered CM/ECF Filer will have access to all public documents and will also be permitted to file public documents on the CM/ECF System. Alternatively, such attorney may register as a “Confidential Information Filer,” which will allow the attorney to file and access not only public information, but also Confidential Information using the CM/ECF System pursuant to the Court’s Rules and this Order.**

**(ii) Registration Process:** Registration will be accomplished with a non-electronic “CM/ECF User–Registration Form” prescribed by the Clerk, which shall ~~require~~**will be used for all three levels of registrants – Users, Filers and Confidential Information Filers. This form will require, as appropriate, identification of the registrant’s name, law firm or agency, employer (if applicable), address, telephone number and, Internet e-mail address(es) of the attorney (“(e-mail address(es) of record”), an identification of the CM/ECF access level being requested, together with a declaration that the attorney is admitted to practice before the Bar of the Court, if applicable, is a member in good standing of the Bar of the Court. CM/ECF Registration Forms must 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.**

(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 **Filer** solely for purposes of the action. Registration ~~shall~~ **will** 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~~ **must** advise the Clerk to terminate the party's registration as a CM/ECF User **Filer** upon the attorney's appearance.

(c) Each attorney of record to an action is obligated to become a Registered CM/ECF User **Filer or Confidential Information Filer**, unless the Court has otherwise ordered in accordance with paragraph 1(b) of this Order. **An attorney is required to become a Confidential Information Filer only if that attorney intends to electronically file or access documents containing Confidential Information.**

~~(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~~ **d) Everyone registered on the** CM/ECF User ~~shall~~ **System** **must** 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 **CM/ECF Registration Form by submitting a Request for** Change in Attorney Information **Form.**

~~(fe)~~ Each Registered **person registered on the** CM/ECF User ~~shall~~ **System will**, upon registration, be issued a User Identification Designation ("User ID") and a **P**assword by the Clerk. The Clerk ~~shall~~ **will** maintain a confidential record of issued User IDs. **Confidential Information Filers are required to change their Passwords at least once**

**a year. Failure of a Confidential Information Filer to change his or her Password at least once a year will result in termination of access to the CM/ECF System until the Password is changed or a new CM/ECF status is requested.**

~~(g) — Each Registered CM/ECF User shall maintain as confidential, except~~  
**f) Except** as expressly provided in subparagraph ~~(ig)~~, the User ID and Password issued by the Clerk: **must be maintained as confidential.** Upon learning of the compromise of the confidentiality of the Password, the Registered ~~CM/ECF User~~ shall **Password holder must change his/her Password and** 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~~ **g) A Registered CM/ECF Filer or Confidential Information Filer** may authorize another person to file a document using the User ID and Password of the Registered CM/ECF User, ~~and~~ **Filer or Confidential Information Filer. Under these circumstances,** the Registered CM/ECF User shall **Filer or Confidential Information Filer will** retain full responsibility and shall **will** be treated as a signatory under the Rules of the Court for any document so filed.

~~(j) — The USCIT Website shall~~ **will** 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 **must file** with the Court **a notice of any changes in his or her e-mail address**, in the manner prescribed by Rule 75(e) of the Rules of the Court, ~~and shall file a Notice of Change in Attorney Information.~~  
~~(k) — An attorney of record or a pro se party who becomes a~~

Registered CM/ECF User is deemed to have consented in writing to electronic service of all documents that are filed electronically pursuant to Paragraph 3 **in addition to submitting the Notice required under paragraph 3(d)** of this Order.

**3.4. Electronic Filing of documents Documents.**

(a) Except as otherwise ordered by the Court, all pleadings and other documents required to be filed with the Clerk shall, **including documents containing Confidential Information, must** 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 **Filer or Confidential Information Filer**, or by a person authorized by a Registered CM/ECF User **Filer or Confidential Information Filer** pursuant to paragraph 2(i) of this Order. **3(g) of this Order. Any document filed with the Court that contains any Confidential Information must be conspicuously marked in accordance with Rule 81(h) and any Confidential Information must be appropriately marked by bracketing.**

(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~~ **(b) With the exception of agency records filed in accordance with Rules 73.1, 73.2 and 73.3 and federal agency remand determinations, every** document filed electronically shall **must** 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 **45(a)** of this Order. For each Rule 11 Signatory, the document shall **must identify the Signatory by name and** 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~~ **(c) Except as provided in subsection (e) of this paragraph, 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 **56** 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.

~~(ed)~~ **(i)** 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~~**must** 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~~**must** list each correction, including the page number for each correction, and ~~shall~~**must** provide a complete copy of the corrected document, or indicate that the corrections are minor. The motion ~~shall~~**must** 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~~**will** 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.~~

**(ii) If a document containing Confidential Information is erroneously filed as a public document, is filed in the wrong case, or otherwise improperly releases Confidential Information, the filing party must immediately contact the Clerk. Parties should use the emergency number posted on the USCIT Website to contact the Clerk after hours. Parties must also follow the procedures set forth in paragraph 17 of this Order.**

~~(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~~ **or in paper form**, and must be accompanied by a Notice of Manual Filing.

**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; and 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) may be filed electronically or manually. A Notice of Manual Filing must accompany manually-filed documents. Notwithstanding any other provision of the EFPs, no document containing classified information may be filed electronically. A party filing a document that contains classified information must file such document manually in accordance with the Rules of the Court. Public versions of such document must be filed electronically in accordance with the requirements and limitations of this Order.**

**(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 set forth in Rule 5(d)(4). Subsequent electronic submission of the same document shall not be deemed to change the date of original filing of that document.** 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.~~ **g) Unless otherwise ordered by the Court, an agency filing an administrative record pursuant to Rule 73.2 will follow the procedure in Rule 73.2(b).**

#### **4.5. 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 **Filer or Confidential Information Filer** as described in paragraph ~~2,~~ **3**, 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~~ **Filer or Confidential Information Filer**, but whose User ID and

Password will not be utilized in the electronic filing of the document, such document shall will 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:

(1i) 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.

(2ii) 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.

(3iii) 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.

(4iv) 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.

**5.6. 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.

**6.7. Service.**

(a) ~~Except~~ **A pro se party who becomes a Registered CM/ECF User or Filer, or an attorney who becomes a Registered CM/ECF Filer or Confidential Information Filer, is deemed to have consented in writing to electronic service of all documents that are filed electronically. Therefore, except** as otherwise ordered by the Court, electronic filing of any document and the Court's transmission of a Notice of Electronic Filing of that document, as described in Paragraph ~~56~~ of this Order, ~~shall~~**will** constitute service of such document on all counsel or pro se parties ~~who are Registered~~**with** CM/ECF ~~Users~~**accounts**. Documents ~~which~~**that** are not filed electronically ~~shall~~**must** be served in non-electronic form in accordance with Rule 5 of the Rules of the Court, and the Court's ~~electronic transmission of a notice of that filing shall~~**Notice of Electronic Filing will** not constitute service.

(b) Counsel excused in any particular case under Paragraph 1(b) of this Order and pro se parties ~~who are~~**do not Registered** ~~have a~~ **CM/ECF Users**~~account~~ **account** must serve and be served with all filed documents in non-electronic form as provided in Rule 5 of the Rules of the Court.

(c) For any document which is served electronically pursuant to subparagraph (a) of this paragraph, the requirement for the filing of a certificate or other proof of service

set forth in Rule 5 of the Rules of the Court ~~shall~~**will** be satisfied by the Court's transmission of the Notice of Electronic Filing described in Paragraph ~~5~~**6** of this Order.

(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.

**(f) Any document containing Confidential Information not required to be electronically filed as permitted in this Order must be served on all parties whose counsel are authorized to have access to such document. The document must be contained in a wrapper conspicuously marked on the front "Confidential – to be opened only by (authorized attorney for that party)." If served by mail, the confidential document must be placed within two envelopes, the inner one sealed and marked "Confidential Information – to be opened only by (name of authorized attorney)" or Business Propriety Information – to be opened only by (name of authorized attorney)," and the outer one sealed and not marked as containing Confidential/Business Propriety Information. Parties not authorized to have access to any such document pursuant to this Order are to be served in accordance**

**with Rule 81(h) with a copy of the document from which all Confidential Information has been deleted.**

**7.8. 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.

**8.9. Notice of Entry of Orders and Judgments.**

The Clerk ~~shall~~**will** file electronically all orders, decrees, judgments, and proceedings of the Court in accordance with the EFPs, which filing ~~shall~~**will** 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~~**will** transmit by e-mail to all e-mail addresses(es) of record in the action a notice of the entry of the order or judgment and ~~shall~~**will** make a note of the transmission in the docket. Transmission of the notice of entry ~~shall~~**will** constitute notice as required by Rule 79(c) of the Rules of the Court and ~~shall~~**will** constitute service of such notice unless non-electronic service is required under paragraph ~~6~~**7**(b) of this Order.

**9.10. Technical Failures.**

(a) The Clerk ~~shall~~**will** 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~~**will** 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~~**will** 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~~**will** become due the next business day. Such delayed filings ~~shall~~**will** 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~~**will** 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~~**must** 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~~**will** be marked "Re-transmitted". This provision (and the designation "re~~Re~~-transmitted") ~~shall~~**will** not be used for filing a motion for errata as set forth in paragraph ~~34~~**34(ed)(i)** of this Order.



~~40-~~**11. Copyright and Other Proprietary Rights.**

(a) The USCIT Website ~~shall~~**will** 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~~**are** 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~~**are** 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.

**11.12. 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)~~ **4(a) or (e)** 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~~**must** 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~~**may** be construed to change the standard for the issuance of a protective order respecting confidentiality in an action subject to the EFPs.

**13. Disclosure and Access to Confidential Information.**

**(a) (i) Individuals who have access to Confidential Information pursuant to Rule 73.2(c) and/or this Order will not disclose it to anyone (including, without limitation, any officer, shareholder, director, or employee of any of the parties in the action), other than the Court, authorized Court personnel, and other persons authorized under this Order. An authorized attorney or authorized consultant may use Confidential Information only for issues relating to the federal administrative agency proceeding that is the subject of the action, in administrative proceedings resulting from an order of the Court remanding the matter to that 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 International Trade Commission and the Department of Commerce, nothing in this Order will be read to require or allow the use of Confidential 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 Confidential Information from the record of the other.

With respect to Confidential Information that was originally submitted by a party to the action, nothing in Rule 73.2(c) or this Order prevents 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 entity's Confidential Information to anyone not authorized under Rule 73.2(c) and/or this Order to have access to the Confidential Information.

(ii) The Clerk of the Court will permit access to documents containing Confidential Information, including electronic access, only to the Court, authorized Court personnel, and individuals authorized by this Order to have access to such documents.

(b) Authorized Consultants. An authorized consultant may have access to Confidential Information in an action only under the direction and control of an authorized attorney, who will assume responsibility for compliance with the terms of Rule 73.2(c) and/or this Order by such authorized consultant, and subject to the terms of Rule 73.2(c) and/or this Order. 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 must file with the Court a Business Proprietary Information Certification which must 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, the authorized attorney must, 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 may then file such a Certification, executed by the proposed consultant, with the Court. If all counsel do not consent, access to Confidential Information for the consultant may be sought by motion.

(c) An authorized attorney or authorized consultant may disclose Confidential Information to office personnel (such as paralegals, administrative assistants, etc.) 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 will assume responsibility for compliance with the terms of Rule 73.2(c) and/or this Order by all office personnel described in this paragraph. An authorized consultant will assume responsibility for compliance with the terms of Rule 73.2(c) and/or this Order by all of his or her own office personnel. All office personnel authorized to see the Confidential Information must comply with the terms of Rule 73.2(c) and/or this Order, and must, before

having access to any confidential documents, sign a statement of recognition that he or she is bound by the terms of Rule 73.2(c) and/or this Order, that the information is confidential and that such information will not be disclosed to anyone other than authorized attorneys, authorized consultants or authorized office personnel. Such statements of recognition must be retained by an authorized attorney, but need not be filed with the Court or served on the parties.

14. Safeguarding Confidential Information.

The individuals covered by Rule 73.2(c) and/or this Order must review the procedures for the protection of Confidential Information listed in any federal agency administrative protective orders on the administrative record and comply with such procedures for the duration of the action.

15. Termination of Access to Confidential Information.

Termination of access to Confidential Information in other than one filed under 28 U.S.C. § 1581(c) will occur under the terms of the protective order issued in the case. For actions filed under 28 U.S.C. § 1581(c), the following procedures will apply. An authorized attorney or authorized consultant will cease to have access to Confidential Information subject to this Order on the filing of a Notice of Termination pursuant to Rule 73.2(c). For government attorneys, access to Confidential Information will cease upon the filing of a Form 18A. 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/or this Order and may not divulge Confidential Information that he or she learned during the action or in the underlying administrative proceeding to any person. Within 28 days of final judgment, including all appeals, the parties will

file a Joint Notice of Final Judgment, and the Clerk's Office will terminate electronic access to any confidential documents on receipt of that filing.

16. Use of Confidential Information During Proceedings in Open Court.

Authorized attorneys will endeavor to avoid the unnecessary use of Confidential Information in any oral proceeding before the Court. If an authorized attorney for any party in the action finds it necessary to refer to Confidential Information in any oral proceeding before the Court, such attorney must 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 Confidential Information to persons other than those authorized by this Order.

17. Breach of Requirements Regarding Confidential Information.

The individuals covered by Rule 73.2(c) and/or this Order must promptly report any breach of paragraphs 13-16 of this Order to the Court, to counsel for the federal administrative agency involved, and to counsel for the party whose Confidential Information is involved. The individuals covered by Rule 73.2(c) and/or this Order must take all reasonable steps to remedy the breach and must cooperate fully in any investigation of the breach undertaken by the Court.

~~12-18.~~ Miscellaneous Provisions.

(a) The Clerk ~~shall~~**will** establish procedures to permit pleadings and other documents to be presented for electronic filing at the Court. The Clerk ~~shall~~**will** also provide for ~~public~~**appropriate** access to all ~~public~~ electronic Court records. Facilities and

equipment made available **at the Court** 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~~**will** 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~~**will** 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~~**will** be posted prominently in and otherwise made available in the Office of the Clerk. Any amendments to the EFPs ~~shall~~**will** 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:

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By: Tina Potuto Kimble  
Clerk of the Court

Dated: April 1, 2002, amended Nov. 28, 2006, eff. Jan. 1, 2007; amended Aug. 2, 2010, eff. Sept. 1, 2010; **amended \_\_\_\_\_, 2012, eff. \_\_\_\_\_, 2013.**

New York, New York

**Advisory Committee Note**

CIT Administrative Order 02-01, *In Re Electronic Filing Procedures* (“AO 02-01”), has been amended to permit the electronic filing under seal of a document that contains confidential or business proprietary information and to provide for procedures related to the filing and safeguarding of such information. As a result, it has been renamed *In Re Electronic Filing Procedures and Submission of Confidential Information*. The CM/ECF system now has three levels of users. The Registered CM/ECF User has access to all public information available on the system. The Registered CM/ECF Filer is an attorney who is a member of the CIT bar who has access to all public information available on the CM/ECF system and is permitted to file documents containing public information on the CM/ECF system. An attorney who wishes to electronically file confidential or business proprietary information, or to access such information, will be granted an enhanced level of access and filing rights as a Confidential Information Filer, but will also be required to change passwords at least once a year to enhance the security of the system.

In addition, this Order has been revised to incorporate the relevant language from the Appendix on Access to Business Proprietary Information pursuant to Rule 73.2(c) and that Appendix has been deleted.