

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CQG, INC. and CQG, LLC (f/k/a CQGT, LLC),  
Petitioner,

v.

CHART TRADING DEVELOPMENT, LLC,  
Patent Owner.

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Case CBM2016-00048  
Patent 8,060,435 B2

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Before JAMESON LEE, KEVIN F. TURNER, and  
KEVIN W. CHERRY, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

SCHEDULING ORDER

## A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. The parties may not stipulate to an extension of DUE DATES 6 and 7.

In stipulating to different times, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section B, below).

The parties are reminded that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,772 (Aug. 14, 2012) (Appendix D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. *See* 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

### 1. INITIAL CONFERENCE CALL

An initial conference call is not scheduled in this case. A party may request an initial conference call within 25 days after the institution of trial. A party requesting an initial conference call shall: (a) identify the proposed motions, if any, to be discussed during the call; and (b) propose two or more dates and times when both parties are available for the call. When an initial conference call is scheduled in response to a request, the parties are directed

to the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012), for guidance in preparing for the initial conference call and should be prepared to discuss any proposed changes to the schedule in this proceeding.

We note the following guidance:

The parties shall not to use the Motion to Exclude for any purpose other than to raise admissibility issues under the Federal Rules of Evidence. If an issue arises with regard to a paper being out of proper scope, e.g., belatedly raising new issues or belatedly submitting new evidence, the parties shall contact the Board in a timely manner to raise the matter.

Supplemental evidence is not the same as supplemental information, and that the rules do not contemplate more than one cycle of objection to evidence and subsequent supplemental evidence to cure the objection.

A motion for Observation on Cross-Examination should not be argumentative and that the entry for each identified item is limited to one short paragraph. It does not mean that arguments can be presented so long as they are less than one short paragraph in length. Also, circumventing the length requirement by use of footnote is inappropriate.

## 2. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.220), and
- b. A motion to amend the patent (37 C.F.R. § 42.221).

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The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.

3. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

4. DUE DATE 3

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

5. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section C, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

6. DUE DATE 5

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

7. DUE DATE 6

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

8. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE 7.

B. CROSS-EXAMINATION

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due. *See* 37 C.F.R. § 42.53(d)(2).
2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *See id.*

C. MOTION FOR OBSERVATION ON CROSS-EXAMINATION

A motion for observation on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,768. The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

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