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Paper 22 (IPR2014-00356)
Paper 16 (IPR2014-00366)
Paper 16 (IPR2014-00406)
Paper 13 (IPR2014-00420)
Paper 13 (IPR2014-00421)
Entered: August 26, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALTRICS, LLC,
Petitioner,

v.

OPINIONLAB, INC.,
Patent Owner.

Cases¹

IPR2014-00356 (Patent 6,606,581 B1)
IPR2014-00366 (Patent 8,041,805 B2)
IPR2014-00406 (Patent 7,085,820 B1)
IPR2014-00420 (Patent 7,370,285 B1)
IPR2014-00421 (Patent 8,024,668 B2)

Before RAMA G. ELLURU, JEREMY M. PLENZLER, GEORGIANNA
W. BRADEN, and CARL M. DEFRANCO, *Administrative Patent Judges*.

ELLURU, *Administrative Patent Judge*.

REVISED SCHEDULING ORDER

¹ This order applies to each of the five listed cases. We exercise our discretion to issue one order to be docketed in each case. The parties, however, are not authorized to use this caption for any subsequent papers.

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IPR2014-00421 (Patent 8,024,668 B2)

A. INITIAL CONFERENCE CALL

This order sets a date for the initial conference call. *See* Appendix. 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 this Scheduling Order and any motions the parties anticipate filing during the trial.

B. DUE DATES

This order sets due dates for the parties to take action in this trial. *See* Appendix. 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 any 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 C).

The parties are reminded that the Testimony Guidelines appended to the *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012) (Appendix D), apply to this trial. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys' fees

IPR2014-00356 (Patent 6,606,581 B1)
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incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

1. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

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 and fully briefed in the response will be deemed waived.

2. 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.

3. 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.

4. DUE DATE 4

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

IPR2014-00356 (Patent 6,606,581 B1)
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IPR2014-00421 (Patent 8,024,668 B2)

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.

5. 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.

6. DUE DATE 6

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

7. DUE DATE 7

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

C. CROSS-EXAMINATION

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

1. Cross-examination begins after any supplemental evidence is due. 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. *Id.*

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IPR2014-00421 (Patent 8,024,668 B2)

D. 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, since no further substantive paper is permitted after the reply. *See Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). 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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