

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

J SQUARED, INC. d/b/a UNIVERSITY LOFT COMPANY,
Petitioner,

v.

SAUDER MANUFACTURING COMPANY,
Patent Owner.

Cases¹

IPR2015-00774 (Patent 8,585,136 B2)

IPR2015-00958 (Patent 8,585,136 B2)

Before LINDA E. HORNER, JOSIAH C. COCKS, and
JAMES A. WORTH, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

¹ This order addresses issues raised in both cases. We exercise our discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in subsequent papers.

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I. INTRODUCTION

On November 10, 2015, a conference call was conducted between respective counsel for the parties and Judges Horner, Cocks, and Worth. Petitioner, J Squared, Inc. d/b/a University Loft Company (“Petitioner”), was represented by counsel William F. Bahret. Patent Owner, Sauder Manufacturing Company (“Patent Owner”), was represented by counsel Thomas N. Young.

The purpose of the call was to discuss: (1) submission of excerpts taken from deposition transcripts in a corresponding patent infringement litigation and submission of exhibits accompanying these deposition transcripts; (2) filing of certain papers under seal accompanied by a protective order; and (3) submission of exhibits supporting a declaration.

A. Deposition Transcript and Exhibits

Patent Owner indicated that it wishes to submit as evidence in support of its Patent Owner Response portions of two deposition transcripts from a corresponding patent infringement litigation. Petitioner indicated that it does not object to the submission of portions of these deposition transcripts. Patent Owner and Petitioner sought the Board’s guidance on whether it would be acceptable to submit only excerpts of the deposition transcripts or whether it would be necessary to submit the entire transcript and accompanying exhibits from each deposition. We advised the parties that it is not necessary to file entire deposition transcripts in this instance. We instructed Patent Owner to submit only those excerpts relied in support of the Patent Owner Response. We further instructed Patent Owner to submit only those exhibits referenced in the portions of the deposition transcript

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submitted by Patent Owner. We noted that if Petitioner feels that further portions of the deposition transcripts would be useful to the Board in this case, they may submit additional excerpts in any Petitioner Reply.

B. Filing Under Seal and Protective Order

Patent Owner noted that portions of the depositions transcripts from the related patent infringement litigation may contain information that the Petitioner deems business confidential information. Patent Owner and Petitioner stated that they were amenable to adopting the Board's default protective order, and they sought guidance on the appropriate procedure for filing the confidential business information under seal.

We reminded the parties of the strong public policy that all papers filed in an *inter partes* review are open and available for access by the public, and that there is a presumption that any confidential information relied on by the Board in a final decision shall become public. The standard for granting a motion to seal is "good cause." 35 U.S.C. §§ 316(a)(1), 316(a)(7); 37 C.F.R. §§ 42.14, 42.54. The party asserting confidentiality bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c). This includes showing that the information is truly confidential, and that such confidentiality outweighs the strong public policy interest in having an open record.

We advised the parties that any document filed with a motion to seal is treated as sealed until the motion is decided, and that a proposed protective order should be filed concurrently with a motion to seal. *See* 37 C.F.R. § 42.54(a). Specifically, we informed Patent Owner that if the Patent Owner Response includes confidential information, it should be filed

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with a motion to seal and include as an exhibit to the motion a copy of the proposed protective order, along with a redacted, public version of the paper. We instructed that even if the parties agree to the Board's default protective order, the parties must file a joint motion to seal accompanied by a proposed protective order. Further guidance may be found in the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, App. B (August 14, 2012).

C. Exhibits to Declaration

Patent Owner noted that a declaration it plans to file with the Patent Owner Response contains references to exhibits, including video exhibits, available on the Internet. Patent Owner sought the Board's guidance as to whether it would be necessary to electronically file these exhibits with the Board, or whether providing a link to a URL at which the exhibits could be located would be adequate. We advised Patent Owner that any exhibits referenced in the Patent Owner Response or accompanying declarations must be submitted using the Patent Review Processing System (PRPS). Only MPEG format video files (MPEG, MPG, MP1, MP2, MP3, M1A, M2A, M1V, MPA, MPV) may be uploaded in PRPS. Password-protected files will not be accepted. A single uploaded file may not exceed 25 megabytes in size. For technical reasons, PRPS is unable to accept files over 25 megabytes at this time. The parties are encouraged to reduce the file size by splitting a large file into multiple smaller files. The parties are directed to address all questions related to video excerpt submission issues to Frances Han at (571) 272-4612.

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D. Changing Due Dates

At the end of the call, Patent Owner raised the issue of extending the due date for filing the Patent Owner Response. We advised that the parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). We further informed the parties that 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.

II. ORDER

It is therefore

ORDERED that the parties are authorized to submit excerpts of the two deposition transcripts from the corresponding patent infringement litigation;

FURTHER ORDERED that the parties must submit any exhibits referenced in the excerpts of the two deposition transcripts;

FURTHER ORDERED that exhibits referenced in any declarations, including video submissions to the Board, must be submitted in PRPS.

FURTHER ORDERED that a notice of any stipulation to different dates for DUE DATES 1 through 5, specifically identifying the changed due dates, must be promptly filed with the Board.

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