

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ALARM.COM INC.,  
Petitioner,

v.

VIVINT, INC.,  
Patent Owner.

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Case IPR2015-01965 (Patent 7,884,713 B1)  
Case IPR2015-01977 (Patent 6,924,727 B2)<sup>1</sup>

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Before MICHAEL R. ZECHER, JAMES B. ARPIN, and  
CHARLES J. BOUDREAU, *Administrative Patent Judges*.

ARPIN, *Administrative Patent Judge*.

ORDER  
Denying Change to Rescheduled Due Date 7  
*37 C.F.R. § 42.5(a) and (c)*

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<sup>1</sup> This Order addresses an issue that is identical in both cases. We, therefore, 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 any subsequent papers.

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## I. DISCUSSION

On March 24, 2016, we instituted *inter partes* review in IPR2015-01977; and, on March 30, 2016, we instituted *inter partes* review in IPR2015-01965. IPR2015-01965, Paper 12; IPR2015-01977, Paper 13. We issued a Scheduling Order for each case, and, in the Scheduling Order for IPR2015-01965, we advised the parties that, “if no Motion to Amend is filed in this proceeding, Due Date 3 is moot, and the panel may advance Due Dates 4–7, *sua sponte*.” IPR2015-01965, Paper 13, 3 n.2. On October 3, 2016, we issued a Second Revised Scheduling Order, in which we changed Due Dates 4–7, and, in particular, in which we set Due Date 7 for November 30, 2016. IPR2015-01965, Paper 24, 3; IPR2015-01977, Paper 30, 3. Further, we advised the parties that, “if oral argument is requested, counsel for the parties shall appear and present their arguments in Alexandria, Virginia, before Judge Zecher. Judge Arpin (Denver, Colorado) and Judge Boudreau (San Jose, California) shall participate in any requested hearing remotely.” *E.g.*, IPR2015-01965, Paper 24, 2.

On October 11, 2016, we held a telephone conference with the parties to discuss their joint request that we change Due Date 7 again. During that telephone conference, Petitioner informed us that one of its back-up counsel, Mr. Brooks (*see, e.g.*, IPR2015-01965, Paper 11 (admitting Mr. Brooks as back-up counsel *pro hac vice*)) would be out of the country on business on November 30, 2016. Petitioner informed us that it wished for Mr. Brooks to present its arguments at any requested hearing.<sup>2</sup> Further, Petitioner informed us that neither its lead counsel nor any of its other three back-up counsel has a conflict with the rescheduled Due Date

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<sup>2</sup> We note that, at this time, neither party has requested a hearing in either IPR2015-01965 or IPR2015-01977.

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7, and Patent Owner informed us that none of its counsel has a conflict with the rescheduled Due Date 7.<sup>3</sup>

Nevertheless, in an effort to accommodate Petitioner's desire to have Mr. Brooks available to present Petitioner's arguments at any requested hearing, we instructed that the parties confer and inform us of the date of Mr. Brooks' return from his business trip abroad and possible alternative dates for Due Date 7. After conferring, the parties informed us that Mr. Brooks will return from his business trip on December 2, 2016, and proposed that Due Date 7 be rescheduled for December 7, 8, or 9, 2016. After investigation, we determined that either at least one judge has a conflict with the proposed dates for Due Date 7 or that a hearing room is not available in Alexandria on the dates proposed. Therefore, we *deny* the parties' request to change rescheduled Due Date 7.

## II. ORDER

Accordingly, it is ORDERED that the parties' request to change rescheduled Due Date 7 is *denied*.

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<sup>3</sup> As the parties are aware, “[i]f a party is represented by counsel, the party must designate a lead counsel and at least one back-up counsel who can conduct business on behalf of the lead counsel.” 37 C.F.R. § 42.10(a); *see* Office Trial Practice Guide, 77 Fed. Reg. 48756, 48758 (Aug. 14, 2012).

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