

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AXON ENTERPRISE, INC.,  
Petitioner,

v.

DIGITAL ALLY, INC.,  
Patent Owner.

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IPR2017-00375  
Patent 8,781,292 B1

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Before PHILLIP J. KAUFFMAN, MINN CHUNG, and  
ROBERT L. KINDER, *Administrative Patent Judges*.

KAUFFMAN, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding  
*37 C.F.R. § 42.5*

On May 4, 2018, we held a call with the parties regarding our recent order that added a new ground of unpatentability (“the new ground”) to our Institution Decision. *See Papers 47, 9; see generally, Guidance on the Impact of SAS on AIA Trial Proceedings*, April 26, 2018.<sup>1</sup>

During the call, the parties proposed (“the proposed schedule”): (1) authorization for Patent Owner to file a supplemental response, not to exceed seven pages, no later than May 11; (2) authorization for Petitioner to file a supplemental reply, not to exceed five pages, no later than May 18; and (3) no oral hearing, new evidence, or new discovery.

We discussed other possible courses of action, and the parties indicated they still preferred the proposed schedule.

Patent Owner indicated that they strongly desire that we enter the Final Decision by the statutory deadline of June 6, 2018. We explained that if the parties did not file any additional papers regarding the new ground, the panel expected to meet the statutory deadline. However, the proposed schedule leads to submitting the last paper less than three weeks from the Final Decision deadline. It is ambitious to complete and enter a Final Decision in that period, and it is possible we would request an extension (not to exceed six months). The panel remains committed to entering the Final Decision as soon as possible.

The papers should discuss: (1) the new ground; (2) impact, if any, of the new ground on our decision regarding the Motion to Amend; and, (3) any due process concerns raised by the amended Institution Decision.

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<sup>1</sup> Available on line at <https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials/guidance-impact-sas-aia-trial>.

We asked the parties if they needed additional pages and they indicated they did not.

We remind the parties of their duty to seek relief promptly after the need for that relief is identified. *See* 37 CFR § 42.25(b). In particular, if either party perceives the approach set by this order is insufficient in some respect, that party should request a conference call.

### ORDER

We authorize Patent Owner to submit a supplemental Response as outlined above.

We authorize Petitioner to submit a supplemental Reply as outlined above.

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