

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC. and INSTAGRAM LLC,
Petitioner,

v.

SKKY, LLC,
Patent Owner.

Case IPR2017-00550 (US 9,037,502 B2)
Case IPR2017-00602 (US 9,219,810 B2)

Before KARL D. EASTHOM, WILLIAM V. SAINDON, and
CHRISTOPHER PAULRAJ, *Administrative Patent Judges*.

PAULRAJ, *Administrative Patent Judge*.

SCHEDULING ORDER
37 C.F.R. § 42.5

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A. GENERAL INSTRUCTIONS

1. Requests for an Initial Conference Call

Unless at least one of the parties requests otherwise, we will not conduct an initial conference call as described in the Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012). **The parties must request an initial conference call if either party is aware of any conflicts or concerns with DUE DATE 7 set forth in the Appendix of this Scheduling Order.** Any request for an initial conference call must be made no later than 25 days after the institution of trial.

2. Standing Procedure for Requests for Conference Calls

If the parties request a conference call, including an initial conference call, the parties must follow these procedures:

- a. Prior to requesting a conference call, the parties must confer in an effort to resolve any issue to be discussed with the Board, or be prepared to explain to the Board why such a conference was not possible.
- b. Parties may request a conference call by contacting the Board at the email address or telephone number listed above the caption of this Order. Requests via email are expected and preferred; requests via telephone should be reserved for time-critical circumstances. Requests by email must copy opposing counsel. Requests by telephone should include opposing counsel as practicable.
- c. The request must include a list of proposed issues and/or motions to be discussed during the call.

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- d. The request may include a brief background discussion of the issue(s) and/or motion(s) to be discussed, but must not include arguments.
- e. The request must certify that the parties conferred in accordance with section A.2.a. of this Order, and must indicate the result of the conference (e.g., whether the non-requesting party opposes or does not oppose the request).
- f. The request must include a list of dates and times when both parties are available for the call.

3. *Protective Order*

A protective order does not exist in this proceeding unless the parties file one and the Board approves it. If either party files a motion to seal before entry of a protective order, a jointly proposed protective order should be presented as an exhibit to the motion. We encourage the parties to adopt the Board's default protective order if they conclude that a protective order is necessary. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, App. B (Aug. 14, 2012). If the parties choose to propose a protective order deviating from the default protective order, they must submit the proposed protective order jointly along with a redline comparison of the proposed and default protective orders showing the differences; and the parties must explain why the proposed deviations from the default protective order are necessary.

The Board has a strong interest in the public availability of the proceedings. We advise the parties that redactions to documents filed in this proceeding should be limited to isolated passages consisting entirely of confidential information, and that the thrust of the underlying argument or evidence must be clearly discernible from the redacted versions. We also

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advise the parties that information subject to a protective order will become public if identified in a final written decision in this proceeding, and that a motion to expunge the information will not necessarily prevail over the public interest in maintaining a complete and understandable file history. *See Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,761.*

4. Motions to Seal

A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed.

37 C.F.R. § 42.14. The moving party must also file the following as exhibits accompanying the motion:

- (a) A declaration establishing that the document or thing sought to be filed under seal is sealable.
- (b) If seeking to file a portion of a document under seal, a redacted version of the document must be filed publicly.
- (c) An unredacted version of the document must be filed confidentially (i.e., as available to the “Parties and Board Only”). The unredacted version must highlight or otherwise clearly indicate the portion(s) of the document that have been redacted in the redacted version.

If the moving party is seeking to file under seal a document designated confidential by the opposing party pursuant to a protective order, the declaration in support of the motion to seal must identify the party that has designated the material as confidential (“the designating party”). Within five business days, the designating party must file a response to the motion to seal and file a declaration as an exhibit that establishes the designated information is sealable.

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4. Motions to Amend

Patent Owner may file a motion to amend without prior authorization from the Board. Nevertheless, Patent Owner must confer with the Board before filing such a motion. *See* 37 C.F.R. § 42.121(a). Patent Owner should arrange for a conference call with the panel and opposing counsel at least two weeks before DUE DATE 1 to satisfy the requirement. We direct the parties to the Board's website for representative decisions relating to Motions to Amend, among other topics. The parties may access these representative decisions at: <https://www.uspto.gov/patents-application-process/appealing-patent-decisions/decisions-and-opinions/representative-orders>.

5. Discovery Disputes

The panel encourages the parties to resolve disputes relating to discovery on their own and in accordance with the precepts set forth in 37 C.F.R. § 42.1(b). To the extent that a dispute arises between the parties relating to discovery, the parties shall meet and confer to resolve such a dispute before contacting the Board. If attempts to resolve the dispute fail, a party may request a conference call with the Board in accordance with section A.2 of this Order to seek authorization to file a motion for relief.

6. Depositions

The parties are advised 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. 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.

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