# UNITED STATES PATENT AND TRADEMARK OFFICE

# BEFORE THE PATENT TRIAL AND APPEAL BOARD

# SONY CORPORATION, Petitioner,

v.

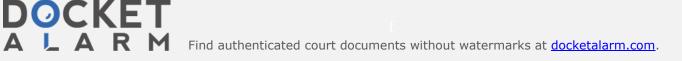
FUJIFILM CORPORATION, Patent Owner.

> Case IPR2017-00618 Patent 7,355,805 B2

Before JO-ANNE M. KOKOSKI, JEFFREY W. ABRAHAM, and MICHELLE N. ANKENBRAND, *Administrative Patent Judges*.

KOKOSKI, Administrative Patent Judge.

MODIFIED SCHEDULING ORDER



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On January 6, 2017, Sony Corporation ("Petitioner") filed a Petition ("Pet.," Paper 2) to institute an *inter partes* review of claims 1–3 and 10 of U.S. Patent No. 7,355,805 B2 ("the '805 patent," Ex. 1001) with respect to the following grounds:

Reference(s)	Basis	Challenged Claims
Hennecken	§ 102(e)	1–3, 10
Hennecken and Albrecht II, Basis 1	§ 103(a)	1–3, 10
Hennecken and Albrecht II, Basis 2	§ 103(a)	1–3, 10
Hennecken, Albrecht II, and Dugas, Basis 1	§ 103(a)	1–3, 10
Hennecken, Albrecht II, and Dugas, Basis 2	§ 103(a)	1–3, 10
Albrecht II and Hennecken	§ 103(a)	1–3, 10

Pet. 4. On July 24, 2017, we denied the Petition and did not institute an *inter partes* review of the '805 patent. Paper 9. In response to Petitioner's Request for Rehearing (Paper 10), on December 18, 2017 we instituted *inter partes* review on the following grounds:

Reference(s)	Basis	Challenged Claims
Hennecken	§ 102(e)	1–3, 10
Hennecken and Albrecht II, Basis 1	§ 103(a)	1–3, 10
Hennecken, Albrecht II, and Dugas, Basis 1	§ 103(a)	1–3, 10

Paper 11, 11. On April 27, 2018, we modified our institution decision to include review of "all of the grounds presented in the Petition." Paper 15, 2.

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On May 15, 2018, a conference call was held between respective counsel for the parties and Judges Kokoski, Abraham, and Ankenbrand,

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during which the parties were directed to meet and confer, and then jointly propose a schedule regarding supplemental briefing to address the newlyinstituted grounds. On May 23, 2018, the parties submitted their proposed schedule to the Board via email.

Upon consideration of the parties' proposed schedule, we modify the schedule in this proceeding as set forth in the Appendix to this Modified Scheduling Order. The due dates set forth in this Order cannot be changed without prior authorization from the Board. We note that this proceeding is in a relatively early stage (Patent Owner submitted its Patent Owner Response on March 27, 2018), the newly-instituted grounds include the same prior art and claims as the originally-instituted grounds, and there is no Motion to Amend pending.

The parties are reminded 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 attorney's fees incurred by any party may be levied on a person who impeded, delays, or frustrates the fair examination of a witness.

# A. DUE DATES

# 1. DUE DATE 1A

The patent owner may file—

A supplemental response to the petition (37 C.F.R. § 42.120), limited to the merits of the previously non-instituted grounds.

The patent owner must file any such response by DUE DATE 1A, limited to 15 pages. If the patent owner elects not to file anything, the patent

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owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised in the response will be deemed waived.

# 2. DUE DATE 2

The petitioner must file any reply to patent owner's response and supplemental response by DUE DATE 2.

# 3. DUE DATE 3

a. Each party must file any observations on the cross-examination testimony of a reply witness (*see* section C, below) by DUE DATE 3.

b. Each party must file any motion to exclude evidence (37 C.F.R § 42.64(c)) by DUE DATE 3.

c. Each party must file any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 3.

4. DUE DATE 4

a. Each party must file any response to an observation on crossexamination testimony by DUE DATE 4.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 4.

5. DUE DATE 5

Each party must file any reply for a motion to exclude evidence by DUE DATE 5.

6. DUE DATE 6

The oral argument (if requested by either party) is set for DUE DATE 6.

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### B. 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*.

# C. OBSERVATIONS ON CROSS-EXAMINATION

Observations on cross-examination provide the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness because no further substantive paper is permitted after the reply. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. at 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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