

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC. and AMAZON WEB SERVICES, INC.,
Petitioner,

v.

BROADCOM CORPORATION,
Patent Owner.

Cases

IPR2017-00811 (Patent 7,296,295 B2)
IPR2017-00814 (Patent 8,147,332 B2)¹

Before JAMES B. ARPIN, BARBARA A. PARVIS, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

SCHEDULING ORDER

¹ This Scheduling Order sets due dates that are identical in both cases. We exercise our discretion to issue one Scheduling Order to be filed in each case. The parties may not use this style heading unless authorized.

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A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceedings. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). A notice of the stipulation, specifically identifying the changed due dates, must be filed promptly. The parties may not stipulate to an extension of DUE DATES 6 and 7. Nor does stipulating to a different DUE DATE 4 modify the deadline, set in this Order, for requesting an oral argument.

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 (*see* section B, below).

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 these proceedings. 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.

1. INITIAL CONFERENCE CALL

The parties are directed to contact the Board within a month of the issuance of the decisions instituting review if there is a need to discuss proposed changes to this Scheduling Order or proposed motions. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (guidance in preparing for the initial conference call). Patent Owner is

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reminded that it must confer with the Board before filing a Motion to Amend. 37 C.F.R. § 42.121(a). Patent Owner should contact the Board to request such a conference, if necessary, at least ten (10) business days before DUE DATE 1.

2. DUE DATE 1

Patent Owner may file—

- a. A response to the Petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

Patent Owner must file any such response or motion to amend in each proceeding by DUE DATE 1. If Patent Owner elects not to file anything in either proceeding, Patent Owner must arrange a conference call with the parties and the Board. Patent Owner is cautioned that any arguments for patentability not raised in the response to the particular proceeding will be deemed waived.

3. DUE DATE 2

Petitioner must file any reply to Patent Owner's response and opposition to the motion to amend by DUE DATE 2.

4. DUE DATE 3²

Patent Owner must file any reply to Petitioner's opposition to Patent Owner's motion to amend by DUE DATE 3.

² Please be advised that, if no Motion to Amend is filed in either of these proceedings, Due Date 3 is moot, and the panel may advance Due Dates 4–7 *sua sponte*.

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5. DUE DATE 4

a. Each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section C, below) by DUE DATE 4.

b. Each party must file any motion to exclude evidence (37 C.F.R § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

6. DUE DATE 5

a. Each party must file any response to an observation on cross-examination testimony by DUE DATE 5.

b. Each party must file any opposition to a motion to exclude evidence by DUE DATE 5.

7. DUE DATE 6

Each party must file any reply for a motion to exclude evidence by DUE DATE 6.

8. DUE DATE 7

The oral argument in either or both proceedings (if requested by either party) is set for DUE DATE 7.

The panel is available to hear oral argument, if requested, at the USPTO main office in Alexandria, Virginia, at the Texas Regional Office in Dallas, Texas, or at the Rocky Mountain Regional Office in Denver, Colorado. If the parties have a preference with regard to the above-identified locations, the parties are directed to state the preference as soon as possible but in no event later than in the parties' requests for oral argument, including whether the parties agree to a stated preference. The Board will

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set and identify the location in the order setting oral argument. Although the panel shall consider the parties' hearing location preference, the Board may not be able to honor the parties' preference due, for example, to the availability of hearing room resources.

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. MOTION FOR OBSERVATION ON CROSS-EXAMINATION

A motion for observation on cross-examination provides 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. 48,756, 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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