

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MIPOX CORPORATION,  
Petitioner,

v.

INTERNATIONAL TEST SOLUTIONS, INC.  
Patent Owner.

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Case IPR2017-00938  
Patent 6,777,966 B1

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Before JO-ANNE M. KOKOSKI, JEFFREY W. ABRAHAM, and  
JOHN F. HORVATH, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

SCHEDULING ORDER  
*37 C.F.R. § 42.5(a)*

## A. DUE DATES

This Order sets forth due dates for the parties to take action after institution of this proceeding. The parties may stipulate to different dates for DUE DATES 1 through 5 (earlier or later, but no later than DUE DATE 6). The parties may not stipulate to an extension of DUE DATES 6 and 7, and with respect to DUE DATE 4, may not stipulate to an extension of the date set forth in this Order for requesting oral argument.

If the parties stipulate to different due dates, a notice of the stipulation specifically identifying the changed due dates must be promptly filed. In stipulating to different due dates, 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) (“the Trial Practice Guide”), 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.

### 1. DUE DATE 1

The 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).

The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file a response, the patent 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.

4. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

5. DUE DATE 3

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

6. 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.

7. 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.

8. DUE DATE 6

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

9. DUE DATE 7

Oral argument (if requested by either party) is set for DUE DATE 7.

B. INITIAL CONFERENCE CALL

The parties are directed to contact the Board within one month of this Order if there is a need to discuss proposed changes to this 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).

C. PROTECTIVE ORDER

A protective order does not exist in this proceeding, and will not exist until a party files a motion to seal that includes a proposed protective order, and the proposed protective order is approved by the Board. *See* 37 C.F.R. 42.54(a). The motion to seal must include a certification that the moving party has in good faith conferred or attempted to confer with other affected parties in an effort to resolve any dispute. *Id.* A party filing confidential information must use the appropriate availability indicator in PTAB E2E, regardless of who owns the confidential information. The owner of the confidential information, not necessarily the party filing the information, must file the motion to seal and bears the burden of showing the information for which protection is sought is confidential information.

We encourage the parties to adopt the Board's default protective order if they conclude that a protective order is necessary in this proceeding. *See* Default Protective Order, Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,769–71, App. B. If the parties file a proposed protective order that deviates from the default protective order, they must submit the proposed protective order jointly, together with a marked-up copy showing the differences between the default and proposed protective orders.

The Board has a strong interest in the public availability of 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 redacted documents. We also 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.

#### D. 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.*

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