

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

SAINT LAWRENCE COMMUNICATIONS LLC,
Patent Owner.

Case IPR2017-01077
Patent 7,260,521 B1

Before ROBERT J. WEINSCHENK, SCOTT C. MOORE, and
MICHELLE N. ANKENBRAND, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

SCHEDULING ORDER
37 C.F.R. § 42.5

This Order may differ from scheduling orders that counsel have received in other Board proceedings. All counsel are ordered to familiarize themselves with the provisions of this Order.

A. GENERAL INSTRUCTIONS

1. Initial Conference Call

The parties are directed to contact the Board within fifteen business days of the date of this Order if there is a need to discuss proposed changes to this Scheduling Order (i.e., regarding DUE DATES 6 and 7) or any proposed motions, not authorized already by our Rules or by this Scheduling Order, which the parties anticipate filing during the trial. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,765–66 (Aug. 14, 2012) (setting forth guidance in preparing for the initial conference call). To request a conference call, the requesting party should submit a list of dates and times when both parties are available for a call.

2. Motion 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 shall arrange for a conference call with the panel and opposing counsel at least 10 business days before DUE DATE 1 in order to satisfy the requirement for a conference.

3. Disputes; Meet and Confer Requirement

The panel encourages the parties to resolve disputes 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, the parties shall meet and confer to resolve such dispute before contacting the Board. If attempts to

resolve the dispute fail, either party may request a conference call with the Board and the other party in order to seek authorization to move for relief.

In any request for a conference call with the Board to resolve a dispute, the requesting party shall: (a) certify that it has conferred with the other party in an effort to resolve the dispute; (b) identify with specificity the issues for which agreement has not been reached; (c) identify the precise relief to be sought; and (d) propose specific dates and times at which both parties are available for the conference call.

If a party files an unopposed motion (e.g., a *pro hac vice* motion), that party shall clearly indicate on the caption page that the motion is unopposed. Failure to comply with this requirement may delay the disposition of unopposed motions.

4. *Depositions*

The parties are advised that the Testimony Guidelines appended to the Office Patent Trial Practice Guide, 77 Fed. Reg. at 48,772, App. D, apply to this proceeding. The Board may impose an appropriate sanction or sanctions 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.

Whenever a party submits a deposition transcript as an exhibit in this proceeding, the submitting party shall file the full transcript of the deposition rather than excerpts of only those portions being cited. After a deposition transcript has been submitted as an exhibit, all parties who subsequently cite to portions of the transcript shall cite to the first-filed exhibit rather than submitting another copy of the same transcript.

5. *Cross-Examination*

Except as the parties might otherwise agree, for each due date—

a. Cross-examination begins after any supplemental evidence is due. 37 C.F.R. § 42.53(d)(2).

b. 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.*

6. *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. Each observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. No observation should exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

B. DUE DATES

This Order sets due dates for the parties to take action after institution of the proceeding. 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 promptly filed. Stipulating to a different DUE DATE 4 does not modify the deadline set in this Order for requesting an oral argument. The parties may not stipulate to an extension of DUE DATES 6 and 7, and, if either party anticipates the need to alter DUE DATE 7, the parties must schedule a

conference call with the panel immediately upon identifying any conflict or potential conflict with DUE DATE 7.

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.

1. 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 by DUE DATE 1.

If Patent Owner elects not to file anything, 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 will be deemed waived.

2. DUE DATE 2

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

3. DUE DATE 3¹

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

¹ The parties are advised that if no Motion to Amend is filed in this proceeding, DUE DATE 3 is moot, and the panel may advance DUE DATES 4–7 *sua sponte*.

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