

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,
Petitioner,

v.

SUSAN McKNIGHT, INC.,
Patent Owner.

Case IPR2017-01687
Patent 9,066,511 B2

Before JAMES A. TARTAL, TIMOTHY J. GOODSON, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

TARTAL, *Administrative Patent Judge*.

CONDUCT OF PROCEEDING

Authorizing Additional Briefing and Modifying Due Dates 2 and 4 to 6
37 C.F.R. § 42.5

On May 2, 2018, we issued an order modifying our Institution Decision (Paper 7) to include review of all challenged claims of U.S. Patent No. 9,066,511 B2 (Ex. 1001, “the ’511 patent”) on all grounds presented in the Petition. Paper 15, 3. We also requested that the parties meet and confer to determine whether they desired any changes to the schedule or briefing in the proceeding. *Id.* at 3.

In response, United Industries Corporation (“Petitioner”) and Susan McKnight, Inc. (“Patent Owner”) submitted a joint proposal, portions of which we adopt as set forth below. Because Patent Owner did not file a motion to amend in this case by the deadline under the original schedule, we need not extend the deadlines for Petitioner to file an opposition, or the deadline for Patent Owner to file a reply, to a motion to amend. *See* Paper 8, 8. Additionally, because briefing will be complete under the joint proposal by October 12, 2018, the date of oral argument if requested (DUE DATE 7) will remain as set forth in the original schedule as October 18, 2018. *See id.*

As provided in the Scheduling Order, the parties also may stipulate to different due dates, other than DUE DATES 6 and 7. Paper 8, 6. If either party desires additional briefing beyond what is provided below, or further adjustments to the schedule for DUE DATES 6 or 7, that party may request a conference call with the Board to seek such changes or authorization for briefing after it has met and conferred with the opposing party.

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner is authorized to submit a Supplemental Patent Owner Response by June 6, 2018, not to exceed 3,000 words excluding title page, Table of Contents, Table of Authorities, and Exhibits List;

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FURTHER ORDERED that the Supplemental Patent Owner Response may only address the additional grounds instituted on May 2, 2018, and will be considered in conjunction with the Patent Owner Response (Paper 14), such that Patent Owner need not repeat in the Supplemental Response allegations and argument already submitted in the Patent Owner Response, but may refer back to allegations and argument in the Patent Owner Response, and that such references will not be considered to be impermissible incorporation of arguments or documents by reference under 37 C.F.R. § 42.6(a)(3);

FURTHER ORDERED that Petitioner is authorized an additional 3,000 words in its single reply to both the Patent Owner Response and Supplemental Patent Owner Response; and,

FURTHER ORDERED that the Scheduling Order (Paper 8) is modified to extend:

DUE DATE 2 to August 10, 2018;

DUE DATE 4 to September 24, 2018;

DUE DATE 5 to October 5, 2018; and

DUE DATE 6 to October 12, 2018.

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